The Legal Status of the Muslim Minority in Western Thrace: Efficacy of the Present Regime in the Light of Current International Human Rights Law

By

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I certify that all material in this thesis, which is not my own work has been identified and that no material included for which, a degree has previously been conferred upon me.

(Signed)..Iris Boussiakou.....

DEDICATION

To my grandmother Anastasia Kalkani for imparting on me the essential values of morals, ethics and dedication and my parents Dr. Boussiakos and Dr. (Mrs.) Boussiakou for their continual love, support and guidance throughout the years.

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ABSTRACT

This thesis explores the position of minorities in the state of Greece. It is particularly, but not exclusively concerned with the Muslim minority in Western Thrace, which was the subject of special provisions in the Treaty of Lausanne of 1923 (and which remains in force today). The thesis argued that the principle, which underlay that Treaty, that of reciprocity between Greece and Turkey in dealing with minorities with other's "ethnicity" or "religion" is now outdated. It is also argued that that principle has often proved dysfunctional in protection because, it meant that respect for minorities depended upon the state of the relations between the two states. It also led to retaliation against minorities, if one state was perceived to be in breach of its obligations to the other.

At the same time, the delicate process by which minorities are encouraged in their differences while being expected to integrate (but not assimilate) with the majority is considered and explored. The conclusion of the thesis is that it is only possible to achieve a satisfactory position with regard to minorities, if Greece adopts the current thinking in international law for minority protection. This will necessitate both acceptance of human rights provisions in treaties and their enforcement in Greek law. The end result of this process should be vibrant and distinct minorities secure in their separate identities, but nevertheless able to compete and co-operate with the majority culture.

There are of course factors, which militate against such a happy outcome and these difficulties too are considered. In particular, the compatibility of Islam and human rights provisions, which prevent discrimination, particularly sex discrimination require and receive attention. Also considered is the contemporary emphasis of human rights upon individualism and rights, as opposed to Islamic emphasis upon community and obligations.

Implicit in the thesis is the premise that minorities in Greece have, if for understandable reasons, received less protection and economic and social aid, than is desirable both for them and indeed for the Greek State. This is exemplified by considering linguistic, religious and educational rights.

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Greek-Turkish Agreements

1881 Convention of Constantinople, 1881, arts. 2, 44(11) 88, 89(1).

1930 Greek-Turkish Covenant of Friendship, 1930, arts. 1, 2.

1951 Greek-Turkish Educational Agreement, 1951, arts. 8, 18.

1968 Greek-Turkish Cultural Protocol, 1968, arts. 11, 12, 13, 14, 15, 16, 17.

2000 Greek-Turkish Agreement on Cultural Co-operation, 2000.

Regional Legislation

1950 European Convention on Human Rights, 1950, arts. 2(1), 5, 6, 8, 9, 10, 11, 13, 14, 2 7(1) (a).

1954 Protocol [illegible] the European Convention for Human Rights, 1954: "Enforcement of certain Rights and Freedoms not included in Section I of the Convention." art. 2.

1960 UNESCO [illegible] Convention Against Discrimination in Education, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, during its 11th session, 1960, arts. 1(1), 1(2), 5(1)(a), 5(b)

1968 Protocol [illegible] the European Convention for Human Rights, 1968: "Securing certain Rights and Freedoms other than those included in the Convention [illegible] Protocol No.1." art. 2.

1975 Final Act [illegible] Helsinki Conference, 1975, CSCE, principle VIII.

1988 Protocol [illegible] the European Convention for Human Rights, 1988: "Concerning Matters." art. 5.

1990 Concluding [illegible] Document of the Copenhagen Meeting of the Conference on the Human [illegible] tion of the OSCE, 1990, paras. (5), (30), (31), (32), (34), (35), (40

1990 The Charter of Paris for a New Europe, OSCE, 1990.

1992 European [illegible] Regional or Minority Languages, Council of Europe, 1992, art. [illegible], 11, 14.

1995 Framework [illegible] tion for the Protection of National Minorities, Council of Europe, 1992. arts. 1(2), 3(1), 4(1), 4(2), 4(3), 5(1), 5(2), 6(2), 9(1), 10(1), 11 [illegible] 14, 14(3), 15, 17(2).

International Legislat[illegible]

1945 The United [illegible] Charter, October 24, 1945.

1947 Treaty of [illegible] 7, arts. 19(4) 29(2).

1948 The United [illegible] laration on Human Rights, 1948(G.A. Res. 217A (III)/10. [illegible] 48, art. 1, 2, 7, 16, 26.

1951 The United [illegible] Convention on the Prevention and Punishment of the Crime of [illegible]. 1948(G.A. Res. 260A (III)/9.12.1948, entered into force on [illegible], 1951, in accordance with Article XIII), arts. 2.

1960	The U	onvention Against Discrimination in Education, 1960(C erence of the United Nations Educational, Scientific and Cu zation, December 14, 1960, 11th session.
1966	Internat ant on Economic, Social and Cultural Rights, (G.A. Res. (X 966, entered into force on January 3, 1976, in accord icle 27), arts. 1, 2(1), 2(2), 4(1) 13, 14, 14(3), 24(1), 26.
1966	Internati ntion on the Elimination of All Forms of Racial Discrim 6(G.A. Res. 2106(XX)/21.12.1965), entered into force on Jan in accordance with Article 19.)
1966	The I venant on Civil and Political Rights, 1966(G.A. Res. 2200 .1966, entered into force on March 23, 1976, in accor icle 49), arts. 1, 2(1), 3, 7, 14, 14(3)(a), 18, 19, 25,26, 27, 41.
1966	Option o the International Covenant on Civil and Political Rights.
1969	The I onvention on the Elimination of All Forms of Racial Discri 5(G.A. Res. 2106(XX)/21.12.1965, entered into force on J), in accordance with Article 19), arts. 1(4), 2, 4, 5(d)(
1978	Vienn n on Succession of Treaties, 1978(G.A. Res. 3496(978), art. 2
1981	Unite nvention on the Elimination of All Forms of Discri inst Women, 1979(G.A. Res. 34/80/18.12.1979, enter September 3, 1981,in accordance with Article 27(1)), arts. 1.
1981	Unite eclaration on the Elimination of All Forms of Discr sed on Religion or Belief, 1981(G.A. Res. 36/5 ts. 1(3), 6, 18.
1987	Opti the Convention on the Elimination of All Forms of Racia n, G.A. Res. 39/46, December 10, 1984, entered into force 87, in accordance with Article 27(1).
1989	Seco otocol to the International Covenant on Civil and Polit . Res. 44/128, December 15, 1989.

1990	The U	s Convention on the Rights of the Child, 1989(G.A. Res. 89, entered into force on September 2, 1990, in accor icle 49), arts. 2(1), 28, 29, 30.
1992	Unite	eclaration on the Rights of Persons Belonging to Natio , Religious and Linguistic Minorities (G.A. Res. 47/13 art. 2(5), 4.

TABLE OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CSCE	Conference on Security and Co-Operation in Europe
Doc.	Document
DR	Decisions and Reports
E.H.R.R.	European Human Rights Reports
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
ELIAMEP	Hellenic Foundation for European and Foreign Policy
EPATH	Special Pedagogical Academy of Thessaloniki
EU	European Union
Eur.Ct.H.R.	European Court of Human Rights
FEK	Official Gazette
G.A.	General Assembly
H.R.L.J	Human Rights Law Journal
H.R.Q.	Human Rights Quarterly
HCNM	High Commissioner on National Minorities (OSCE)
HDM	Human Dimension Mechanism (OSCE)
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
KEMO	Minority Rights Research Group
MRG	Minority Rights Group
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation

OSCE	Organisation for Security and Co-Operation in Europe
PCIJ	Permanent Court of International Justice
Res.	Resolution
UN	United Nations
UN	United Nations
UNESCO	United Nations, Educational, Scientific and Cultural Organisation

PAGE NUMBERING AS ORIGINAL

INTRODUCTION

This thesis sets out to examine the legal status of the Muslim minority in the Greek legal system. The reason for choosing to research on this particular minority group is the special position it has within Greece and the significant impact the relations between Greece and Turkey have on the legal status of the Muslim minority in Greece. In addition, a brief comparison will be made between the Greek minority in Istanbul and the Muslim minority in Western Thrace, since both minority groups are governed by the Treaty of Lausanne, 1923 on a historical and political level.

Greece officially recognises the existence of only one religious minority, the Muslim minority in Western Thrace.[1] The Muslim minority is composed on an ethno-linguistic basis, being made of Muslims-Turks, speaking Turkish; the Pomaks (Muslim Slavs) who speak a Bulgarian dialect and Roma Gypsies, who have their own oral dialect. The Muslim-Turks together with the Pomaks and the Muslim Gypsies living in Western Thrace are recognised as a religious Muslim minority, in accordance with the Treaty of Lausanne. Therefore, throughout this thesis the Muslim minority will be described as a religious minority rather than a national or ethnic minority, however, this does not mean that extensive research or criticism have not been conducted on the legal and administrative practices of the Greek government towards the rights of minorities on its territory. In particular, the thesis focuses on the cultural, religious and linguistic rights of the Muslim minority in Greece in the international legal domain within the framework of the United Nations' international legal documents for the protection of human rights and minority rights and on other regional and national laws.

The International Covenant on Civil and Political Rights is the only binding legal instrument in the International Human Rights Bill, which directly deals with the rights of minorities. Article 27 of the Covenant is expressed in individual terms, it namely protects the rights of persons belonging to a minority group to have the right to enjoy their own culture, profess and practise their own religion and use their own language. However, for the effective implementation of the rights provided by Article 27, rights of minorities are to be enjoyed in a collective manner. The principles of equality and

non-discrimination are the most fundamental principles of human rights law. They are essential principles for the protection of human rights and minority rights. Thus these principles are enshrined in various other major instruments. For example, the European Convention on Human rights prohibits discrimination in Article 14 of its text. In addition, Article 2 of the Universal Declaration of Human Rights states that the rights provided in the Declaration are to be enjoyed by everyone "without any distinction of any kind, as to, colour, sex, language, political or other opinion, national or social origin, property, birth or other status".

The Muslim minority in Western Thrace is officially estimated to be one hundred and twenty thousand.[2] The Muslim-Turks are of Turkish origin, who were living in northern Greece during the Ottoman Empire and remained there after the end of the war in Asia Minor. They were exempted from the Greek-Turkish exchange of populations, which took place in 1923 after the end of the First World War. They are Greek citizens mainly living in the plains and urban centres of Western Thrace. They speak the Turkish language and are devoted to the Turkish-Muslim culture and traditions. They mostly live in the prefecture of Rodopi.[3]

The Pomaks is a population, whose ethnic origin is rather doubtful.[4] Nevertheless, it is believed that it is one of the most ancient populations in the Balkans.[5] After 1923, Pomaks who lived outside Western Thrace had to resettle in Turkey, because they were exchanged as Muslims in accordance with the Treaty of Lausanne. Only those Pomaks living in Western Thrace were exempted from the compulsory exchange of

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[1] Western Thrace is a prefecture in northern Greece, which is composed of three towns: Rodopi, Komotini and Evros. See, Appendix E: "Map in the Context of Neighbouring States"

[2] More specifically, there are twelve-thousand Muslims living in the district of Xanthi of which eleven-thousand are Muslim-Turks, twenty-five thousand are Pomaks and five-thousand three-hundred are Gypsies. The Christian population in Xanthi is forty-six thousand eight-hundred. In the district of Rodopi there are fifty-seven thousand Muslims, which forty-six thousand are Muslim-Turks, twelve-thousand two-hundred are Pomaks and eight-thousand seven-hundred are Gypsies. The Christian population in Rodopi is fifty-one thousand. Finally, in the district of Evros, there are eleven thousand Muslims living of which almost two-thousand are Muslim-Turks, two-thousand are Pomaks and seven-thousand are Gypsies. The Muslim population in Evros is one-hundred and forty-four thousand. See, G.D. Kodogiannis, "The Muslim Minority of Western Thrace" Eleftheros Typos July 6, 1988.

[3] Eleni Kanakidou, The education of the Muslim minority in Western Thrace, 2nd edition (Ellinika Grammata, Athens, 1997) pp.63-65.

[4] See, Appendix B: "Analysis of the Social Status and Origin of the Muslim Minority in Western Thrace"

[5] Kanakidou, *op.cit*, pp. 77-78.

populations and were allowed to remain in Greece. Pomaks live in the three regions of Western Thrace, they are the main component of the Muslim minority in Xanthi.

In their way of life, one could observe some elements of Christian civilisation. Their language is restricted and is based on the Slav-Bulgarian dialect.[6] Its elements were adopted at the 13th century together with many Turkish and Greek linguistic roots. The accession of the Pomaks into Islam during the 16th and 17th century is explained as the only possible way for the group's continuation and survival. With the change of religion, many Turkish words were adopted with the language of the group, which gradually led to their assimilation into the Turkish culture.

During the era of the Ottoman Empire, the Balkan region offered a wide space for the movement of various tribes. However, the population movement was mostly due to the optional exchange of populations that occurred in the 19th century until the compulsory exchange of populations with the Treaty of Lausanne. According to this historical evolution, one of the population groups involved is the Gypsies. They comprise a group of people with strong internal differentiation regarding their cultural and social characteristics, their structure of organisation and their value system. Most probably this kind of differentiation is due to the different forms of socialisation of the Muslim Gypsies. A further factor, which defines the particularities of this group, is the position they have within the social structure of Western Thrace. The Gypsies living in Western Thrace are unique in the way they have adopted the Muslim religion, quite easily, while retaining their own distinctive culture, tradition and ethics. The Romas mostly live in the prefecture of Evros.[7]

The Turkish language was established as the representative language of the minority, due to the political changes of Kemal Ataturk, who abolished the Arab language, in his efforts towards developing Turkey into a secular state. In contrast, the decision of the Greek government to recognise the Turkish language as the mother tongue of the Muslim minority resulted in the unified treatment of all three ethno-linguistic groups of the Muslim minority. As a consequence, the Turkish language constitutes the 'representative' language of the Muslim Greek citizens. At the same time, it has great

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[6] See, Appedix B, note four, *supra*.

significance in expressing the religiousness of the social life of the minority. This is true, especially in the area of education where language and religion constitute the two determining characteristics of the ethnic distinctiveness of the Muslim minority.

In particular, religion in the Muslim societies plays a key role in the development of societal ideas, perceptions and the general way of living. The Muslims in Western Thrace seem to exercise their religious duties with great respect and intensity. It is probably fair to say that it does not seem to constitute a social 'provocation' for the majority of the society they are living in. In general, Christians and Muslims seem to co-exist peacefully. In addition, conflicts rarely, occur on an individual level. The participation in the life of the minority is perceived as no more than a function of tradition rather than a source of friction between the Muslim and Christian citizens.

The Muslim minority is not only a religious minority it is officially recognised as a bilingual population. On the one hand, the Greek language is the language used for the wider social functions of the minority and for all the formal acts between the minority and the administrative and judicial authorities. On the other hand, the Turkish language is reserved only for the use in the family and community domain. However, in the communities occupied by Pomaks the language spoken is their own Slavic dialect. It may be argued that any possible conflicts between the Greek government and the Muslim minority seem to exist on an institutional level. Indeed, some argue that bilingualism in minority education is regarded as constituting a repressive factor in the full and effective participation and integration of the members of the minority in the social and economic life of the Greek society.[8]

Greece has been a country with a long-lasting experience in minority issues, since its establishment as a sovereign state. The observance of the rule of law and fair dealings remains the essential elements of the Greek government's stated foreign policy. However, various historical and political events within the Balkans and various territorial claims over the Greek State, inescapably have acted as an influential factor in the legal and political attitude of the country.

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[7] See, Appendix E, *supra*, note one.

At this point it is important to note, the political position and the enactment of legislation concerning the Muslim minority, in Western Thrace especially after the invasion of Cyprus by Turkey in July of 1974. A similar example, is the political behaviour towards the Slav-speaking population before and after the establishment of the Yugoslavian Republic of Macedonia, until its recent independence and the tension that followed afterwards between the two countries.

This research has been divided into five parts. In the first chapter, an analysis is provided of the historical period arising from the beginning of the Balkan Wars up to the First World War and the peace settlement that followed at the end of war. The aim of the first chapter is to analyse the historical existence of the Muslim minority in Greece. The analysis examines the period from the end of First World War, until the creation of the United Nations.

An examination will be made of the series of Peace Treaties that followed the end of the First World War. The Treaty of Lausanne was signed between Greece and Turkey, at the Lausanne Peace Conference on July 24, 1923, to put an end to the Greek-Turkish War. At the same time, a separate convention was signed, on January 30, at the Peace Conference, the Lausanne Convention Regarding the Compulsory Exchange of the Greek-Turkish Populations. The Treaty of Lausanne, defines the existence of the Muslim and non-Muslim minorities in Greece and Turkey. The fourth part of the Treaty accords rights to the Muslim minority in Western Thrace and the Greek minority in Istanbul, based on the principle of reciprocity. In the final part of the first chapter of this thesis, comment is made on the impact the Lausanne Convention had on the relations between Greece and Turkey.

In the second chapter, an analysis is made of the concept and existence of minorities in international law, with special references to Article 27 of the International Covenant on Civil and Political Rights. This discussion is mainly based on the definition of the term 'minority' as provided by the Permanent Court of International Justice in 1930 in the case of the *Greek-Bulgarian Communities* case. Accordingly, it is concluded, that the existence of a minority is "not a question of law but a question

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[8] Kanakidou, *op.cit.* p. 61.

of fact".[9] A provisional definition of the concept of a minority is also provided by Francesco Capotorti, the UN Special Rapporteur, in his report: "A study on the rights of persons belonging to ethnic, religious and linguistic minorities"[10], in 1992. Capotorti defines a minority group as: "a group of individuals who owe allegiance as nationals of the state they are living in, and posses distinctive characteristics from the rest of the majority". Once the objective criterion of the existence of minorities has been satisfied, the subjective element of the definition has to be proved. The minority group must necessarily share a common desire towards the preservation of their special characteristics for the protection of special measures to be taken by the state. Accordingly, one can argue that the subjective element of a minority is essential for the existence and recognition of a minority group.

In the third chapter, an examination is made of the official recognition of ethnic, religious and linguistic minorities in Greece. This is done within the framework of regional and international treaties for the protection of human rights and minority rights. The analysis expands on the development and structure of the distinctive culture, religion and language of the Muslims in Western Thrace. The second part of the chapter offers a detailed analysis of the official position of the Greek government regarding the rights of minorities in its territory, under national and international law.

The primary point concerns the legal recognition of the existence of minorities in Greece. Accordingly, an analysis is given of the official position of the Greek government towards the recognition of minorities in its territory. At this point, it may be observed that the official position of the Greek government maintains a rather restrictive and rigid approach towards the rights and existence of minorities. As a result a large number of minority groups often go unacknowledged and do not seem to enjoy a special system of protection for the preservation and promotion of their distinctive identity.

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[9] See, Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, (1930), PCIJ, Series B, No.17, pp. 14-16, also known as the Greek-Bulgarian Communities Case.

[10] Capotorti Francesco, A Study on Persons Belonging to Ethnic, Religious and Linguistic Minorities, (New York: United Nations Publications, 1991).

In the fourth chapter, an analysis is provided of the international obligations Greece has undertaken for the protection of the rights of minorities. This chapter gives an overall picture of the legal status and rights of the Muslim minority in Western Thrace since the Treaty of Lausanne with the inter-war period, the period to the end of the Second World War and the present time. The main aim of this analysis is to provide a detailed account of the rights of the members of the Muslim minority in Western Thrace, by emphasising the positive steps taken by the Greek government, but also address any existing inadequacies of the present regime and ways of resolving them.

The fifth chapter focuses on the practice of the judicial authorities in their interpretation of the minority cases. The practice of the Greek courts has not always been in accordance with the principles of pluralism, the rule of law and human rights. In a number of cases involving members of the Muslim minority, the courts have demonstrated a quite restrictive and rigid approach in the application of rights. This chapter provides a detailed analysis of the exercise of civil and political rights of the Muslim minority before the national courts and official attitude of the judicial authorities towards minority members.

The sixth chapter focuses on the religious freedom of the Muslim minority under the Treaty of Lausanne and international law. The Greek government respects the right to freedom of religion, for all Greek citizens, according to Article 3 of the Constitution. The members of the Muslim minority of Western Thrace enjoy their right to freedom of religion as provided by national legislation and the provisions of the Treaty of Lausanne. This chapter examines the status of religious freedom of the Muslim minority in Western Thrace. A detailed description will be provided of the legal aspects of the appointment of the Mufti (religious leader) and the division of his religious and civil duties.

This proceeds to consider the concern of the Muslim minority of Western Thrace. On the part of the Muslim minority, their main claim is that they must have a right to elect their own religious leader free from government interference. However, the Greek government argues that, since the Mufti is a civil judge, he should be appointed by the state, in compliance with national legislation. While religious freedom is provided according to the Treaty of Lausanne it is the duty of the state authorities to

examine the decisions of the Mufti, to ensure they are in compliance with the Constitution and international human rights standards. Thus, a detailed analysis will be made regarding the jurisdiction of the civil courts, in examining the decisions of the Mufti to ensure they are compatible with the Constitution and international human rights principles and norms.

The main focus of the seventh chapter is placed on the relationship between the state and the religious freedom of the Muslim minority in relation to the application of Islamic law, in personal and family law cases between Muslims in Western Thrace. In this chapter an analysis is made between Islamic family law and national and international human rights. An evaluation is made of the necessity to grant religious freedom to the members of the Muslim minority vis-à-vis the duty to ensure respect for the principles of equality and non-discrimination for minority members, especially women. This is important, in reaching a balance between the religious rights of the minority and compliance with the Constitution and current human rights norms.

Chapter eight analyses the right of the members of the Muslim minority to use their own language in both private and in public as well as in administrative and judicial domains. The first part of the chapter provides a detailed analysis of international law instruments providing for the right of linguistic minorities to use their own language, when reasonable and justified. The second part of the chapter gives a detailed account of the rights of the Muslim minority to use their own language in Greece before the administrative and judicial authorities. The right the members of the minority have to use the Turkish language in public authorities, based on national and international law is thoroughly considered.

Chapter nine provides a detailed analysis of the right to education of the Muslim minority. Firstly, an analysis is provided regarding the present status of education in the minority schools in Western Thrace. In doing so, the problems and existing inadequacies of current educational system are described. Secondly, several solutions and recommendations are suggested in improving and advancing the quality and system of education provided to the Muslim students in order for them to gain sufficient knowledge of the Greek and Turkish language, as well as to facilitate their development, progress and future integration into the Greek society.

Finally and most importantly, a detailed analysis is made regarding the legal status of the Muslim minority in the light of current international human rights law. In this context, an examination is made as to whether the protection afforded by national legislation and the Treaty of Lausanne is adequate for the protection of minorities in Greece. This analysis is mainly based on the arguments made throughout the thesis, by examining the civil and political rights, religious freedom and educational rights of the Muslim minority. In conclusion, several proposals are made for the improvement of the status of the Muslim minority.

As will be illustrated, the Treaty of Lausanne may no longer correspond to the current expectations of the international community for the protection of minority rights. The Greek government will be well advised to replace the system of protection arising from the Treaty of Lausanne with the current international obligations of human rights law. This, of course, means Turkey's obligations under the Treaty are also to be seen in the light of general and more specialist obligations under contemporary international law. Perhaps no better illustration of this can be found, than the fact that Turkey continues to actively negotiate its possible membership in the European Union.

CHAPTER ONE: THE HISTORICAL BACKGROUND OF GREECE AS A SOVEREIGN STATE

1.0: General Background

The Greek State was established as a sovereign state in 1830 after winning independence from the Ottoman Turks. The boundaries were extended, most notably after the end of the Balkans Wars. The massive exchange of populations between Greece and Turkey after the Treaty of Lausanne in 1923[1] led to a dramatic change in the "human geography" of Greece.[2] The Treaty of Lausanne greatly changed the borders in the South Balkan Peninsula and in particular in the wider geographical area of Macedonia and Thrace.

The Balkan Peninsula is characterised by cultural, religious and linguistic distinctive traditions. The Balkan states became a target for national and territorial claims by their bordering states, since continual massive populations movements followed at the end of the Balkan Wars.[3] Meanwhile, the development of a particular national or ethnic model based on a specific language and religion had as its main target the national homogeneity of the internal structure of the Balkan states. [4] However, as Hugh Poulton states, "modern Greece is the sum of diversity of influence from different civilisations and peoples"[5] such as the Romans, the Byzantine and the Ottoman Empire.

The Romans conquered the Balkans during the third and second century B.C.[6] The cultural influence of the Roman Empire upon the Balkans varied. The Romans admired the Greek civilisation and the upper classes adopted a certain degree of Greek culture. The Greek language was considered the language of culture and Latin the language of administration and government. The Greeks remained maintained their language and

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[1] See, Legislative Decree 25/1923(FEK A' 311/30.10.1923): "On the Ratification of the Treaty of Lausanne"

[2] Hugh Poulton, The Balkans: Minorities and States in Conflict, (London: Minority Rights Group Publication, 1991) p. 173.

[3] For the population figures and Greece's situation and stand after the Balkan Wars, see, Y. Mourelos, "The 1914 Persecutions and the First Attempt of an Exchange of Minorities between Greece and Turkey" Vol. 26 Balkan Studies, No.2 (Thessaloniki : 1985) p. 389.

[4] For the internal structure of Greece, on terms of religion, culture and language, see L. Divani, Greece and Minorities: The Protective System of the League of Nations (Athens: Kastaniotis, 1999) pp. 167-192.

[5] Poulton, *op.cit.* p. 175.

[6] L.S. Stavrianos, The Balkans since 1453, (London: Hurst & Company, 2000) p. 20.

culture under Roman rule. During the Roman period a Greek-Roman culture flourished throughout the Balkans with Greek culture predominant in the north-east and Latin influence in the north-west.[7]

During the Byzantine Empire, with its capital Constantinople, Greek language and culture were considered to be of higher status and authority and Christianity as the basis of religion.[8] However, the cohesion and unity of the Byzantine Empire was not based on ethnicity but religion (Christianity). The Byzantine Empire extended over the Balkans and the entire of Anatolia. The decline of the Byzantine Empire, however, did not mean the demise of the Greek culture or religion. Under the Ottoman Empire a new relation was formed between Hellenism and Christianity, since religion played a major role in maintaining the Greek culture and ethnicity under the Ottoman rule.[9]

At the beginning of the Greek War of Independence, Constantinople constituted the spiritual and cultural capital of the Greeks. At the end of war, the Greek state was established; the Kingdom of Greece. At the end of the First World War and the Asia Minor disaster, 1922, concentrated efforts were made to maintain territorial sovereignty and integrity and to preserve the religious and cultural homogeneity of the nation (*ethnos*).[10]

The majority of the population is ethnically Greek and adheres to the Christian Orthodox religion. The minority population groups in their average were considered to share a 'Greek ethnic' consciousness, according to the Greek statistics. Firstly, there were the Slav-speaking Bulgarians or Serbs from a Bulgarian or Serbian ethnic origin respectively, and the Vlahs with a Romanian ethnic origin. Secondly, there were the Muslims, mostly Turkish-speaking from a Turkish ethnic background, according to the Turkish sources.[11] The criteria used to describe the participation in a particular ethnic group were either religion or language.

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[7] *Ibid.* p. 21.
[8] In 326 A.D. Emperor Constantine moved his seat of government to Byzantium and established Christianity as the official religion. The city was renamed, New Rome, however, externally the city was called the city of Constantine or Constantinople.
[9] However, certain parts of Greece maintain a certain degree of autonomy, such as the Pelloponnese, some geographical inaccessible parts of mainland Greece and some of the islands. Also, Crete remained under Venetian rule until 1669.
[10] See, Chapter one, *supra*, section 1.10.
[11] D. Lithoxou, Minority Problems and Greek ethnicity, (Athens: Leviathan 1991) p. 37.

At the end of the second Balkan War (1913) Greece was sharing the geographical area of Macedonia with its northern bordering states.[12] As a result the territorial growth of the Greek State increased up to sixty-eight percent and its population up to seventy-eight percent. The linguistic and religious homogeneity of the Greek citizens, which was thought to be of a high percentage until 1913, significantly decreased. Fifteen percent of the total population belonged to different minority groups mainly concentrated on the northern provinces of Greece.

1.1: The Balkan Wars

The Treaty of Bucharest[13] was signed on August 10, 1913, between Bulgaria, Greece, Serbia and Romania. The Treaty of Bucharest put an end to the Second Balkan War mainly by defining the borders between the signatories of the Treaty. In the Treaty of Bucharest the Prime Minister of Greece, Eleftherios Venizelos, addressed a letter which was appended to the Treaty of Bucharest (in answering a letter of the Minister of Foreign Affairs of Romania). In this, Greece committed itself to allow special autonomy to the Vlahs schools and churches and also allowed the creation of a separate Diocese. Parallel to this development and under the control of the Greek Government, Romania finally was able to financially maintain its own schools and churches.[14]

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[12] *Ibid.* Macedonia before 1913 was a society of significant ethnic diversity: It was structured as such: (1). Muslims, which in their turn are divided into Turkish-speaking, Albanian-speaking, Slav-speaking (Pomaks), Greek-speaking (Valaades) Spanish-Jewish (Domendes) and Roma, Gypsies. (2) Christian patriarchal ethnic Grecks, which are Slav-speaking, Greek-speaking, Vlah-speaking and Albanian-speaking (3) Christians Exarchs which are Bulgarian-speaking and Vlah-speaking, ethnic Romanians, which are Slav-speaking and ethnic Serbs (4) Christian Gypsies, Turkish-speaking Christians (Gagauzi and others) (5) Ounites, Protestants Slav-speaking, (7) Jewish Spanish-speaking (Latin language). Indicative is the census carried out by Hilmi Pasas (title of aTurkish king) of the multi-ethnic and multi-lingusitic community in 1904 in the greater geographical area of Macedonia: Muslims 1.508.507, Exarchs Bulgarians 575.534, Patriarchs Bulgarians 320.0692, Patriarchs Greeks 307.000, Patriarchs Serbs 100.717, Patriarchs Vlahs 99.00, Israelis 48.720.

[13] Ioannou Perakki, Texts of International Practice : General and Specialised International Law, (Athens: 1985) p. 560.

[14]Constantinos Tsistelikis, The International and European Status for the Protection of the Linguistic Minority Rights and the Greek Legal Order, (Athens: Ant. N. Sakoulas 1996) p. 275. The text of the letter was constructed by Venizelos on 23 July 1913 at Bucharest and was sent to the Romanian Minister of Foreign Affairs T. Magioresko: "Greece consents to provide autonomy to the Vlahs schools and churches existing on the future Greek territories and also to allow the creation of the Diocese for the Vlahs population for the Romanian Government to be able to financially subsidise such future religious or ethnic establishments under the Greek Government's supervision" This letter was also addressed and send to Serbia and Bulgaria in relation to the linguistic and religious peculiarities of their Vlahs citizens.

The Treaty of Athens was signed on November 1, 1913 between Greece and Turkey.[15] The Treaty confirmed Greek sovereignty over the former Ottoman conquest territories in Epirus, Macedonia and the Aegean Sea. The administration of the Muslim private educational establishments was regulated according to the third Protocol of the Treaty and was applied to the territories, which were obtained by Greece and in any territories that were to be obtained in the future by Greece.[16] The special educational regime of the Ottoman Empire applied to all "recognised" ethnic groups of the Ottoman Empire[17] and was maintained and re-established by the Greek state for the Vlahs,[18] the Armenians[19] and the Jews[20]

1.2: The Post World War I Period

After the end of the First World War, the Allied Powers decided in favour of a series of Peace Treaties and separate conventions or unilateral declarations in order to deal with minority issues.[21] However, a significant period of time passed before the treaties were formed. This is due to the fact that the war had destructive consequences

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[15] Law No. 4213/1913(FEK A' 229, 1913): "On the Ratification of the Peace Treaty of Athens between Greece and Turkey".

[16] *Ibid.* See, also Law No. 568/1915(FEK A', 1915): "In Regard to the Teaching of the Greek Language in the Ottoman and Israeli Schools in the New Territories of Greece", Law No. 278/1922(FEK A' 84, 1922): "In Regard to the Development of Education in the Muslim, Israeli and Armenian Communities in Western Thrace", Law No. 2456(FEK A' 173): "In Regard to the Israeli Communities".

[17] *Ibid.* In the beginning of the 20th century, except from the 1.000 Greek and Ottoman schools other 'special' schools operated in some areas of Thessaloniki (Northern Greece): 561 Bulgarian schools with 18.311 students, 49 Romanian schools with 2.002 students and 53 Serbian schools with 1.647 students.

[18] *Ibid.* The Vlahs use a kind of Latin language closely related to the Romanian one. They mainly come from the mountainous areas of Thessaloniki and central Macedonia. After a concurrent series of immigration they finally settled in the plain-lands or at the urban areas. From that settlement the Vlahs were greatly assimilated to the Greek language.

[19] *Ibid.* The Armenians settled in the urban areas of Greece, mainly after the Asia Minor catastrophe as well as with the subsequent exchange of populations. At the end of the 19th century the Armenian population suffered a great series of persecutions from the Ottomans, which as a result they finally settled in Greek urban centres. Today the Armenian community in Greece, mainly in Athens and Thessaloniki is composed from almost 11.000.

[20] *Ibid.* The Jewish immigrated to Greece during the 16th century, due to a series of persecutions they suffered in Spain. They mainly settled in Thessaloniki, where they formed one of the most significant socio-economic population centres, but also in other urban centres of northern and western Greece. They used the Spanish-Jewish language, the Latin and sometimes the French one. After the German occupation, there were only left around 5.5000 Jewish people. They are mainly living in Athens, Larisa and Thessaloniki.

[21] L.S. Stavrianos, The Balkans since 1453, (London: Hurst & Company, 2000) pp. 571-592. The Versailles Treaty with Germany (June 28, 1919) the Saint-Germain Treaty with Austria (September 10 , 1919) the Trianon Treaty with Hungary (March 22 , 1919) the Neuilly Treaty with Bulgaria (November 27 , 1919) the Sevres Treaty with Turkey (August 20 , 1920) and the Treaty of Lausanne between Greece and Turkey (July 24, 1924).

on the internal structure of the states. For example, in Central and Eastern Europe, four great empires had disappeared, the German, the Austro-Hungarian, the Russian, and the Ottoman Empire. Although, the First World War ended in 1918, violence and hostility continued in Europe for the next five years. For example, in the Balkans, Greece and Turkey were engaged in a war in Asia Minor for three years.

The war ended and the Peace Treaties were formed: the Versailles Treaty with Germany, the Saint-Germain Treaty with Austria, the Trianon Treaty with Hungary the Neuilly Treaty with Bulgaria and the Sevres Treaty with Turkey. The Treaty of Lausanne was signed on July 24, 1923 between Greece and Turkey at the end of the Greek-Turkish War. It is significant to note that it was only after that date that World War I came to an end in the Balkans. [22]

1.3: The Treaty of Neuilly

The Treaty of Neuilly was signed on November 27, 1919, between the Allied and Associated powers on the one part and Bulgaria on the other. According to Article 56(2) of the Treaty,[23] Bulgaria undertook the obligation to accept any such terms as the Allied powers considered best with respect to the reciprocal and voluntary emigrations of national minorities. Accordingly, a special convention was signed between Greece and Bulgaria concerning the reciprocal and voluntary emigration of their respective minorities as part of the peace settlement. It also entailed a corresponding duty of the contracting states to facilitate by all means possible the exercise of this right.

A Mixed Commission was composed of four members, one appointed by each contracting state and two members of another nationality, one of whom would be acting as president appointed by the Council of the League of Nations. The duty of the Mixed Commission was to supervise this emigration and liquidate the immovable property of the emigrants. Emigrants were entitled to take with them their movable property exempt from customs duties of any kind. The right of emigration was to be exercised within two years of the creation of the Mixed Commission witnessed by the

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[22] *Ibid.*

[23] Article 56(2) of the Treaty of Neuilly states: "Bulgaria undertakes to recognise such provisions as the Principal and Associated Powers may consider opportune with respect to the reciprocal and voluntary emigrants of persons belonging to racial minorities."

commission or its representatives. This kind of emigration included an automatic change of nationality.

Both states ratified the convention on August 9, 1920. However, the implementation of the Treaty did not take place until a few years later due to the war situation in Asia Minor and the general unstable political balance in that region. By the end of 1926, according to the statistics of the Mixed Commission, fifty-three Slav-speaking people left Greece and emigrated to Bulgaria or elsewhere.[24] When the Treaty of Neuilly ceased to exist on January 31, 1932, it has been calculated from the Mixed Commission that ultimately one-hundred and sixty-six Bulgarian families and one-hundred and ninety-seven Greek families emigrated in the respective states.[25] However, it is worthy mentioning at this point that the idea of emigration did not seem very desirable to either minority group. Thus, about ninety-two thousand Bulgarians and forty-six thousand Greeks failed to avail themselves of the terms of the Treaty of Neuilly.

According to the Treaty of Neiully Thrace was divided into three separate parts. Bulgaria was requested to cede the western part of the province to Greece, ultimately in 1920.[26] However, no ethnic considerations entered into this decision for the population of the province was extremely mixed. The most numerous were the Greeks, Bulgarians and Muslims but none of them constituted a majority population. This had as a consequence the total increase of the linguistic and religious groups in Western Thrace.[27]

1.4: The Treaty of Sevres

The Treaty of Sevres was signed on August 10, 1920 between the Allied Powers and Turkey. The war in Asia Minor and the destruction of the Greek cultural element there was of great magnitude. Due to the tense and unstable relations that had developed in

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[24] Tsitselikis, *op.cit*,. p. 277.

[25] A. Aggelopoulos, "Population distribution of Greece today according to Language, National Consciousness and Religion", Balkan Studies (Thessaloniki, 1979) p. 124.

[26] The Convention respecting the Thracian Frontiers , signed at Lausanne, July 24 , 1923

[27] With the annexation of Western Thrace to Greece 191.000 of citizens were added, (According to the census of 1920, which the Greek Administration carried out the population of Western Thrace was composed of 84.000 Muslims , 68.000 Greeks , 35.000 Bulgarians and 4.000 other various groups : mainly Armenians and Jewish , which in their majority gained Greek citizenship, see Palli, *op.cit.*, p. 23.

that region after the end of the war, the Treaty of Sevres was ratified in 1923[28] and came into force for Greece concurrently with the Treaty of Lausanne. Nevertheless, the Treaty of Sevres was abandoned after the end of the Second World War at the time when treaties concluded within the system of the League of Nations were being re-examined.

The Treaty of Sevres set out the general framework for the protection of minorities in Greece. The provisions of the Treaty were based on the principle of non-discrimination of all the inhabitants of Greece, regardless of citizenship, ethnicity, religion or language. In particular, it referred to the religious freedom and linguistic rights of the Jewish minority and Muslim minority.[29] As far as the right to use a minority language was concerned, Greece allowed the free use of a minority language in private, in commerce, in the press and in public gatherings.[30]

In the area of education, Greece undertook the obligation to establish primary schools teaching in a minority language in areas where a considerable proportion of minorities lived and used their mother tongue as the language of communication. A separate clause was provided in the Treaty, according to which the Greek government granted autonomy to the Vlahs of the mountainous areas of Northern Greece (Pindos) with respect to religion and education.[31] However, the Greek government remained in control of the situation.

1.5: The Lausanne Peace Conference

On November 20 1922, the President of the Swiss Confederation, Robert Haab, opened the Peace conference at Lausanne. The Turkish delegation led by General Ismet Pasha arrived as victors on an equal standing with the four Allied Powers. The Greek delegation was led by Eleftherios Venizelos, the Prime Minister of Greece during the First World War and during the Peace Conference.

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[28] See, Legislative Decree 291923(FEK 311/30.10.1923): "On the Ratification of the Treaty of Sevres Concerning the Protection of Minorities in Greece"
[29] See, Articles, 2(1), 7(1)-(3) and 9 of the Treaty of Sevres.
[30] *Ibid.*

The Peace Conference was divided into three main commissions. The first commission on territorial and military questions and the regime of the Straits was chaired by Lord Curzon, the British Foreign Secretary. The second commission on the regime of foreigners and minorities in Turkey was chaired by Marquis Garroni, the Italian Ambassador at Istanbul and the third commission on financial and economic questions, on ports and railways and on sanitary questions was chaired by M. Barrere, the French Ambassador at Rome.[32]

Due to some disagreements caused largely by the Turkish representative's (Ismet Pasha) demands of territorial integrity and full independence, including the restoration of Eastern Thrace and the Straits and the abolition of all foreign control over Turkish finances,[33] the negotiations faced an insurmountable stalemate. In fact, the, Conference, after beginning on November 20, 1922, broke up on February 20, 1923, since no agreement could be reached.

The Peace Conference resumed again on April 23 and finally on July 24 common points were reached and the Lausanne Treaty was signed. At the same time, the Treaty of Lausanne was being ratified aiming to put an end to the war and to deal with minority issues. Under the terms of the Treaty of Lausanne both states undertook a set of obligations for the protection and promotion of the minority rights in their respective territories. The compulsory exchange of Greek-Turkish populations was effected on the basis of the Lausanne Convention Concerning the Exchange of Greek-Turkish Populations (hereafter the "Lausanne Convention") that was signed on January 30, 1923 between Greece and Turkey.[34] The Lausanne Convention was signed together with an agreement relating to the reciprocal restitution of interned civilians and the exchange of prisoners. All these acts form part of the peace settlement with Turkey reached at the Conference of Lausanne in 1923. Similarly, another peace

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[31] Article 12 of the Treaty. In regard to whether or not the Treaty of Sevres replaces the content of the letter of the Prime Minister Venizelos, see L. Divanis, *op.cit.*, pp. 97 and 99.

[32]Kalliopi K. Koufa and Constantinos Svolopoulos, "The Compulsory Exchange of Populations Between Greece and Turkey : The Settlement of Minority Questions at the Conference at Lausanne , 1923 and its Impact on Greek-Turkish Relations", Ethnic Groups in International Relations, Vol. V Comparative Studies on Government and Non-Dominant Groups in Europe , 1850-1940 , Paul Smith (ed.) (New York : New York University Press 1992) p. 279.

[33] *Ibid.*

[34] Legislative Decree 25.08.1923 (FEK A' 238, 1923) "On the Ratification of the Lausanne Convention Concerning the Exchange of Greek-Turkish Populations"

convention was signed, namely the Convention Respecting the Regime of the Straits and other Instruments at the Lausanne Conference.

As far as the Balkan Peninsula was concerned, Eastern Thrace including Andrianople, returned to Turkey and the Imbros and Tenedos Island[35] near the Straits also reverted to Turkey though the remaining of the Aegean islands went to Greece. Italy retained the Dodecanese Islands and the United Kingdom kept the island of Cyprus. The capitulations were abolished in return for judicial reforms and Turkey was not required to pay reparations though it did accept treaties for the protection of minorities.[36]

The Treaty of Lausanne remains in force presently and regulates among other matters the legal rights and protection of the Muslim minority in Western Thrace and the Greek minority in Istanbul. The Treaty is based upon a mutual exchange of rights and obligations designed for the benefit of the respective populations carefully identified. According to Article 45 of the Treaty: "The rights conferred by the provisions of the present section of the non-Muslim minorities of Turkey will be similarly conferred by Greece on the Muslim minority in her territory".

It is important to note that the principle of reciprocity found in Article 45 must not be interpreted as referring to the substance of the rights of the respective minorities but merely prescribing the mutual obligations of both states to protect the rights of their respective minorities. Therefore, under no circumstances can it be reasonably argued that the violation of the substantial rights of the Treaty of Lausanne committed by one party may be used as a justification for any "reciprocal" future violations by the other one.

Besides the mutual obligation of Greece and Turkey to respect the rights of both minority groups, the unique principle of "numerical balance" was also established

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[35]Article 14 of the Treaty of Lausanne, states that: "The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organisation composed of local elements and furnishing every guarantee for the native non-Muslim population in so far as concerns local administration and the protection of persons and property. The maintenance of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and placed under its orders. The agreements which have been, or may be, concluded between Greece and Turkey relating to the exchange of the Greece and Turkish populations will not be applied to the inhabitants of the islands of Imbros and Tenedos." For the full text of the Treaty of Lausanne, see Appendix A: "The Treaty of Lausanne".

regarding the two minorities. However, the number of the Greeks living in Istanbul was dramatically decreased, since several categories of them were included in the compulsory exchange of populations.[37] On the contrary, the Turkish government specifically requested that the Turks, who had left Western Thrace between the period of 1912-1913 should be allowed to return. As a result, in March 1920 there were eighty six-thousand seven- hundred and ninety Muslims in the region whereas the ones exempted from the compulsory exchange of populations were one-hundred and six thousand.[38]

The Treaty of Lausanne was undoubtedly unique and contained many exceptions to the rule compared to the status of other treaties or unilateral declarations of its type under the system of the League of Nations. It can be said that Greece and Turkey are mutually obliged as demonstrated by *opinio juris* to observe in good faith the provisions of the Treaty of Lausanne. Section IV of the Treaty, which is devoted to the protection of minorities can be seen as a bilateral autonomous agreement pact, which continues to exist in the manner and degree that both states agree to.

1.6: The Compulsory Exchange of Greek-Turkish Populations

There are several methods used in international law to solve the problem of national minorities where it may constitute a future source of inter-state conflicts. One such method is the "compulsory exchange of national minorities". This takes the form of "obligatory uprooting of populations from one country to another".[39] This kind of method has quite correctly been described as the most drastic method used for the "physical elimination and discontinuance of the co-existence of two separate ethnic groups in the same state."[40] It was this particular method that was adopted to solve the serious problems posed by the existence of Greek and Turkish minorities after the end of the First World War and the consequent attempts at reestablishment of peace between Greece and Turkey.

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[36] Stavrianos, *op.cit.*, p. 589.

[37] Alexandris, *op.cit.*, p. 39. According to the census carried out by the Turkish authorities, which results were published in 1924, the Greek citizens of Istanbul numbered 279, 788.

[38] D. Mitrany , The Effects of the War in South-Eastern Europe , (Yale 1936) pp. 224-226.

[39] Svolopoulos, *op.cit.*p. 275.

The compulsory exchange of Greek-Turkish populations became the centre of academic attention during the inter-war period and still remains rather controversial. On the one hand, it has been severely criticised for violating fundamental human rights under international law. On the other hand, it was seen as the most effective and realistic means to resolve the minority problems between the two states and thereby eliminating any obstacles to the attainment of ethnic homogeneity in the two states.

However, it may be argued that through this method of a compulsory exchange of populations, the right to self-determination, respect and preservation of human dignity and tolerance are violated and ultimately denied. The compulsory exchange of Greek Turkish minorities and the compulsory liquidations of property raised immense problems of economic and human readjustments in both states. This undertaking is of considerable significance because, it altered substantially the ethnographic map of the Balkans and especially of Macedonia.[41]

It should be noted that the migrations that followed the compulsory exchange of populations were but a succession of a series of Balkan population shifts that began with the Balkan Wars. Large migratory movements had taken place in the previous decades as a result of the two Balkan Wars and the First World War due to the systematic expulsion and deportation by the Ottoman government of the Greeks from Eastern Thrace and Asia Minor.

The first occurred in 1912 when about one-hundred thousand Turks fled before the successful armies of the Balkan League.[42] Then with the second Balkan War and the Bucharest Treaty other mass migration occurre involving approximately five-hundred thousand Turks, sixty-thousand Bulgarians and seventy-thousand Greeks. During 1914 the population movements continued and many people found themselves on the "wrong" side of the newly created frontiers. About one-hundred and fifteen-thousand Muslims left Greece another one-hundred and thirty-five thousand left the other Balkan states and one-hundred and fifteen-thousand Greeks departed from Eastern Thrace.[43]

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[40] *Ibid.*
[41] Stavrianos, *op. cit.*, p. 590.
[42] Ibid. Bulgaria, Serbia, Montegro and Greece formed a military alliance against the Ottomans. This alliance was later known as the "Balkan League".
[43] *Ibid.*

With the end of the war the migrations were resumed the largest being the voluntary exchange of Greek and Bulgarian minorities provided under the Treaty of Neuilly and the compulsory exchange of Greek and Muslim minorities required by the Treaty of Lausanne. It is estimated that fifty-thousand Bulgarians emigrated from Greece and thirty-thousand Greeks emigrated from Bulgaria. The Greek-Turkish exchange was of an altogether different magnitude, involving some four-hundred and forty-thousand Turks and one million three-hundred thousand Greeks. The price was heavier to pay for Greece, which in the period of severe economic difficulties, faced a twenty per cent increase its population.[44]

Population changes of such a dimension naturally involved a great amount of dislocation and human suffering. The members of historical communities were transferred and re-located quite often into hostile environments. The Greeks from Asia Minor were perhaps the ones who suffered the most partly because of their number and partly because there were fewer opportunities in poor and overcrowded Greece than in Turkey where the Greeks had dominated the economic life.

However, the population transfers did reduce the size of minority groups in the Balkans and thereby removed a leading source of friction. A very small number of Greeks were left in Turkey with the exception of Istanbul where the compulsory exchange had not taken place. Similarly in Bulgaria the Greek settlements were reduced to very small proportions. In Western Thrace the Muslims still constituted thirty percent of the total population having been allowed to remain in return for the Greeks in Istanbul under the Lausanne Convention. The greatest change happened in Macedonia where there was much greater ethnic homogeneity than at any time in the past. This was particular true because the Asia Minor Greeks settled in sections of Greek Macedonia evacuated by Turks and Bulgarians.[45]

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[44] *Ibid.*, p. 591.

[45] *Ibid.* According to an ethnographic map of the League of Nations Refugee's Settlement Commission, whereas in 1912 the population of the portion of Macedonia now belonging to Greece was 42.2 percent Greek, 39.4 Muslim, 9.9 percent Bulgarian and 8.1 miscellaneous (including the Jews of Thessaloniki), by 1926 it had become 88.8 percent Greek, 0.1 Muslim, 5.1 Bulgarian and 6 percent miscellaneous.

The underlying reason that led Greece and Turkey to the compulsory exchange of populations was their intention to resolve a problem that was constantly growing between them. In particular, both states wished to establish national and religious homogeneity in their territories. The criterion used to complete the exchange of populations was religion (Muslims and Greek Orthodox). Interestingly, language was not used or chosen as a criterion, since it was agreed that religion could more precisely approach and describe the national and ethnic 'consciousness' of both people.[46] During the Ottoman Empire it was Orthodox Christianity that preserved the sense of ethnic identity and self-identification of the Greeks. In any case, after four-hundred years of Greeks and Turks co-existing within the Ottoman Empire, a clear distinction between the two groups could not be made on cultural grounds except language.[47] For example, the 'Turks' who were exiled from the island of Crete were descendants of those who had apostatised to Islam during the seventeenth century when they arrived in Anatolia they only spoke Greek. Greece received Orthodox Christians (the *Karamanli*) speaking the Turkish language and sharing a Turkish culture. Thus, in terms of self-identity "the self-definition of a social entity" religion constituted the main distinctive factor between the Greeks and the Turks.[48]

Both Greece and Turkey had a common interest in assisting in the process of national integration. Any attempts made for a liberal constitutional regime for the promotion of equality between the two different nations were overthrown by the reaction of the Muslim conservative party during the 19th century and the Young Turks' movement from 1908 onwards.

During the First World War, the Young Turks in favour of the concept of a Turkish national state carried out massive persecution and forced displacement of the Greek Christian population living in Asia Minor. First, the Kemalists troops entered Smyrna where a large population of Greeks lived; they were massacred and those who were not were forced to abandon their homes and flee to Greece, stripped of all their possessions.[49] Secondly, the Greeks were violently uprooted from Eastern Thrace,

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[46] This reality underscores the level of emphasis on freedom of religion in this thesis.
[47] Roger Just "Triumph of the Ethnos" Jane Elizabeth Tankin et. al. (eds.) History and Ethnicity (London: Routledge, 1989), p. 81.
[48] Ibid. p. 82.
[49] Svolopoulous, *op.cit.*, p. 305.

immediately after the armistice was signed at Moudania on October 11, 1922 and the region's Hellenic civil and military authorities and their Entente allies were required to retreat and be replaced by the Turks.[50]

This was mainly due to the policy of 'ottomanisation' applied by the Young Turks in their efforts to eliminate any national minorities in the Ottoman Empire and achieve a homogenous Turkish state. On the contrary, despite the huge increase in populations the Muslim population that inhabited the northern areas of Greece were exempt from such arbitrary measures even though they were a constant source of concern for the Greek government. [51]

Moreover, the decision to carry out the compulsory exchange of populations was also influenced by political events and their resultant consequences. The Greek-Turkish war ended in 1922 with the overwhelming defeat of the Greek armies in Asia Minor. The military defeat of the Greek armies was followed by a large movement of Greeks from Asia Minor and Eastern Thrace. People fled to Greece in order to escape religious and political prosecution in Turkey. As soon as peace was established two main issues became urgent, first, the protection or transfer of the remaining national minorities, which could not or would not emigrate and secondly, a mechanism for the liquidation of all the personal properties abandoned or left behind by the emigrants.

Under these circumstances, Eleftherios Venizelos, under the stress of necessity, proposed at the Lausanne Conference, the compulsory exchange of populations between Greece and Turkey, which was favourably received by the four Allied Powers and the organs of the League of Nations. At the end of the war in Asia Minor, Turkey following their great victory demanded that Greeks evacuate Eastern Thrace immediately. To add political pressure the Turkish military began to advance into the Straits zone. At this point, they were confronted with British troops and for a few days an Anglo-Turkish war was imminent. However at the end of October 11, 1922 and in the following months peace negotiations began at Lausanne.

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[50] *Ibid.*
[51] *Ibid.*, p. 278.

The question of the exchange of populations between Greece and Turkey was discussed within the Territorial and Military Commission between December 1, 1922 and January 27, 1923. Lord Curzon stated that this matter should be quickly resolved since it directly affected the interests of both peoples. Two important political questions were discussed at the Conference. The first was whether the future treaty should be based on the principle of compulsory or voluntary emigration and the second was the determination of its area of application.

In the first case, although Venizelos had initially proposed the method of a compulsory exchange of populations nevertheless he declared that such an idea was appalling to the Greek delegation. As far as he was concerned, he did not wish to oblige the Turkish population to leave Greece. Accordingly, the Greek government made a proposal that it would give up the idea of compulsory exchange on condition that the Greeks, who were expelled from Istanbul or Anatolia as well as the Turkish citizens in Greece should not be compelled to abandon their ancestral homes. Moreover, any Greek habitants who were expelled from Turkey or Eastern Thrace and had come as refugees in Greece should be allowed to return to their homes.

The President of the Commission announced that the compulsory exchange of populations at this stage was the only possible method to resolve the problems between Greece and Turkey.[52] On the second question, the area of application, Venizelos had emphasised the he could not agree that thousands of Greeks should be obliged to leave Istanbul. Such an expulsion would amount to a great political, economic and social disaster.

The Greek delegate's position had also been strongly supported by Lord Curzon. The existence of the Greek population in Istanbul was essential for the city's commerce, industry and business, since without it the city would lose its authority, trade and status. After some initial hesitations, Ismet Pasha agreed to the exclusion from the exchange those Greeks, who were born in Istanbul. An agreement was finally reached on the principle of general exchange except as regards the Greek Orthodox minority in Istanbul and the Muslim minority in Western Thrace. [53]

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[52] *Ibid.*, p. 281.
[53] *Ibid.*

Article 1 of the Lausanne Convention, thus, established the principle of a compulsory exchange of populations and also defined the exchangeable persons as follows:

> As of 1st of May, 1923 there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory and of Greek nationals of the Muslim religion established in the Greek territory. These persons shall not return to live in Turkey or Greece respectively without the authorisation of the Turkish Government or the Greek Government respectively.

According to Article two of the Lausanne Convention certain groups were exempted: "The following persons shall not be included in the exchange of provided for in article one:

(a) The Greek inhabitants of Constantinople
(b) The Muslim inhabitants of Western Thrace

All Greeks, who were already established before October 30, 1918 within the areas under the Prefecture of the City of Istanbul as defined by law of 1912 were to be considered as Greek inhabitants of Istanbul. All Muslims established in the region to the east of the frontier line laid down by the Treaty of Bucharest were to be considered as Muslim inhabitants of Western Thrace."

Certain issues deserve to be highlighted here to deepen the analysis. The date of October 30, 1918 was the day of the armistice of Moudros[54] and the use of this date excluded under Article 2 a large number of Greeks, who had arrived in Istanbul after that date. More specifically, the Treaty of Bucharest had pushed the Greek borders to the east as far as the river Nestos. This eastern frontier of Greece also defined the western boundary of Western Thrace surrendered by Bulgaria in 1919 and granted to Greece by the Treaty of Lausanne, although it was contested by Turkey, during the Lausanne Conference that it was the boundary of Western Thrace.[55] According to the Turkish interpretation at the Lausanne Conference it was not the river Nestos but the river Strymon, which defined the western boundary of the region in question. However, according to the Greek interpretation, in compliance with Article 2 of the Lausanne

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[54] Between the Allied Powers and Turkey at the end of the First World War.
[55] Svolopoulos, *op. cit.*, p. 290.

Convention, the western boundary of Western Thrace was formed mostly by the river Nestos. This interpretation was eventually accepted by Turkey.

Article 3(1) of the Lausanne Convention, states:

> Those Greeks and Moslems who have already and since the 18th October, 1912, left the territories the Greek and Turkish inhabitants of which are to be respectively exchanged, shall be considered as included in the exchange provided for in Article 1. The expression "emigrant" in the present Convention includes all physical and juridical persons who have been obliged to emigrate or have emigrated since the 18th October, 1912

This date was particularly chosen as it was the date of the declaration of war between Greece and Turkey in the first Balkan War of 1912. The reason for this provision and its retroactive effect in extending the application of the exchange agreement between Greece and Turkey to previous emigrations was the need to clear up a substantial number of problems that were created due to the previous population movements between Greece and Turkey. Article 7(1) of the Lausanne Convention, states that emigrants lost their original nationality and automatically acquired the nationality of the country they emigrated to.

Article 8(2) that regulated the free transport of the movable property of those to be exchanged made a special reference to the "members of each community" including personnel of mosques, churches, convents, schools, hospitals, societies and associations, who would leave the territory of one of the contracting parties and would have the same rights as the individual emigrants. Therefore, the provisions of the agreement were extended to those juristic persons, who had left either Greece or Turkey after the end of the first Balkan War.

However, in this agreement no consideration was taken for the distress and human suffering caused to the citizens involved nor was any space left for any possible disagreements from the people, who were subjected to the compulsory exchange. This kind of international agreement has been severely criticised due to its lack of humanity and disregard of fundamental human rights recognised under international law.[56]

1.7: The "Established" Populations under the Lausanne Convention

As would be expected of the execution of such a significant process, there was no shortage of matters of discord and misunderstanding. One of these was the point of controversy between Greece and Turkey over the meaning of the term "established", used in referring to the Greek inhabitants of Istanbul, in Article 2(2) of the Lausanne Convention. According to Article 2(2) the Greek inhabitants of Istanbul are defined as "all Greeks who were already established before October 30, 1918, within the areas under the Prefecture of the city of Constantinople as defined by law of 1912." As can be seen, this provision lacks any specific reference to the rules to be applied in order to determine the status of the "established" people.

According to the Greek interpretation, the term established included those persons, independently of any Greek or Turkish legislation, satisfying the conditions of transfer or acquisition of domicile, who have been resident in a certain place for a considerable period of time and had established their activities and business n Istanbul. It was thus, clear from the Greek interpretation, which was based on the spirit of the Lausanne Convention that all persons, who had been resident in Istanbul before 30 October 1918 and had expressed a strong intention of staying there for a considerable period of time, would have satisfied the conditions of Article 2(2). Thus, they were to be considered as "established" and be exempted from the compulsory exchange.[57]

However, according to the Turkish interpretation, the status "established" had to be explained according to Turkish legislation and it depended on the fulfilment of legal formalities prescribed by Turkish law, save in the case that some provisions were altered or abolished by the Lausanne Convention.[58] According to the Turkish law of 1914, certain legal formalities of registration had to be completed by all the people leaving their place of origin in order to establish a domicile in another place. The Greek people of Istanbul resident there before October 30, 1918, but who had not complied with the local legislation or whose families were established in regions of Turkey subject to exchange and who did not come with the intention of permanently staying in

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[56] *Ibid.* p. 288.
[57] *Ibid.* at p. 291.
[58] *Ibid.* at p. 292.

Istanbul, were not considered as "established" in Istanbul and therefore, were not to be exempted from the exchange.

Finally, the Greek government made an appeal to the Council of the League of Nations for the matter to be resolved. The Council referred the case to the Permanent Court of International Justice. The Court first, had to consider the meaning and scope of the term "established" and secondly, whether the term should be interpreted according to the laws of the two states. The Court in its decision did not approve the Turkish interpretation of the definition of the term "established".[59] It did not consider it was necessary to refer to Turkish legislation to resolve this matter. The Court maintained that, according to the spirit of the Lausanne Convention the intention was to apply identical and reciprocal measures in Greece and Turkey. Accordingly, this would not be possible if the case was determined by reference either to Greek or Turkish legislation.

Thus, the Court, in a unanimous advisory opinion on February 21, 1925 decided that the term 'established' included both the element of resident and stability together with a permanent intention of continuous residence in a certain place for an extended period of time.[60] In the opinion of the Court, the term "established" included all those Greek inhabitants of Istanbul, who had arrived there no matter when they came before October 30, 1918 and had expressed an intention of remaining there for a longer period of time. [61]

According to Article 10 of the Lausanne Convention, Turkey eventually recognised as 'established' all Orthodox Greeks, who were Turkish citizens actually present in Istanbul and exempted them from the exchange, independent of the date of their arrival or place of birth, before October 30, 1918. Greece, on the basis of reciprocity, under Article 14 recognised as "established" all Muslims, who were Greek citizens, that were present in Western Thrace and exempted them from the compulsory exchange of populations.

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[59] See, Series B, No. 10 *op.cit*, p. 20.
[60] Permanent Court of International Justice Publications, Series B, No. 10.
[61] Stephen P. Ladas, The Exchange of Minorities-Bulgaria, Greece and Turkey, (New York: The Macmillan Company, 1932) pp. 407-408.

1.8: The Mixed Commission

A Mixed Commission ("Commission" hereafter) was created to supervise the exchange of populations between Greece and Turkey. According to Article 12 of the Lausanne Convention, the main function of the Commission was to assist in the execution of the Lausanne Convention but also to guarantee impartiality and give an international aspect to the emigration process and liquidation of property.

According to Article 11 of the Lausanne Convention, the Commission was to be set up in Turkey or Greece consisting of four members representing each of the contracting parties and three members chosen by the Council of the League of Nations from the nationals of powers, which did not take part in the war between 1914-1918.

The Commission was formed on September 17, 1923 and came into force after the ratification of the Treaty of Lausanne by Greece and Turkey. The Commission held its first meeting in Athens, in October 8, 1923. The Commission had power to set up Sub-Commission's working under its supervision. Each Sub-Commission was to consist of a Turkish member, a Greek member and a neutral president designated by the Commission, who also had the power to appoint delegates to the Sub-Commission.

Due to the compulsory exchange of populations, several property issues had risen, which neither the Mixed Commission nor Greece nor Turkey could resolve. According to Article 12(2), the Commission had full power to decide all questions which would arise from the exchange by majority vote, like "all disputes relating to property rights and interests", which were to be liquidated.

Finally, under the provisions of Article 13, the Commission had the power to evaluate any movable and immovable property. Article 14 provided the Commission with power to dispose property and with respect to the owners to make declarations stating the sums due to them. The sums due under these declarations were "a government debt from the country where the liquidations takes place to the government of the country to which the emigrant belongs." Finally Articles 15 and 17 provided for the funds designated to facilitate the emigrations to be advanced to the Commission. In particular, besides the estimate of the properties of almost two million Greek refugees

there were still certain categories of immovable property, which remained unresolved.[62]

The Turks, in any event, controlled the sum of all movable and immovable properties of almost two million exchangeable and missing Greeks whereas the properties of the established Greeks in Istanbul were at the mercy of the Turkish authorities. Meanwhile, Greece had to organise the immovable property of three-hundred and eighty-eight thousand exchangeable Turks as well as the land property, which belonged to the Muslims of Western Thrace. It is important, however, to state that there was a significant difference between the cosmopolitan Greeks of Istanbul and the predominantly peasant population of Western Thrace. It is therefore not too difficult to appreciate that Greece has since expressed a lot of dissatisfaction and misgivings with the adopted scheme.

Greece's overall position was further compromised by the fact that Turkey strengthened its representation in the Mixed Commission, constantly with distinguished economists, the Greek representation was characterised by constant changes of its delegates. Accordingly, the Turkish representatives emphasised the issue of compensation of those entitled under the Declaration Relating to Muslim Properties in Greece signed during the Lausanne Conference, (Declaration IX).[63] This declaration provided for the protection of property held by Muslims, who did not come under the terms of the Lausanne Convention and who had left Greece before October 12, 1912 or who had always resided outside Greece.

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[62] Alexandris, *op.cit.*, pp. 49-52. In particular, the situation in Greece was as following: (a) Pieces of land that belonged to the Turks (owners of large country estates) which had left Greece before October 10, 1912. These properties were seized and controlled by the Greek government, since the beginning of the First World War; (b) Pieces of land that belonged to the Muslims of Western Thrace fugitives. These were seized from the Greek authorities; (c) Pieces of land that belonged to the Muslim-Greek citizens of Western Thrace. Some of them had been temporarily seized for the settlement of Greek refugees. Secondly, the situation in Turkey was as following: (a) Pieces of land that belonged to Greek citizens, who were exempted from the compulsory exchange of populations in Istanbul. These properties were declared abandoned and their income was retained by the Turkish authorities; (b) Pieces of land that belonged to the Greek citizens, who no longer lived in Turkey. Gradually they were placed under the control of the Turkish authorities, which were also receiving the rent; (c) Pieces of land in Asia Minor and Eastern Thrace that belonged to the Greek citizens, who had left the Turkish territory after the withdrawal of the Greek army. These were being administered by the Turkish state authorities, since 1922; (d) Pieces of land that belonged to the Greek missing persons and were also exempted from the compulsory exchange of populations in Istanbul. These properties were declared abandoned and were seized by the Turkish state authorities; (e) Pieces of land that belonged to the Greeks who were exempted from the compulsory exchange of populations and still were in Asia Minor and in Eastern Thrace. These were seized by the Turkish state authorities.

The Greek government, seeing the practical difficulties of effecting such an agreement, agreed that if they wished they could use the services of the Mixed Commission to dispose of their property. However, this agreement would entail no obligation for the Greek government to purchase such properties. Moreover, the Declaration was signed on the basis of reciprocity, thus, providing for the same rights for the Greek owners of property, who had left Turkey before October 12, 1912 or had always resided outside Turkey.

Greece was not able to provide for immediate compensation due to the country's difficult financial situation. In any case, it was not yet clarified whether all the Turkish owners of large country estates had left Macedonia before October 1912, according to the terms of Declaration IX. However, for at least a large number out of the one-hundred and nineteen Turks, the Greek government had evidence that they had not left Greece before the end of the Balkan Wars.

The Turkish government did not hesitate to seize the Greek properties in Istanbul as reprisals for the non-deposit of compensation from the part of the Greek government under Declaration IX. The Turkish government never gave a satisfactory explanation as to why they had not given the Turkish landowners of Macedonia, the large Greek properties of Asia Minor and Eastern Thrace, which were already under the Turkish control.

In 1925, an *ad hoc* committee of the Mixed Commission examined almost three-thousand four-hundred and twenty applications, the majority of which were made by Greeks. The *ad hoc* committee had examined and accepted, as up to July 8, 1925, one-hundred and nineteen claims of Muslims as beneficiaries of the Declaration IX. Noting several discrepancies the Greek government carried out an investigation and provided substantial evidence, that out of the one-hundred and nineteen claimants, there were some exchangeable persons, who for this reason could not be property beneficiaries. Therefore, the Greek government requested new negations to begin in order to reach an agreement regarding this matter.[64]

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[63] LNTS, Vol. 28, (1924), at p. 155, otherwise known as Declaration IX.
[64] Ladas, *op.cit.*, pp. 467-475.

Ankara continued to seize further Greek properties in Istanbul. Meanwhile, the Turkish government suggested an *en bloc* solution for the Greek-Turkish property differences. Another dimension of the socio-legal situation of note is that the Turkish owners of large country estates, especially those in Macedonia were among the most active in the new Turkish revolution and therefore, could easily influence the government of Ankara, which was constantly putting pressure on Greece to facilitate the immediate compensation of those entitled.[65] In the face of such glaring injustices in the outcomes of the Mixed Commission work, it has been suggested that no Greek government could not give full effect to its reasonableness, in such a manner that would adversely affect the rights and interests of the returning Greek refugees. [66]

After twenty months of difficult and persistent negotiations with the Turkish government, Eleftherios Venizelos, successfully arranged a Greek-Turkish settlement. On July 10, 1930 Greece and Turkey signed the Covenant of Ankara (1930) (hereafter "Covenant") which finally regulated all the legal and property issues that had arisen due to the compulsory exchange of populations in 1922-1923.[67]

According to the Covenant, the two governments decided that the properties of the exchangeable populations that had been seized respectively during the period of 1923-1929 and used for the settlement of refugees were not going to be granted to the persons that were entitled to them, but were going to be settled under a scheme of compensation. [68] These properties created quite onerous financial burden on Greece. The Greek government was obliged to pay one-hundred and fifty-thousand English pounds to the land-owners of Greek and Turkish titles. For land belonging to the Muslims of Western Thrace, Greece undertook the obligation to pay one-hundred and fifty thousand English pounds.

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[65] Alexandris, *op. cit.*, p. 51.

[66] In regard to a detailed analysis of Declaration IX as well as for the Greek-Turkish Agreements that followed: The Angora Accord, June 21, 1925 and The Athens Accord, Deceber 1, 1926 leading to the 1930 Greek-Turkish Covenant, see, Harry J. Psomiades, The Eastern Question: The Last Phase, (Thessaloniki: Institute of Balkan Studies, 1968) pp. 79-81.

[67] Covenant of Ankara (FEK A' 226, 3.7.1930).

[68] See, Alexandris *op.cit.* at p. 73.

In addition, the Greek government provided compensation, one-hundred and twenty five thousand pounds, even for the properties of the Greeks in Istanbul, who were outside the city borders and whose livelihood and interests had been badly damaged by the period of 1923-1926. Finally, the Greek government paid twenty-five thousand English pounds to the fugitives, who were not included in the exchange of populations and whose properties were seized by the Turkish authorities.

There is almost no doubt that the economic convention of 1930 favoured Turkey to a great degree. Even though, a precise estimation of the properties of one-million two-hundred thousand Greeks living in Istanbul that were included in the compulsory exchange of populations and four-hundred thousand Muslims living in Greece would normally work in favour of Greece. In contrast, Greece paid four-hundred twenty-five thousand pound for the properties of the non-exchangeable populations. According to Article 7 of the Covenant, specific categories of Muslims-Turkish citizens would maintain their properties in Greece whereas Article 8 stated that all the immovable properties of the Greek citizens that were outside the borders of Istanbul would automatically be taken by the Turkish State. For instance, according to the wording of these provisions, a Muslim could maintain his property in Thessaloniki but a Greek citizen could not do the same in other parts of Turkey, apart from Istanbul.[69]

As would be expected, the costly financial compromises were heavily criticised in Greece, especially by the opposition party. The Greek Prime Minister, Venizelos, however, strongly believed that the price was worth paying in order to develop friendly and stable relations between Greece and Turkey. In particular, Article 10 of the Covenant accorded the status of being "established" to all Greek-Orthodox Turkish citizens, who were in Istanbul, during the ratification of the Covenant and legally permitted the Greek citizens to remain in the Kemalist Turkey.[70] As Venizelos stated in the Greek Parliament, the continuance of the Greek-Turkish conflicts would only

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[69] See, the remarks made by Wh. Knight dated June 27, 1930, that were included in the Clerk telegram of Ankara towards Henderson (Foreign Office), June 18, 1930 FO 371/14575/E 3254.

[70] Tsitselikis, *op. cit.*, pp. 288-289. Accordingly, the Turkish government provided the Turkish citizenship to 73, 000 Greeks living in Istanbul. Meanwhile the legal position of the Greek citizens, who had been living in Istanbul for many generations was also regulated. A stay permit was granted to the non-exchangeable populations of Istanbul. In addition, the citizens of Imbros and Tenedos, who were not exchanged, according Article 14 of the Treaty of Lausanne were provided with certificates confirming their status as non-exchangeable populations.

benefit the Turkish government by providing it with an opportunity or justification for the maltreatment and discrimination of the Greek minority in Istanbul.

The uncertain future in Turkey eventually obliged many Greeks to flee to Greece, creating a new wave of refugees and stirred up further social problems. Finally, in September 1931, the Turkish government granted an official certificate to the Patriarch confirming his non-exchangeable status therefore, resolving the personal status of the priests in the Ecumenical Patriarchate.

1.9: The Post World War II Period

After the end of the Second World War, Italy's defeat led to the creation of the Paris Peace Treaty on February 19, 1947 between Italy and the Allies. According to the Treaty of Paris, Italy ceded to Greece full sovereignty of the Dodecanese Islands to Greece. These islands contained a small Muslim population.[71] It may be noted that the Treaty of Paris did not explicitly regulate the legal regime of the Muslims in these islands. Thus, the main question one needs to consider is whether the protection offered by the Treaty of Lausanne regarding minority rights extends to the Dodecanese islands after their annexation to Greece.

In a series of national legislation[72] and judicial decisions,[73] it has been decided that the protection offered to the minorities in Greece could only be implemented in favour of the population groups that were exempted from the exchange of the Lausanne Convention in 1923, in the specified geographical areas. In particular, the Supreme Court in a celebrated case[74] had to consider whether Muslim personal law might be implemented in the Dodecanese islands instead of the Greek Civil Code. The Court

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[71] *Ibid.* According to the 1951 census there was a Muslim population living mainly in Rhodes and Kos, 4.795 Turkish-speaking people in their majority being Muslims.

[72] See, Article 4 of Law No. 5210/1947(FEK A' 298, 1947): "In Regard to the Implementation of Administrative Legislation in the Dodecanese Islands" and Law No. 493/1947(FEK A' 262, 1947) "In Regard to the Establishment of Courts in Dodecanese Islands".

[73] See, Decision No. 48/1952, Court of Appeal of the Dodecanese Islands, (*Efeteio Dodekanison*) (1952).Supreme Court, (*Areios Pagos*) Decisions: Nos. 738/1967, Vol. 36 Nomiko Vima (1968) pp. 381-382, No. 1723/1981, Vol. 29 Nomiko Vima (1981) at pp. 1217, Court of Appeal of the Dodecanese islands, (*Efeteio Dodekanison*) 201/1987, Vol. 36 Nomiko Vima (1988). According to these decisions the implementing legislation at the Dodecanese islands is not the Treaty of Lausanne but the Greek Civil Code.

[74] See, Decision No. 738/1967.

after it carefully examined the protective system of the Treaty of Lausanne and the relative legislation concluded that the Greek Civil Code prevails in that region.

Accordingly, the special regime provided by the Treaty of Lausanne for the regulation of the education and religious freedom of the Muslim minority does not apply to the Dodecanese islands. The Court held that according to Law No. 510/1947, regarding the integration of the Dodecanese Islands into Greece, which extended the Greek legislation to the whole area, Greece was not obliged to provide minority rights to Muslims in the district of the Dodecanese Islands.[75] Consequently, it was held that the application of the personal law of the Muslims in the Dodecanese islands was to be constructed restrictively.

Moreover, the Court argued that Law No. 2345/1920[76], which provided for the special religious regime of the Muslims was not effective in relation to the Dodecanese islands. This reasoning was also applied to bar the application of the provisions of the Treaty of Lausanne, the Treaty of Athens and the Treaty of Sevres. According to this argument, Greece did not undertake the obligation under the Treaty of Paris to implement the Muslim personal law in the Dodecanese islands. The Court did not seem to dwell extensively on the argument, since it considered that the absence of a specific provision in the Treaty of Paris corresponds to the absence of any specific obligation undertaken.

Thus, according to the Court's reasoning the Greek government did not extend the protection afforded by the Treaty of Lausanne to the Dodecanese islands by Law No. 510/1947. Moreover, according to the Paris Peace Treaty the Greek government was not obliged to provide such a protective clause. However, given the fact that Greece succeeded Italy over the sovereignty of the Dodecanese islands this matter should also be examined in regard to state succession under international law.

According to international law, regarding the extension of a state's territory, McNair explains that:

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[75] See, Article 2 of Law No. 510/1947.

[76] FEK A', 148/3.08.1920: "In regard to the Religious Regime of the Muslim minority in Western Thrace", see, Chapter six, generally, *infra*.

> The general principle governing the operation of treaties when the territorial extent of a party has been enlarged is that all its existing treaties (except those which are specifically or by implication limited to its existing territory or a part of it) automatically apply to the territory newly acquired.[77]

Similarly, O'Connell argues, albeit in a more hesitant manner that:

> Whether or not the existing multilateral and bilateral treaties of a State apply automatically to territory annexed by or ceded to it would seem to depend upon the interpretation of the treaties in question. As a general rule the territory becomes impressed with such treaties as can be construed to apply to the State as a whole without regard to alterations in its boundaries.[78]

Accordingly, one may conclude that as a general principle of international law the territorial expansion of a state produces the resultant effect that all treaties in relation to the territorial state are also directly applicable in the extended territory. Moreover, one may also refer to the Vienna Convention on Succession of States in Respect of Treaties[79] where Article 2 provides that the conventions of a state are effectively implemented in the annexed territory from the day of succession unless this would be contrary to the spirit and intent of the convention or it would fundamentally alter the conditions of its scope and application.

In the case of the Treaty of Lausanne, it would arguably be contrary to its spirit and intent if the protection was extended for the Muslims in the Dodecanese islands. Even though, it might appear according to Article 45, that the Treaty is not geographically limited within the borders of Western Thrace. The aim of the legislatures during the drafting of the Treaty at the Lausanne Conference was to provide special protection for the two ethnic groups in the specified geographical areas, as exempted from the Lausanne Convention. Thus, the Treaty of Lausanne need not be implemented in favour of the Muslims in the Dodecanese islands, since they are not defined as a minority group under the Treaty of Lausanne.

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[77] McNair, The Law of Treaties (Oxford: Clarendon, 1961) p. 633.
[78] D.P. O'Connel, "State succession in municipal law and international law", Vol. II, (1967) p. 374.
[79] G.A. Res. 3496(XXX), December 15, 1978.

Article 19(4) of the Treaty of Paris arguably introduced a new basis of protecting human rights and minorities, as it had developed after the Second Word War. It is also possible to argue that its scope went beyond the protection provided by the Treaty of Lausanne. The Treaty of Paris offered a wider regime of protection to the inhabitants of the Dodecanese islands regarding religious freedom, the right to use one's language and enjoy one's culture.[80] In particular, Article 19 of the Peace Treaty of Paris strictly prohibits any kind of discrimination based on race, religion or language in the territory of the Dodecanesse islands. Accordingly, since the criterion of distinguishing between the minorities is religion one may assume that Article 19(4) also extends its protection towards the Muslims of the Dodecanese islands as well as towards other Greek citizens, who adhere to a religion or dogma other than the Christian Orthodox religion.

Accordingly, there are two separate treaties, the Treaty of Lausanne and the Treaty of Paris, which were formed during different times based on separate ideologies and norms. On the one hand, the Treaty of Lausanne is of a more restrictive and particular nature providing protection for the Greek minority in Istanbul and the Muslim minority in Western Thrace as specified during the Lausanne Conference and the compulsory exchange of populations, in 1923. On the other hand, the Treaty of Paris as provided by Article 19(4) established a wider regime of human rights protection towards the inhabitants of the Dodecanese islands, including the Muslims living in that region. Thus, it may be concluded that the two legal regimes prescribed according to international standards have a separate scope of application under the times and circumstances they were developed.[81]

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[80] See, the Council of Europe, in particular the Framework Convention for the Protection of National Minorities, Article 1 which specifically regulates the relation between the rights of minorities and human rights.

[81] The main argument used in these articles, is that the Treaty of Lausanne is not geographically limited within the borders of Western Thrace, (see, Article 45 of the Treaty), but it should instead be extended, in order to apply in the Dodecanese, Athens or Thessaloniki, where a large number of Muslims have emigrated in. However, these arguments, must be examined under state succession and international law as well as a careful and thorough examination of the Treaty of Lausanne, as it was formed during the Lausanne Conference, to fulfil particular purposes after the First World War. As it is established, by Alexandris, there is a difference in the protection provided to the Greek inhabitants of Imbros and Tenedos, by a specific provision of the Treaty of Lausanne, Article 14 and the absence of any express provision in favour of the Muslims in the Dodecanesse islands (see, Appendix D: "An Analytical Description of the Religious and Judicial Duties of the Mufti of Western Thrace and Greek Civil Law", section, D.2). In any case, the Muslims as any other minority groups in Greece, can enjoy the protection provided by the international human rights instruments, which Greece has ratified and are directly applicable within national law. Subsequent international instruments, which provide for the

In 1949, the first Muslim religious school (*Medrese*) was established in Komotini. The graduates of this school were appointed to teach either in the minority schools or in the Koranic schools. In 1951, the "Celal Beyar" minority high school was established in Komotini.[82] Moreover, from the mid-1950s the Arab alphabet was gradually abolished in Western Thrace and Latin characters were introduced for the writing of the Turkish language. In this way, the new political order of Kemal Ataturk was established among the members of the Muslim minority, whereas the traditional Ottoman culture was set aside.

1.10: Concluding Remarks

The compulsory exchange of populations between Greece and Turkey had a strong impact on the relations between the two states. It was designed to reduce the friction caused by the existence of minorities and to assist in the national attainment of homogeneity of both states. It may, however, be concluded that the massive injustices that were suffered by both affected populations and a lot of what these sovereign states gained in strategic terms was paid too dearly in individual terms of the citizens. The decisions taken at the Lausanne Conference had a decisive effect on the development of the territories in Greece and Turkey as well as on the two states internal geopolitical balance and composition. On the part of Turkey, Kemal Ataturk had abandoned the idea of re-establishing the Ottoman Empire and was looking towards creating an independent and secular Turkey. The main goal now was to safeguard the security of

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universal protection of human rights on an individual basis and are not limited to the mere protection of few minorities, i.e. the Universal Declaration on Human Rights (G.A. Res. 217A (III)/10.2.1948) or the International Convention on the Elimination of All Forms of Racial Discrimination (G.A. Res. 34/80/18.2.1979, entered into force on September 3, 1981, in accordance with Article 27(1)). For a variety of views, regarding the implementation of the Treaty of Lausanne in the Dodecanese islands, see , Tsitselikis, *op.cit.*, pp. 288-289, Konstantinos Tsitselikis, "The Position of the Mufti in the Greek Legal Order", Dimitris Christopoulos, Legal Issues of Religious Heterogeneity in Greece, (Athens: Kritiki & KEMO, 1999) pp. 282-285, Achilleas Skordas, "The Minority Identity: From the System of Treaty of Lausanne to the System of the Council of Europe", A. Bredimas and L.A. Sisilianos, The Protection of Minorities: The Framework Convention of the Council of Europe (Athens: Ant. N. Sakkoulas, 1997) pp. 171-178.

[82] The minority high school in Komotini was the first minority school to be established in Western Thrace during the period of rapprochement between Greece and Turkey in the 1950s. It was named after the Turkish Prime Minister "Celal Bayar". See, Legislative Decree 2203/1952(FEK A' 222, 1952): "In Regard to the Establishment of the Celal Beyar High School in Komotini"

the state, the territorial integrity and independence of the ethnic Turkish state, respect for international legitimacy and the preservation of peace.

On the part of the Greek government, after the Lausanne Conference a new policy was formed for Greece's domestic affairs. In the domestic sphere, the significant territorial changes that took place in the southern Balkans and the Aegean were combined with the massive waves of immigration of Greek populations from Asia Minor and Eastern Thrace. The result of these changes was the overwhelming concentration of ethnic Greeks in the new independent and sovereign Greek State. As Venizelos, correctly noted this composition of the population made Greece one of the most homogenous states in south-east Europe. The fundamental aim for the Greek government now was to secure its independence and safeguard its defensive security and territorial integrity.

The compulsory exchange of populations between Greece and Turkey although based on different strategies had a common effect. By the implementation of the terms of the Lausanne Convention and the elimination of foreign elements from each contracting party's territory, they achieved the creation of national homogenous states. By removing any possible source of conflict between the two states, they sought to chart a new dimension for themselves. It was necessary now to re-establish peace between Greece and Turkey for the development of friendly and peaceful relations between the two states. However, it must be reiterated that the method of compulsory exchange of populations used at the end of the First World War did not conform to contemporary standards of human rights and the principle of self-determination and minority rights. The compulsory exchange of Greek-Turkish populations resulted in terrible human tragedies, suffering and the physical dislocation of refugees in the respective territories.

CHAPTER TWO: THE RIGHTS OF MINORITIES IN INTERNATIONAL LAW

2.0: General Background

This chapter will examine the rights of minorities as they developed in a historical and legal context under the system of the League of Nations as well as under the auspices of the United Nations. In addition, an examination will be provided on a series of cases where the Permanent Court of International Justice described and analysed the protective system of the League of Nations. The main issues examined by the Permament Court of International Justice are the membership in a minority, the right of minorities to establish and maintain their own private educational institutions and most importantly the aim and purpose of the Minorities Treaties formulated at the end of the First World War.

Moreover, the period after the Second World War and the creation of the United Nations will be examined. In particular, an analysis will be given on the concept of a minority under current international law. This will be done mainly, according to Article 27 of the International Covenant on Civil and Political Rights (ICCPR).[1] The work of the Human Rights Commission (HRC) will also be demonstrated in providing a satisfactory definition of the concept of a 'minority' to be accepted by all states. Finally, the study of Capotorti will be described on the rights of ethnic, religious and linguistic minorities.

2.1: The League of Nations

As a consequence of the territorial changes in Europe after the First World War, various peace treaties were created to deal with the problem of minorities.[2] The 1922 Lausanne Peace Conference, which took place after the end of the First World War aimed to deal with issue of national minorities in the newly independent states in Europe. [3]

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[1] G.A. Res. 2200A(XXI), December 16, 1996, entered into force on March 23, 1976, according to Article 49.

[2] For a full text of the Peace Treaties and their historical background, see, Chapter one, *supra*, pp.3-13.

The system of the League of Nations basically provided international guarantees to national minorities seeking to eliminate the possibility of a new war. States were to provide national minorities a certain degree of autonomy in their internal relations, in order to maintain peace and stability in their territories.[4] The provisions of the Minorities Treaties can nowadays be viewed as rather extensive in aim and scope regarding the protection of minorities. Apart from safeguarding the principles of equality and non-discrimination there were specific rights included therein, designed to protect the cultural and religious traditions of the minorities. For example, special provisions were designed under the Minorities Treaties to ensure respect for the Muslim personal laws for regulating their family and personal status according to their own religion and traditions.[5]

More specifically, the provisions of the Minorities Treaties provided that every member of the minority group in the newly independent states would enjoy the same civil and political rights, be equal in law and in fact, which would usually include an equal right to public employment and the exercise of professions.[6] As to the use of minority languages, an essential provision was included in the Minorities Treaties for the free use of language by any national of the country in any language in private interaction, in commerce, in religion, in the press, in publications and at public meetings. In addition, adequate facilities were guaranteed for nationals whose mother-tongue was not the official language to employ their own language both in writing and orally, before the courts.

Members of a minority group were granted the right to create, establish, manage and control at their own expense, any charitable, religious, social and educational institutions. In towns and districts where a considerable number of nationals existed using a foreign language, minority students were to receive primary school instruction

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[3] Maria Tabory, "Language Rights as Human Rights", Vol. 10, Israeli Yearbook of Human Rights, (1968) p. 168.

[4]Hurst Hannum, Autonomy, Sovereignty and Self-Determination, (Philadelphia: University of Pennsylvania) pp. 50-73, regarding the rights of minorities under the League of Nations and following the formation of the United Nations, with references for the search of a definition of the concept of a 'minority'.

[5] Sebastian Poulter, Ethnicity, Law and Human Rights, (Oxford: Oxford University Press, 1998), p. 73, Tsitselikis Konstantinos, "The Rights of Minorities: From the Legal Enactment to Implementation" Vol. 63, Contemporary Issues, (1997) pp. 26-31.

[6] For a detailed analysis of the provisions of the Treaty of Lausanne regarding the protection of national minorities, as formed back in 1923, see Chapter four, *infra*, at sections 4.4 and 4.5.

through the medium of their own language without preventing the obligatory teaching of the official language in those schools. Finally, in areas inhabited by a considerable proportion of nationals of the country belonging to racial, religious or linguistic minorities, these were to be assured an equitable share of public funds under state, municipal or other budgets designated for educational, religious and charitable purposes.[7]

The League of Nations was the main organ for ensuring compliance with the treaties and declarations. The Council of the League of the Nations could refer to the Permament Court of International Justice any inter-state disputes arising due to non-compliance with the treaties and declaration.[8]

The Permanent Court of International Justice gave the definition of the concept of a 'minority' in its advisory opinion on July 31, 1930 in connection with the emigration of the Greek-Bulgarian communities[9]:

> By tradition the 'community' is group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and tradition in a sentiment of solidarity, with a view of preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions and rendering mutual assistance to each other. The question whether a particular community does or does not conform to the conception described above is a question of fact. The existence of communities is a question of fact; it is not a question of law.

The Permament Court of International Justice seems to include two main elements in its definition of the term "minority" Firstly, it points towards an 'objective' definition of a minority based on the "existence of facts" secondly, it also provides a 'subjective' definition, based on the "sentiment of facts."[10] The group may 'exist' according to the

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[7] See, Appendix A: "The Treaty of Lausanne", Articles 40 to 42.

[8] Poulter *op.cit*, p. 73.

[9] See, Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, Series B, No. 17, PCIJ, (1930), at pp. 14-16, (also known as the Greek-Bulgarian Communities Case).The Greek-Bulgarian Communities case refers to the reciprocal and mutual immigration of Greek and Bulgarian populations provided by the Treaty of Neuilly for a greater analysis on this issue, see Chapter one, *supra*, section 1.2.

[10] Patrick Thornberry, International Law and the Rights of Minorities (Oxford: Oxford University Press, 1992) p. 165. See, also, UN Doc. E/CN.4/Sub.2/384/Rev.1., p. 5. See, also Thornberry Patrick, Minorities and Human Rights Law (London : Minority Rights Group, 1991)

'objective' criteria but its members either do not see themselves as different from the rest of the majority population or may not wish to preserve their distinctive characteristics. Accordingly, one could argue that the 'subjective' criterion is fundamental and essential for the official recognition of minority groups.

The Permanent Court of International Justice created a special set of rules for minorities. States apart from offering legal guarantees for the rights of minorities, they should recognize that certain groups of their population are different and therefore, they need to introduce factual equality in their legal system in order to accommodate the special needs of those groups. This kind of attempt, towards the recognition of different rights for minorities should not be regarded as discrimination but as aiming towards true and factual equality.

On the issue concerning who could claim membership in a minority group, the Permament Court of International Justice chose a rather liberal approach in the *Polish Nationality Case.*[11] The Court took into account the purpose and background of the Polish Minorities Treaty and the interest in avoiding any possible conflict and tension. This was mainly due to the creation of the newly independent states and as a result certain individuals found themselves in states where the majority spoke a different language or practised a different religion.

The Court concluded that any inhabitant, who differed from the majority of the population in race, language, or religion, should be entitled to claim membership in the religious, racial, or linguistic minority group sharing the same distinctive characteristics.[12] For example, any individual in Poland, who spoke German as a primary language regardless of his ethnic or national origin could claim recognition as a member of the German linguistic minority. The status of a minority was purely a demographic issue and it was not related to political or economic considerations.

In the *Rights of Minorities in Upper Silesia (Minority Schools)* [13] the Court held that an individual could freely declare whether or not his child belonged to a racial, linguistic

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[11] See, Advisory Opinion on Certain Questions Arising Out of the Application of Article 4 of the Polish Minorities Treaty Series B, No. 7, PCIJ, (1923), (later known as the Polish Nationalities Case).
[12] *Ibid.*, pp. 13-16 .
[13] Series A, No. 12, PCIJ, (1928).

or religious minority. It therefore, entitled the latter to attend a minority school although such declarations did not eliminate the requirement of factual evidence:

> The declarations must set out what their author regards as the true position in regard to the point in question and that the right freely to declare what is the language of a pupil or child, though compromising, when necessary, the exercise of some discretion in the appreciation of circumstances, does not constitute an unrestricted right to choose the language in which instruction is to be imparted or the corresponding school.[14]

Moreover, the Permament Court of International Justice described the dual nature of the Minorities Treaties: on the one hand, to ensure equality for all (including members of minorities) before the law and on the other hand, to preserve the distinctive characteristics of minorities if the members of a minority group wished to do so. The Minorities Treaties, in the context of imposing on states certain positive obligations usually included the right for linguistic minorities to freely use their language in private institutions and schools.

In the case of the *Minority Schools of Albania*[15], the Permament Court of International Justice examined the validity of an Albanian law aimed at abolishing all private schools in the country. According to the Greek government this was contrary to Article 5 of the Albanian Minorities Treaty, which safeguarded the right of minorities to establish and maintain their own schools. The Albanian government argued that the law treated both the Albanian majority and the Greek-speaking minority in exactly the same way, since no private Albanian-language school would be allowed to operate and that Article 5 only guaranteed that both should "enjoy the same treatment and the same security" both in law and in fact.

The Permament Court of International Justice concluded that pursuant to Article 5, Greek-speaking Albanians enjoyed special rights not available to other Albanians and in particular the right to operate their own private schools where the language of instruction would be Greek. This was required in order to ensure the preservation of the minorities' special characteristics. This simply means that members of minority groups should be permitted some rights or freedoms not necessarily enjoyed by the

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[14] *Ibid.*, p. 46 .
[15] Series A/B, No. 64, PCIJ, (1935).

majority, since most often their position as a minority in the society they are living in renders them vulnerable to the rest of the majority population.

Public schools using Greek as the medium of instruction could exist and did in fact exist in Albania but, however, they were public schools and were subject to direct and extensive control by the Albanian government. Greek-speaking officials were ultimately left with little influence on the quality and content of Greek language instruction. The Permament Court of International Justice, appeared to have adopted the position that members of a minority should be entitled to establish, manage and control their own schools and educational establishments despite the fact that such a right may be denied to members of the majority.

In addition, the Permament Court of International Justice described the main objectives of the Minorities Treaties as following:

> The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority and satisfying the ensuing special needs.[16]

The Court further explained that the Minorities Treaties incorporated two elements in order to achieve this goal:

> The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics. These two requirements are indeed closely interlocked for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority.[17]

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[16] *Ibid.*, p. 17.
[17] *Ibid.*

The first aspect is described as *"negative"* equality merely providing that members of a minority group are not subjected to discriminatory treatment due to their vulnerable status in the majority society. The second aspect is described as *"positive"* equality providing that states undertake some positive action in assisting minorities to maintain and preserve their special characteristics, such as their own language, culture and religion.

Provisions to this effect, mean that states must accept positive obligations to grant nationals using a language other than the official one, proper facilities for employing their own language before the courts. In addition, in the area of education, states must ensure that in localities where a substantial proportion of citizens speak a language other than the state's official language, instruction should be given to children of such nationals in their own language, however, this does not prevent the state authorities from making the teaching of the official language obligatory.

The Permament Court of International Justice also examined the way to achieve 'true equality' for minorities under the standard articles of the Minorities Treaties and Declarations. The provisions of the Minorities Treaties, provided for the "same treatment in law and in fact." The Permanent Court of International Justice finally concluded that:

> Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result, which establishes an equilibrium between different situations. It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact. The equality between members of the majority and of the minority, must be an effective, genuine equality that is the meaning of this provision.[18]

The particular right to maintain and manage separate schools was an important application of the principle of equal treatment "in law and in fact". Private schools were essential to the Greek minority. The abolition of these institutions and their replacement by public schools would deprive the minority of the institutions applicable to its needs supplied by public schools. Accordingly, the Court held that:

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[18] See, *supra*, note 14, p. 19.

"Far from creating a privilege in favour of the minority, as the Albanian Government avers, this stipulation ensures that the majority shall not be given a privileged situation as compared with the minority."[19]

The Court, therefore, rejected the Albanian Government's argument to the charge that the abolition of private schools was lawful under the Declaration. The Court decided that the existence of private schools was indispensable for a minority, since it was capable of satisfying the minority's special cultural needs. This decision is generally based on the recognition of a right of each minority to full equality with the majority and for the preservation of its separate identity. In the Court's view the right of the minority to manage its own schools was an unconditional right, which could not be taken away simply to achieve an identical result for all private school. Accordingly, one may conclude that the ability of the members of a linguistic minority to freely use their own language in several instances in everyday life is essential for the protection and preservation of the cultural characteristics and tradition.

2.2: The United Nations Regime

The United Nations Charter constitutes the founding convention of an international organization. Its articles constitute the legal element of the organization but they also create political and moral obligations for its members. It is based on the principles of equality and non-discrimination: Article 1(3) reads as follows:

> To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The period after the Second World War and the adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly on December 10, 1948 highlighted the beginning of a new era. Whereas the system of the League of Nations aimed to protect a number of minorities in the newly independent states of Europe on a collective basis, the United Nations set the principle of protecting individual human

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[19] *Ibid.* p. 20.

rights on a universal basis for all human beings everywhere.[20] The principle of equality and non-discrimination played a key role in safeguarding the rights of persons belonging to minorities.

The UDHR does not contain any specific reference to the rights of minorities. The question of including an article for the rights of minorities seemed to be too complex and delicate, especially if it were to appear in a universal declaration. However, following the proclamation of the UDHR in 1948, discussions began on transforming the rights outlined within it into more detailed binding treaty obligations. Finally, in 1966 two International Covenants one on Civil and Political Rights (ICCPR) and the other on Economic Social and Cultural Rights (ICESCR)[21] were signed and then entered into force ten years later.

The UN Commission on Human Rights (hereafter "Commission") together with the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, decided to include a specific provision on minorities, which was incorporated into the ICCPR, namely Article 27. For the first time therefore, a provision seeking to guarantee the protection of minorities and their separate identity was contained in a treaty intended to be of universal application. The article is not a source of legal obligation for those states, which have not yet ratified it. Nonetheless, it can be considered to constitute to customary international law.

2.3: The Concept of a Minority in International Law

Although many references to minorities can be found in the international legal instruments, there is no generally accepted definition of the term 'minority'. [22] The ICCPR, is the only binding legal instrument, which specifically addresses the question of the rights of minorities. It does not, however, provide a definition of the concept of a minority. Article 27 states that:

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[20] See, Poulter, *op.cit.*, p. 77.

[21] G.A. Res.220A(XXI), December 16, 1966, entered into force on January 3, 1976, according to Article 27.

[22] Thornberry, *op.cit.*, p. 1164 where he states that : "As to what constitutes a 'minority', there seems only to be general agreement that there is no generally agreed definition." See, also, Ramaga Vucuri Philip, "The Relativity of the Minority Concept", Vol. 14, Human Rights Quarterly (1992) pp. 104-109.

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language.

As described earlier on, the main elements of the Capotorti's definition of the concept of a minority are those of numerical inferiority, non-dominance, citizenship or nationality of the state in question, the possession of cultural characteristics and an implicit sense of solidarity. However, the Human Rights Committee in its General Comment No. 23(50)[23] seems to disregard the Capotorti requirement that minorities need to be citizens or nationals of the state or even permanent residents.[24] The rights under Article 27 are not to be confined to the citizens of the state party in question. The approach of the Committee to the citizenship issue seems to be in contrast with positions expressed in the drafting of the article which tended to support the requirement that minorities should be citizens according to the aim and purpose of the article. However, post-Article 27 developments support the claims of immigrant communities even without citizenship of the state to enjoy cultural rights. In the opinion of the Committee it would be too restrictive that only minorities with a traditional area of settlement in particular regions fall within the scope of Article 27.[25]

2.4: An analysis of Article 27 of the International Covenant on Civil and Political Rights

The formulation of Article 27 poses a number of problems in the interpretation of its provisions. In this section a more detailed textual analysis will be provided regarding the aim and scope of Article 27 regarding the degree of protection offered to minorities.

A. "In those States in which ethnic, religious or linguistic minorities exist"

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[23] General Comment No. 23(50), A/49/40, annex V. Work on the Comment was begun at the 49th sesseion of the Committee and drafts were discussed at the 1, 275th, 1, 294th , 1, 295th , 1, 313th and 1, 314th meetings. The text was adopted at the last of these meetings on April 6, 1994.

[24] In connection with Estonia, the Committee was "deeply concerned" at the definition of minorities in national legislation, which excluded permanent residents: A/51/40, para. 121.

[25] Concluding Observations on the Fourth Periodic Report on Germany, A/52/40, para. 183. The Committee added that: "Article 27 applies to all persons belonging to minorities whether linguistic, religious, ethic or otherwise, including those who are not concentrated or settled in a particular area or region in Germany."

The most important is the question of defining the scope of this particular phrase, that leaves open the question of how to define which minorities exist in what states and who is to define them.[26]

As has already been stated, the purpose of Article 27 was to restrict the enjoyment of the rights to minorities, which were long established in the territory of a state. This was done so as to prevent the protection of minorities, which have formerly integrated to the majority of the population. The expression might also mean that it is the responsibility of the state to recognise the existence of a minority in its territory, since such official recognition is a condition for the implementation of Article 27.

According to the General Comment No. 23(50) of the Human Rights Committee the reference to the "existence" of a minority in the wording of Article 27 "does not depend upon a decision by that State party but requires to be established by objective criteria."[27] However, the objective criteria do not lead to any definition of a minority, the Committee's observation is that the persons designed to be protected are those who belong to a group who share a common culture, a religion and a language. [28]

As long as these international instruments are drafted and ratified by states, it will be up to their governments to determine whether there are minorities in their territories or not. There is a potential danger in doing so, since many governments may deny the existence of minorities in their territory while minority groups maintain that they constitute minority and claim cultural rights.

B. "Persons belonging to such minorities.."

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[26] Thornberry, *op.cit.*, pp. 154-172. In regard to the rights of minorities under international law and an analysis of Article 27, see, Diakofotakis, *op.cit.*, pp. 312-366.
[27] Para. 5.2. The reference to "existence" of minorities within a State derives from a proposal by Chile to replace the requirement that minorities "have long been established" in a state with "in which they exist": E/CN.4/SR. 371, p. 6. This suggests that Chile regarded the existence point as narrowing the scope of the article.
[28] Para. 5.1.

Secondly, an analysis needs to be made regarding the individualist approach found in the wording of Article 27 of the ICCPR for the provision of minority rights.[29] The beneficiaries of Article 27 are the persons belonging to minorities and not the minority group as such. Nevertheless, even though, Article 27 is expressed in individual terms, it provides that the persons belonging to minorities shall enjoy the rights provided *in community* with other members of their group. Thus, it recognises the existence of minority groups as collective entities and grants individual rights to the existence of such groups.

Most current international human rights law treaties are mainly dealing with the individual rights –the human rights of persons belonging to minorities. In addition, the various provisions of the ICCPR lay down a number of individual rights. The only right of a collective nature is the right to self-determination, which applies to *people* and is of an entirely different nature to the rights and concept of a 'minority'.[30]

It has generally been observed that states are rather reluctant in granting recognition to groups as such. This is mainly due to the fear, that group rights could involve a serious threat to the sovereignty of states, which could eventually undermine their territorial integrity.[31] Minorities will be invested with authoritative power to represent the interests of the minority against the state representing the interests of the rest of the population. It is important, that the individual has freedom to choose between voluntary assimilation and the preservation of his or her culture within the minority group, which will be better secured if the rights of the individual within the minority are protected rather than the minority as a collective entity.

Most members of a minority group usually wish to maintain their separate identity. There might be some individuals, which might prefer to be part of the majority population and culture. Under these circumstances and provided that it is their free choice, no obstacles should be placed in their way only to maintain intact group solidarity.[32] The creation of any such obstacles would constitute a violation of the freedom of the individuals concerned. Freedom of expression (Article 19 ICCPR) and

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[29] *Ibid.*, pp. 173-176.
[30] See, Common Article 1 of the ICCPR and ICESCR.
[31] Capotorti, *op.cit.* p. 42 at paragraph. 315.
[32] *Ibid.*, p. 42, paragraph. 250.

association (Article 21 ICCPR) are also relevant. In regard to the principles of equality and non-discrimination, Article 26 of the ICCPR states that "all persons are equal before the law and are entitled without discrimination to the equal protection of the law." Thus, the members of a minority group are entitled to equality before the law and to the equal protection of the law without discrimination. This would entail the undertaking of positive measures to ensure 'true' and 'factual' equality between minorities and the majority population.

In regard to the conflict between the individual choice of member of a minority in integrating to the majority culture or maintaining his or her cultural traditions, Article 27 of the ICCPR provides that an individual should not be forced to conform to the choice made by the greater part of the minority group to which he or she belongs. However, for those individuals who wish to maintain their distinctive characteristics, special measures should be taken by the states in permitting minorities to develop and preserve their ethnic identity.

In regard to the issue of cultural membership the very first case under the Optional Protocol, *Lovelace v Canada*[33], made some very useful observation on the matter. In the celebrated case the main complaint was that Sandra Lovelace had lost her status and rights as an Indian in accordance with section 12(1)(b) of the Indian Act of Canada as a consequence of marrying a non-Indian in 1970. Sandra Lovelace, stated that an Indian man who married a non-Indian woman did not lose his status[34], thus, she claimed that the Indian Act was discriminatory and contrary to Articles 2(1), 3, 23(1), 23(4), 26 and 27 of the Covenant.[35] Canada submitted that many aspects of the Indian Act needed reform and that the government intended to put a reform bill before the Canadian Parliament. Nevertheless, Canada stressed out that the Act was necessary to protect the Indian minority; a definition of Indians was needed in granting privileges to the Indian minority.

The relevant legislation included a loss of certain rights for Indians who ceased to be members of an Indian band, in particular they were not entitled to reside by right on a reserve although they could do so if their presence was tolerated by other band

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[33] Communication No. 24/1977 , views adopted on July 30, 1981, see, A/36/40, pp. 166-175.
[34] Para. 1 of the Indian Act.

members.[36] Lovelace itemised the consequences of loss of status, including the cultural benefits of living in an Indian community and the emotional ties to home, family, friends and neighbours and the loss of identity.[37] The Committee considered that the essence of the complaint was the continuing effects of the Indian Act in denying Indian status to Sandra Lovelace, [38] "in particular because she cannot for this reason claim a legal right to reside where she wishes to on the Tobique reserve."[39]

In the Committee's view most of the effects due to the Indian Act listed by Lovelace did not adversely affect the rights protected in the Covenant, except the loss of cultural benefits to which Article 27 was directly applicable. The Committee stated that:

> Persons who are born and brought up on a reserve, who have kept ties with their community and wish to manifest these ties must normally be considered as belonging to that minority within the meaning of the Covenant.

The Committee observed that individual choice was essential point in regard to cultural membership although the "right to the community" or "cultural membership" does not entirely depend on the choice of the individual as an act of individual determination. The Committee also stated that although the right to live on a reserve is not guaranteed as such by Article 27 , Lovelace belonged to the community and her right to enjoy her culture in community with other members of her group was subject to continuing interference "because there is no place outside the Tobique reserve where such community exists."[40] Moreover, it was stated that any restrictions placed on the enjoyment of cultural and minority rights must have a reasonable and objective justification and be consistent with the provisions of the Covenant read as a whole.[41] The Committee concluded that:

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[35] *Ibid.*
[36] Para 5. Lovelace disputed the contention that legal relationships within Indian families were traditionally partilineal in nature.
[37] Paras. 9.9 , 13.1.
[38] In the Committee's view, family life issues under Articles 17, 23 and 24 were "only indirectly at stake" and the finding under Article 27 made it unnecessary to examine questions of discrimination under Articles 2, 3 and 26, Para. 18.
[39] Para. 15.
[40] Para 15.
[41] Para. 16.

> Whatever may be the merits of the Indian Act in other respects it does not seem that to deny Sandra Lovelace the right to reside on a reserve is reasonable, or necessary to preserve the identity of the tribe. The Committee therefore concludes that to prevent her recognition as belonging to the band is an unjustifiable denial of her rights under Article 27 read in the context of the other provisions refereed to.

The case of *Lovelace v Canada* illustrated some significant points regarding the prevalence of the international standards over the national ones regarding the existence of minorities. In regard to the individualist wording of Article 27; "persons belonging to minorities" and not minorities themselves, in the celebrated case individual and community elements of right are recognised and put to the balance including the need "to preserve the identity of the tribe." The Committee further observed that although Article 27 provided individual rights in the context of minorities; "they depend in turn on the ability of the minority group to maintain its culture, language or religion."[42] The most significant contribution of the Lovelace case was that it embraced Article 27 into the framework of human rights.

C. "They shall not be denied the right.."

A third shortcoming of Article 27 is the nature of the obligation imposed on states and the formulation of certain considerations on the right of members of minorities to enjoy their own culture, practise their own religion and to use their own language.[43] In this respect, Article 27 is framed in a rather passive way. It states that persons belonging to such minorities "shall not be denied the right". A literal interpretation of this phrase does not establish any positive, affirmative right or obligation or even duty on the part of the states to create policies with the objective of protecting and promoting the rights of minorities. It only requires states to refrain from interfering from the enjoyment of the rights of minorities.

On the one hand, Capotorti[44] and Thornberry[45] have concluded that Article 27 provides that states must provide "positive action" for ethnic, religious and linguistic

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[42] General Comment No. 23(50) para. 6.2.
[43] *Ibid.*, pp. 178-186.
[44] *Ibid.*
[45] Thornberry, *op.cit.* ,pp. 178-186.

minorities. Accordingly, states must provide the means to ensure the actual survival and maintenance of their characteristics through appropriate financial assistance and a legal framework for institutions and activities vital to the minorities' interests. If states took no action to address imbalances between vulnerable groups and powerful majorities, they were neither 'securing' nor 'respecting' Article 27. [46]

Capotorti argued that the right granted to members of a minority group to enjoy their own culture would loose much of its effectiveness, if no assistance were required from the states. In particular, in most instances, the principles of non-discrimination and equality or the constitutional guarantees of freedom of expression and association are not sufficient for the effective implementation of minority rights. Most often, positive action is required for the effective implementation of Article 27.[47]

Thus, even though the aim and intent of Article 27 as expressed by the drafters has been to protect minorities by prohibiting states from interfering in their internal affairs in respect to their language, religion, or culture, Capotorti has submitted his own interpretation. Accordingly, Article 27 should be implemented to guarantee the preservation and development of the language, religion, and culture of minorities, including if necessary the active support and intervention of the state.

Others reject this view and state that the wording of Article 27 has a more restricted goal. It only requires states not to intervene in private community activities regarding language, religious or cultural usage.

However, the UN Human Rights Committee (hereafter "Committee") has indirectly confirmed the non-interference nature of Article 27, as a minimal measure of protection of minorities.[48] The Committee concluded that the state authorities by their

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[46] Capotorti, *op.cit.* pp. 36-37.

[47] See, the Minority Schools in Albania case, *supra*, note 16, where the Permanent Court of International Justice held that special measures need to be taken in order to achieve true equality between the members of a minority and the rest of the population.

[48] Kitok v Sweden, Communication 197/1985, UN Doc. CCPR/C/33/D/197/1984, UN Human Rights Committee, Lovelace v Canada, Communication 24/1997, UN Doc. CCPR/C/O/P/1, UN Human Rights Committee, Ominayak v Canada, Communication 167/1984, UN Doc. CCPR/C/38/D/167/1984, UN Human Rights Committee. In regard to the rights of minorities and indigenous people, see, Bloch Anne-Christine, "Minorities and Indigenous Peoples" Eide Asbjorn, Catarina Krause and Rosas Allan (eds.), Economic, Social and Cultural Rights, (Dordrecht: Martinus Nijhoff Publishers, 1995) pp. 309-323.

legislation were interfering in the cultural life and language use of indigenous people constituting linguistic or ethnic minorities:

> Although Article 27 is expressed in negative terms, that article, nevertheless, does recognise the existence of a "right" and requires that it shall not be denied. Consequently, a state party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are therefore, required not only against the acts of the state party itself, whether, through its legislative, judicial or administrative authorities, but also against the acts of other persons within the state party.[49]

In fact the references to "positive measures" and "specific obligations" mean that a state must always take appropriate steps to protect a minority's right to use its language. Accordingly, positive measures by states are necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion. According to the Committee, such positive measures must respect the provisions of Article 2(1) and 26 of the ICCPR both as regards the treatment between different minorities and the treatment between persons belonging to a minority and the majority population. A legitimate differentiation under the ICCPR must be based on reasonable and objective criteria.[50]

In regard to the legal nature of Article 27 and the obligations of members states, it is useful to examine the case of *Apirana Mahuika et.al. v New Zealand.*[51] According to the facts of the case, the parties are Apirana Mahuika and eighteen other individuals belonging to the Maori people of New Zealand. They claim to be victims of violations by New Zealand of articles 11, 12, 16, 18, 26, 27of the International Covenant on Civil and Political Rights.

The parties claim was that the Treaty of Waitangi (Fisheries Claims) Settlement Act confiscates their fishing resources, denies them their right to freely determine their political status and interferes with their right to freely pursue their economic, social and cultural development. It is submitted that the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 is in breach of the State party's obligations under the

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[49] *Ibid.*,at paragraph 6.1.
[50] *Ibid.* at paragraph 6.2.

Treaty of Waitangi. In this context, the authors claim that the right to self-determination under Article 1 of the ICCPR is only effective when people have access to and control over their resources. The parties claim that the Government's actions are threatening their way of life and the culture of their tribes in violation of Article 27 of the ICCPR.

They submit that fishing is one of the main elements of their traditional culture, that they have present-day fishing interests and the strong desire to manifest their culture through fishing to the fullest extent of their traditional territories. They further submit that their traditional culture comprises commercial elements and does not distinguish clearly between commercial and other fishing. They claim that the new legislation removes their right to pursue traditional fishing other than in the limited sense preserved by the law and that the commercial aspect of fishing is being denied to them in exchange for a share in fishing quota. (see, *Ominayak v Canada UN Communication No. 167/1984*: "the rights protected by Article 27include the rights of persons in community with others to engage in economic and social activities which are part of the culture of the community to which they belong."

The parties further submit that prior to the enactment of the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992, they had a right of access to a court or tribunal based on section 88 of the Fisheries Act to protect, determine the nature and extent and to enforce their common law and Treaty of Waitangi fishing rights or interests. The repeal of this section by the 1992 Act interferes with and curtails their right to a fair and public hearing of their rights and obligations in a suit at law as guaranteed by Article 14(1) of the ICCPR, because there is no longer any statutory framework with which these rights or interests can be litigated.

The Government of New Zealand, with regard to the parties' claim under Article 27 it accepted that the enjoyment of Maori culture encompasses the right to engage in fishing activities and it accepts that it has positive obligations to ensure these rights are recognised. The 1992 Act, it submits has achieved this.

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[51] UN Communication No. 760/1997. See also the case of J.G.A. Diergaardt et.al. v Namibia Communication No. 760/1997.

Moreover, the government of New Zealand notes that the rights of minorities contained in Article 27 are not unlimited but may be subjected to reasonable regulation and other controls or limitations provided that these measures have a reasonable and objective justification and are consistent with the other provisions of the Covenant and do not amount to a denial of the right. In the case of the 1992 Act the government of New Zealand had a number of important obligations to reconcile. It was necessary to balance the concerns of individual dissentients against its obligations to Maori as a whole to secure a resolution to fisheries claims and the need to introduce measures to ensure the sustainability of the resource.

The government of New Zealand concluded that the Fisheries Settlement has not breached the parties or of any other Maori under the ICCP. On the contrary the government of New Zealand submitted that the 1992 Act should be regarded as one of the most positive achievements in recent years in securing the recognition of Maori rights in conformity with the principles of the Treaty of Waitangi.

In the parties view Article 27 of the ICCPR requires the government of New Zealand to adduce convincing and cogent evidence which establishes the necessity and proportionality of its interferences with the rights and freedoms of the authors and their tribes or sub-tribes as guaranteed by Article 27. The parties submit that the government has not adduced such evidence.

The first issue before the Committee was whether the parties' rights under Article 27 of the ICCPR have been violated by the Fisheries Settlement as reflected in the Deed of Settlement and the Treaty of Waitangi(Fisheries Claims) Settlement Act 1992. The two basic facts of the case are that: the parties are members of a minority within the meaning of Article 27 of the ICCPR and that the use and control of fisheries is an essential element of their culture. In this context, the Committee states that economic activities may come within the protection of Article 27, if they are an essential element of the culture of the community. The recognition of Maori rights in respect of fisheries by the Treaty of Waitangi confirms that the exercise of these rights is a significant part of Maori culture. The right to enjoy one's culture cannot be determined in *abstracto* but has to be placed in context. In particular, Article 27 does

not only protect traditional means of livehood of minorities but also allows for adaptation of those means to the modern way of life and ensuing technology.

In this context the legislation introduced by the state affects in various ways, the possibilities for Maori to engage in commercial and non-commercial fishing. The main question is whether this constitutes a denial of rights. On this issue the Committee had on a previous case stated that:

> "A state may understandably wish to encourage development or allow economic activity by enterprises. The scope of its freedom to do so is not to be assessed by reference to a margin of appreciation but by reference to the obligation it has undertaken in Article 27. Article 27 requires that a member of a minority shall not be denied his right to enjoy his own culture. Thus, measures whose impact amount to a denial of the right will not be compatible with the obligations under Article 27. However, measures that have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a denial of the right under Article 27."[52]

The Committee referred to its General Comment No. 23(50) on Article 27 according to which the enjoyment of the right to one's own culture may require positive legal measures of protection by a state party and measures to ensure the effective participation of members of minority communities in decisions which affect them. According to the case-law of the Committee it has been emphasized that the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee confirmed that the Treaty of Waitangi (Fisheries Settlement) Act 1992 and its mechanisms limit the rights of the parties to enjoy their own culture.

The Committee concluded that a consultation process took place between the government of New Zealand and the Maori people prior to the enactment of the Treaty of Waitangi (Fisheries Settlement) Act 1992 where special attention was paid

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[52] See, Committee's Views on Lansamann et. al. v Finland, UN Communication No. 511/1992 CCPR/C/52/D/511/1992, para. 9.4.

to the cultural and religious significance of fishing for the Maori, to secure the possibility of Maori individuals and communities to engage themselves in non-commercial fishing activities. The Committee submitted that the government of New Zealand by engaging itself in the process of broad consultation before proceedings to legislate and by paying specific attention to the sustainability of Maori fishing activities taken the necessary steps to ensure that the Fisheries Settlement and its enactment through legislation are compatible with Article 27.

However, the Committee ruled that the government of New Zealand continues to be bound by Article 27 which requires that the cultural and religious significance of fishing for Maori deserves special consideration in the implementation of the Treaty of Waitangi (Fisheries Claims) Settlement Act. Finally, the Committee stated that in order for the government of New Zealand to comply with Article 27 any measures, which might affect the economic activities of Maori must be carried out in a way that the authors continue to enjoy their culture and profess and practice their religion in community with other members of their group. The government of New Zealand is under a duty to bear this in mind for the future implementation of the Treaty of Waitangi (Fisheries Claims) Settlement Act.

The protection provided by Article 27 does not provide for the members of a linguistic minority the right to maintain contacts and use their language with individuals, who do not reside within the borders of a state. There are, however, a vast number of treaties and other documents on a European and international level regarding the right of minorities to maintain and develop their culture and preserve their identity. [53] In more practical terms a number of treaties have gradually began to recognise the right of a minority to establish and maintain free and peaceful contacts across frontiers.

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[53] See, Article 2(5) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (G.A. Res. 47/135/18.12.1992) and Article 14 of the European Charter for Regional or Minority Languages, (Council of Europe, 1992). In regard to a detailed analysis of the UN Declaration see, Patrick Thornberry, "The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, And An Update" Alan Phillips and Allan Rosas (eds.), Universal Minority Rights, (Finland: Abo Akademi University Institute for Human Rights/Minority Rights Group International, 1997) pp. 13-76.

More specifically the members of a minority group have the right to maintain transborder contacts with individuals with whom they share an ethnic, cultural, linguistic or religious identity and background or a common ethnic heritage. Even though not expressly stated in any further detail, it may be argued that this right covers an individual's right to freely receive radio and television broadcasts in minority languages from abroad without interference by the public authorities.[54]

2.5: The Work of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

In 1947 the UN Economic and Social Council (ECOSOC) defined the task of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which had been established by the Commission in 1946:

> In the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination on grounds of race, sex, language, or religion and in the field of the protection of minorities and to make recommendations to the Commission on urgent problems in these fields.[55]

The Commission asked the Sub-Commission, to undertake a "thorough study of the problem of minorities in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities."[56]

The Sub-Commission in its third session in 1950 adopted a definition of "minorities". Accordingly, the Commission would recognise:

> That there are among the nationals of many States distinctive population groups, usually known as minorities, possessing ethnic, religious, or linguistic traditions or characteristics different from those of the rest of the population and that among these are groups that need to be protected by special measures, national or international, so that they can preserve and develop the traditions or characteristics in question. Such minorities

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[54] This right has been particularly recognised in Recommendation 11 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.

[55] H. Lauterpacht, International Law and Human Rights, (Hamden (Conn.): Archon Books, 1968) pp. 265-266.

[56] G.A. Res. 217(III), Part C. See J.P. Humphrey, "The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities" Vol. 62 Amnesty Journal of International Law, (1968) p. 873.

> should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; finally they must be loyal to the state of which they are nationals.[57]

The Sub-Commission submitted this proposal to the Human Rights Commission and the Economic and Social Council. Until the adoption of the UN Covenants on Human Rights, the Sub-Commission suggested that the UN General Assembly recommended that states provide certain positive measures in assisting minorities to maintain their cultural identity and traditions.

However, without determining which groups deserve special protection, the Sub-Commission at its fifth session adopted a draft resolution regarding the definition of a minority, accordingly the definition would include the following elements:

> The term minority shall include only those non-dominant groups in a population which possess and wish to preserve ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; such minorities must be loyal to the State they are living in.[58]

Nevertheless, the definition of the term 'minority' was criticised by the UN Commission of Human Rights in several ways.[59] While some members felt that national groups should be given special protection others stated that the inclusion of the provision of only such groups that "wish to preserve ethnic, religious, or linguistic traditions or characteristics" was subjective and could be used by dominant groups, which did not want to extend equal rights to such minorities. They could justify their action by claiming that those minorities did not wish to maintain their individual character. Moreover, other members considered that the definition suggested by the UN Sub-Commission did not make it sufficiently clear that minorities did not include foreigners residing in the territory of the state or groups which had come into existence as the result of immigration.

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[57]Res. C , paragraphs (1), (4) , Doc. E/CN.4/358, E/CN.4/Sub.2/117(119).

[58] See, Commission on Human Rights, Report of the 10th sessions (1954) in ECOSOC, O.R. 18th sessions, Supp. No.7 (Doc. E/2573) ,(E/CN.4/705) , Res. F (Doc. E/CN.4/703) Arts. 3(I), 2 , p. 48, at paragraph. 420.

It was recognised therefore, both by the Commission of Human Rights and the Sub-Commission that it was extremely difficult, if not impossible to group together under a satisfactory definition every kind of minority group in need of special measures on a universal basis.

2.6: The UN Special Rapporteur, Fransesco Capotorti "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities."[60]

The preparation of universally accepted definition has not proved to be possible so far due to its difficult and complex nature. However, this does not mean that a description of what might be described as a minority or any possible interpretations of the concept cannot be suggested. Several different aspects can be considered in an attempt to define the concept of a minority. In 1967 the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to resume consideration of the question of protection of minorities. While some members felt that Article 27 was satisfactory on an international level others were dissatisfied with the comparative neglect of the subject. They regarded Article 27 as inadequate, since it did not directly produce positive obligations for states regarding the protection of minorities. It was therefore agreed to undertake a study on the subject of minorities.

In 1971, the Sub-Commission initiated three studies concerning groups or collectivities, which were approved by the Commission and the Economic and Social Council. One of the studies was on the rights of persons belonging to ethnic, religious and linguistic minorities. This was assigned to M. Francesco Capotorti, who undertook a "Study on the Rights of Persons Belonging the Ethnic, Religious and Linguistic Minorities" in 1979.[61]

In his study, Capotorti posed some very interesting questions in the search for a definition of the term 'minority'. Specifically, he considered whether objective criteria should suffice in defining a minority or whether subjective criteria are also important. Capotorti presented states with a provisional interpretation of the term "minority" and

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[59] See E/CN.4/705, at paragraphs. 422-437.
[60] Capotorti F. Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities (New York: United Nations Publications, 1991) UN Doc. E/CN.4/Sub.2/384/Rev.1.
[61] *Ibid.*

requested governments, specialised agencies and a number of regional governmental organisations and non-governmental organisations to make their own comments and give their own opinion on his proposed definition.

Some governments expressed the view that the definition by the Special Rapporteur was incomplete and vague. In particular, the Greek government made the following remarks:

> An ethnic, religious or linguistic minority group of persons should be clearly recognisable as such. The following criteria among others should be applicable to a group of persons for it to qualify as a minority: the characteristic features should be sufficiently distinctive for the group concerned to be clearly distinguishable as separate from the majority.[62]

A 'final' proposed definition of the term "minority" is provided, according to the comments made by states and governments in the study of Capotorti:

> "A group numerically inferior to the rest of the population of a State, which possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.[63]

While some states reiterated that there was no generally accepted definition of a 'minority' others expressed their approval of the provisional definition as a broad formula. Nevertheless, the concept of a minority is constantly changing throughout the passage of time due to political and social circumstances. Such changes would also affect the term in its legal sense. However, certain distinctive characteristics of a population group, like religion, culture and language are essential for the recognition of a group as a 'minority'. In essence, the consensus was reached by the refusal by most states to accept proposals, which would oblige them to concede to every minority on its territory, regardless of its numbers, the right to obtain public financial assistance and to establish institutions among other things. The final provision merely reflects a commitment to refrain from interfering with the rights of individuals regarding the use of language, religious practices and cultural expression of a minority group.

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[62] See, Capotorti, *op.cit.*, at paragraph. 9.
[63] *Ibid.*

2.7: The Legal Nature of International Obligations towards Minority Rights

In regard to the nature of legal obligations regarding minority rights, international and regional instruments seem to result in different legal consequences.[64] Nevertheless, in this section, the international legal obligations of the basic international human rights instruments, providing protection for minorities, will be discussed and analysed in relation to their monitoring system on the international and national level.

The obligations described in the UN Charter are to be applied reasonably and in good faith, according to the particular circumstances of each state. As far as the UDHR is concerned, it does not impose legal obligations upon the states. Nevertheless, it is considered to be a statement of general principles carrying great authority under international law regarding the protection of human rights.

The rights that stem from the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights can be classified into two categories.[65] Firstly, the ICCPR creates legal rights, which can be incorporated into national law through the appropriate legislative or administrative action. However, ICCPR does not provide direct rights for individuals, but creates mutual obligations for states to respect human rights.[66] Accordingly, Article 2(1) of the ICCPR imposes the obligation upon state parties to ensure that the rights provided are enjoyed by everyone based on the principle of non-discrimination.[67] The remaining provisions of the ICCPR oblige states to undertake all the necessary measures to implement the rights contained therein, including providing effective remedies, in case of a violation of the convention by competent authorities.

Nevertheless, whereas Article 2 of the ICCPR requires immediate incorporation into domestic law, several provisions of the ICCPR cannot be placed in the category of immediate application. It would seem that the ICCPR are not required to be directly

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[64] In regard to the regional minority rights instruments, see Chapter 4, *infra*, section 4.3.
[65] In regard to the system of the United Nations, see, Philip Alston, (ed.) The United Nations and Human Rights : A Critical Appraisal , (Oxford : Oxford University Press, 1996).
[66] Thornberry, *op.cit.* p. 144.
[67] See Article 2(1) of the ICCPR. See, also J.P. Humphrey, "The Implementation of International Human Rights Law" Vol. 24, New York Law School Law Review, (1978), No. 31, p. 39.

incorporated into national law[68] but merely imposes on states an obligation to take all necessary steps in accordance with their constitutional process.[69] Therefore, it is possible for the states to ratify the ICCPR without immediately complying with the obligations provided that they have an intention of doing so but there is no time limit.[70]

As to the monitoring system of the ICCPR, the Committee was established in 1976 under the ICCPR.[71] Its duties and functions are defined by the ICCPR, in particular Part IV defines the Committee's composition, status, functions and procedures. In particular, Articles 28 to 45, which require international implementation provide for the composition and duties of the Committee. The Committee has two main functions, firstly it considers member state's reports and secondly, it also considers complaints against member states. Each member state of the ICCPR is obliged to produce a state report to the UN Secretary–General, who will then pass it on to the Committee for consideration. However, the state complaint system is optional and operates on two different forms; the "interstate communications" in matters relating

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[68]O. Schachter , "The Obligation to Implement the Convention in Domestic Law" Louise Henkin (ed.), The International Bill of Rights (New York : Columbia University Press, 1981), p. 311.

[69] Article 2(2) of the ICCPR, states that : "Where not already provided by existing legislation or other measures each State Party to the present Covenant undertakes to take the necessary measures, in accordance with its constitutional process and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant."

[70] Thornberry, *op.cit.*, pp. 144-145.

[71] Torkel Opsahl, "The Human Rights Committee", Alston Phillip (ed.), The United Nations and Human Rights : A Critical Appraisal , (Oxford: Clarendon Press, 1992) pp. 369-443.

to the application of the ICCPR and for resolving such differences[72] and the "individual communications" under the Optional Protocol. [73]

The ICESCR provides rights, which although recognised in principle cannot effectively be implemented in law until after the fulfilment of certain economic and social conditions have been met. Accordingly, Article 2(1) of the ICESCR allows "progressive implementation" regarding the enjoyment of the rights provided in the Covenant. [74]

In 1979 the Committee on Economic, Social and Cultural Rights was established to monitor the implementation of the ICESCR.[75] Part IV of the ICESCR defines the duties and functions of the Committee. Accordingly, the state parties are required to submit reports, in accordance with a programme to be determined by the Economic and Social Council to the Secretary General on the measures they have adopted and the progress they have made in ensuring compliance with the rights recognised in the

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[72] Capotorti, *op.cit.*, p. 93. Since the state complaint system is optional it operates, only if a state party declares that it recognises the competence of the Human Rights Committee to receive and consider communications to the effect that a state party claims that another state is not fulfilling its obligations under the ICCPR. Moreover, this complaint system operates reciprocally, thus, only a state, which has made a declaration recognising the competence of the Human Rights Committee in regard to itself is allowed to initiate proceedings against another state party which has also recognised this competence of the Committee. Accordingly, if a state party of the ICCPR believes that another state party is not complying with the provisions of the ICCPR, it may call for the attention of that state party. The receiving state party shall send an explanation to that state or any other form of statement. However, if the matter is still not resolved within the six months limit, either state party may refer the matter to the Human Rights Committee. In regard, to the rules of the Committee, all local remedies must have been exhausted, according to international law before, before it can consider any state complaints. The Committee will examine the state communications in closed meetings, where both states will be able to make oral and written representations. Finally, if the matter has been resolved, the Committee will prepare a statement of facts and the solution, but if a solution is not reached it will only include a brief statement of facts See, Article 41 of the ICCPR.

[73] Each state party to the ICCPR recognises the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that state party regarding the rights provided in the Covenant. Accordingly, the Committee should notify any individual complaint made under the Protocol to the interesting state. The interesting state should submit written statements to the Committee on the relevant matter and state any remedy, if available, against the individual complaint made. The Committee will consider all written information provided, including the individual and the state concerned. However, the rule of exhaustion of local remedies applies in this case, as under the ICCPR.

[74] Article 2(1) of the ICESCR states that : "Each State Party to the present Covenant undertakes to takes steps individually and through international assistance and co-operation, especially economic and technical to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means including particularly the adoption of legislative measures."

[75] Phillip Alston, "The Committee on Economic, Social and Cultural Rights", Philip Alston (ed.), The United Nations and Human Rights: A Critical Appraisal, (Oxford: Clarendon Press, 1992) pp. 473-508.

ICESCR. The reports might also include any issues or difficulties affecting the fulfilment of the state parties' obligations. [76]

It is submitted that both Covenants include a non-discriminatory clause. However, the legal obligation not to discriminate against the rights of minorities, for example regarding the right to a fair trial (Article 14) or the rights of the members of minorities (Article 27) is more immediate and binding in the ICCPR than the corresponding obligation of non-discrimination in the economic, social and cultural fields. For example, Article 13 ICESCR provides for the right to education whereas Article 14 allows for the progressive implementation of such a right in the national legal systems of the state parties. [77]

2.8: Limitations on the Rights of Minorities

At this point an analysis needs to be made on the extent of limits that human rights instruments impose on the rights of minorities. Several state representatives during the drafting process of the ICCPR strongly recommended the existence of certain limitations upon Article 27. For example, the representative to the Netherlands stated that according to his understanding Article 27 includes similar restrictions as set out in Article 18 of the ICCPR accordingly the article: "could not be held to exempt the rights of minorities from the limitations laid down by law to protect public safety, order, health or morals or the fundamental freedoms of others."[78] Greece did not accept the definition of Capotorti but instead chose a more restrictive interpretation of the concept of a minority. The representative of Greece declared that Article 27 "should not be applied in such a manner as to encourage the creation of new minorities or to obstruct the process of voluntary integration."[79]

First, it was agreed that, in general, some provisions state that positive rights for minorities should not interfere or conflict with the basic civil and political rights;

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[76] Ibid., 474.
[77] Tabory *op.cit.* p. 218.
[78] GAOR, 16 session, 3rd Committee , 1103rd meeting , paragraph. 17. Article 18(3) of the ICCPR, states that : "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."
[79] UN Doc. E/CN.4/1298, 10.

secondly, they provide that any kind of positive measures of support shall not in any way compromise the territorial integrity and political unity of the state. This provision arises from the fear that minority rights must not be used to advance secessionist or irredentist causes. However, it is recognised according to Article 8(3) of the UN's General Assembly that measures adopted by states to ensure enjoyment of minority rights shall not constitute discrimination.

The Committee in two of its decisions involving Articles 27 stated that not every interference by public authorities can be regarded as a denial of rights within the meaning of the provision. The Committee has affirmed that any legal restriction affecting the right of a person belonging to a minority group must both have a reasonable and objective justification and be consistent with the other provisions of the ICCPR read as a whole.[80] Accordingly, any state interference against the rights of minorities must be made in the light of the provisions of the ICCPR providing for the principles of equality and non-discrimination. [81]

According to the reasoning of the Committee, a state may interfere and restrict a minority member's right, for example to practice his or her religion, use his or her language or enjoy his or her culture, if there exists a reasonable and objective justification for such a restriction.

When a state then adopts a series of positive measures in compliance with Article 27, such measures must be in consistency with other human rights provisions. In particular, states need to consider the principle of non-discrimination provided by Article 26. According to this process a balance needs to be reached between the interests and obligations of the state with the interests and rights of the members of a minority in order to determine whether the law has a reasonable and objective justification

2.9: Concluding Remarks

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[80] See, *Lovelace v Canada*, *supra*, note, 48, section 2.4.b.
[81] In particular, see Articles 2, 3 and 26 of the ICCPR.

One may observe the adoption of a new philosophy regarding the protection of human rights under the auspices of the United Nations. The emphasis is placed on protecting individual human rights on a universal basis rather than the rights of a few minorities under the system of the League of Nations. The first universal instrument to offer protection for the rights of minorities is Article 27 of the ICCPR.

Although Article 27 is expressed in individual terms and is based on the principle of non-interference by the states in the activities of the minorities, states need to adopt a set of special measures for the effective implementation of minority rights to ensure equality between the minorities and the majorities. In addition the rights of a minority group are to be enjoyed on a collective basis in order to be effectively protected.

It is submitted that there is no "universal" accepted definition of the concept of a 'minority' in international law. Nevertheless, most states seem to agree on a general broad formula in identifying the existence of a minority group. The existence of a minority is examined on both objective criteria, the mere presence of a group of individuals, who are substantial in number living in a specific geographical location over a long period of time and on subjective criteria, the evidence of a sense of solidarity among the members of the group to maintain and preserve their distinctive identity and characteristics.

The protection of human rights, including minority rights, seems to be a high priority under international law not least to avoid any potential inter-state conflict. This is mainly due to the fact that the harmonious and peaceful relations between the states as well as between the minority groups and the majority population with a state greatly depend on safeguarding minority rights. Accordingly, a society could be established based on the principles of equality and non-discrimination that could be enriched by the variety of cultures and traditions of the different people.

CHAPTER THREE: THE CONCEPT OF A MINORITY IN THE GREEK LEGAL SYSTEM

3.0: General Background

In this chapter an analysis will be made regarding the concept of a minority in the Greek legal system from a historical and legal point of view. This will be done by reference to current international law with special reference to Article 27 of the International Covenant on Civil and Political Rights (ICCPR).[1] Secondly, a description will be provided for the rights of the minorities in Greece and comment on Greece's official position towards minorities.

There are usually various factors, which contribute to the differentiation of a minority from the rest of the population. Thus, several different kinds of minorities may exist in the territory of a state. Usually it is not just the ethnicity, language, religion or culture of a minority that express its distinctiveness. The combination of some or all of these factors explicitly forms a distinctive minority group.

Each ethnic group often has its own distinctive religious traditions, uses its own language and has its own customs and way of living such characteristics can account for the ethnic identification of the group. Religion is often described as one of the most important factors in identifying a minority group.[2] It has often been observed among ethnic groups, that religious traditions play an important role in the daily life of the people in organising their own social and family relations.[3] In particular, the preservation of an ethnic group's culture is essential in illustrating the group's distinctiveness against any process of forced assimilation. Similarly, language is an essential factor in examining the existence of a minority group and a sense of solidarity among the members of the group.[4] In essence, a minority's distinctive culture, language and religion are the main factors in developing and preserving the ethnic identity and consciousness of the group on an individual and collective basis.

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[1] G.A. Res. 2200A(XXI), December 16, 1996, entered into force on March 23, 1976, according to Article 49.
[2] Capotorti, "A Study on Persons Belonging to Ethnic, Religious and Linguistic Minorities." (New York: United Nations Publications, 1972) p. 43 ,at paragraph 252, *et.seq.*
[3] *Ibid* ,at paragraphs 252 and 255.
[4] *Ibid.* at paragraph 254.

3.1: Application of Article 27 of International Covenant on Civil and Political Rights in the Greek Legal System

A. The 'Numerical' Factor

From the total population in Greece, the individual groups, who are using a language another than Greek as their mother tongue or who do not belong to the Greek Orthodox religion are small in numbers.[5] Approximately ninety-four to ninety-seven percent of the country's citizens adhere nominally to the Greek Orthodox faith. The remainder is primarily the Muslim minority[6] in Western Thrace in which the majority uses the Turkish language constitutes a high percentage of the total population only in that particular region. [7]

B. A Sense of Solidarity among the Members of a Minority

Another way for a group to be identified as a minority group is to demonstrate implicitly or explicitly a sense of common solidarity among its members.[8] In particular, that was one of the criteria considered by the Sub-Commission for the definition of the term 'minority'.[9] As a matter of fact most of the participating governments, which commented on the provisional definition of a 'minority', expressed the view that such a desire constituted an important element of the concept of a minority. In any case, there can be no doubt that a sense of ethnic identity of a minority is strictly linked with a strong desire of the group or at least most of its members to preserve their own special characteristics.

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[5] *Ibid.*

[6] See," Religious Discrimination and Related Violations of International Commitments" (Joint NGO Report for the OSCE Supplementary Human Dimension Meeting on Freedom of Religion , Vienna 11-22 March 1999.) (Internet Version).

[7] See, Greek Statistical Service, Census Report for 1928 and 1951. According to the 1928 and 1951 census, the non Greek-speaking people or the bilingual Greek citizens only constituted seven percent of the total population of the country. Similarly, the totality of the people who did not practice the Greek Orthodox religion, would only come to four percent in 1928 and to three percent in 1940. In 1951, less than three percent of the Greek population used another language other than Greek as their mother tongue and even less than two percent did not belong to the Greek Orthodox Church. The same is valid within the various prefectures of Greece, since rarely such populations would reach a high percentage.

[8] Tsitselikis, *op.cit.* p. 296, Capotorti, *op.cit.*, pp. 44-45.

[9] See, Chapter two, *supra*, section 2.5.

In general, most ethnic, linguistic or religious minorities in varying degrees demonstrate a desire to preserve their own characteristics and traditions irrespective of the length of time they have lived in a place. In Greece such an expression of identity by a minority group would be adherence to a faith other than the Greek Orthodox Church, the use of a language other than the Greek language or the sense of the group belonging to culture 'alien' to the Greek society. A minority group would preserve and use a code of ethics and values, which cannot be found under the general terms of the 'Greek culture' or 'Hellenism'[10]

Under such circumstances a heterogeneous society may exist but its official recognition and existence are difficult to determine. In countries where ethnic and linguistic minorities have been officially recognised as such the fact of recognition may be interpreted as constituting in itself a response to the desire of the minorities concerned to maintain their own characteristics. As may be seen, the existence of groups with distinctive ethnic, religious or linguistic characteristics might be determined according to the position each government decides to take implicitly or explicitly, *de jure* or *de facto*.[11] However, with the passage of time the desire of a group to preserve its distinctive characteristics may vary due to historical circumstances or social change. It is quite common to experience certain changes within the minority group throughout the process of integration.

The expression of an ethnic identity by various groups has appeared in Greece during certain historical and national moments. First, before the exchange of populations took place under the Treaty of Neuilly in 1919 and the Treaty of Lausanne in 1923, it was established that the exchanged populations would share the ethnic consciousness of their neighbouring country. Religion was chosen as a criterion during the Lausanne Convention Concerning the Exchange of Greek-Turkish Populations[12] (hereafter "Lausanne Convention"), since it was a significant factor in determining the existence of a minority group, which can structure the ethnic or national consciousness of the minority. In this instance, one can refer to the Muslims in Western Thrace, which form an appreciable percentage of the total population in that region. The Muslim

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[10] *Ibid.*
[11] *Ibid.* Capotorit, *op.cit.* p. 42.
[12] Legislative Decree 25.8.1923 (FEK A' 238, 1923): "On the Ratification of the Lausanne Convention Concerning the Exchange of Greek-Turkish Populations".

minority is the only minority group officially recognised by the Greek government as a religious minority. The group as a whole shares a common ethnic consciousness with the neighbouring country, Turkey.[13]

It is widely accepted that group solidarity can be identified by a strong sense of ethnic identity among a minority. Most often any attempts of forced assimilation would meet a deliberate and conscious resistance. However, if such a sense of solidarity is not evident by the general attitude and behaviour of the ethnic group then one may conclude that the members of the minority group have chosen not to preserve their distinctive characteristics. In such a situation the minority group has decided by its own will to assimilate into the majority of the population in the country it is living in.[14]

The sense of the minority group of its common characteristics with a view towards their preservation can be manifested in different ways. For example, the formation of unions and associations by the members of a minority aiming at maintaining their language or culture or the establishment of private educational and religious institutions may contribute to maintaining the group's traditions and customs.[15] Moreover, the creation of a committee constituted by members of the minority or even the ability of the group to have some of its members representing their interests in the country's parliament can be described as one of the most effective ways for the minority group to protect and safeguard their rights and express their distinctive ethnic identity.

It should be stressed that the Muslim minority is represented in the Greek Parliament through its elected representatives. Indeed, one of Greece's positive developments in the field of minority rights was the government's decision to institute the election of the previously state-appointed provincial governors and municipal councils. In this way the members of the minority can promote their common interests and safeguard

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[13] See, Chapter four, *infra*, section 4.4 and 4.5.
[14] Capotorti, *op.cit.*p. 42.
[15] *Ibid.* p. 44 paragraph 263.

their rights.[16] The Muslim minority has quite often formed associations or unions, thus, expressing and preserving their distinctive culture, language and religion.[17]

The real problem lies in identifying the active participation of the members of a minority in the various cultural shared activities organised by their group. The difficulty found in distinguishing between a population group and a minority group is that there might be a group using their own distinctive language or having a particular culture but lacking a common desire to preserve their distinctive characteristics. For example, the preservation of very few cultural traditions or customs may not be enough for the group to be described as a 'minority'.

In order for the members of a minority group to be able to freely practise their own religion, enjoy their culture and use their own language, they need to live in a friendly and tolerant environment towards different ethnic groups.[18] It would appear that peaceful relations between the various minority groups and the majority greatly depend on the political will of the society to allow and promote the economic and social development of the minorities living in their territory. However, this can only be achieved in a society built on the principles of equality, equal protection of the law and non-discrimination where the members of a minority group would be able to participate in the economic and social life of the country and be ensured of their rights and freedoms.[19]

C. The 'Non-Dominant' Position of a Group

Essentially, any special measures for the protection of a minority group derive and are necessitated from the weakness and vulnerability of the group's position. In the context of a democratic country, which conforms to the standards set by the United Nations on human rights and the rule of law it is the duty of the government to ensure the rights of minorities are adequately protected.

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[16] See , Chapter four, *infra,* sections 4.4 and 4.5.
[17]. See, Chapter five, *infra*, sections 5.1 and 5.2.
[18] Capotori *op.cit.* pp. 44-46.
[19] Capotorti *op.cit.* p. 45 at paragraph 268.

The Muslim minority in Western Thrace has often found itself in a less favourable position in the past. In particular, the Muslim minority suffered unequal treatment and severe administrative difficulties, especially during the 1980s due to political circumstances and still some serious problems persist.[20] For example, the very low-level of education in the minority schools has had as a consequence the insufficient knowledge of the Greek language and thus, has resulted in the limited choice or opportunities for employment in the public sector. However, since the early 1990s the situation has significantly improved with the introduction of the principles of equality and non-discrimination.

The existence of certain legal provisions and regulations as well as the exercise of administrative measures often tended to result in differential treatment towards the Muslim minority.[21] Under such circumstances, it is obvious that the members of any minority group would find themselves in a disadvantaged and weak position in relation to the majority of the society. Minority groups are not able to enjoy the freedoms and liberties guaranteed by the Greek Constitution. It seems that the notions of rights are restricted to those rights granted by the state as provided in the constitution and the national legislation. As a consequence, the members of an ethnic group cannot effectively participate in the social and cultural life of the society which they living and take advantage of the wider social benefits enjoyed by the rest of the Greek citizens.

Members of minority groups are as entitled to non-discriminatory practise as the rest of the population. Even if there is legislation designed to protect the rights of such groups, in the absence of factual equality, economic or social circumstances can weaken the position of the members of a minority group. For example, in the case of the Muslim minority in Western Thrace despite the legal protection afforded to the members of the minority group, which derives from the terms of the Treaty of Lausanne and contemporary human rights law;[22] The Muslim minority on average still counts in the lowest socio-economic levels in the area.

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[20] See, Chapter four, *infra.*, sections 4.4 and 4.5.
[21] Tsitselikis, *op.cit.*, p. 297.
[22] *Ibid.*

3.2: The Existence of Ethnic, Religious and Linguistic Minorities in Greece

A. Ethnic Minorities

An ethnic minority can be described as a group of Greek citizens that share an 'ethnic' consciousness other than a 'Greek ethnic' consciousness.[23] It may also be the case that some members of a minority group, especially children share both a 'Greek ethnic' consciousness together with their own ethnic one. At this point an analysis needs to be made on the legal content of the term 'Greek nation' (*ethnos*) a reference point to 'Greek ethnic' consciousness. Article 1(3) of the Greek Constitution makes a distinction between the "nation" (*ethnos*) and the "people" (*laos*). The term "people" refers to all Greek citizens whereas the term "nation" refers to the ethnicity of each group or individual.[24] Accordingly, Article 1(3) states that: "All powers are derived from the People (*Laos)* and exist for the People and the Nation (*Ethnos*); they shall be exercised as specified by the Constitution." However, by establishing the concept of a nation on ethnic criteria, the possession of a 'Greek' ethnic consciousness may mean the faith and loyalty of an individual to the Greek nation.

Two important components of culture are language and religion, which occupy a central role in Greek history and tradition. Language is a legitimate factor for an individual or group of people to claim ethnic identity, however, language is open to change or may also be suppressed or 'disappear' throughout time[25] Religion can also change through conversion or apostasy. Moreover, cultural habits and customs may change or transform with the passage of time. Nevertheless, culture, religion and language are the main elements regarding ethnic identity and origin.

It is important to examine the conditions under which the term '*ethnos*' has been formed. Much of the history of Greece has been written in the terms of '*ethnos*' and

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[23] Tsitselikis, *op.cit.* p. 300, In regard to the cultural rights of minorities under international law, see, Giorgos I. Diakofotakis, Minorities and International Law, (Athens: Sakkoulas, 2001) pp. 377-386. In regard to the concept of 'ethnic minorities', the 'state' and 'multi-culturalism' from an anthropological and sociological point of view and their use in Greece, see Giorgos Aggelopoulos, "Ethnic Groups and Identities: Definitions and the Evolution of their Content" , Vol. 63, Contemporary Issues, (1997) pp. 18-25.

[24] *Ibid.*, pp. 300-302.

[25] *Ibid.*

much of its policies have been formulated under the concept of '*ethnos*'.[26] However, there is a substantial difference from the current meaning of the English word 'nation' and even though *ethnos* means nation, it does not mean nation-state or state (where in the English language it has become almost synonym).[27] There is distinction between the state (*kratos)* and the nation (*ethnos*) in Greece. The term *kratos* refers to a political unity whereas the term *ethnos* refers to the ethnicity of an individual or a group of people.

The concept of ethnicity is based on a number of factors. First, "political incorporation into/membership of a sovereign state" which includes the assimilation of 'nation' and 'state' (*ethnos* and *kratos*), "a legally and politically valid civic status coincides with the self-conceptions of self-identity."[28] Secondly, "geographical location" where ethnic identity is based on the existence of "people" and "territory".[29] Thirdly, "historical continuity" which includes the existence of historical roots and origin is also significant in order for the individual to claim cultural membership into an ethnic community on a historical collective basis.[30] Fourthly, culture and tradition play a major role in terms of defining ethnicity on an individual and collective basis.

It is argued that in the case of Greece the criteria for ethnicity: political unity, geographical location, historical continuity and culture have been hard to maintain.[31] Instead, the notions of ethnos and ethnic identity are claimed in defiance of these terms and instead they are based on "physical continuity and descent"[32] namely 'race'. However, this is not entirely correct, since as stated earlier on, an ethnic minority in Greece would be a group of people having an 'ethnic' consciousness other than the 'Greek' one or sharing a culture other than the 'Greek culture or civilisation'. Thus, there are several factors in determining ethnicity such as ethnic consciousness, culture, religion, language and historical origins in order to distinguish between an 'ethnic' Greek and a 'non-ethnic' Greek.

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[26] *Ibid.* pp. 72-73.
[27] *Ibid.*
[28] Roger Just, "Triumph of the Ethnos", Jane Elizabeth, et.al. (eds.) History and Ethnicity (London: Routledge, 1989) p. 75
[29] Ibid.
[30] Ibid. p. 76.
[31] *Ibid.* p. 76, 82.

The issue of citizenship in Greece due to the continuous change of borders after the First World War was resolved with the Treaty of Sevres. Under articles 3, 4 and 5 of the Treaty of Sevres, in the part "In regard to Minorities"[33] the Albanians, the Bulgarians and the Turks residing in the territories, which were ceded to Greece after January 1, 1913 as well as their children immediately acquired Greek citizenship.[34] A similar provision was included in the Peace Treaty of Paris in 1947 (Article 29(2)), which regulated the issue of citizenship in the Dodecanese islands. Accordingly, all the populations that were living in the Greek territory, including minority groups acquired Greek citizenship.

The population group in question must be composed of people living in a particular area for some generations and not by people who have recently obtained Greek citizenship.[35] However, such a criterion is difficult to meet, since the application of any such measurement of a period of time would seem only arbitrary, in the case of some groups due to historical circumstances.[36]

The Council of State gave a landmark decision on the appeal of a person of Jewish origin against the application of Article 19 of the Greek Code of Citizenship.[37] The Council of State defined the concept of 'non-ethnic' Greek citizen *(allogenis)* as stated in Article 19.[38] The Council of State referred to both objective and subjective criteria in the use of the definition of a 'non-ethnic' Greek citizen. Accordingly, a 'non-ethnic' Greek citizen is someone, who expresses ethnic feelings that do not form part of the Greek civilisation or culture. Thus, such an individual has not yet

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[32] *Ibid.*

[33] *Ibid.* Before the Treaty of Sevres, the Treaty of Athens in 1913, (Article 4) regulated the issue of citizenship between the 'New States'.

[34] See, Chapter one *supra*, section. 1.3. The Treaty of Sevres was superseded with the Treaty of Lausanne, in 1923 and was later abolished at the end of the Second World War.

[35] See, Chapter two, *supra* section 2.2.

[36] Tsitselikis, *op.cit.* p. 295.

[37] See, Decision No. 57/1981, Council of State. See, also Paboukis Harris, "Article 19 of the Greek Code of Citizenship" Vol. 63, Contemporary Issues, (1997) pp. 36-38.

[38] Legislative Decree 3370(FEK A' 258, 1955) Article 19 states: "In Regard to the Ratification of the Code of Greek Citizenship", which states that : "A Person of non-Greek origin may be deprived of their Greek citizenship, if they leave the country without the proven intention to return. This also applies to a person of non-ethnic origin and domiciled abroad. His minor children living abroad may be declared as having lost Greek citizenship, if both their parents or the surviving parent have the same." The minister of interior decides in these matters with the concurring opinion of the National Council.

assimilated into the Greek nation, which is composed of all those who are tied together by a common history, culture and religion.[39]

This decision reveals two important factors considering the distinction between ethnic and non-ethnic Greek citizens. First, participation in the Greek nation is not solely determined on the basis of ethnic origin. This means that non-ethnic Greeks can participate, if they have assimilated into the Greek nation. Secondly, a Greek ethnic consciousness and a non-ethnic Greek identity are not automatically exclusive.[40]

The members of the Muslim minority often express their own distinctive ethnic identity. They possess all the distinctive characteristics of a minority group; they practise their own religion, enjoy their own culture and use their own language. They have their own special way of living, their own tradition and customs and follow their own ethical and moral values.[41]

As has already been mentioned, the criterion for the identity of the exchanged populations during the Treaty of Lausanne was religion. The reason for that was that historically, the main practice under international law had been to provide protection to religious minorities rather than ethnic or linguistic ones.[42] It was only from the creation of the United Nations that measures of protection were extended to other kinds of minority groups apart from religious minorities. When the Lausanne Convention was signed the concept of 'ethnic' minority had not yet developed. Moreover, during the formation of the Lausanne Convention, it was considered that the ethnic groups, who had acquired the citizenship of the state they found themselves in (either due to immigration or change of borders) were entitled to special protection due to their minority status.

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[39] S. Stavros , "Ethnic Origin , Religion , Language and Constitutional Rights : Citizenship and the Protection of Minorities in Greece" Kevin Featherstone and Kostas Infantis, Greece in a Changing Europe: Between European Integration and European Disintegration, (Manchester : Manchester University Press, 1994) p. 4.

[40] *Ibid.*, p. 119.

[41] It is interesting to see what a great author of the time said concerning the exchange of the Greek-Turkish populations. In his work, he analyses, the religious criterion, which determined the ethnic character of the Muslim population that was exempted from the exchange. According to Stephanos P. Ladas: "It was already accepted that all the Muslims in Greece from every ethnic background (with the exception of the Muslim-Albanians) had Turkish ethnic consciousness." See, Stephen P. Ladas, The Exchange of Minorities : Bulgaria, Greece and Turkey, (New York : The Macmillan Company, 1932) p. 381, *et. seq.*

The Muslim minority in Western Thrace preserves its own special characteristics and customs and possesses its own distinctive ethnic identity. The Muslim-Turks due to their high population percentage and their political and cultural dominance within the Muslim minority have greatly influenced the two 'weaker' groups namely, the Pomaks and Muslim Gypsies. This is mainly achieved by the introduction of an ethnic Turkish model within the Muslim minority, most often encouraged by the Turkish foreign policy.[43] However, one may still observe the maintenance of certain special customs and traditions, especially in the Pomaks' way of living.

The question of recognition of the Muslim minority by the Greek government as an ethnic minority is a very complex and sensitive issue. Many Greek Muslims including Pomaks identify themselves as Turks and claim that the Muslim minority as a whole shares a Turkish national consciousness.[44] While the term 'Turk' or 'Turkish' is prohibited in titles of organisations, individuals legally may call themselves 'Turk'. The Greek Government has reaffirmed individual's right of self-identification but not on a collective basis.[45] This has quite often lead to several members of the minority being prosecuted and convicted by the national courts for using the term "Turk" or "Turkish" in their title of their organisations or institutions.[46] Nevertheless, the Greek government has undertaken a number of positive measures in favour of the Muslim minority in Western Thrace, especially in the field of education[47] but concentrated efforts are still required for the improvement of the legal status of the minority.

B. Religious Minorities

A religious minority in Greece would be a group of people that practise a religion other than the Greek Orthodox.[48] Such a group would have their own faith and manifest their own forms of worship. These kinds of expressions would have to be distinctively different compared to the rest of the Greek society. Moreover, the

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[42] See, Chapter two, *supra*, section 2.1.
[43] See Chapter four, *infra*, sections 4.4 and 4.5.
[44] See , Appendix B: "An analysis of the Social Status and Origin of the Muslim Minority in Western Thrace".
[45] See, Chapter five, *infra*, sections 5.1 and 5.3.
[46] *Ibid.*
[47] See, Chapter nine *infra*.

members of that group would have to be characterised by a strong sense of solidarity in preserving their own religious traditions and customs.[49] Accordingly, not only the Muslim minority of Western Thrace but also the Muslims in the Dodecanese Islands, as well as in Athens and Thessaloniki, due to internal emigration, constitute a religious minority in Greece beyond any legal recognition.[50]

Eastern Orthodoxy is an essential element of Greek nationality and constitutes an integral part of the Greek nation. The Greek Constitution gives the Eastern Orthodox Church the status of an official religion. However, the privileged position of the Greek Orthodox Church quite often puts other religions into a disadvantaged position.[51]

Article 3 of the Constitution states that: "The prevailing religion in Greece is the religion of the Eastern Orthodox Church of Christ." Article 3 of the Constitution, apart from referring to the Eastern Orthodox religion, contains a set of rules concerning the organisation of the Greek Orthodox Church. The Church is treated as a legal person incorporated under public law (*nomiko prosopo dimisiou dikaiou)*. Accordingly, the Church enjoys all the privileges of the state while at the same it retains its own legal personality. The legal status of the Church is contrasted with the absence of any substantial provisions regarding the legal personality of other churches in Greece. This legal gap has made some churches, such as the Jehovah's Witnesses and the Old Calendarists to operate as ordinary voluntarily associations, (*ethelodika somatiea*).[52]

In the case of *Canea Catholic Church v Greece*[53], the European Court of Human Rights held that the refusal by a Greek civil court to recognise the church had legal personality violated Article 6(1) of the ECHR taken on its own or with Article 14. The Greek government in its report to the Committee of Ministers acting in its capacity under Article 46(2), in compliance with the execution of Courts judgments, reported

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[48] Tsitselikis, *op.cit.* p. 306.
[49] Diakofotakis, *op.cit* pp. 386-391.
[50] Regarding the special case of the Dodecanese islands see Chapter one *supra*, section 1.9.
[51] Pollis Adamantia, "Greek National Identity: Religious Minorities and European Norms" Vol. 10, Journal of Modern Greek Studies, (1992) pp. 176-191, *et. seq.*
[52] Stavros, *op.cit.* p. 121. *Kokkinakis v Greece*, Series A, Vol. 260, Eur.Ct.H.R, (1993).
[53] Canea Catholic Church v Greece 143/1996/762/963, Eur.Ct.Hum.Rts. , 16 Dec. 1997.

that a new law recognising the legal personality of the Catholic Church had been passed.[54]

Freedom of religion and worship is granted by Article 13 of the Greek Constitution: "Freedom of religious conscience is inviolable. Enjoyment of all individual and civil rights does not depend on the individual's religious beliefs." According to the Constitution, "religious freedom includes freedom of religious consciousness and freedom of worship"[55] Religious freedom is absolute, everybody may adhere to a religion of his choice and that extends to atheistic and non-theistic beliefs." One may observe that although freedom of religion is provided by the Constitution it still needs to be protected within a European framework of human rights beyond any legal or administrative difficulties.

Although the Government respects the right to freedom of religion, non-Orthodox or non-Christian groups sometimes face administrative obstacles or legal restrictions on religious practice. In particular, religious freedom in Greece is limited both by the attitudes of society, which lead to social discrimination and by several provisions of the Constitution. For example, Article 13(2) of the Constitution prohibits proselytism:[56] "All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of law. The practice of rites of worship is not allowed to offend public order or moral principles. Proselytism is prohibited."

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[54] Committee of Ministers, Appendix to Resolution DH (2000), 44, 10 April 2000, Canea Catholic Church v Greece. In regard to the jurisprudence of the European Court of Human Rights on minority issues, see Geoff Gilbert, "Minority Rights Jurisprudence of the European Court" Vol. 24 Human Rights Quarterly, No. 3, pp. 736-780, p. 754.

[55] Stathopoulou Mihali P. "The Constitutional Enactment of Religious Freedom and the Relations between the State and the Church" Dimitris Christopoulos (ed.), Legal Issues of Religious Othernes In Greece, (Athens: Kritiki & KEMO, 1997) pp. 199-224. In regard to the level of religious freedom, see U.S. Department of State, Annual Report on International Religious Freedom for 1999: Greece, Bureau of Democracy, Human Rights and Labour, (Internet Report).

[56] See, Article 4 of Necessity Act No. 1363/1938(FEK A' 305, 1938): "In Regard to the Implementation of Articles 1 and 2 of the Current Constitution", Necessity Act No. 1672/1939(FEK A' 123, 1939): "In Regard to the Modifications of the Necessity Act No. 1363/1938."

The Greek courts in order to enforce this provision continue to apply two 'Necessity Acts' Act No. 1363/1938 and Act No. 1672/1939, which criminalise proselytism.[57] Accordingly, proselytism is defined as "any direct or indirect attempt to influence or alter the religious beliefs of others, in particular, by fraudulent means or with promises of any type or moral gain."

This legislation dates from the dictatorship of General Metaxas and the main purpose was to safeguard the provisions of the 1911 Constitution prohibiting proselytism against the Orthodox Church. The 1975 Constitution does not make a distinction between the Orthodox religion and the various minority religions and protects all equally. However, the Greek courts seem to apply this provision in a rather narrow way, which most often results in confusion and legal uncertainty especially for the various religious minority groups in Greece.[58] Accordingly, this provision ought to be declared outdated and be amended.

Similarly, Article 13(2) provides that freedom of religion is granted to all "known" religions. According, to domestic legal practice, a "known" religion must have no secret dogma and must not involve worship in secret. Moreover, it must be a religion to which any person may adhere and it must be sufficiently transparent, so that it is possible to guard against religions that pose a threat to public order, morals and the rule of law. [59] The absence of any constitutional or legal definition of the concept "known" would appear to contravene the principles found in human rights instruments protection religious freedom and minorities.

This restriction also seems to contradict Article 1(3) of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion

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[57] In regard to the criminalisation of proselytism within the limits of the constitution and international law, see Kiriakos N. Kiriazopoulos, Restrictions on the Freedom of Religion in the Teaching of Minority Religions, (Thessaloniki: Sakkoulas, 1999) pp. 151-230.

[58] Stavros, *op.cit.* p. 121. See, also, Decisions of the Supreme Court Nos. 1304/1982 and 480/1992.

[59] Abdelfattah Amor, "Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms- Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief." UN General Assembly, 51st session, A/51/542/Add 1, Report on the Elimination of All Forms of Religious Intolerance concerning a Visit to Greece prepared by Abdelfattah Amor, UN Special Rapporteur of the Commission on Human Rights, pursuant to General Assembly Resolution 50/183 December 22, 1995, p. 3.

or Belief[60], which provides that "freedom to manifest one's religion or belief may be subject to protect public safety, order, health, morals or the fundamental rights and freedoms of others."

Similarly, Article 13(2) of the Constitution states that if a religious minority wishes to establish a "house of worship" an application for a permit must be made to the Ministry of Education and Religion. Before the Ministry takes its decision to grant a permit, he must consult with the local Orthodox bishop. According to the relevant legislation[61], there needs to exist an "actual need" for the operation of such places thus, some proof is required that a sufficient number of adherents exists. Even though this provision seems to be in compliance with recognised European standards of freedom of religion, nevertheless, the possibility of the creation of a place of worship extending to future needs of an expanding non-Greek Orthodox Church seems to be excluded based on the assumption that any such expansion will be the result of proselytism. [62]

In addition, Article 13(4), states that "no person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions." The wording of this provision may lead to certain problems, especially regarding the Jehovah's Witnesses claim to be exempted from military service.[63] The Greek government introduced Law No. 763/1977, which provided for an alternative civilian service for a period of time double that of military service for those refusing to bear arms due to religious beliefs. Moreover, Law No. 1763/1988[64], Article 5(2), provided that those refusing to bear arms due to their religious or ideological beliefs were obliged to serve full or partial civilian service double in length to that which, in each case was required from the category in which they belonged.

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[60] G.A. Res. 36/55/25.11.1981. In regard to the European and international standards of freedom of religion, see, Evans M.D, Religious Liberty and International Law in Europe, (Cambridge: Cambridge University Press, 1997).
[61] See , Article 1 of Necessity Act. 1363/1939, Article 41 of Necessity Act No. 1672/1938.
[62] Stavros, *op.cit.* p. 122.
[63] *Ibid.*
[64] FEK A' 57, 1988(FEK A' 57, 1988) "In Regard to the Military Service of the Greeks."

The constitutionality of the alternative civilian service might be brought into question, on several grounds.[65] Some jurists argue that alternative civilian service is contrary to the Constitution, (Article 4(1)), which provides for the principle of equality before the law for all Greek citizens and requires its citizens to contribute to the defence of their country (Article (6)). Others argue, in favour of the performance of alternative civilian service, since it is the duty of the state to "protect the value of the human being" and "all persons shall have the right to develop their personality freely."[66]

The Greek government has reaffirmed that the issue of conscientious objectors is treated in a very sensitive manner despite the absence of a constitutional or legal protective framework.[67] Although, this issue is not explicitly dealt with in the International Covenant on Civil and Political Rights Covenant such a right can be derived from Article 18 "as much as the use of lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."[68] According to international human rights instruments, conscientious objectors have a right to refrain from performing military service, thus, no discrimination must arise due to that fact. Every state has a duty to respect and protect the religious freedom of the people living in its territory and must not compel them to perform acts contrary to their religious beliefs and customs.

In regard to the principle of non-discrimination, the European Court of Human Rights in *Thlimmenos v Greece*[69], a case involving Jehovah Witnesses stated that:

> "So far considered that the right under Article 14 not to be discriminated against is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification. However, the Court considers that this is not the only facet of the prohibition of discrimination. The right not be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."[70]

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[65] Amor *op.cit.*, p. 6.
[66] See, Article 2(1) and 5(1) of the Constitution, respectively.
[67] Amor , *op.cit.* p. 6
[68] See, *supra* note 22 , at paragraph 11 .
[69] Application No. 34269/97, Judgement of April 6, 2000.
[70] *Ibid.* para. 44.

Generally speaking, religious minorities in Greece do have the right to practise their faith with few judicial or administrative impediments. The Muslims, the Jews and the Catholics are considered to be historical religious communities. In particular, the religious rights of the Muslims are derived from the Treaty of Lausanne. In addition, the Muslims have their own religious courts where their religious leader, the Mufti, can hear cases on family and inheritance matters and judge according to Islamic law. Moreover, according to Article 26 of Law No. 2456/1920, the Jewish community can enjoy the right not to work on Saturday as opposed to Sunday, which is a day of rest for the Christians.[71] However, according to Law No. 1920/1991 the decisions of the Muslim courts are not to be enforced, if they are based on rules, which violate the Constitution mostly referring to the principle of equality between men and women.[72]

Even though freedom of religion exists in law, discrimination still persists in a number of laws, in judicial form, in employment in the public sector and education. This is due to the fact that the legislation fails to take into account religious diversity and therefore, the problems of religious liberty for minorities persist.

C. Minority Language

Language is essentially used as a means of communication between individuals in society. However, the 'communicative and cultural' aspects of language must be differentiated. The first one refers to the way language is used in everyday life. The second one refers to its cultural aspect, since language represents one of the crucial elements of the human personality on an individual level and acts as a symbol of traditions, heritage and ethnicity.

This distinction is important in any considerations of language of an ethnic group while at the same time the cultural characteristics of that group remain after language shift has occurred. It is a significant characteristic of the distinctive identity of a minority group. However, the position of a minority group in its social environment, the use of its distinctive language in everyday life and the various regulations by the

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[71] *Ibid.*, p. 122.
[72] See, Article 5(3) of Law No. 1920/1991.

organs of the government all come under national legislation dealing with issues of linguistic minorities and their rights.

Under the League of Nations, language was usually protected as a distinctive factor identifying a national minority but yet of secondary importance.[73] Language was viewed as expressing the nationality of a minority group but not as an independent characteristic. In the Minorities Treaties regarding the meaning of the term 'language' no precise definition is provided referring to the language that was to be protected. One may conclude that, since language was protected as a distinctive element of a national minority, that language could be protected as such, e.g. school instruction provided in the language of the minority. This is an essential point given that the use of language closely affects the minority rights regarding education.

On a similar note, the same conclusion might be valid regarding the principles of equality and non-discrimination found in the post-war human rights instruments. The principles of equality and non-discrimination usually provide protection to individuals rather than national minorities. Thus, when an individual who lives in a society uses a language different from the official or majority language he or she might suffer discrimination, since it might prevent him or her from taking advantage of any social or economic opportunities due to the use of a different language. According to the preparatory works on the Human Rights Covenants, it appears that a language will be defined by a distinct history, a literature, an expressive vocabulary and a grammatical system.[74]

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[73] E.W. Vierdag, The Concept of Discrimination in International Law, (Hague: Martinus Nijhoff, 1973) p. 93 .

[74] Tabory, *op.cit.*, p. 188, Tsitselikis, *op.cit.*, pp. 37-41. The recognition of a language as a national or official one is based on the hierarchy of the used languages in the territory of a state. Such recognition is usually provided by the state either in the national constitution or in the domestic legal system. The official language of the state is used in parliament, in administrative and judicial proceedings and in education. The recognition of a language as the official one can be either *de facto*, by its use in the public sector or *de jure* by the constitutional process. The definition of the mother tongue is essential for the understanding of the concept of a minority language and a majority language. An individual can have more than one language as his mother tongue, according to these criteria. However, the ethnic and linguistic consciousness of the individual plays an important role in realising the minority character of the mother tongue. The individual realises its linguistic rights, according to the existence of relevant national legislation governing the linguistic rights of minorities. Finally, the term 'mother tongue' may be defined as the language the individual first learned to use and speak. It is the language he or she uses in social relations, in everyday life, the language the individual uses, speaks and thinks in. Finally, a bilingual individual is a person that has learned two languages from people, whose language was their mother tongue, like from parents and teachers. Such an individual is comfortable in using both languages to the level demanded by its social environment and of course, he or she is aware of its

The next question is the distinction between a 'language' and a 'dialect' and whether the right to use one's own language includes the right to use a particular dialect.[75] During the drafting process of the Covenant on Civil and Political Rights it was pointed out that in every country, there are groups of people whose members do not use the official or majority language but use a 'dialect', which may lack the characteristics of a 'language'. It was pointed out that the term 'dialect' should not be equated with 'language' The representatives of states therefore, requested some clarification of the meaning of the word "language" and the phrase 'persons belonging to linguistic groups' as used in the draft resolution. It was felt that protection of such rights was an extremely complex task and might even lead to separatist movements.[76]

It is generally accepted the 'numerical factor' provided by Article 27 of the ICCPR may be used as a descriptive element of a minority group. Accordingly a 'language' of an ethnic group may be classified as a 'minority language' according to the percentage of the population using it in its everyday life.[77] The status and protection provided to a minority language greatly depends on the existence of national legislation. Thus, a minority language is the language used by members of a minority group.

The Council of Europe in 1992 adopted the European Charter for Regional or Minority Languages (hereafter the "Charter").[78] The Charter is the only legal text formulated by the Council of Europe exclusively for the linguistic rights of minorities. However, the provisions of the Charter are expressed in terms of state obligations to protect languages and not in terms of minority rights.

The main obligation for those states that have ratified the Charter is to respect general principles in the formulations of their policies in protecting languages. The specific

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bilingualism. It may be concluded that a bilingual individual is someone, who uses a second language apart from its mother tongue and posses an equal and sufficient knowledge of it, in using it and speaking in it. It is quite possible that second language also constitutes the mother tongue of the individual.

[75] *Ibid.*

[76] See, Commission on Human Rights, Report of the 18th session (1962) , in ECOSOC O.R. 34th Session,. Supp. No. 8 at paragraph. 205.

[77] Tsitselikis, *op.cit.*, p. 37, Profiler Olga, "Support for the Regional and Minority Languages in the European Union" Vol. 63, Contemporary Issues, (1997) pp. 86-88.

obligations that a state decides to assume may vary from language to language, according to the special circumstances of each country.[79] These principles are included in the first part of the Charter. A set of more specific obligations is found in the second part, however, their implementation is optional.[80] The Charter is of central importance for the preservation of the separate identity of linguistic minorities. The main aim of the Charter is to encourage states to consider and advance the status of minority languages therefore, it could provide rights for the linguistic minorities, either individually or collectively, although it is only designed to in respect of state obligations.[81]

The Charter creates different categories of linguistic groups. It only protects two types of languages: the "regional or minority languages" and certain "non-territorial languages." According to Article 1(a) of the Charter, dialects and languages of recent immigrant populations are strictly excluded.[82] However, it does not provide any general guidance as to how to determine what kind of form of speech is a dialect of an official language or a distinct language. In particular, Article 1(a) states that regional or minority languages" means languages:

1. "traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
2. different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants."

According to Article 1(2) the term 'territory' is used to define a particular geographical area where a significant number of people use a particular language as

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[78] Council of Europe, 5 November 1992.
[79] See, Article 2 of the European Charter for Regional or Minority Languages.
[80] See, Explanatory Report of the European Charter for Regional or Minority Languages (Internet Version) p. 4.
[81] Eero J. Aamio "Minority Rights in the Council of Europe" in Alan Philips and Allan Rosas , Universal Minority Rights (Finland: Abo Akadami University Institute for Human Rights/Minority Rights Group (International), 1997) p. 126.
[82]Article 27 of the ICCPR, provides a similar distinction between the protection of national minorities and immigrants, Chapter two, *supra,* section 2.4.

their mode of expression. It is only according to this justification, which the provisions of the Charter can apply to protect the linguistic characteristics of group.[83]

The essence of providing minority language protection is to prevent any potential risks to a distinct minority group. Therefore, a distinction needs to be made between the protection of linguistic minorities and the general recognition of languages. The actual need for linguistic protection means that: "language must refer not to any distinct form of speech but to those forms whose distinctness arouses or is likely to arouse, group conflict or domination."[84] Accordingly, language cannot solely be interpreted in a linguistic sense but other factors should also matter such as aspects of script, which might serve as symbols of the group's ethnic, historical and religious identity.[85]

The same can be said for the use of a dialect (since language rights are designed to provide a sense of security), if states were to exclude speakers of a particularly marginalised or disadvantaged dialect, it could be seen as a violation of the principles of non-discrimination and equality based on language. It is submitted, however, that a legal distinction between a 'language' and a 'dialect' based on an objective definition of language is legitimate, since otherwise the fragmentation of dialects claiming linguistic rights would be endless. Ultimately, one might say that the distinction between a language and a dialect is often based on political and historical reasons rather than linguistic ones.[86]

The second part of the Charter provides benefits for both the "regional or minority languages" and the "non-territorial languages" of a state and contains some general objectives and principles to which the state is required to provide. However, only the "regional or minority" languages are entitled to the benefit of Part III of the Charter, which contains more detailed and specific positive measures of support which the

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[83] Even though Turkey remains outside a strict definition of Europe, at least for the purposes of the relevant European Union treaties of which the above is one, we may chose to adopt this definition as a working definition for this study.

[84] Philip Vuciri Ramaga , "The Relativity of the Concept of a Minority" Vol. 14 Human Rights Quarterly , (1992) p. 409 .

[85] Fernand De Varennes , Language, Minorities and Human Rights, (Hague : Martinus Nijhoff Publishers, 1996) pp. 162-163.

[86] Tabory *op.cit.* p. 188.

state is obliged to undertake such as education, provision of the media and the use of language in administrative and legal proceedings. [87]

According to the Charter, it is up to the state to determine which 'languages' will be classified as "regional or minority" for the purposes of Part III. In this sense the state is given a wide discretion to provide positive support to any languages so specified. Finally, Part IV of the Charter contains provisions regarding its implementation, including in particular the establishment of a European expert committee to monitor the application of the Charter based on state reports.

There does not seem to be any guarantee, that each regional or minority language will be treated equally. The main reason why the Charter has developed such a policy is due to its main concern to protect threatened "autochthonous" language communities of Europe. However, this might be against the notion that minority language rights are fundamental human rights aiming to protect the dignity of the person. Even the objective of promoting linguistic diversity cannot be entirely satisfactory, since the "non-territorial" languages and those "regional or minority languages" not provided in Part III are entitled to a lesser degree of protection than the "regional or minority" languages, which are included in Part III. However, one can only expect that states when exercising their discretion will use objective criteria in classifying different categories of language protection.

A minority language would be the language of a group of Greek nationals, which uses a language other than the official Greek language. From 1920 until recent times, in Greece the use of another language other than the Greek one has never exceeded ten percent of the total population of the state. In particular, in the last decades due to the cultural and linguistic assimilation of non-Greek speaking and bilingual citizens, the total percent of the use of another language has significantly decreased to little more than four percent. [88]

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[87] See, note 67, *supra*, p. 4.

[88] Tsitselikis, *op.cit*, p.307. The languages that appear on the official statistics of 1928, 1940, and 1951 are: Greek, English, Romany, Albania, Armenian, Bulgarian, The Pomaks language, French, Jewish, Spanish, Italian, Vlahs language, Macedonian-Slavs, or the Slav language, the Romanian, and the Russian. From all these languages, firstly the Greek language, would have to be exempted, as the official language of the State and as the mother tongue of the overwhelming majority of the total population of the country, including bilingual citizens. Secondly, individuals, who use a different

The recognition of the Greek language as the official language of the country, first in its official form and later in 1977 in demotic Greek[89], eliminated the need for the official recognition of a second language. This made it significantly easier to distinguish the use of any minority languages in the Greek society and the existence of the linguistic minority groups.

D. Linguistic Minorities

A linguistic minority can be described as a group of individuals, who use a language, written or oral, which is different from the majority or official language of the state and such individuals are aware of their distinctiveness.[90] The "socio-linguistic" position of minority languages plays a significant role in establishing an identity for a minority group throughout the passage of time. [91]

Keeping in mind the historical and social position of linguistic minorities in Greece but also in other European countries, it is possible to come to the following conclusions. First, each ethnic, religious or linguistic minority group must express a common desire to preserve its distinctiveness, thus, preserving a common solidarity among its members. Secondly, the special characteristics of the members of a minority group could be the use of their own particular language, the preservation of their customs and traditions and any common memories they might have acquired from their parents or grandparents, which might serve as a reminder of their culture, language or religion.

The ethnic identity of a minority group may be described as the main feature in identifying a minority group, which may express its distinctive characteristics and

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language, other than Greek are those, who have recently acquired the Greek citizenship or the children of mixed marriages. A situation where, one parent has recently become a Greek citizen and does not use or speak the Greek language, or any other languages which were used by immigration groups that were established in Greece, especially during the 1920s. The languages being used by Greek citizens, which themselves constitute a minority group, can precisely be described as the following languages: Arvanites, Vlahs, Pomaks, Romany and Turkish.

[89] See the Greek Constitution of 1911 and 1952, Article 107, states: "The official language of the country (Greece) is the one which the national legislation and the form of government are written. Any attempt to deteriorate the official language is forbidden." See, Tsitselikis, *op.cit.*, p. 309.

[90] *Ibid.*, p. 308, Diakofotakis, *op.cit.*, pp. 391-456.

[91] *Ibid.*, p. 311.

consciousness. The preservation and promotion of a minority's distinctive ethnic identity may occur when the members of the minority group show a common interest in maintaining their culture, customs and tradition throughout history. The maintenance of the use of distinctive language or practise of religion of a minority group may be used as evidence regarding the preservation of the group's distinctive ethnic identity.

The use of the Turkish language of the Muslim minority in Western Thrace may be perceived as evidence of the common desire of the members of the minority to maintain their distinctive cultural identity. Nevertheless, the two other groups of the minority, namely the Pomaks and the Muslim Gypsies do not have sufficient opportunities in learning their own language at school.[92]

3.3: The Rights of Minorities under Greek law

In this section, an analysis will be made on the existing Greek national laws for the protection of minority rights. This analysis will be done in the light of current human rights law on a European and international level. A description will be given of Greece's national and foreign policy on minority issues. The main focus will be on the positive steps the Greek Government has taken to improve the situation of the Muslim minority in Western Thrace as well as the kind of improvements required for the protection and promotion of the rights of members of the Muslim minority.

The official ideology of Greece has been built exclusively around the concept of a single nation with a common religion and language. The Greek constitution was adopted in 1975 after the end of the military regime. The maim aim of the Constitution was to prepare Greece to enter the European Community composed of democratic states.[93] Moreover, Greece has been one the most homogenous countries in ethnic, religious and linguistic terms. This can be found in the constitution and in series of laws concerning the status of citizenship and the rights of minorities.[94]

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[92] See, Chapter nine, *infra*, section 9..2.
[93] Stavros, *op.cit.* p. 117.
[94] See, Article 16 of the Greek Constitution regarding the development of 'ethnic consciousness' in education ; Chapter nine *infra*, section 9..3.

This homogeneity is mainly due to historical events, which allowed the concentration of a great number of ethnic Greeks into the territory of the modern state as well as the massive exodus of foreign elements. However, it is also a product of a policy, which aimed as much as possible at the integration of aliens. The Orthodox Church played a major role in preserving the ethnic identity of the nations of south-eastern Europe under Ottoman rule and in guiding them towards their national "awakening". In the modern Greek nation the word "ethnos" has been used to describe collectively a group of people held together by a common language, religion and cultural heritage. Education and religion have significantly contributed in the homogenisation of the Greek nation.

This can be described as an ethnic-based definition of a nation. It suggests that those, who speak Greek, adhere to Christian Orthodox faith and share a similar culture and traditions form one community while those speaking a different language, sharing a different culture or practising a different religion are outside it. Accordingly, all these cultural alien groups can potentially become members of the Greek nation, if they decided to integrate in the Greek society. In the process of 'helenisation' the nation is therefore, conceived essentially as a cultural community. The unifying factor is language, ethnic origin, common history and religion.[95]

A. The Principles of Equality and Non-discrimination

The principles of equality and non-discrimination constitute the cornerstone for the protection of minority rights. They are the most basic means of protection for speakers of minority languages. The prohibition of discrimination and the promotion of equality have been prominent in the international human rights agenda. In particular, the rules of equality and non-discrimination are prescribed in the UN Charter and in the Universal Declaration of Human Rights (UDHR).

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[95]Paschalis M. Kitromilides , "Imagined Communities and the Origins of the National Question in the Balkans" ,Blinkhorn , M. Veremis , T. (eds.) Modern Greece : Nationalism and Nationality , (Athens: SAGE/ ELIAMEP , 1923) pp. 23-66.

Article 2 of the UDHR provides that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour sex, language, religion, political, or other opinion, national or social origin, property, birth or other status." Although, the UDHR is not law mandatory, it has come to achieve the status of customary international law. Thus, its principles are authoritative, in that they reflect an international consensus on minimum legal standards regarding the protection of human rights.

Equal rights and non-discrimination are the basic principles of the UDHR and have been reiterated and reinforced in the various instruments relating to minorities.[96] The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter "UN Declaration") reaffirms the principles of equality and non-discrimination in both preamble and substantive articles.[97] For example, the preamble states: "Stressing the need to ensure for all, without discrimination of any kind, full enjoyment and exercise of human rights and fundamental freedoms."

Moreover, Article 2 of the UN Declaration provides that the members of a minority group have the right to enjoy their own culture, practise their own religion and use their own language without interference or any form of discrimination. In addition, the members of a minority group have the right to maintain free and peaceful contacts with other members of their group without discrimination. According to Article 4 of the UN Declaration, 'persons belonging to national minorities' have the right to enjoy the rights provided therein "without discrimination and in full equality before the law." Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter "Convention") according to Article 2 does not permit any kind of distinctions in the enjoyment of the rights provided therein.[98]

The International Covenants have elaborate provisions dealing with non-discrimination and equality. Articles 2 and 2(2) of the International Covenants

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[96] Tsitseliks, *op.cit.* pp. 218-219.
[97] G.A. Res. 47/135/18.12.1992.
[98] G.A. Res. 2106(XX), December 21, 1965, entered into force on January 4, 1969, according to Article 19. Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination:, states that :

respectively contain a general prohibition on discrimination, which only applies with regard to the rights contained in the Covenants and does not refer to specific rights of the minorities. It was agreed that differential treatment might be granted to minorities in order to ensure them 'true' and 'factual' equality of status with other elements of the population and that an article on this question should be included. [99]

The UN Human Rights Committee in its General Comment on non-discrimination under the ICCPR stated that:

> The term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms.[100]

The UN Human Rights Committee noted that equality does not necessarily mean identical treatment in every occasion and that not every differentiation in treatment constitutes discrimination. Special rights for minority groups can be described as a requirement to ensure the necessary means, including differential treatment for the preservation of minority distinctive characteristics and tradition, which distinguishes them from the majority in the society that they living in. Accordingly, the adoption of a separate set of rights for the members of a minority group is only permitted, if the aim is to achieve conditions of equality to the highest degree possible between the minority and the majority population.[101]

The principles of equality and non-discrimination are also found in regional human rights conventions and the concluding documents of the Organisation for Security and Co-operation in Europe (OSCE).[102] The European Convention on Human Rights

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"This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

[99] See, for example, Doc. E/CN.4/SR.303, 4 June 1952, pg. 8 (Lebanon); also E/CN.4/SR.368. See proposed text by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/358, paragraph. 47). International Covenant on Economic, Social and Cultural Rights, G.A. Res. 220A(XXI)/16.12.1966, entered into force on January 3, 1976, according to Article 27.

[100] See , UN Human Rights Committee, General Comment 22(48) , UN Doc.A/48/40, Part I, at p. 208.

[101] See, also Article 1(4) of the Convention Against all Forms of Racial Discrimination.

[102] See , for example , the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE , 1990 and the Charter of Paris for a New Europe ,1990.

(ECHR) provides a general prohibition on non-discrimination under Article 14.[103] Article 4(1) of the Framework Convention on the Protection of National Minorities (hereafter "Framework Convention")[104] is more specific in proving protection to members of national minorities; it states that: "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."

The principles of non-discrimination and equality aim to guarantee that the members of a minority group are not subjected to discrimination by the state authorities. It does not, however, guarantee that such persons are entitled to special treatment by the state authorities. It is essential that the principles of non-discrimination and equality are firmly established in the society that minorities are living for the effective protection of their rights.[105] It must be emphasised that while the two concepts are distinct in the sense that equality and non-discrimination imply that all individuals must be treated equally and must not be subjected to discrimination based on race, colour, religion, language, national or ethnic origin, sex or any other ground whereas protection of minorities implies that the state must take some special measures and positive action in favour of the members of a minority group. The purpose of these measures is to institute factual equality between members of minority groups and the majority population due to the distinctiveness and vulnerable status of minorities within a majority society.

This shows that the prevention of discrimination and the application of special measures aim to ensure equality for all individuals on two different levels. Members of minority groups are entitled to non-discriminatory practise as the rest of the population. Even if there is legislation designed to protect the rights of such groups, in the absence of factual equality, economic or social circumstances can weaken the position of the members of a minority group. For example, in the case of the Muslim

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[103] The European Convention on Human Rights was signed in Rome on November 4, 1950 and entered into force on November 3, 1953. Article 14 of the ECHR: states that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[104] Council of Europe, November, 11, 1995.

[105] Capotorti, *op.cit.* p. 54, at paragraph 316.

minority in Western Thrace despite the legal protection afforded to the members of the minority group, which derives both from the terms of the Treaty of Lausanne and positive law, the Muslim minority on average remains in the lowest socio-economic levels in that region.[106]

The principle of equality is defined under Article 4 of the Greek Constitution into two different parts. Article 4(1) describes the relation between the citizens and the law whereas Article 4(2) describes the relation between the citizens themselves. Article 4 states that all Greek citizens are equal before the law and that both Greek men and women have equal rights and obligations. The principle of non-discrimination is accommodated in Article 5(2) of the Constitution:

> All persons living in the Greek territory shall enjoy full protection of their life, honour and freedom irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.

The concept of "ethnicity" is not defined in Article 5 of the Constitution; it is not clear whether it refers to 'ethnic consciousnesses or 'nationality' However, a generous interpretation would have to be provided according to the intentions of the legislature and spirit of the Constitution.

B. The Principle of Protection and Non-Assimilation

Most recent human rights instruments impose obligations on states with respect to the protection of minorities. These obligations could themselves include a "negative" and "positive" aspect. The negative aspect includes protection from any kind of forced assimilation. For example, Paragraph 32 of the Copenhagen Document, provides that:

> Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects free of any attempts to assimilation against their own will.

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[106] See, Chapter four, *infra*, sections 4. 1 and 4.2.

This entails an obligation upon states to refrain from any discriminatory practices which would prevent members of a minority group to freely develop and preserve their culture and would eventually lead to involuntary assimilation. However, in addition states must assist minority by positive action in maintaining and promoting their own distinctive characteristics.

The same principle is echoed in Article 5(2) of the Framework Convention, which according to the Explanatory Report of the Framework Convention provides an "acknowledgement of the importance of social cohesion."[107] This essentially means that an integrationist policy towards minorities is not necessarily inconsistent with cultural and linguistic pluralism. However, one should be careful, since the line between integrationist and assimilationist policy is a very fine one.

The positive aspect is the obligation imposed by most minority instruments in ensuring that members of a minority group do not fall victims of violence or aggressive behaviour.[108] In this matter, Article 6(2) of the Framework Convention encourages a spirit of tolerance and intercultural dialogue where states need to take appropriate measures to protect minorities due to their vulnerable status within the majority society.

C. The Right to Existence

The right to existence of a population group, which distinguishes itself according to its religion, culture, ethnicity and language is provided by Article 2 of the Genocide Convention.[109] Similarly, the Convention on the Elimination of All Forms of Racial

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[107] See, Explanatory Report, paragraph. 46. (Internet Version). Article 14(3) of the Framework Convention, states that the teaching of the minority language "shall be implemented without prejudice to the learning of the official language or the teaching of this language."

[108] See , Paragraph 40 of the Copenhagen Document.

[109] G.A. Res. 260(A(III)/9.12.1948, entered into force, on January 12, 1951, according to Article XIII. Article 2 defines genocide as:

"In the present Convention, genocide means any act of the following committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group, as such:

(a) Killing members of the group ;
(b) Causing serious bodily or mental harm to members of the group ;
(c) Deliberately inflicting on the group conditions of life calculate to bring about its physical destruction in whole or in part ;

Discrimination is of particular importance for the existence and preservation of the distinctiveness of a minority group.[110] In particular, Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination introduces into the Greek legal system a state obligation to undertake special measures for the preservation and promotion of the special characteristics of ethnic or cultural groups, if necessary, for the equal enjoyment of human rights and fundamental freedoms.

3.4: The Official Position of Greece in Relation to Minorities

The right to an official recognition of a minority does not fall within the rules of international law. However, it is directly connected to the right to existence and identity of a minority. It constitutes one of the basic foundations for the legal protection of minorities. In regard to Article 27 of the ICCPRR, the main purpose of Article 27 is to effectively safeguard and protect the rights and needs of minorities within a legal framework implemented at the national level.

The official policy of the Greek government regarding minority rights is mostly based on a legal framework.[111] The existence of a minority is a legal matter, which can only be defined by national law or the existence of an international treaty (i.e. The Treaty of Lausanne).[112] Only in these two cases is the state obliged to provide minority rights. But apart from these objective criteria, an ethnic minority would also have to express its desire to preserve its own distinctive characteristics in the society it is living in. Most importantly, a minority group will have to share a strong sense of solidarity among its members with a view of preserving their special identity and characteristics.

(d) Imposing measures intended to prevent births within the group ;
Forcibly transferring children of the group to another group

[110] G.A. Res. 2106(XX)/21.12.1965, entered into force on September 3, 1981, according to Article 27.

[111] Alexis Heraclides, "Minority Foreign Policy and Greece" Dimitris Christopoulous and Konstantinos Tsitselikis, (eds.) The Minority Phenomenon in Greece: A Contribution of Social Sciences (Athens: Kritiki 1997) pp. 216-235, Christopoulos Dimitris, "Human Rights and Minorities in Greece", Vol. 63, Contemporary Issues, (1997) 39-44, Heraclides Alexis, "The Greek Minority Policy: The Anachronistic Position and its Reasons"Vol.63, Contemporary Issues, (1997) pp. 32-35, Pollis Adamantia, "The State, the Law and Human Rights in Modern Greece" Vol. 9, Human Rights Quarterly, (1987) pp. 587-614.

[112] *Ibid.*

However, if the existence of a minority is a "question of law" as opposed to being a "matter of fact"[113] the rights of minorities in Greece may be rather restricted. For example, an international agreement defining the existence of a minority would only be formed with the consent of the state concerned. Nonetheless, the official act of recognition is an essential pre-condition for the legal structure of minority rights.[114] The national or international legal instruments granting recognition to the minorities can provide a strong basis for the members of a minority group to express their needs and claim their rights.

It is generally accepted that human rights, including minority rights, are individual rights and not collective ones. This is also the view the Greek government shares regarding human rights and minority rights.[115] The United Nations Charter is based on the idea of universal and individual human rights. This is also evident in the wording of several regional and international documents. For example, Article 27 of the ICCPR is also expressed in individual terms. However, in order to give effect to the provisions of the Article 2, minority rights are to be enjoyed on a collective manner by the minority group as a whole.[116] Moreover, even though, OSCE documents attribute rights to the members of minority group and are mainly based on the idea of individual human rights, the Copenhagen Document provides rights for the minority group as a collective entity.

Under international law the right of self-determination belongs to peoples and not to minorities.[117] According to the common article of the International Covenants on Human Rights, the right to self-determination is the *right of peoples.*[118] Minorities are not necessarily described as 'peoples' under international law thus, they are not

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[113] Chapter two, *supra,* section 2.1.
[114] Capotorti *op.cit.* p. 42, paragraph 246.
[115]Heraclidis, *op.cit.* p. 217.
[116] See, Chapter two, *supra.*, section 1.3.
[117] Henry J. Steiner and Philip Alston (ed.) International Human Rights in Context (Oxford : Oxford University Press, 1996 p. 97, Rosas Alllan, "The Right to Self-Determination", Eide Asbjorn, Catarina Krause and Rosas Allan (eds.), Economic, Social and Cultural Rights, (Dordrecht: Martinus Nijhoff Publishers, 1995) pp. 79-89, Mayall James, "Sovereignty and Self-Determination in the New Europe", Hugh Miall (ed.) Minority Rights in Europe: The Scope for a Transnational Regime, (London: Royal Institute of International Affairs, 1994) pp. 7-14. In regard to the right to self-determination as it evolved under international law, see, Alexis Heraclides, The Self-Determination of Minorities in Politics, (Athens: Frank Cass, 1991) pp. 21-24.

automatically entitled to the right of self-determination. The ICCPR contains a separate article dealing *only* with minority rights. As can be seen, they are two different articles dealing with separate issues; Article 27 of the ICCPR provides rights for the *members of minorities* whereas Article 1 of the ICCPR provides for the right to self-determination for the *peoples*.[119]

The OSCE documents exclusively provide rights to the members of a minority. They specifically refer to the minority rights as rights of individuals within the minority group. For example, the Helsinki Final Act 1979 in Part VII titled "Respect for Human Rights and Fundamental Freedoms", in one of its paragraphs, refers to "persons belonging to national minorities". On the other hand, a separate part is devoted to the right of self-determination *of peoples.*[120]

According to the Greek Government, autonomy or self-government are not automatically granted to a minority group. Thus, only the state can provide such rights within its internal legal order. It may, however, be the case that sometimes autonomy can arise as a result of an international treaty (e.g. Article 14 of the Treaty of Lausanne regarding the status of self-administration of the islands of Imbros and Tenedos.)[121]

Moreover, the Greek position is quite clear, as far as the right to self-identity is concerned. The right to self-identity is an individual right. Therefore, one can be self-identified without the fear of suffering any kind of sanctions. However, an individual self-identification cannot by itself create a minority group even if several individuals decide to be self-identified, as belonging to a particular minority group.[122] According

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[118] Article one of the International Covenants, states that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[119]Rosalyn Higgins , "Post-Modern Tribalism and the Right to Secession" Catherine Brolmann, R. Lefeber & M. Zieck (eds.), Peoples and Minorities in International Law (1993) p. 30.

[120] Principle VIII of the Helsinki Final Act : "Equal rights and self-determination of peoples", states that: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of states.

[121] See, Appendix C: "An Historical Analysis of the Status and Rights of the Greek Minority in Istanbul and the Greek Inhabitants of Imbros and Tenedos." Section B.2

[122] See Chapter five, *infra*, section 5.3.

to Paragraph 32 of the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, (1990), it is a person's individual choice to belong to a national minority.

According to the Greek government, the principles of non-discrimination and equality are sufficient, in most cases, to protect minority rights, provided of course, they are respected and honoured at all times. The adoption of special measures for minority rights is not usually needed, since they may lead to the fragmentation of society and would destroy any effort of integration and progress.[123] However, the Greek government has adopted on numerous occasions a set of special positive measures regarding the Muslim minority, especially in the field of religious freedom and minority education.[124]

The Greek Citizenship Code (Articles 6(2)(b) and 19) refers to a vague *de jure* recognition of national minorities.[125] Moreover, Article 5(3) of the Law No. 376/1936[126] refers to "non-ethnic Greek citizens" an expression, which means that apart from those individuals that have recently adopted the Greek citizenship it also includes every Greek citizen, who belongs to an ethnic minority.

Greece's attitude towards minority issues is quite restrictive, even within the legal review framework. Accordingly, Greece does not always realise and accept the religious and cultural diversity of its society or promote a spirit of tolerance, understanding and mutual respect towards 'different' people from the majority population. The Greek government firmly supports the existence of only one minority in its territory, the Muslim minority in Western Thrace, which is recognised only as a religious minority according to the terms of the Treaty of Lausanne. In more exact terms, there is only "one legally recognised minority." Despite claims that the Treaty of Lausanne only allows reference to a "Muslim minority", official Greek state policy regarding the identity of the minority has been highly influenced by and appears to be a function of Greek-Turkish relations.

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[123] Heraclidis, *op.cit.* p. 218.
[124] See, Chapter nine, *infra*, section 9.2.
[125] Zoi-Papasiopi-Pasia, Code of Citizenship, (Athens: Sakoulas Publicatins, 1999) pp.1-12.
[126] FEK A' 546, 1936: "In Regard to Security Measures Undertaken in Strategic Areas."

The Greek government does not recognise the existence of any other minority group. Consequently, no other minority enjoys the same rights as the Muslim minority does. The situation of the Muslim minority would have to be reviewed from a new perspective, which corresponds to the real needs of the minority in modern days. Nevertheless, the Greek government has undertaken a series of positive measures in developing a policy of tolerance and protection of minority rights.

3.5: Concluding Remarks

Every ethnic, linguistic, or religious minority uses its own distinctive language, practices its own religion and shares its own distinctive ethnic identity. The members of the Muslim minority share a strong sense of solidarity among the members of the Muslim minority to maintain their own language, preserve their own traditions, culture and religion.

It may be concluded that the Greek government maintains a rather restrictive and rigid approach regarding the official recognition of minority groups in its territory. This is mainly due to the high degree of religious, cultural and linguistic homogeneity in Greece. Moreover, in the Greek society, ethnicity and religion are intertwined in the minds of the people. Most often this has resulted in limiting the rights and freedoms of minorities. The official Greek policy regarding the existence of minorities and the right to self-identity does not appear to be in conformity with the standards set by the international community.

The Greek government needs to adopt a more positive approach towards minorities based on international human rights instruments. Minority rights must be protected within a European and international framework of international human rights and must not depend on inter-state relations as the case is with the Treaty of Lausanne, which provides rights for the Muslim minority in Western Thrace and the Greek minority in Istanbul on the principle of reciprocity. The principle of reciprocity and the Treaty of Lausanne have placed minority rights in the context of inter-state relations rather than providing a set of rights on a European and international level. The rights of minorities in Greece need to be protected on a universal human rights basis beyond any restrictive legal and political restrictions.

CHAPTER FOUR: THE TREATY OF LAUSANNE AND INTERNATIONAL LAW

4.0: General Background

Greece has undertaken a number of international legal obligations for the protection of human rights in its territory. At this point, a distinction needs to be made between particular treaties, which deal directly with a specific case of a minority group and treaties, which deal with the general protection of minorities, namely rules of general application at a regional or international level. In the first category, there is only one treaty, namely the Treaty of Lausanne[1], which deals directly with the rights of the Muslim minority in Western Thrace. In the second category, there are several international treaties, which are intended to protect minorities and attribute to them a number of rights.

The Greek government currently recognises the existence of one minority in its territory, the Muslim minority in Western Thrace. However, a lot of minority groups in Greece are not officially recognised by the Greek government. Due to this lack of official recognition, several minorities in Greece do not seem to enjoy the same set of special rules, that for example the Muslims do. Although the Greek Government is not yet a party to several international human rights documents, it took a positive step by ratifying the International Covenant on Civil and Political Rights on May 5, 1997.[2]

4.1: The System of International Law in the Greek Legal System

The international documents which have been ratified by Greece as well as customary international law form part of the Greek legal system, according to Article 28 of the Constitution:

> The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein, shall be an integral part of domestic Greek law and shall prevail over any contrary provisions

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[1] , Legislative Decree 25/1923(FEK A' 311/30.10.1923): "On the Ratification of the Treaty of Lausanne"

[2] G.A. Res. 220A(XXI)/16.12.1966, entered into force on March 23, 1976, according to Article 49.

> of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

Article 25 of the Constitution describes the human rights provisions contained in the Constitution, according to European and international law standards. Thus, it states: "The rights of man as an individual and as a member of the social entity are guaranteed by the State and all agents of the State shall be obliged to ensure their unhindered exercise."

4.2: On an International Level

On the international level, the Greek government has ratified the International Covenant on Civil and Political Rights (ICCPR)[3] as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR).[4] Both International Covenants include a non-discriminatory provision. In particular, Article 2(1) of the ICCPR provides that the state parties should ensure the rights set forth in the Convention "without distinction of any kind, such as race, colour, sex, language or other traits." Article 27 of the ICCPR has become the basic human rights norm, in discussing questions relating to the rights of minorities.[5]

In times of emergency, the only derogation permitted is those strictly required by the situation. Such measures must not be incompatible with obligations under international law and must not involve discrimination.[6] Article 14 of the ICCPR, ensures equality before the law; it includes the minimum guarantees in criminal law proceedings.[7] As far as the rights of the child are concerned, Article 24(1) of the

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[3] Law No. 2462/1997(FEK A, 25, 1997): "On the Ratification of the International Covenant on Civil and Political Rights." See, Human Rights Watch, "Greece: Human Rights Developments" Helsinki Watch Report , (1998), (Internet Report). However, Greece has not yet ratified the UNESCO Convention against Discrimination in Education (adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, during its 11th session, 1960).

[4] G.A. Res. 220A(XXI)/16.12.1966, entered into force on March 23, 1976, according to Article 27. See, Law No. 1532/85 (FEK A' 45/19.3.1985): "On the Ratification of the International Covenant on Economic, Social and Cultural Rights."

[5] See, General Comment No. 23(50) on Article 27, adopted by the International Committee on Civil and Political Rights, U.N. Doc. A/48/40, Part I, pg. 208. Text also reproduced in Vol. 15 H.R.LJ. p. 233 (1994).

[6] See, Article 4(1) of the ICCPR

[7] Article 14(3) of the ICCPR, states that: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, (a) To be informed promptly and in

ICCPR, states that every child should enjoy the rights provided in the Covenant without any discrimination and the " the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State."

Article 2(2) of the ICESCR provides for the principle of "non-discrimination of any kind" including "national origin". This article deals with individual rights and it is expressed in "negative" terms. The Covenant lays down the principle of equality in the enjoyment of various rights, considering the right to education as a cultural right. Even though the Covenant does not create a positive duty for the state to protect and promote the language and culture of their minorities, this kind of guarantees requires positive measures to be taken by the state. Similarly, Article 26 of the ICCPR refers to non-discrimination in both negative and positive terms.[8]

The International Convention on the Elimination of All Forms of Racial Discrimination (hereafter "Convention)[9] provides for equality of treatment to racial and ethnic groups as well as to individuals requiring such protection. It further introduces the principle of non-discrimination and elaborates on its interpretation. Article 1(1) defines racial discrimination as:

> Racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, on an equal footing for human rights and fundamental freedoms in the political, economic social, cultural or any other field of social life.

Article 1(4) of the Convention allows for special measures to be taken towards the members of a minority in a state. However, such special measures will only be taken for the "sole purpose of securing adequate advancement of certain racial and ethnic

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detail in a language which he understands of the nature and cause of the charge against him; (b) To have the free assistance of an interpreter if he cannot understand or speak the language used in court."

[8] For a greater analysis regarding the principle of non-discrimination in the Human Rights Covenants see, Chapter 3, *supra*, section 3.3(b).

[9] G.A. Res. 2106(XX)/21.12.1965, entered into force on January, 4, 1969, according to Article 19. See, Law No. 494/1970(FEK A' 77, 1970): "On the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination." In regard to Greece's compliance with the UN Convention, see, International Helsinki Federation for Human Rights, Parallel Report on "Greece's Compliance with the International Convention on the Elimination of all Forms of Racial Discrimination", UN Committee on the Elimination of Racial Discrimination, 56th Committee Session, (2000), (Internet Report).

groups." Once such objectives have been achieved any special measures shall not continue and under no circumstances may such measures lead to the creation and maintenance of a separate list of rights for different ethnic groups.

Accordingly, enforcement of a policy of non-discrimination might not be enough for the protection of minority rights. Minorities need equality in fact as well as in law. Article 2 of the Convention condemns racial discrimination and requires that states must take all necessary steps to eliminate such discrimination. The Convention illustrates that special protection for minorities is based upon the idea of creating equal conditions for all groups rather than promoting separate cultural, political or economic development. The ultimate purpose of the Convention is to create a balance between the respective positions of the various population groups and in particular to assist minorities. Finally, Article 2 of the Convention does not permit any kind of distinctions in the enjoyment of the rights provided therein.[10]

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[10] Article 2 of the Convention states that: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

The Genocide Convention on the Prevention and Punishment of the Crime of Genocide (1948)[11] contains the general prohibition of committing any acts, which will bring about the "physical destruction of the existence of racial, national, cultural and religious groups."[12] The United Nations Convention on the Rights of the Child (1989) [13] provides in Articles 28 and 29 for the right of use of the mother tongue to children that belong to cultural, religious or linguistic minorities. The introduction of such a provision into the Greek legal system is almost definitely an "innovation".[14] Article 2(1) constitutes an important step towards the factual recognition of the right of children, which belong to a minority group to enjoy the same rights in the Convention "without discrimination of any kind."[15]

4.3: On a Regional Level

In the context of the Council of Europe, the Greek government has ratified the European Convention on Human Rights (ECHR).[16] The ECHR is a legally binding human rights treaty, which is considered to be an authoritative text for safeguarding civil and political rights such as the right to a fair trial, freedom of expression and freedom of association. The provisions of the Convention establish obligations of immediate effect, which generally are directly enforceable in domestic law. The ECHR is legally enforced by the European Court of Human Rights on a case by case basis.

The ECHR similar to most post-World War II texts on human rights places strong emphasis on individual rights and the principles of equality and non-discrimination.

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[11] G.A. Res. 260A(III)/9.12.1948, entered into force on January 12, 1951, according to Article XIII. See, Legislative Decree 3091/1954(FEK A' 250, 1954): "On the Ratification of the Genocide Convention on the Prevention and Punishment of the Crime of Genocide."

[12] See, Article 2 of the Genocide Convention.

[13] G.A. Res. 44/25/20.12.1989, entered into force on September 2, 1990, according to Article 49. See, Law No. 2101/1992 (FEK A' 192/2.12.1992): "On the Ratification of the United Nations Convention on the Rights of the Child."

[14] Konstantinos Tsitselikis, The International and European Status for the Protection of the Linguistic Minority Rights and the Greek Legal Order, (Athens: Ant. N. Sakkoulas Publications, 1996) p. 315.

[15] In regard to the right to education of the Muslim minority and the Greek legislation, see Chapter nine *infra*, section 9.2.

Although the ECHR does not contain a specific provision on the rights of minorities, it prohibits discrimination in Article 14 of its text, which provides among other prohibitive grounds of discrimination regarding the enjoyment of the rights contained therein "in association with a national minority." [17]

Article 2 of the First Protocol of the European Convention provides for the right to education.[18] Article 2 respects the right of parents to ensure the education of their children in conformity with their own religious and philosophical convictions. The right to education is also guaranteed in the internal legal system of Greece by Article 16 of the Constitution.[19]

Although the Greek government has not yet ratified the Framework Convention for the Protection of National Minorities ("hereafter" "Framework Convention)[20], it is important to give an in-depth analysis of the Convention for the purposes of examining the rights of minorities. The Framework Convention contains fundamental provisions for the protection of minority rights. It is the first binding international instrument exclusively devoted to the protection of national minorities. It establishes legal principles to which member states commit themselves and also incorporates a monitoring mechanism under international law for their implementation. [21]

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[16] The European Convention on Human Rights, was signed in Rome on November 4, 1950 and entered into force on November 3, 1953. See, Legislative Decree 53/1974(FEK A' 256, 1974) : "On the Ratification of the European Convention on Human Rights".

[17] See, *Austria v Italy*, Application No. 760/1997, European Commission on Human Rights.

[18] Protocol No. 1 of the European Convention on Human Rights, entered into force on May 18,1954:"Enforcement of Certain Rights and Freedoms not included in Section I of the Convention."

[19] In regard to the educational rights of the Muslim minority, see Chapter nine, *infra*, section 9.2.

[20] Framework Protection for the Protection of National Minorities, Council of Europe, November, 1, 1995.

[21] Gerd Oberleitner, "Monitoring Minority Rights under the Council of Europe's Framework Convention" Peter Cumper and Steven Wheatley (eds.) Minority Rights in the 'New' Europe (Hauge: Martinus Nijhoff Publishers, 1999) pp. 71-84, Geoff Gilbert, "The Council of Europe and Minority Rights" , Vol. 18 Human Rights Quarterly,(HRQ), (1996) No. 1, pp. 160-189, Geoff Gilbert, "Minority Rights Under the Council of Europe", Peter Cumper and Steven Wheatley (eds.), Minority Rights in the 'New' Europe , (Hauge: Martinus Nijhoff Publishers, 1999) pp. 55-65, Eero J. Aarnio, "Minority Rights in the Council of Europe: Current Developments", Alan Phillips and Allan Rosas (eds.) Universal Minority Rights (Finland:Abo Akademi University Institute for Human Rights, 1997) pp. 87-93, 99-101. In regard to the compliance system set for the Framework Convention is based on state reports to the Committee of Ministers assisted by an advisory committee of experts, (Articles 24-26). However, the articles of the Convention are formulated in a rather general and vague manner, compliance of which depends on the contracting states, rather than attributing rights to individuals.

The member states by Article 4(1) undertake the obligation to guarantee for the members of minorities' full equality before the law and prohibit any act of discrimination. In particular, Article 4(2) obliges states to adopt measures for the effective equality and participation in the social, economic and cultural life between the minority and majority. The state parties in doing so must consider any specific conditions of the minorities and take the appropriate steps for the adoption of any special needs of these groups. In accordance with Article 4(3), this act will not constitute discrimination on the part of the member states.

Moreover, of particular importance is Article 15 where state parties undertake the obligation to promote and encourage the effective participation in the cultural, economic and social life and in public affairs with additional emphasis in the areas, which affect their rights and interests of the minorities. Finally, state parties must provide the necessary conditions for the minorities to be able to develop and maintain their culture, religion and language, which are considered to be essential elements of their distinctive identity as a minority group.

Although the Framework Convention primarily provides safeguards for the rights of minorities based on individual terms, Article 3(2) states that: "persons belonging to a national minority may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework convention *individually as well as in community* with others."[22] Moreover, the Framework Convention seems to recognise to a certain degree that positive action is necessary regarding minority rights such as the obligation of states to promote the necessary conditions for the persons belonging to national minorities to preserve their distinctive identity.[23] Nevertheless, according to Article 6(1) of the Framework Convention, this is only done in the spirit of encouraging "tolerance, mutual respect and understanding" rather than a set of

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[22] Article 3(1) of the Framework Convention, states that: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."

[23] Article 5(1) of the Framework Convention, states that: "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

substantive measures for the preservation of the religious, cultural and linguistic rights of the minorities. [24]

The Framework Convention does not provide a definition of the term "minority" and thus, leaves it up to the states to define which groups in their territory might be classified as a minority. Accordingly, the Framework Convention provides wide discretionary powers to the states in setting the standards and defining the scope and content of the necessary measures. The obligations created for the states under Article 10 (1) of the Framework Convention are effected in areas "traditionally inhabited by national minorities in substantial numbers and they may be undertaken in response to a request or manifest need." In addition, all that is required by states is to endeavour "as far as possible" or "where necessary", according to their financial resources the necessary conditions for the preservation of the distinctive characteristics of the minorities. Accordingly the Framework Convention does not place concrete obligations upon the states but rather provides in a more vague and general manner aims and norms for the states to inspire and use as standards or guidelines regarding the protection of minorities in their territories.

The Organization for Security and Co-operation in Europe (OSCE) was established with the Helsinki Final Act in 1975 and it is based on an unequivocal commitment to human rights and minority rights. The OSCE instruments raise fundamental questions on the issue of minorities and stand as a reminder that minorities are "a permanent feature of states as well as a source of inspiration and development of a European society."[25] Although the OSCE instruments are not legally enforceable treaties they carry great moral and political weight. The OSCE has raised the standards of minority rights in Europe and contains a large range of fundamental principles, which

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[24] Cf. Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination that states: "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

[25] Patrick Thornberry, "International and European Standards on Minority Rights", Hugh Miall (ed.) Minority Rights in Europe: The Scope for a Transactional Regime, (London: The Royal Institute of International Affairs, 1994) p. 18, *et.seq.*

have considerably "advanced the minorities" case."[26] Greece has participated in all the OSCE meetings with the other members and has signed all the relevant documents. It is political and morally committed to them.[27]

The Helsinki Final Act 1975 provides a detailed set of measures that states would have to undertake to abstain from discrimination against the rights of minorities in their territory. In particular, Principle (VIII) is of significant importance in the area of human rights. It provides that: "the participating states will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion." Moreover, Paragraph 4 of Principle (VIII) provides protection to national minorities:

> The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner protect their legitimate interests in this sphere.

According to Principle (VIII) of the Final Act 1975 protection is provided to persons belonging to "national minorities". However, the term "national minorities" is not defined in the OSCE documents. It would seem that the term "national" has been broadly interpreted as to include "ethnic" minorities and has not been applied in a restrictive manner. Similar to other international documents the OSCE has adopted an individualist approach towards minority rights[28] such as Article 27 of the ICCPR and the Optional Protocol, which allow the right to petition only to individuals to the UN Human Rights Committee.[29]

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[26] Ibid.

[27] In regard to Greece's compliance with minority rights under the OSCE, see, Internet Reports: Greek Helsinki Monitor/Minority Rights Group (Greece), "Report on Greece to the 1999 OSCE Implementation Meeting", Freedom of Religion : Greece, Report on Greece to the 1999 OSCE Supplementary Human Dimension Meeting on Freedom of Religion .

[28] Principle VII of the Helsinki Final Act 1975: "The Participating States on whose territory national minorities exist will respect the *right of persons belonging to such minorities* to equality before the law; will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere."

[29] Gilbert, *op.cit.* pp. 70-71.

The Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, 1990, (hereafter "Copenhagen Document") constitutes one of the most important of all the OSCE documents. The Copenhagen Document is an innovative and unique international instrument. It explicitly requires that states take affirmative action in assisting minorities in the protection and preservation of their distinctive identity. Moreover, it contains provisions, which relate to all the important aspects of the international protection for the rights of national minorities. Although most OSCE states favoured a precise wording of the various clauses, the Copenhagen Document contains very detailed norms.

The Copenhagen Document refers to the rights of individuals by virtue of their membership in a particular group. The clauses concerning specific rights are preceded by an introductory provision in which the participating states "recognise that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with the functioning of an independent judiciary."[30] In Paragraph (31) the participating states, affirm their commitment and respect for human rights and the principles of equality and non-discrimination. A major step forward in the protection of minorities is found in Paragraph (32), which states that: "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice."

Persons belonging to minorities have the right to participate effectively in the social, economic and public life. Here it can be observed that a great number of clauses in relation to minority rights are rather carefully formulated. This is reflected in the wording of Paragraph (35), which deals with the sensitive issue of local or autonomous administrations. Paragraph (35) provides for the "effective participation in public affairs" for persons belonging to national minorities. This aim may be

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[30] Paragraph (30) of the Copenhagen Document states, that: "The Participating States recognise that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power."

achieved "by establishing appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned."

Despite the detailed and impressive achievements of the provisions of the Copenhagen Document, in the area of the international protection for minorities there are still some problems. For example, the search for a satisfactory definition of the concept of "national minorities" and the debate between the individual or collective rights for minorities. The individual approach is predominant in the OSCE process, which is quite evident by the formulation of the provisions, "rights of persons belonging to national minorities". However, there are some clauses in the document, which may deviate from this approach.[31] Accordingly, several provisions of the Copenhagen Document encourage states to adopt a positive position regarding the protection of minorities, which may be compared to the position adopted by Capotorti and Thornberry regarding Article 27 of the ICCPR. Thus, even though Article 27 is expressed in negative terms, the overall aim is to protect and promote the collective identity of minorities in the enjoyment of community activities.[32]

Special emphasis is placed on the obligation of states in creating the appropriate conditions for the promotion and expression of the minorities' distinctive identity. Even though, the Copenhagen Document provides elaborate provisions for the protection of minority rights, it cannot ensure compliance in practice. The major limitation of the OSCE documents is that they are political commitments, which can only be enforced through negotiation and consensus. [33] Accordingly, the OSCE's principles do not create international legal obligations upon the member states, which can be judicially enforced. However, the OSCE member states have confirmed that

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[31] Such deviations can be found, in Paragraph (32) of the Copenhagen Document, which states that person, belonging to national minorities "can exercise and enjoy their rights individually *as well as in community with other members of their group."* See also, Paragraphs (33) and (35) of Copenhagen Document, which aim to protect and promote the cultural, religious and linguistic identity of national minorities, therefore, taking a collective approach towards minority rights.

[32] Thornberry, *op.cit.*, p. 171-177, Capotorti, F. Study on the Rights of Persons belonging to Ethnic , Religious and Linguistic Minorities (New York: United Nations Publications, 1991) UN Doc. E/CN.4/Sub.2/384/Rev.1., p. 68, *et. seq.*

[33] Arie Bloed, "The OSCE and the Issue of National Minorities" in Allan Phillips and Allan Rosas (ed.) Universal Minority Rights (Finland: Abo Academy University Institute for Human Rights, 1997) pp. 113-120, Jane Wright , "The OSCE and the Protection of Minority Rights." Vol. 18 Human Rights

issues relating to national minorities can only be resolved in compliance with international human rights instruments and are matters concerning the international community and not matters concerning individual states. Thus, the international community is politically and morally committed resolving minority issues in accordance with international human rights law for the protection and safeguard of minority rights.

Greece has ratified all the international legal agreements described in this section. Thus, any person who claims that Greek authorities have violated his or her rights under the ECHR may take proceedings against Greece to the European Court of Human Rights. The main emphasis of the agreements is on the principles of non-discrimination and equality. Minorities benefit from a system of legal equality, which prohibits any kind of discrimination and at least offers minority groups the same level of protection to that provided for the rest of the majority population.[34]

4.4: The Treaty of Lausanne

The Treaty of Lausanne was signed on July 24, 1923, at the end of the Greek-Turkish war between the Allied Powers and Turkey at the Lausanne Peace Conference. The Treaty of Lausanne is considered to be an explicit international document. The Treaty of Lausanne, which is still in force provides for the protection of non-Muslim minorities in Turkey and reciprocally for the Muslim minority in Greece. It has been

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Quarterly, No. 1, (1996) pp. 190-205, Tabory Maria, "Minority Rights in the CSCE Context" Vol. 20, Israeli Yearbook of Human Rights, (1990) pp. 197-221.

[34] In regard to the national obligations of Turkey regarding human rights, including minority rights, Article X of the Turkish Constitution of 1982 provides equality before the law and the right to be free from discrimination: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations" At this point, is worth mentioning that Turkey has signed the ECHR, the Helsinki Final Act (1975), the Concluding Document of the Vienna Follow-Up Meeting to the Conference on Security and Co-operation in Europe (1989), the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, (1990) , the Charter of Paris, (1990). Accordingly, all these international agreements, provide for the rights of minorities, including the principles of equality and non-discrimination, for the preservation and promotion of the cultural, religious and linguistic identity of minorities and for the full and equal enjoyment of human rights and fundamental freedoms for the members of minorities within states. However , Turkey has not yet signed the ICCPR, (1966), or the UNESCO Convention against Discrimination in Education, (1960), which provides for the right of the members of minorities to engage in their own educational activities and maintain their own separate schools, (article 5). However, Turkey in 1972, signed the International Convention on the Elimination of All Forms of Racial Discrimination, which provides for equal rights for the members of minorities with the rest of the majority population in a state, (article 1(9)), but has not yet ratified it.

observed that the Treaty of Lausanne marked "the beginning of a new era in the mutual relations of Turkish and Greek nations."[35]

The text in both English and French refers to non-Muslim minorities concerning the Turkish obligations, but it only refers to the protection of one Muslim minority when it comes to the Greek obligations under the Treaty of Lausanne. The Greek translation uses the term minority in its plural form (minorities). This practice has eventually led to several confusions in the application of the Treaty of Lausanne, especially in regard to the ethnic identity of the Muslim minority in Western Thrace.

Section III of the Treaty of Lausanne is titled "Protection of Minorities". All nine articles of this section grant specific rights to the Muslim minority in Greece and the Greek minority in Turkey. Article 37 provides for the general protection of both minorities and the rest constitute substantive clauses protecting the minorities' religious and linguistic identity. In particular, according to Article 37 the provisions of the Treaty of Lausanne are to be considered as "fundamental laws of the State".[36]

According to Article 45 of the Treaty of Lausanne, identical obligations arise for both countries towards the protection of the rights of the respective minorities. However, Article 45 does not in any way guarantee the proper and effective implementation of minority rights in either Greece or Turkey. [37]

Article 41 of the Treaty of Lausanne defines the territorial principle regarding the rights and existence of Muslim and non-Muslim minorities. Articles 38 to 43 provide substantive rights for the protection of both minorities. There exists a common understanding of the parties to the Treaty of Lausanne that their respective minorities are quite complex in nature and that they possess a number of distinctive differences from the majority population in Greece and Turkey. The obligations that the two states have undertaken include both a passive aspect, to tolerate the distinctive nature

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[35] Umit Haluk Bayulken, "Turkish Minorities in Greece" Vol. IV, Turkish Yearbook of International Relations, (1963) p. 147.

[36] Article 37 of the Treaty of Lausanne, states that: "Greece undertakes that the stipulations contained in Articles 38-44 shall be recognised as fundamental laws and that no law, no regulations, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulations, nor official action prevail over them." See, Appendix A, for the full text of the Treaty of Lausanne.

[37] See, Chapter one, *supra*, section 1.5.

of their respective minorities and a positive aspect, the duty to assist the minorities in their preservation and promotion of their distinctive identity.

In Article 38 of the Treaty of Lausanne, Greece and Turkey prohibit any kind of discrimination based on birth, nationality, language, race or religion. The distinctiveness of both minorities functions under the protection of the state in safeguarding the right to life and liberty. Religious freedom is granted to the members of both minorities under Article 38(2) of the Treaty of Lausanne. Article 38(3) guarantees full freedom of movement and emigration for both Greek and Turkish citizens

Moreover, Article 39 of the Treaty of Lausanne establishes the principle of equality before the law and for the same civil and political rights for every Greek and Turkish citizen. The free use of language is found in Article 39(3) in private or in public, in commerce religion and the press.

The Treaty of Lausanne also regulates issues relating to the education and linguistic distinctiveness of both minorities. The articles that directly deal with such issues may be classified accordingly. In the context of public education, Article 41(1) obliges both states to provide public instruction in the mother tongue of the Muslims and Greeks in primary schools. However, this does not prevent the respective governments from making compulsory the teaching of the official language.

In the context of private education, Article 40 of the Treaty of Lausanne provides the members of the respective minorities with an "equal right to establish, control and manage, at their own expense, any charitable, religious and educational institutions." The right to use their own language is interrelated with this provision. The exercise of the right to education in the mother tongue of the minority is connected with the territorial principle. Its implementation is restricted only to specific towns or areas. In particular, the two states undertake the organisation of the educational establishment for the members of the minority only in such towns or areas where a substantial number of Muslim and Greek people live. Moreover, the right to an equitable share arises either out of public funds under the state or municipal budgets for the function of minority schools.

The members of the Muslim minority have a right under Article 42 of the Treaty of Lausanne to resolve family and personal law cases on the basis of Islamic law.[38] According to Article 43 of the Treaty of Lausanne the members of the respective minorities cannot be bound to accomplish any act violating their faith or their religious practices. Finally, they cannot be sanctioned in the case they refuse to be present before courts or to perform a legal act on the day of their weekly holiday.

The Treaty of Lausanne establishes procedural guarantees for the implementation of the substantive clauses on both minorities. According to Article 44(a), Greece and Turkey agree that:

> Every member of the Council of the League of Nations has the right to refer to the Council any violation or danger of violation of any of the obligations of the two countries contained in the substantive provisions of the Treaty of Lausanne. The Council may proceed to issuing instructions, which may be considered efficient in the circumstances of a given case.

In the case of a dispute on law or facts concerning the relevant articles on minorities between the two Governments, the dispute will be considered as an international dispute in accordance with Article 14 of the Covenant of the League of Nations. This kind of dispute would be settled, if the other party requests, by reference to the Permanent Court of International Justice whose judgement will be binding.[39]

It is obvious, however, according to the United Nations Charter, the members of the United Nations organisation have replaced the members of the League of Nations and the competent court is the International Court of Justice. This clause of the Treaty of Lausanne gives competence to the International Court in the Hague to decide any case between the two disputing parties. It provides a high degree of protection offered by the Treaty of Lausanne, which still applies to determine any inter-state dispute arising from legal obligations of both governments.

4.5: An analysis of the Treaty of Lausanne

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[38] See, Chapter six, , *infra*, section 6.2.

[39] See, Article 44(2) of the Treaty of Lausanne.

In regard to the ethnic identity of the Muslim minority, the use of the term "Muslim" in Article 45 of the Treaty of Lausanne does not provide any particular indications as to the area of the application of the Treaty of Lausanne or ethnicity of the Muslim minority. At first sight, it seems that the provisions of the Treaty of Lausanne are not geographically limited but apply in every instance where the existence of Muslim-Greek citizens can be found. However, a more substantial view of the territorial principle can be determined in relation to the educational rights of the Muslim minority. Thus, Article 41 of the Treaty of Lausanne provides:

> As regards public instruction, the Greek Government will grant in those towns and districts where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Greek Government from making the teaching of the Greek language obligatory in the said schools.

The choice of the religious criterion, as the distinctive factor of the identity of both minorities has to be examined within the historical and social context of the Lausanne Peace Conference in 1923. The system of the League of Nations provided protection, primarily to national groups with a distinctive religion than to purely ethnic or linguistic groups. Thus, it was decided that the religious aspect of the minorities would be legally recognised and protected.

Several political debates have taken place considering the way the Greek Government has interpreted the concept "Muslim minority" within the context of Article 45 of the Treaty of Lausanne. According to the Greek government, the Muslim minority is composed of three ethno-linguistic groups: the "Turkish-speaking" or "Turkish-origin"("*Tourkogeneis*") group (but not ethnic-Turkish) the Pomaks and the Muslim Gypsies.[40] Despite the strong political will to improve the situation of the Muslim minority in Western Thrace based on the principles of equality before the law and non-discrimination, it has not proved successful to eliminate all possible of sources of conflict between the state and the minority. [41] Thus, most attempts made

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[40] *Ibid.*, p. 319.
[41] *Ibid.*

for a genuine and effective rapprochement between Greece and Turkey have failed due to political, historical and national factors and have often brought the opposite effect for both the Muslim in Western Thrace and the Greek minority in Istanbul.[42]

Several problems arise due to the recognition of a minority group either as an ethnic or religious one. This may lead to confusion as to the kinds of rights guaranteed under the Treaty of Lausanne. However, the choice of religion as a reference to these groups did not reduce them automatically to religious minorities.[43] If one considers the complexity of these minorities and the cultural and social significance of Greeks and Turks upon religion, it can be understood that the religious element was used to refer to a group distinctively different from the majority of the population.

The description of the Muslim minority as an ethnic group might end up including certain other groups of the minority such as the Pomaks and the Muslim Gypsies within the Turkish mainstream and undermine their own ethnic and cultural identity. In particular, the Treaty of Lausanne would have to be reviewed in order to comply with the population composition of the minority and provide an overall protection for the cultural and religious rights of the three minority groups of the wider Muslim minority in Western Thrace.

The minorities that were established in Greece and Turkey differed greatly, especially according to their social and educational status. The Greeks of Istanbul belonged to the higher social levels of the Ottoman/Turkish society and until the beginning of the twentieth century controlled an important part of the local economy.[44] In particular, the Greeks in Istanbul held important administrative, judicial, economic and educational posts in the government; "The Greeks emerged as an economic (and intellectual) elite throughout the Empire by the end of the eighteenth century."[45] In addition, many Greeks maintained influential positions, holding senior diplomatic

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[42] Alexis Irakleidis, "Minorities, Foreign Policy and Greece" Constantinos Tsitselikis and Dimitris Christopoulous (ed.) Minority Phenomenon in Greece (Athens: Kritiki, 1997) p. 225, *et seq.*
[43] Tsitselikis, *op.cit.*, pp. 319-320.
[44] Alexis Alexandris and Thanasis Varemis, The Greek-Turkish Relations: 1923-1987 (Athens: Gnosi, 1988) p. 38. The Greeks of Istanbul at that time, amounted to 103, 000, whereas the Greeks of Imbros amounted to 7, 000 and in Tenedos to 1, 2000.
[45] See, Roger Just, "Triumph of the Ethnos", Jane Elizabeth Tankin *et. al.* (eds.) History and Ethnicity (London: Routledge, 1989) p. 74.

posts, including the ambassadorship to Great Britain, governors of island provinces and university professorships and serving as bankers, lawyers and doctors.[46]

Moreover, the Greek society of Istanbul maintained important educational and cultural associations and institutions. Most importantly, the spiritual leadership, the Orthodox Ecumenical Partiarchate constituted an essential part of the Greek community. The Christian Orthodox, *Millet-i-Rum* or 'Roman Millet' under the Ottoman Empire were given separate identity and were placed under the control and supervision of the Patriarch in Istanbul as *millet-bashi* or 'ethnarch'.[47] Before World War I, the Greek community made up about one-third of the population in Istanbul and constituted a major presence in Constantinople and Smyrna.[48]

However, the social composition of the Muslims in Western Thrace was entirely different. Even though they shared a common faith, they were distinguished according to their mother-tongue, their social organisation and their value system.[49] This kind of differentiation was also noted according to their place of residence and their internal relations, since the members of the different Muslim groups did not maintain close relations among them. The members of the Muslim minority with the exception of those members living in the urban centres of Western Thrace (mainly of Turkish-origin) were an agricultural population, living mainly in the southern areas, and partially in the northern and northeastern mountainous region of the district of Rodopi.[50] A substantial number of landowners and members of the most powerful social classes of the Muslim population emigrated to Turkey soon after the agreement was signed regarding the compulsory exchange of populations. Therefore, those who remained in Western Thrace belonged by majority to the poorer social structure of the local community.

After this brief description of the social status of both minorities the special significance the minorities had for the respective countries becomes apparent. The Greek-Christian minority in Istanbul constituted from an economic and cultural point

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[46] See, Human Rights Watch (HRW), "Denying Human Rights and Ethnic Identity: The Greeks of Turkey" Helsinki Watch Report, (1992), (Internet Version) p. 5, Alexandris, *op.cit.* p. 39.
[47] Just, op.cit. p. 78.
[48] *Ibid.*
[49] *Ibid.*

of view, the most progressive section of Hellenism and belonged to the upper social structure of the Turkish society. The Kemalists saw the Muslim minority in Western Thrace as both conservative and anachronistic, since it refused to follow the modernised reformations of their policy. The treatment of the Greek-Christian minority by the Turkish government determined the Greek foreign policy against Turkey until the mid-1950s.

The presence of the Greek and Muslim minority in Istanbul and Western Thrace respectively will continue to influence the relations of both countries. Nevertheless, the political relations of both countries, to a great extent determine the status and rights of both groups on a historical and political level. As has been stated:

> The presence of an established Turkish-Muslim minority in Greece, will, on the one hand, continue to influence politics of ethnicity and identity within Greece and other hand, perpetuate nationalist fervour in both countries as an item of domestic politics. The continuous references to issues surrounding Turkish minority in Greece has already started to feed the emergence of transnational nationalism among Turks of Western Thrace living in Turkey and in various European countries. The Turkish-Muslim minority as an Ottoman legacy in Greece will also continue to determine Turkey's attitude towards their affairs as a kin-state and influence Turco-Greek relations. [51]

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[50] The population mainly living in the northern region of Rodopi were Pomaks.

[51] Talip Kucuckan, "Re-Claiming Identity: Ethnicity, Religion and Politics Among Turkish-Muslims in Bulgaria and Greece." Vol. 9, Journal of Muslim Minority Affairs, No. 1, (1999) p. 59. In particular, one might observe, a rather negative attitude and views expressed by Turkish authors, regarding the Muslim minority in Western Thrace. Even though, they point out the problems the minority is faced with nowadays, they do not seem to emphasise the positive steps and efforts taken by the Greek government to improve and upgrade the status of the minority, especially in the field of education. The negative picture built against Greece, within the context of the Muslim minority, will have detrimental effects for the status and rights of the Muslim minority in Western Thrace and influence the relations between Greece and Turkey thus reducing the possibilities of improving the treatment of the Muslim and Greek minority respectively. Similarly, see, Armaoglu Fahir, "Turkey and Greece", Vol. 38, Review of International Affairs, (1987) pp. 7-10, Hassan Koni, "Turkish Minorities in the Balkans and the Problems They are Confronted With", Vol. 8, Turkish Yearbook of Human Rights, (1986) pp. 109-112. Even though, one might expect to find a more positive picture of the Muslim minority of Western Thrace, since the beginning of 1990s when the principles of equality and non-discrimination were introduced within the Muslim minority, such positive developments are not reflected in the writings of most such articles. Nevertheless, some articles, such as, Turkkaya Ataov, "The Ethnic Turkish Minority in Western Thrace, Greece", Vol. XXII, Turkish Yearbook of International Relations, (1992) pp. 92-93, have devoted some space describing the positive steps the Greek government has undertaken in recent times.

The foreign policy of Turkey regarding the Muslim minority has been of interference in the internal affairs of Greece.[52] Its main target has been to eliminate the traditional Muslim leadership of Western Thrace, to strengthen the Turkish ethnic identity within the Muslim minority and to create an 'autonomous' Turkish population within Western Thrace.[53] Moreover, the existence of numerous minority associations and unions has helped to promote and cultivate the idea of a "Turkish-Muslim community" within Western Thrace.[54] The national 'autonomy' of the Muslim minority seems to have been the main target of the Turkish policy, as illustrated by the activities of certain 'active' members of the Muslim minority for their own political motives and interests while disrupting the relations of the Christians and the Muslims in Western Thrace and undermining any prospects of development and progress. In particular, it has been stated: "The main problem between Turkey and Greece is the long-standing insecurity, whose roots goes back many years, even centuries. In other words, they bear the burden of the past."[55]

The Greek minority in Istanbul has decreased dramatically, since 1923.[56] According to official statistics after the population exchange there were one-hundred and ten thousand Greeks in Turkey most of them in Istanbul and a smaller number on the islands of Imbros and Tenedos.[57] Today, the Greek community is no more than two thousand in Istanbul and about four hundred and eighty on the two islands.

The main reason for the dramatic population decline of the Greek minority is the campaign of "systematic and brutal oppression of the Greek minority" including persecution, violent and anti-Greek riots and outright expulsion.[58] The Greek minority

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[52] Kapsis Giannis, "The Aims of the Turkish Foreign Policy in Western Thrace", Eleftheros Typos, September, 3, 1989.
[53] See, George Gionis, Ethnos, Tuesday March 20, 1990, p. 24.
[54] See, Chapter five, *infra*, sections 5.1, 5.2.
[55] Ilham Uzgel, "The Role of the Muslim Minority in International Relations in the Balkans", Vol. XXI, Turkish Yearbook of International Relations, (1995) p. 108.
[56] See, Appendix C: "A Historical Analysis of the Status and Rights of the Greek Minority in Istanbul and the Greek Inhabitants of Imbros and Tenedos", section C.1, Helsinki Watch Report, *op.cit.* at p. 6. In particular, of the 2, 000 Greeks in Istanbul, according to the Constantinopolitan Society in Athens, 350 are elderly people, 410 are children and students and 55 are priests, Gerodopoulos Akis, "Minorities in Greece and Turkey" Typos tis Kiriakis, May 7, 1995, Gerodopoulos Akis, "Minorities in Greece and Turkey" Typos tis Kiriakis, May 7, 1995.
[57] *Ibid.* (Appendix C)
[58] See, Helsinki Watch Report, *op.cit.* at p. 7.

in Istanbul is "elderly, deteriorating and frightened". [59] This is due to a history of pogroms and expulsions, which they have suffered from the Turkish government.

In Turkey the principle of a secular state during the period of Kemal Ataturk was implemented through administrative measures against public religious affiliation. However, the 'Kemalists' did not underestimate the power that Islam had as a religious ideology, to the citizens of Turkey in developing a collective national consciousness against the non-Muslim populations.[60] The main aim of the new policy was the review of the interpretation of traditional Islam in order to give it a modern character. First, the Koran was translated into Turkish and the Arab alphabet was replaced with the Latin one. Secondly, the religious institutions were placed under government control and the Islamic Law was restricted in favour of the secular law. In particular, the Turkish government adopted the Swiss Civil Code thus; the religious courts were also placed under the jurisdiction of the Ministry of Justice. According to the Constitution of April 20, 1924 the Kemalist policy was finally implemented and Turkey became a secular state.[61]

During the 1920s the issue regarding the treatment of minorities was overshadowed by the Greek-Turkish relations.[62] The Turkish minority policy was based on two main principles; internally it aspired towards the national homogenisation of the economy by implementing a series of discriminatory measures against the Christian minority whereas externally the Turkish government followed a tactic of a series of complaints to the Council of the League of Nations against the Greek government alleging the maltreatment of the Muslim minority in Western Thrace. [63]

However, the members of the Muslim minority possessed an adequate standard of living, according to the geographical position and regional development of Western Thrace. Accordingly, one can conclude that the position of Turkey regarding the

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[59] *Ibid.*

[60] Sevasti Troubeta, Constructing Identities for the Muslims of Thrace: The Example of the Pomaks and the Gypsies, (Athens: Kritiki, , 2001) p. 27. Mustafa Kemal Pasha (member of the Turkish delegation) stated before the Lausanne Conference in 1920 that: "the bond of nationality can be strengthened through religion at least to the majority of the population." In regard to the effects of the adoption of Civil law in the Greek minority of Istanbul, regarding their religious traditions and customs, as provided by the Treaty of Lausanne. See, also Appendix C, *supra,* note 50, section C.1.

[61] *Ibid.*, p. 28.

[62] See, *supra*, note, 52.

rights of minorities was based on a strong reaction against the support the Greek government offered to the opposition party, the 'anti-Kemalist' party, which until the end of the 1920s was freely active within the region of Greek Thrace.

The Turkish government accused the Greek government of favouring the Muslim traditionalists (*palaiomousoulmanoi*) or (*muhafazaka)* as they were called in Turkey over the Turkish reformers (*metarithmistes*) or (*inikilapcila*). However, the 'Kemalist' group in Western Thrace was composed only of a small minority, which was mainly concentrated in Xanthi with their leader party, Mehmet Hilmi, who was a teacher and a newspaper publisher.[64] The largest portion of the minority remained loyal to the Islamic Law and did not seem prepared to follow the Kemalists' reformations in favour a secular state over a religious one, especially regarding the educational and social changes in the new Kemalist Republic (i.e. the Latin alphabet, the civil courts and the position of the woman in the Muslim society).

Meanwhile, the position of the Muslim traditionalists was even more re-enforced with the establishment of a group of Turks in Western Thrace. The leader of this group was Mustafa Sabri, the last religious leader of the Ottoman Empire.[65] Mustafa Sabri contributed significantly to the maintenance of the social and religious traditions of the Muslims and in the fight against the spreading of the Kemalist model in Western Thrace.

However, despite this religious and ideological battle between the "conservatives" and the "Kemalists", the nationalist Turks were mainly aiming towards transforming the minority from an officially recognised religious minority to an ethnic one. Nevertheless, the Muslim minority in Western Thrace continued to be religiously identified and organised on a collective basis. The leader of the minority, the Mufti, established in the three districts of Western Thrace: Komotini, Xanthi and Didimotiho constituted the cornerstone of their community structure.[66]

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[63] Alexandris, *op.cit.*, pp. 38-39.
[64] *Ibid*, p. 66 . Mehmet Hilmi circulated the newspaper *Yeni Ziya* during 1924-1925 and the *Yeni Adim* from 1926 until his death in 1930. .
[65] *Ibid.*
[66] In regard to the religious freedom of the Muslim minority in Western Thrace, see Chapter six, *infra,* section 6.2.

The Muslims of Western Thrace had a strong religious faith and insisted on being self-identified, according to their religion by strongly denying the Kemalist reformations.[67] The Greek government seemed to support the choice of the religious criterion for the identification of the minority in Western Thrace, according to the provisions of the Treaty of Lausanne. The region of Western Thrace became a place of conflict between the Turkish nationalists and the Muslim traditionalists.[68]

Eleftherios Venizelos officially visited Ankara in October 1930 where he signed a bilateral Covenant of Friendship, which prohibited both countries entering any political or economic association that could prejudice the interests of either party. In addition the two parties agreed to remain neutral in the case that one of the two parties was attacked by a third one.[69]

With the ratification of the Covenant of Friendship (1930)[70] between Greece and Turkey, the Greek government in its efforts towards maintaining friendly and peaceful relations with Turkey dismissed the Muslim leadership in Western Thrace.[71] Accordingly, the Kemalists replaced the conservative Muslims. This new kind of situation encouraged the influence of Turkish nationalism among the members of the Muslim minority.

Subsequently, the first Turkish 'national' newspapers began to be published in Western Thrace and the first associations were formed being self-identified as "Turkish".[72] At the same time, Ismail Saharp Ustun, built the first minority school, according to the Kemalist model in the town of Hrisa in Xanthi.[73] In addition, with the approval of the Greek government, in 1930 a Turkish consulate was established in Komotini, which until that time was functioning as a simple consulate under the supervision of the Turkish consulate of Thessaloniki. It was an omission on the part of

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[67] Alexandris, *op.cit.*, p. 40.
[68] Lena Divani, Greece and Minorities: The International System of Protection of the League of Nations 3rd edition, (Athens: Kastaniotis, 1999) p. 185.

[69] Alexandris, *op.cit.*, p. 77. The Bilateral Covenant of Friendship of 1930 was inspired by the model of agreements published by the Commission of Security and Arbitration of the League of Nations in 1928 , regarding the peaceful settlement of differences of a legal or political nature.
[70] Regarding a detailed analysis of the Covenant, see, Ifigenia Anastasiadou , Venizelos and the Greek-Turkish Covenant of Friendship of 1930, (Athens : Fillipotin 1982).
[71] Ilias Nikolakopoulos, Political Powers and Election Behaviour of the Muslim Minority in Western Thrace: 1923-1955 (Athens: Centre of Minor Asian Studies, 1991) p. 181.
[72] Alexandris *op.cit*, p. 95. The members of the anti-Kemalist party sought asylum in Egypt and Syria
[73] *Ibid.*

the Greek government not to demand, on the principle of reciprocity, the establishment of a Greek consulate in Imbros, a region where a Greek population existed. [74]

Eleftherios Venizelos firmly believed that the rights and status of the Greek minority in Istanbul depended on the development of friendly relations between the two countries. Accordingly, after the ratification of the Covenant of Friendship, Venizelos was convinced that any issues regarding the respective minorities that were created during the period of 1923-1930 were finally resolved.

The Greek government mainly focused on the development of political and diplomatic co-operation between the two countries as well as on the security and territorially integrity of the Greek State. The official position of Venizelos was that the Christians and the Muslims in Western Thrace could live together harmoniously with equal status and secondly that Greece honoured and respected the terms of the Treaty of Lausanne.[75]

The Turkish policy after 1930 had two main goals; first, although it aimed at maintaining the Greek-Turkish diplomatic and political co-operation it also aimed at the economic and national destruction and persecution of the Greek minority in Istanbul. During a meeting between Venizelos and Ismet Inonou, the Turkish government asked Greece to take certain measures regarding the internal organisation of the Muslim minority. During these negotiations, the Turkish Prime Minister requested the deportation of a certain group of anti-Kemalists, who after the end of the Greek-Turkish war in 1922 had found asylum in Greece.

The newspaper of Mustafa Sabri had readers not only in Western Thrace but also in Turkey; in addition seven more Muslim conservative newspapers were being circulated in Komotini.[76] These newspapers had great appeal to the Muslim minority in Western Thrace, which remained strongly connected with the Islamic socio-

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[74] See, Appendix C, *supra*, note 48, section C.2. Later on, in 1950 Turkey upgraded the consulate in General Consulate of Komotini, at this time Greece once more did not ask for the establishment of a Greek consulate in Imbros based on the principle of reciprocity.

[75] Alexandris, *op.cit.*, p. 524. In a memorandum towards the English Foreign Office, the English ambassador stated that : "The treatment of the Turkish minority in Western Thrace from the Greeks was excellent." (Alexandris, p. 102).

religious values that had survived throughout the centuries. The presence of a substantial group of traditional Muslims (the so-called "150"), constituted a strong obstacle in the action of the supporters of the Kemalist reformations in Western Thrace.[77]

The presence of a Muslim minority in the Greek-Turkish borders was viewed as constituting a great threat and danger to the national peace. However, the fact that the minority shared to a certain degree a 'religious' identity and not an 'ethnic' one provided the basis for the harmonious relations of the two states. In any case, the Treaty of Lausanne refers to a "Muslim" minority and not a 'Turkish" minority. The protective system of the League of Nations was based on the exclusion of any interventions of the kin-states within the internal affairs of the respective minorities.

The action of the Turkish nationalists created confusion and conflict within the Muslim minority, which was mostly composed of conservative Muslims. The Turkish Consulate exercised strong political pressure upon the Greek authorities demanding the deportation of the anti-Kemalists from Greece. Venizelos, as an act of good faith, agreed to deport the anti-Kemalists supporters in Western Thrace. The list of the people to be deported from Greece was prepared by the Turkish Consulate of Komotini as well as by the local police. Accordingly, Mustafa Sabri was finally deported from Xanthi and emigrated to Alexandria and by the end of 1931; the members of the group "150" were also deported. With the expulsion of the anti-Kemalist group, a gap was automatically created in the leadership of the minority, which was quickly filled by the Muslims nationalists, who aimed at the creation of an ethnic 'identity' and 'consciousness' with the Muslim minority.

The Pomaks, however, were highly reluctant to follow the Kemalist reformations due to their strong religious faith as a minority group. In addition, the Pomaks constituted a different cultural entity with a distinctive linguistic and social background.[78] It was

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[76]Alexandris,*op.cit.*, p. 93. The newspaper "*Yarin*"(Voice) of Mustafa Sabri was first published in Western Thrace in 1923.

[77] Nathanail M. Panagiotidis, The Muslim Minority and National Consciousness, (Alexandrople: Topiki Enosi Dimon kai Koinotition , 1995) pp. 147-149. These were Turkish fugitives, who had fought against the new Turkish regime and had found asylum in Greek territory. In addition, they had helped the Greek army in Asia Minor, therefore, Greece was morally obliged to support them.

[78] Hidiroglou, The Greek Pomaks and their Relation with Turkey, (Athens: Odysseus, 1984) p. 15, *et. seq.*

this very group that the Kemalists aimed to assimilate into the Turkish ethnic model. In particular, most 'nationalistic' Turkish newspapers were first published and circulated in Xanthi where a large number of Pomaks lived.[79]

When the Prime Minister of Turkey visited Greece in 1931, he stated the success the secular reforms had had within the Muslim minority. He also emphasised that when the conservative Muslims were dismissed from the leadership in Western Thrace, fifty-one percent of the minority population accepted the Latin alphabet.[80] The Turkish Prime Minister then requested that the application of the Islamic Law by the religious courts in Western Thrace be replaced with the Greek Civil law. The Greek government responded that this would constitute a violation of the provisions of the Treaty of Lausanne regarding religious freedom, which among various matters allowed the members of the Muslim to resolve family law issues based on Islamic law in the religious courts of Western Thrace by the Muftis, mostly fearing the imminent strong reactions of the traditional members of the Muslim minority.[81]

Despite the friendly relations between the two countries, Turkey continued to take measures against the Ecumenical Patriarchate and the Greek minority in Istanbul. The Greek government did not wish to disturb the climate of friendship and political co-operation between the two countries, thus, it did not take a strong stand on the minority issues in Istanbul, in favour of the continuation of the Greek-Turkish harmonious relations. The main goal of the Greek foreign policy was to avoid raising any issues regarding the minorities, which might harm the Greek-Turkish friendship.[82]

In 1952 both Greece and Turkey entered the North Atlantic Treaty Organisation (NATO). Eleftherios Venizelos in his efforts to improve Greek-Turkish relations had allowed the newly developed 'Turkish ethnic' model established by Kemal Ataturk within the traditional Muslim minority of Western Thrace. During this period of rapprochement period between Greece and Turkey, the Greek government accepted

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[79] For example, the "Kemalist" Mehmet Hilmi, published the newspaper "*Yeni Adim*" , which followed in great detail the official policy of Turkey. Moreover, Osman Nuri, continued the propaganda of the Kemalist ideas after the death of Mehmet Hilmi. He was elected deputy of Xanthi for many decades, was also the publisher of the newspaper "*Trakya*" (Thrace) that first appeared in 1932. In regard to the right to receive information in the minority language, see, Chapter eight *infra*, section 8.4.

[80] Alexandris, *op.cit.*, p. 75

[81] *Ibid.*, p. 81.

[82] Alexandris, *op.cit.*, p. 101.

that the minority was a 'secular' and not only a 'religious' one.[83] Consequently, this gradually led to an influence of the ethnic Turkish model among the members of the Muslim minority. However, this had as a result, a series of complainants coming from the traditional Muslims, who witnessed the introduction of Latin alphabet, the closing of their religious schools and their newspapers.[84]

This policy is further reflected when the Greek Government actually began to use the term "Turkish" to describe the minority replacing the term "Muslim". The Greek Government in 1954 by order of the Prime Minister Alexandros Papagos officially approved the use of the term "Turkish" in place of the term "Muslim". Under the provisions of Law No. 3065 of 1954, the minority schools were described as "Turkish" schools and the Turkish language became mandatory for the Muslim students, including the Pomaks and the Gypsies. Accordingly, this had as a result to strengthen the Turkish language and culture in the Muslim minority.

In December 1954 the General Administrator of Thrace (G. Fessopoulos) sent an order to all mayors and presidents of the Communes of the Prefecture of Rodopi, stating:

> Following the order of the President of the Government ((Prime Minister), we ask you that from now and in all occasions the terms, 'Turk-Turkish' are used instead of the terms 'Muslim-of Muslim'. On this matter, we ask you to ensure the replacement, within the region (Thrace), of any signs like "Muslim schools", or 'Muslim Community', with the term 'Turkish.[85]

In May 1955, the General Administrator of Western Thrace again directed state agencies to use the term "Muslim" to describe the minority explaining that:

> In spite of the strict orders of the government to replace the terms 'Muslim-of Muslim' and use from now on the terms 'Turk-Turkish' in the village Aratos and on the public road connecting Komotini with Alexandroupole there exists a very prominent sign with the words

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[83] *Ibid.*

[84] Lena Divani, "The Consequences of the Protective System of the League of Nations" Constantinos Tsitselikis and Dimitris Christopoulous (eds.) The Minority Phenomenon in Greece (Athens: Kritiki, 1997) p. 178: "The Muslims of Western Thrace should keep well in mind that their religion, their education and their tradition and their social status are not a game in the hands of Turkey." Memorandum of complain written by the Mufti to the Greek Foreign Ministry in 1928.

[85] Kingdom of Greece, General Administration of Thrace, Interior Office, Protocol No. A 1043 , Order of 28.1.11954 .

> 'Muslim' School. Any further, necessary, replacements should be done immediately in the region of Rodopi. All majors of the region are asked to take notice of these orders and act accordingly in replacing any such existing signs in their prefectures. [86]

Finally, according to the Legislative Decree of January 28, 1972 the "Turkish" schools were re-named "Minority" schools. This regulation aimed at the reformation of the minority education, which aimed at the separation of the latter from the Turkish ideological influence. [87]

The period of rapprochement between Greece and Turkey, at the time when both countries entering NATO, lasted only until the coup d'etat in Athens of April 1967. After that period and ever since then, the term "Muslim" is used to describe the existence of the (religious) minority in Western Thrace.

In the mid-1950s the Greek-Turkish relations changed dramatically as the issue of Cyprus came to the centre of political attention. This change marked a new era for both minorities in Greece and Turkey. The two major historical and political events that resulted in the major exodus of the Greeks in recent years took place in 1955 and 1964.[88]

In September 1955 a series of violent attacks took place in Istanbul against the Greek minority.[89] In particular, during the nights of the 5th and 6th of September violent demonstrations occurred in Istanbul and Smyrne, in support of the Turkish position on the issue of Cyprus. At the same time, two bombs exploded in Thessalonki, in the garden between the house where Kemal Ataturk was born and the Turkish Consulate. This news was published in the Turkish newspaper, *"Istanbul Express"* As a result a mob organised and directed by the Turkish authorities spread terror and fear in the streets of Istanbul against the Greek minority by vandalising and pillaging anything

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[86] (Order of 5.1.1955, Protocol No. A 202).

[87]See, Legislative Decree No. 1109(FEK A' 17, 1972) "In regard to the changes, additions and replacements of the Legislative Decree 3065/1954 and the Regulations of any Issues relating to the Education of the Muslim Minority in Western Thrace"

[88]Alexandris, *op.cit.*, pp. 495-515.

[89] *Ibid.* pp. 497-504. These events took place while Greece, Turkey and Great Britain were negotiating the issue of Cyprus in a three-day conference.

that was Greek.[90] According to the telegraph sent by the American Consul-General to the Department of state: "The destruction was completely out of hand with no evidence of police or military attempts to control it. I personally witnessed the looting of many shops, while the police stood idly by or cheered with the mob."[91]

Six years later, after a military coup, a Turkish court tried Adnan Menderes, the Prime Minister of Turkey on various charges.[92] During the court proceedings, strong and irrefutable evidence was presented that the main perpetrators of the anti-Greek violent attacks were Adnan Menderes and the Turkish Minister of Foreign Affairs Fatin Zorlu.[93] The Turkish court held that the government of Menderes was the main perpetrator of the violent attacks that took place in Istanbul in order to incite and justify anti-Greek violence in Turkey. The Court also found that the bombing in Thessaloniki had been ordered by Prime Minister Menderes and others in his government to incite and justify anti-Greek violence in Turkey.[94]

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[90] *Ibid.* According to official evidence, sixteen Greeks lost their lives, thirty-two were seriously injured and two-hundred Greek women were raped. Moreover, according to official statistics, two-thousand houses were vandalised and robbed, four-thousand three-hundred and forty-eight stores were destroyed, twenty-seven pharmacies, twenty-one factories, one-hundred and ten hotels and restaurants were destroyed during the night of the 5th and 6th of September. The violent demonstrations against the Greek minority also had as a result the destruction of seventy-three churches, two monasteries, fifty-two Greek schools and five sports associations. However, the most horrific act of violent and disrespect was the vandalising of Greek cemeteries and the murder of a ninety year old priest. The damages were estimated by the Turkish authorities to be 69, 578, 744 Turkish pounds of that time. However, according to the World Church Council, in November 1955, the damages caused to the Greek churches were 150 million dollars. Despite the continuous reassurances from the Turkish Government regarding the restoration of damages, a symbolic amount of only three million Turkish pounds was pad to the minority institutions.

[91] See, Helsinki Watch Report, *op.cit.*, p. 8. A subsequent foreign service dispatch sent from the American Consulate in Istanbul to the Department of State on September 27, 1955 stated : "A survey of damage inflicted on public establishments of the Greek Community of Istanbul during the rioting on the night of September 5-6 shows that the destruction caused has been extremely widespread. In fact, only a small percentage of community property appears to have escaped molestation. Although, there are as yet no figures available assessing the damage sustained, the number of establishments attacked and the nature of the destruction caused in the course of the night under reference convey a clear picture of the scope of the devastation. In most cases, the assault on these establishments involved a thorough wrecking of installations, furniture, equipment, desecration of holy shrines and relics, and looting. In certain instances, serious damage was inflicted on the buildings themselves by fire." A British journalist reported that the Greek neighbourhoods of Istanbul looked "like the bombed parts of London during the Second World War." See, Daily Mail London September 14, 1965, quoted in Christos P. Ioannides, Turkey's Image, (New York: New Rochelle, 1991) p. 118.

[92] Alexandris, *op.cit.*, p. 500.

[93] *Ibid.*

[94] Alexandris, *op.cit.*, p. 501.

The government of Menderes attempted to relieve itself of any responsibility by blaming the attacks on the communists, who organised the overthrowing of the civil regime in Turkey.[95] Finally, the Turkish government offered compensation to those whose property had been destroyed or damaged. Although there are no official statistics some thousands of Greeks left Istanbul following the riots. [96]

The position of Turkey remained advantageous over that of Greece, regarding their respective minorities due to the high social status and education of the Greek minority in Istanbul and the presence of the Ecumenical Patriarchate.[97] In particular, the valuable property of the religious, educational and charitable institutions as well as the excellent social structure and organisation of the Greeks in Turkey could not be easily compared with the social structure and collective organisation of the Muslims in Western Thrace. Accordingly, Turkey used a variety of means to suppress the Greek minority whereas the Greek government maintained a more positive position for the maintenance of friendly relations between the countries and the security of the Greek minority in Istanbul.

With the beginning of the Cyprus crisis at the end of 1954 and the revival of the Greek-Turkish antagonism, the Turkish government brought once more to the political scene the minority issue. According to the Turkish calculations, the pressure used upon the Greek minority and the Ecumenical Patriarchate would make the Greek government more amenable over Cyprus, thus, since, 1955 the minority issue has been a central focus of both governments.

The next major historical event against the Greek minority in Istanbul occurred in 1964. On March 16 1964, Turkey declared that the 1930 Greek-Turkish Covenant of Friendship was no longer valid, because it did not correspond to the new circumstances.[98] Accordingly, the Turkish authorities began to deport from Turkey all Greeks who had Greek citizenship on the grounds that they were dangerous to the "internal and external" security of the country.[99] In September 1964, the Greek

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[95] *Ibid.*
[96] *Ibid.*, pp. 501-504, Helsinki Watch Report, *op.cit.*, p. 8.
[97] *Ibid.*, p. 497.
[98] Alexandris, *op.cit.*, p. 510.
[99] *Ibid.* At this point, it needs to be reminded that the Greeks, who were allowed to stay in Istanbul, according to the Treaty of Lausanne as being "established" in 1927 were numbered at 26, 431. This number gradually decreased until the total decline of the Greek minority in 1964-1965.

government applied to the United Nations Security Council in order to examine the massive deportations of the Greeks from Istanbul.[100]

But, the Greek government did not strongly emphasise on a bilateral or international level its most basic legal claim. The study of the Treaty of Lausanne and the Lausanne Convention Concerning the Exchange of Greek-Turkish Populations[101] in 1923 specifically provided for the right of the Greek citizens, who were established there before 1918 to stay in Istanbul. Similarly, the Convention of 1930, regarding the establishment of the Greeks in Turkey mostly referred to the Greek citizens, who within the context of the Greek-Turkish friendship wished to remain in Turkey.[102] Accordingly, the Convention of 1930 simply strengthened the right of the Greek citizens, who under the terms of the Treaty of Lausanne had remained in Turkey.[103] Therefore, Turkey had a right only to deport those Greek citizens, who had been established in Istanbul after 1930.

The deportation of the "established" Greek citizens in Istanbul with their families, could not take place without violating the Convention Concerning the Compulsory Exchange of Populations between Greece and Turkey, since only under prescribed circumstances could these deportations occur legally.[104]

It is estimated that over a thousand Greeks were expelled, most on a few hours' notice. According to the Helsinki Watch Report, they were only permitted to take with them "twenty-two dollars and a one suitcase of clothes".[105] In a very short period after that, another five thousand were expelled.[106] After September 1964, Turkey did not renew any residence permits of the Greek citizens. According to the Turkish newspaper, "*Cumhuriyet*" thirty thousand Turkish nationals of Greek descent had left permanently, in addition to the Greeks who had been expelled.[107] A consequence of the massive deportations of the Greek citizens was the seizure of their property

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[100] The Greek government to the General Secretary of the United Nations U.N. Security Council/S/5941.
[101] Legislative Decree 25.8.1923(FEK A' 238, 1923).
[102] Alexandris, *op.cit*, p. 511.
[103] *Ibid.* Nevertheless, only a very small number of Greece used the provisions of the 1930 Covenant and established themselves in Turkey after 1930.
[104] *Ibid.*
[105] See, Helsinki Watch Report, *op.cit.*, p. 9.
[106] Alexandris, *op. cit.* , pp. 511-512.
[107] *Ibid.*, p. 512.

according to the decision of the Turkish Ministerial Council that prohibited all Greek citizens from any legal transactions. [108]

The deportations of the period between 1964-1965 did not only affect the Greek citizens of Istanbul but also all members of the Greek minority. The family, professional and historical ties between these two groups were quite strong so that in practice the deportation of the Greek citizens meant the simultaneous exodus of the same number of minority Greeks. A series of new prohibition decree regarding the educational system and the charitable institutions of the Greek minority played a major role in the exodus of the Greeks from Istanbul.[109]

After the military intrusion of Turkey into Cyprus in 1974, the number of the Greek minority in Istanbul again decreased dramatically.[110] They continued to suffer ethnic and religious persecution and discrimination. In the years that followed, many members of the Greek minority, who although had Turkish citizenship, in fear of losing their lives and property, left Istanbul and emigrated into Greece and other parts of the world. The continuous persecution of the Greek minority in Istanbul and the Cyprus affair had serious repercussions for the inter-state relations of Greece and Turkey.

During the dictatorship rule in Greece the government undertook a series of restrictive measures against the members of the Muslim minority, who felt victims of a "double oppression".[111] As Greek citizens they received several restrictions in their public life but as members of a minority group they suffered further violations, especially against their social and economic rights. Such discriminatory measures were affected systematically on the basis of strict military control of the minority institutional organs, especially through administrative measures.

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[108] *Ibid.* See, Turkish Ministerial Decree 6/3807/1964, which ordered the seizure of all real property and bank accounts belonging to Greek citizens. Ministerial Decree No. 3706/1964 prohibited Greek citizens from acquiring real property in Turkey.

[109] *Ibid.*

[110] Alexandris, *op.cit.*, p 515. Similarly, the number of the Greek population in the islands of Imbros and Tenedos has greatly decreased.

[111] Troubeta, *op.cit.* p. 48, Dia Anagnostou, "Collective Rights and State Security in the New Europe: The Lausanne Treaty in Western Thrace and the Debate about Minority Protection" Konstantine Arvanitopoulos, Security Dilemmas in Eurasia, (Athens: Institute of International Relations of Panteios University, 1998) pp. 119,129.

Firstly, the right to purchase immovable property was obstructed, according to a law that had been inactive for a very long period of time.[112] This law prohibited the purchase of land without government permission. Moreover, business licenses, tractor ownership, bank loans, building licenses were provided with great difficult to the members of the Muslim minority. The government interventions were extended into several aspects of the community life of the Muslim minority in Western Thrace, in particular in regard to the regulation of the *Vaklfar* property.[113] The military government dismissed the elected members of the *Vaklfar* and appointed people of their own personal choice. The adoption of these adverse measures aimed towards the emigration of the nationalist members of the minority, who were promoting the interests of Turkey in the creation of an ethnic minority within Western Thrace.[114]

In 1971, the Turkish government ordered the closing of the Halki Patriarchal Academy of Theology.[115] The Turkish government closed the Academy according to Law 625/1965 on Private Higher Education Institutions, which provided that private religious institutions could no longer function in Turkey. This measure was implemented pursuant to a Constitutional Court decree of January 12, 1971, which nationalised private institutions of higher education. The closing of the Academy was a serious problem for the Greek minority in Istanbul. Many priests had received their religious training in the Halki Academy and had served in different parts of the world. More importantly, according to Turkish law, the Patriarch as well as the other clergy had to be Turkish citizen. As a consequence, candidates for the priesthood are now obliged to receive their training abroad and many do not return to Turkey.

At the end of the dictatorship, the Greek-Turkish relations entered a new era of tension. The main point of conflict was the issue of the Aegean Sea.[116] With the new crisis, the issue of Cyprus (1963) was temporarily set aside. However, after the Turkish military intrusion in Cyprus (1974) and ever since, it has become a major factor in regulating the Greek-Turkish relations. The region of Western Thrace

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[112] Law No. 1366/1938 was enacted during the dictatorship period of Ioannis Metxas and was mainly, directed against the political opponents of the regime.
[113] Troubeta, *op.cit.* p. 49. For a greater analysis regarding the vaklfar property of the Muslim minority, see Appendix D: An Analytical Description of the Religious and Civil Duties of the Mufti of Western Thrace and Greek Civil Law"
[114] *Ibid.*
[115] *Ibid.* See, also, Alexandris, op. cit. , p. 515.
[116] Troubeta, *op.cit.*, p. 50.

constituted the only "terrestrial border zone" with Turkey, a fact which urged Greece to view this region as a region of "high national security" with a very sensitive and complex political and population balance.[117] Thus, Greek policy once more connected the Muslim minority with the wider national issues, namely the security of the eastern borders. The Turkish policy connected the Muslim minority with its ambitious views in the Balkans.[118]

Under these circumstances, Western Thrace was placed at the centre of Greek policy, especially during the second half of the 1970s. At the same time, the "issue of Thrace" was created.[119] This includes two fundamental aspects, firstly the economic and social disadvantage of the region and the imminent danger of the decrease of the Greek-Christian population.[120] The decline of Western Thrace is attributed to the development model after the Second World War, which aimed at upgrading the big cities in Greece such as Athens and Thessaloniki. Accordingly, Western Thrace is one of the poorest regions in Greece. In addition, the fact that it constitutes a region of high national security contributed towards its closed social and economic character. In order to socially and economically upgrade the region of Western Thrace, the Dimokrateio University of Thrace was established. The establishment of the university aimed at the development and improvement of the intellectual and cultural life of the region as well as to improve the local economy. [121]

In the middle of the 1980s, the first minority political parties began to appear in Western Thrace.[122] The treatment of the minority issue and its placement in the arena of the Greek-Turkish relations greatly affected the political behaviour of the members of the Muslim minority. In particular, the Muslim minority established a political

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[117] *Ibid.*, pp. 50-51.
[118] *Ibid.*
[119] *Ibid.*, p. 52 .
[120] Gionis G. "Research on the Progress and Employment Status in Western Thrace.", Ethnos, March, 23, 1992, Kakaouli Eirini, "Research on the Industrial Development of Western Thrace.", Kathimerini, April, 2, 1994., Tziafetas G., "The Significane of the Decrease of Child Birth in Western Thrace", Elefthero Vima, July, 9, 1988, Michaelis Dimitris, "The Demographic Problem of Western Thrace", Mesimvrini, October 21, 1991.
[121] *Ibid.*
[122] D. H. Dodos, The Electoral Geography of the Minority: Minority Parties in Southern Balkans: Greece, Bulgaria, Albania, (Athens: Exadas, 1994) pp. 29, 64 In the municipal elections of 1985 the minority political party in Xanthi, "Peace" participated, whereas in Komotini there was an independent candidate participating in the elections, Ahmet Sadik (Guven) .

leadership of a 'Turkish-ethnic' character.[123] The 'politicisation' of the Muslim minority gained great significance and led to a demand for the collective identification as a 'Turkish' minority [124] despite the provisions of the Treaty of Lausanne as well as the internal ethnic differentiation of the minority.

The Turkish government, allegedly, played an active role in those times by providing advocacy and economic assistance for various purposes and initiatives through local organised groups and networks in the region of Western Thrace. This network operated through the Turkish Consulate of Komotini, which had connections with the minority's leaders such as the majors of communes, the members of the Prefecture Council and members of minority organisation, such as the Association of Minority Professionals.[125]

The influence of the minority political parties in Western Thrace was increased at the end 1989.[126] In particular, during the June 1989 parliamentary elections the independent minority deputies (known as the "independents" ("*anexartatoi*") made several statements claiming that the Muslim minority had suffered discrimination and suppression in the hands of the Greek authorities. According to the statement of the late Ahmet Sadik, who was elected twice as independent minority deputy in the district of Rodopi, the aim of these parties was to represent and safeguard the rights of the Muslim minority.[127]

These 'independent' parties played a major political role in the relations between the Muslim and the Christian elements in Western Thrace, the minority and the state as well as between the inter-state relations of Greece and Turkey. In addition, the action of the 'independent' minority parties managed to divide the minority between the "extreme nationalist" segment and the more "moderate-reformist" one.[128] The action

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[123] Kotsiolis Ap. "Research on Anti-Greek Declarations in Komotini" Eleftherotypia September, 6, 1989, Kritsinis Kostas, "The Foreign Policy of Turkey Regarding the Muslim Minorities in Greece, Bulgaria, Yiougoslavia and Albania: The Role of Orthodoxy", To Ethnos, November, 27, 1991. Legeris Ilias, "The Muslim Minority", Estia, May, 2, 1988, Ligeros Stavros, "The Turkish Propaganda within the Muslim Minority of Western Thrace" Eleftherotypia", February, 14, 1993.

[124] See, Chapter five, *infra* .sections 5.1 and 5.2.

[125] Anagnostou Dia, "Breaking the Cycle of Nationalism.: The EU, Regional Policy and the Minority of Western Thrace." Southern European Society &Politics Vol.6, (2001), No. 1, pp. 104-108.

[126] *Ibid.* Chapter five, *infra,* sections 5.1 and 5.2.

[127] Simeon Soltaridis, Western Thrace and the Muslim Minority: What is exactly happening? (Athens: Nea Sinora-A.A. Livani, 1990) pp. 25-26 , in particular see the declarations made by Ahmet Sadik in "Elefterotypia", 9/6/1989 and 16/6/1989.

[128] Anagnostou, (1998), *op.cit.* p. 133.

of the independent parties did not represent the free expression of the whole of the Muslim minority but only a segment.

There are two significant factors, which tend to influence the position of the Muslim minority in Western Thrace. The relations between the Christians and the Muslims in Western are mostly harmonious and have learned to co-exist peacefully throughout the years. However, the activities of extreme nationalist groups, from both sides, often tend to disturb the relations between the Christians and the Muslims.[129] In addition, the interference of third parties such as Turkey, in the internal affairs of the Muslim minority adversely affects the status and rights of the minority as well as its relations with the state and the majority population.

The minority political deputies, who had joined with the other national (Greek-Christian) parties strongly opposed the formation of such groups. They claimed that the Turkish government and press in connection with the Turkish Consulate of Komotini were promoting these parties.[130] For example, they claimed that the Turkish press and media assisted the "independents" in their campaign by broadcasting them daily on Turkish satellite television that most Muslims in Western Thrace were watching. In doing so, the Turkish press and media was encouraging (or even dictating) the minority to vote for the "independents".[131] They further argued that the "independents" used the ethnic, economic and emotional bonds the minority had with Turkey to win them over during the election periods.

This tactic had detrimental consequences for Greek-Turkish relations as well as for the rights and interests of the Muslim minority. During the parliamentary elections of November 1989, several disturbances occurred in Komotini between the Christians

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[129] Tassos Kostopoulos, Dimitris Trimis and Dimitris Psarras , "Research Regarding Nationalism in Thrace: The Relations between the Christians and the Muslims in Western Thrace" Typos tis Kiriakis , May 23, 1993, pp. 200-205.

[130] *Ibid.*, pp. 30-31. Several such statements were made by minority deputies, who belonged to the two main political parties, like Orhan Hazibrahim and Ibrahim Onsounoglou. However, the alleged fact that the independent political parties were actually being supported by Turkey has never been clearly proven. But in any case, both the minority press and the Turkish media had closely observed the parliamentary elections of June 1989, November 1989 and April 1990 and had demonstrated a strong interest towards those groups. In particular, several members of the minority had claimed that they were pressurised into voting the independent parties and those who opposed to such pressure, their names were put in the so-called "black list" and were threatened by the Turkish Consulate of Komotini, that they would not grant them visas to travel to Turkey and would also terminate the studentships of their children studying at Turkish universities. Thus, they were living in a state of terror

[131] *Ibid.*

and the Muslims.[132] This was mainly, due to the persistent and provocative action of the "independents", which seriously affected the relations between Greece and Turkey and disturbed the climate of good faith and co-operation of the minority and the state. However, the relations between the Christians and the Muslims gradually improved in the region of Greek Thrace and they began to live together peacefully again.

During the early 1990s, the Greek government as a result of extremist action during the previous years with the Muslim minority adopted a more positive approach towards its minority policy in compliance with its international obligations for the protection of human rights. The Muslim minority was for the first time, viewed as a source of "cultural and social enrichment" and its integration as an "essential precondition for the region's development."[133] The principles of equality and equal protection of the law were introduced within the Muslim minority in Western Thrace as well as a series of legislation aiming to improve the educational, religious and socio-economic status of the members of the minority.[134]

In particular, the Prefecture Council was changed into a directly elected institution, which allowed for the representation and participation of the minority in the decisions regarding the region's development and local problems.[135] The elected leaders of the minority in the Prefecture Council adopted a more realistic and effective approach towards resolving the minority's affairs. They developed a strong interest for improving the minority's socio-economic status and willingness in co-operating with the new institutions in order to solve the minority's problems. However, despite the strong interest the minority leaders showed towards the minority's integration into the Greek society, stemming from a diversity of views from the minority, the

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[132] See, Chapter five, *infra*, sections 5.3 and 5.4.
[133] Anagnostou (2001)*op.cit.*, p. 110.
[134] In contrast, the Greek minority in Istanbul suffered continuous ethnic and religious persecution and its size and number decreased dramatically until recent times. The Greek government, since the early 1990s has made concentrated efforts to incorporate a minority policy in Western Thrace for the religious and cultural rights of the members of the Muslim minority, which as a result had the increase of the size and number of the minority and the enjoyment of a series of legislation for the protection of minority rights on a national and European level. However, this does not mean that mistakes were not made in the past, which must be rectified and be used as examples for the future protection of human rights and minorities in Greece. For example, some serious problems still persist in the area of education and freedom of religion as it will be described in chapters six and nine.
[135] Anagnostou (2001) *op.cit.*, p. 110.

"independents" declared that political solidarity among the members of the minority and unity with Turkey could guarantee cultural autonomy for the Muslim minority.[136]

Several members of the minority did not share the same views on this matter but rather expressed heavy criticism for the hegemonic role of Turkey in the minority's internal affairs as well as serious doubts regarding its ability to solve their problems.[137] In any case, in Western Thrace the regional and prefecture local government's institutions have managed to create a space where both Christians and Muslims can work together for the development and integration of the minority within the Greek society as well as for the overall development of the region of Western Thrace.

In Greece one problem in implementing the articles of the Treaty of Lausanne has been the variations of the state in the interpretation of its obligations. According to the comments made by Professor Christos Rozakis:

> In Greece two schools of thought have emerged on the semantics of the words 'Muslim minority'. The one which is enunciated during periods of crisis in relations between the two states, attempts to limit the nature of the minority to its religious constitutive aspect, and hence to also limit the protection to the religious and linguistic rights provided in the relevant clauses. The other looks at the minority as an ethnic group. It considers its members as being of Turkish origin. It is not surprising the latter school flourishes in the rare periods of rapprochement between the two countries.[138]

Greece is still bound by the Treaty of Lausanne, which was signed after the end of World War I, but as has been indicated, the protection provided by the Treaty of Lausanne of may not correspond to the current needs and demands of the international community. In any case, if one wants to interpret the Treaty of Lausanne, *stricto sensus* they must be called Muslims.[139] The Treaty of Lausanne attributes rights to

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[136] Soltaridis, op. cit., pp. 177-181. Several such statements were made by the "independents" during the parliamentary elections of June 1989 and April 1990, although peace and order had prevailed in Western Thrace and no violent demonstration occurred like the ones in the elections of November 1989.

[137] Anagnostou (2001), *op.cit* ,.pp. 110-111.

[138] Christos Rozakis, "The International Protection of minorities in Greece", Kevin Featherstone & Kostas Ifantis (eds.), Greece in a Changing Europe: Between European Integration and Balkan Disintegration , (Manchester: Manchester University Press, 1994) pp. 96-116.

[139] See, Human Rights Watch "The Turks of Western Thrace: Denying Ethnic Identity" Human Rights Watch Report, 2000, p. 1. A statement by the late deputy foreign minister, the late Mr. Yannos

Greek-Muslims independently of their ethnic or cultural identity. If one examines the socio-political context in which the text of the Treaty of Lausanne was formed, the term "Muslim minorities", implies a common ethnic character. Nevertheless, the practical implementation of the legal rights provided for the members of the Muslim minority in Western Thrace demands a more realistic tactic. Such practice would have to be based on the realistic social, ethnic and linguistic population facts as well on the internal social relations within the Muslim minority.

4.6: Concluding Remarks

The issue of minorities in Greece and Turkey is highly complex mainly due to its political and historical roots. It has not been easy to reach a long-lasting and effective solution. There seems to exist a strong sense of nationalism in Greece and Turkey, which does not leave much space for a constructive dialogue between the two countries in discussing minority issues. It seems that there is always a potential threat of a 'national awakening' and 'ethnocentrism' in both countries, which is why most attempts of rapprochement or historical compromise between Greece and Turkey quite often do not succeed.

Under such circumstances, the development of an effective solution to minority issues is limited. It is usually restricted to short-time solutions, which do not seem to serve any effective purpose. During periods of crisis between Greece and Turkey the members of the Muslim and Greek minority seem to suffer from severe administrative difficulties, intolerance and discrimination by the state authorities. The existence of such adverse measures seriously affects the members of the Muslim minority in Western Thrace and the members of the Greek minority in Istanbul.

The principles of equality and non-discrimination should be firmly established within the Muslim minority. Accordingly, the members of the minority will feel secured and

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Kranidiotis: "In Greece we do not speak of a Turkish minority; we call it Muslim minority. We feel this term, Turkish, gives them an ethnic character of 'Turkish' while downgrading other elements that are not Turkish (such as Pomaks and Gypsies). We have ratified the code of self-identity. We will wait for the decisions of the European Court of Human Rights.... We have been tolerant and are becoming even more tolerant. *Stricto sensus*, if one wants to interpret the Lausanne Treaty they must be called Muslims. We are respecting however the different elements of the Muslim minority. We would like to see what the Commission and what the Court of Human Rights will say, if we should call them Turks."

protected in the Greek State and will not resort to external powers such as the Turkish government to represent or protect their rights. Only under such circumstances, can 'true' and 'factual' equality be achieved for the Muslim minority according to the standards set by the international community regarding the protection of human rights, including minority rights.

The education provided to the Greek minority and the Muslim minority is of a low level, which might be a strong indication that the implementation of the Treaty of Lausanne has not resulted in the effective protection of the minority rights due mainly to the principle of reciprocity and the level of inter-state relations between Greece and Turkey. Under these circumstances, a review of the Treaty of Lausanne of Lausanne is required or even its replacement by current international human rights treaties protecting the rights of the minorities.

CHAPTER FIVE: THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND GREEK JUSTICE

5.0: General Background

The practice of the Greek courts has not always been in accordance with the principles of pluralistic democracy, human rights and the rule of law regarding the existence and rights of minorities. A number of human rights instruments under the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE) as well as the United Nations deal with basic civil and political rights. They among other things protect the right to freedom of expression, the right to a fair trial and freedom of peaceful assembly and association.

The primary focus of this chapter will examine and analyse the judicial practice of the Greek authorities in dealing with minority cases. In particular, an examination will be provided on a case study basis regarding the implementation of the rights of the members of the Muslim minority in Greece within the context of the European Convention on Human Rights (ECHR).

The Greek government has ratified the ECHR[1], which is directly applicable on national law. Nevertheless, Greece has been found in breach of its international obligations under the ECHR on numerous occasions. The most common cases concern violations of the rights to freedom of expression, freedom of association and assembly, freedom of movement and the right to fair trial. [2] Although the ECHR does not contain a specific article on minority rights such as Article 27 of the International Covenant on Civil and Political Rights, thus, there is no direct way that minorities might claim minority rights at the Court, nevertheless the Court has stated that member states are

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[1] The European Convention on Human Rights, was signed in Rome on November 4,1950 and entered into force on November 3, 1953. In regard to an analysis and understanding of the European Convention on Human Rights, see, Harris D. J., M. O' Boyle and C. Warbick, Law of the European Convention on Human Rights, (Edinburgh: Butterworths, 1995) Janis Mark, Richard Kay & Anthony Bradley, European Human Rights Law- Text & Materials, (Oxford: Clarendon Press, 1996).

[2] Giakoumopoulos Christos, "The Minority Phenomenon in Greece and the European Convention of Human Rights." Konstantinos Tsitselikis and Dimitris Christopoulos, The Minority Phenomenon in Greece, Athens: Kritiki & KEMO, 1997) pp. 45-62.

under an obligation to uphold "international standards in the field of the protection of human rights and minority rights."[3]

5.1: Civil Law Cases

The most serious judicial interventions against the civil rights of the members of the Muslim minority mostly concern the right to freedom of association and freedom of expression, including the right to self-identification. Most of these cases have one common characteristic, the prohibition of the terms "Turkish" or "Turkish-Muslim" to describe the Muslim minority in Western Thrace. In practice, the decisions taken by the national courts most often constitute a partial application of the rights of the Muslim minority as well as discriminatory treatment. However, most importantly such decisions violate fundamental human rights established in the Greek Constitution and the European Convention of Human Rights.

5.2: Freedom of Association-The Case of the Two Unions in Xanthi and Komotini

Several international human rights instruments make references to basic civil and political rights in safeguarding the rights to freedom of expression and freedom of association. The right to freedom of association is established for all the individuals under the jurisdiction of the Greek State. In addition, the right to freedom of association is guaranteed according to several international instruments, which Greece is a party to. Under Greek law the right to freedom of association is provided by Article 12(1) of the Constitution, which states that: "The Greek citizens have the right to form associations or non-profitable associations and unions in compliance with the law. The right to freedom of association can never become dependent on national law without previous permission."

The attribution of the right to freedom of association only to Greek citizens should not be seen as a legal restriction towards non-citizens, since Article 11(2) of the European

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[3] See, Denizci v Cyprus, 25316-25321/94 & 27207/95, Eur.Ct.Hum.Rts. (Fourth Section) 410 (2001). See, also Geoff Gilbert, "*Minority Rights Jurisprudence of the European Court of Human Rights*" Vol. 24, Human Rights Quarterly, No. 3 (2002), p. 737.

Convention does not allow any kind of restrictions except as "prescribed by law" and "necessary in a democratic society".[4]

Article 40 of the Treaty of Lausanne allows the members of the Muslim minority, "to establish, manage and control any charitable, religious and social institutions." There exist a substantial number of associations, unions and institutions established by the members of the Muslim minority with a view of preserving their cultural heritage, religion and culture.[5]

The state authorities have, nevertheless, often restricted the exercise of the right to freedom of association of the members of the Muslim minority. For example, in 1936 and 1938, two minority unions were formed: the "Union of Turkish Teachers of Western Thrace" and the "Union of Turkish Youth of Komotini" respectively. However, during the function of both unions, the prefect of Rodopi lodged an application against them by reason of the use of the terms "Turk" and "Turkish" in their titles. The Court of First Instance of Rodopi (*Polimeles Protodikeio Rodopis*) [6] admitted the application and the unions were dissolved.[7] In its judgement, the Court held that the content and title of both unions referred to ethnic terms ('Turkish') which contradicted the provisions of the Treaty of Lausanne and caused confusion as to the citizenship of the members of the Muslim minority. The administration of both unions appealed against the decision of the Court of First Instance. In 1986, the Court of Appeal of Thrace (*Efeteio Thrakis*) rejected their appeal.[8]

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[4] Article 11(1) of the ECHR, provides for 'right to freedom of assembly and freedom of association'. Whereas, Article 11(2) states, that : "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces of the police or of the administration of the State." See , also Konstantinos Tsitselikis , The International and European Status for the Protection of the Linguistic Minority rights and the Greek Legal Order (Athens : Ant. N. Sakkoulas Publicatios, 1996) p. 363.

[5] *Ibid.* For example, see "Union of Greek-Muslims", "Union of Muslim Teachers of Religious Schools", "Union of Scientists of the Minority of Western Thrace", and "Union of Teachers of the Minority Schools in Xanthi "and" "Supreme Minority Committee".

[6] See, Decisions Nos. 299/1984 and Decision No. 300/1984, respectively.

[7] According to Article 105 of the Greek Civil Code: "A First Instance Court can dissolve a union or association, if it is asked by an administrative body or by one –fifth of the members of the union or the supervising authority. If the union's intentions are different from those set out in its charter or if either its aim or function are contrary to public order."

[8] See, Decision Nos. 158/1986 , 159/1986 , respectively

In November 1987, the Supreme Court of Greece (*Arieos Pagos*) affirmed the Court's of Appeal decision. The Court in its judgement, held that the word "Turkish" referred to citizens of Turkey and could not be used to describe citizens of Greece and that the use of the word "Turkish" to describe Greek Muslims endangered public order.[9] The Court further explained that:

> All Greek citizens, independently of their ethnic origin, religion and language and in whatever manner they have obtained the Greek citizenship, are called Greek and only Greek, the term "Turk" or "Turkish" does not apply to a Greek citizen. [10]

According to the Court's judgement, the use of the terms, "Turk" or "Turkish", leads to confusion regarding the citizenship of the members of the Muslim minority. Thus, the impression created is that there are Turkish schools operating in Western Thrace and not Greek ones where the students are non-Greek citizens. For example, the terms used by both unions to describe their aim and function were "the physical and emotional development of the Turkish youth", "the education of the Turkish Youth of Komotini" and " the teaching of the Turkish language and dialect". In accordance with the judgement of the Supreme Court both the content and aims of the unions were contrary to public peace and the international relations of Greece. The decision of the Supreme Court rests on the premise that one cannot be a Greek citizen and an ethnic Turk at the same time.[11] Thus, the Court concluded that the members of the union are Greek citizens of a Muslim faith.

In this way the Court provided a religious definition for the Muslim minority avoiding or prohibited the reference of the minority in ethnic terms. According to the Treaty of Lausanne the Muslim minority in Western Thrace and the Greek minority in Istanbul are officially recognised as religious minorities, however, the mere identification of the minority collectively as an ethnic group cannot be justified so as to lead to a conviction of its members. The celebrated case must be seen in the wider context of the right to freedom of expression and association protected by the ECHR and numerous international law instruments. The conviction of the members of both

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[9] See, Decisions Nos. 1729/1987 , and 1730/1987, respectively.
[10] *Ibid.*

unions can be seen as a violation of the provisions of the ECHR, Articles 10 and 11, since they cannot be justified as necessary in a democratic society for a legitimate aim or for reasons of national security taking into consideration the circumstances of the case. Greece must obey its obligations under ECHR, which is directly applicable into national law and must avoid using conflicting national legislation that violates fundamental human rights on a European and international level.

However, the Greek government in the case of *Sidiropoulos v Greece*[12] took positive steps to comply with the judgment of the European Court of Human Rights regarding freedom of association under the ECHR. The Court held that the refusal by the Greek courts to register an organisation calling itself "Home of Macedonian Civilisation" violated the freedom of association protected by Article 11 of the ECHR. The Court ruled that the proposed organisation's aims were those of a cultural nature, even its 'true' aim was to establish that there was a "Macedonian" minority in Greece. The ban by the Greek government on the formation of the organisation due to its tile was held to be disproportionate. The Greek government has taken steps to reverse its original position due to the decision of the Court:

> "In order to draw attention of the courts directly concerned, the President of the Supreme Court (*Areios Pagos*) sent on 30 December 1998 a circular to the judicial authorities in the Department of Florina enclosing a Greek translation of the judgment of the European Court in this case. Furthermore, the judgment of the Court was published *in extenso* in the *Syntagma* (Constitutional) legal review and a comment on the judgment can be found in the *Diki* Legal journal. Finally, this judgment was also referred to in the book "*European Convention on Human Rights*". This book has been distributed, freely to all first instance judges, courts of appeal and the Court of Cassation. The Government of Greece is of the opinion that considering the direct effect today given to the judgments of the European Court in Greek law (see notably the case of Papageorgiou v Greece, Resolution DH (99) 714) the Greek courts will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case."[13]

In this regard one may concluded that Greece has taken some positive steps to acknowledge its obligations under the European Convention on Human Rights

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[11] Stephanos Stavros, "Citizenship and the protection of minorities", Kevin Featherstone & Kostas Ifantis (eds.), Greece in a Changing Europe: Between European Integration and European Disintegration (Manchester: Manchester University Press, 1994) p. 120.
[12] *Sidiropoulos v Greece* , 57/1997/841/1047 or 26695/95 Eur.Ct.Hum.Rts, 10 July, 1998.
[13] See, Committee of Ministers, Appendix to Resolution DH (2000) 99, 24 July 2000.

regarding minority rights and also any necessary measures to rectify any legislation that might breach the provisions of the ECHR to avoid future violations.[14]

5.3: Criminal Law Cases

In criminal law proceedings several members of the Muslim minority have been sanctioned due to a partial and quite often discriminatory treatment by the judiciary. In a number of cases both the Court of Appeal and the Supreme Court have strongly denied the existence of an ethnic 'Turkish' minority. Most commonly, the Greek courts have used Article 191[15] and Article 192[16] of the Criminal Code to prosecute minority cases.

Article 191 was formulated during the dictatorship rule in Greece. It was mainly used to criminalise any form of expression or opinion and to restrict freedom of speech. It greatly limits the right to freedom of expression and turns against democracy, the rule of law and human rights. It does not provide for the right to receive or impart information, since in substance its application constitutes an ultimate control from governmental power.[17] Accordingly, the application of Article 191 is a direct violation of the Constitution and international human rights law for the protection of the right to freedom of expression, especially in the case of minorities.

According to Article 191, it is an offence to spread "spread false rumours" capable of disturbing the international relations of the country. The application of Article 191 has essentially been used to prosecute members of the Muslim minority in their efforts to be officially recognised as an ethnic minority on a collective basis. However, the

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[14] Gilbert, *op.cit.* p. 755.

[15] Article 191 of the Criminal Code, reads that: "It shall be an offence punishable by not less than three months' imprisonment and a fine, to spread by any means false information or rumours calculated to provoke anxiety or fear among the citizens or to undermine confidence in the State or to perturb the country's international relations. If the offence is repeated by way of the press, the offender shall be punished by not less than six months' imprisonment and a fine of not less than two hundred thousand drachmas."

[16] Article 192 of the Criminal Code, reads that : "It shall be an offence , punishable by up to two year's imprisonment , save where another provision lays down a harsher penalty , to provoke or incite the citizens , publicly and in a manner whatsoever , to commit acts of violence or sow discord among themselves , thus disturbing the public peace ."

[17] Kourtovik, "Justice and Minorities", Konstantinos Tsitselikis and Dimitris Christopoulous, The Minority Phenomenon in Greece : A Contribution of Social Sciences (Athens : Kritiki, 1997) p. 251.

application of this provision violates Article 14 of the Constitution[18], which provides for the right to freedom of expression in Greece and Article 10 of the ECHR.

According to Article 10(2) of the ECHR, any limitations placed upon the right to freedom of expression must be only applied in a very strict and narrow manner. However, the limitations placed by the state authorities in Greece lead to vagueness and confusion as to the substance of the right protected. In particular, it has quite often been difficult to give a fixed interpretation of Article 191 of the Criminal Code. In most cases considering minority issues, the concept of the term "rumours" or "false information" was never clearly defined.

5.4: The Right to Freedom of Expression-The Case of Ahmet Sadik v Greece (1991) [19]

Ahmet Sadik was a Greek citizen, member of the Muslim minority and lived in Komotini. He was a doctor, publisher of the weekly minority newspaper, *Guven* (Trust)[20] and a member of the Greek Parliament. Ahmet Sadik was an independent candidate of the political party *Guven* representing part of the Muslim minority of Western Thrace, to win a seat in the parliamentary election of June 1989.

The beginning of his political career was marked with a series of criminal prosecutions.[21] During the parliamentary pre-election period of 1989, Ahmet Sadik together with Ibrahim Serif (later "elected" Mufti of Xanthi) published in the newspaper *Guven*, a number of declarations referring to the terms "Turkish" and "Turkish–Muslim" to describe the Muslim minority of Western Thrace. Sadik intended to collect as many signatures as possible from the members of the minority, with view of sening a letter of complaint to several regional human rights

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[18] Article 14(1) of the Greek Constitution states that : "Every person may express and propagate his thoughts orally , in writing and through the press in compliance with the laws of the State ."
[19] Series A, Vol. 10, Eur.Ct.H.R., No. 19, (1996).
[20] Talip Kucukcan, "Re-Claiming Identity: Ethnicity, Religion and Politics Among Turkish-Muslims in Bulgaria and Greece" Vol. 19, Journal of Muslim Minority Affairs, No. 1, (1990) pp. 63-64. Initially, Ahmet Sadik established the "Friendship and Equality Party" (FEP) on September 13, 1991. Nevertheless, due its small numbers, to was not able to meet the 3% requirement for a political party to enter into Parliament, in the elections of 1993. Therefore, Ahmet Sadik and his followers, chose to enter the elections as independent candidates, represented in a list called "Independent Trust List"
[21] Kourtovik, *op.cit.*, 259.

organisations, (the OSCE and the Council of Europe) claiming the suppression and discrimination the Muslim minority had suffered from the Greek government.[22] In doing so, Sadik intended to appeal to the ethnic consciousness and religious feelings of the members of the Muslim minority. [23]

In these declarations and in several speeches Sadik gave in the area of Rodopi, he stated that: "The Turkish community of Western Thrace, especially since 1974, has been through some unhappy experiences at the hands of political parties. The Greek Government ignores the human rights of the Turkish-Muslim minority."[24]

Sadik was referring to Article 40 of the Treaty of Lausanne by establishing the fact that there are only two high schools in the whole of Western Thrace, one in Xanthi and one in Komotini:

> In our world where education and training are so highly developed your schooling was cut short. You did not even have a schoolbook when ethnic-Greek children were getting a modern education and taking advantage of the cultural and technological developments of their time. Access to higher education is barred, since there is not a possibility for the Turkish-Muslim students to take university exams in the Turkish language. [25]

The Criminal Court of Rodopi (*Trimeles Plimeliodikeio Rodopis*) convicted Ibrahim Serif and Ahmet Sadik of contravening Articles 162[26] and 192 of the Criminal Code.[27] The Criminal Court of Rodopi convicted them on following charges[28]:

> By false information and defamatory declarations about certain candidates, (both the accused) deceived the electors in order to induce them to change the way they intended to vote. In particular the accused in the declarations made frequent repetitions of the words "Turk'", "Turkish Muslim minority of Western Thrace" and "Turkish Community" used to designate the Muslim minority in Western Thrace by describing the Muslims "Turks"

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[22] *Ibid*
[23] Simeon Soltaridis, Western Thrace : What is exactly happening, (Athens: Nea Sinora, 1990) p. 20.
[24] See , note 12, *supra*, p. 1643.
[25] *Ibid.*, p. 1644.
[26] Article 162 of the Criminal Code states that : "It shall be an offence, punishable by up to two years' imprisonment and a fine, to deceive an elector through false information or defamatory declarations about an electoral candidate or by any other means in order to prevent him from exercising his right to vote or in order to influence his voting intentions.
[27] See, note 12, *supra*, p. 1645.
[28] See, note 12, *supra*, p. 1645.

> instead of "Greek" and the Muslim minority as "Turkish". He provoked and incited the citizens to sow discord among themselves and between the other citizens of Komotini and thus disturbed the public peace. Ahmet Sadik falsely alleged the existence of discrimination against and oppression of the Muslims of Western Thrace by the Greek administrative authorities and of injustices committed to their detriment.

Ahmet Sadik and his co-defendant both conducted their own defence.[29] They stated that their intention, as expressed in those articles, had only been to condemn the oppression of the Muslim minority by the Greek government and to draw attention to the problems the Muslims encountered in their dealings with the administrative authorities. Sadik pointed out that the term "Turkish" has been used for a long time not only in the press but also by the national administrative and judicial authorities.[30]

Lastly, he asserted that the presence of a crowd, which had gathered outside the court was not due to the articles in issue but due to the fact that while the trial was taking place the Muslims' ethnic identity was still being denied. However, the Criminal Court of Rodopi (*Trimeles Plimeliokeio Rodopis*) held that both accused had contravened Articles 162 and 192 of the Criminal Code. The Court convicted them to eighteen months imprisonment not commutable to a fine.[31]

On January 29, 1990 violence broke out between the Christian and the Muslim community in Komotini. The situation worsened with the death of a Greek-Christian citizen allegedly after a clash with a Greek Muslim.[32] Accordingly, it resulted in the increase of fanatism and more violence in the course, which many shops were damaged

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[29] *Ibid,* pp. 1645-1646. While the witness were being questioned their lawyers challenged one of the court's judges on account of animosity he had shown towards the accused and the way he was asking the questions. After deliberating, the court dismissed the challenge, holding that the questions asked by the judge concerned did not go beyond the scope of the bill of indictment and were intended as an objective means of revealing the truth in the case under consideration. The defence lawyers then withdrew from the case and their clients stated that they did not want any other lawyer to be appointed. They conducted their own defence and denied committing the offence charged.

[30] See, note 12 *supra*, p. 1646, Chapter four, *supra*, section 4.5.

[31] See, Decision , No. 75/1990.

[32] See , note 12, *supra*, p. 1647, Kourtovik, *op.cit*, p. 261, Milonas Thalis, "The Nationality of Sadik and Faikoglou : The Two Minority Deputies are Violating the Greek and International Legislation", Kathimerini, December 12, 1991, Mavros George, "What happened in the Municipal Elections in Komotini with the Muslim Candidates?" Kiriakatiki, October, 21, 1990, Marakis Nikos, "Political Games within Thrace", To Vima, January, 31, 1993, Michas Takis, "An Analysis Regarding the Legal Basis of Ahmet Sadik's Claims for the Use of the Turkish Language, according to the Prefect of Rodopi, in the Official Correspondence of the Central Administration." Kiriakatiki Eleftherotypia December, 31, 1992.

in town. The members of the Muslim minority made several applications for the release of Sadik and Serif until their appeal. At the same time, the Greek-Christians of Komotini and the Church were protesting in town for the applications of the Muslim minority not to be accepted.

For the Muslim minority in Western Thrace the date was particularly significant, since a year previously the Supreme Court had forbidden the use of the term "Turkish" to be used in the titles of the two minority unions, the "Union of the Turkish Youth of Komotini" and the "Union of the Turkish Teachers of Western Thrace".[33] Accordingly, in January 1989, the Muslim minority of Western Thrace decided to organise a demonstration in front of the council to express their disapproval of the above judgement. Although, the police had banned the demonstration it did take place but matters got out of hand and violent clashes took place in the town of Komotini.

However, Sadik and Serif appealed against the decision of the Rodopi Criminal Court. The case was referred to the Court of Appeal in Patra (*Efteteio Patras*) for reasons of having to do with the maintenance of order and public safety.[34] On March 30, 1990 the Court of Appeal upheld the Criminal Court's judgement by stating that the accused deliberately used the term "Turkish" to describe the Greek citizens of the Muslim minority contravening the terms of the Treaty of Lausanne. As a consequence, hostility and violence broke out in Komotini between the Christians and the Muslims disturbing the public peace and order and endangering the international relations of Greece.[35] The Court of Appeal sentenced Sadik and Serif to fifteen months and ten months imprisonment commuted to a fine respectively. [36]

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[33] See, note 12, *supra*, p. 1647.

[34] According to Articles 136(c) and 137 (1) and (c) of the Code of Criminal Procedure. In particular, Article 136(c), states that : "The Court responsible according to Articles 122-125 can order to refer a case to another court of an equal level, when there are serious reasons for the impeachment to take place relating to national security and order." Article 137(1) states that: "An impeachment can be ordered by the public prosecutor, the defendant or the plaintiff, or according to paragraphs (c) and (d) of Article 136 by the public prosecutor of a competent court or the judge of the Supreme Court in his own capacity or by the order of the Minister of Justice." Moreover, Article 137(c): "The Supreme Court will always have a meeting when an impeachment is ordered according to Article 136(c).

[35] Klironomou Zefi, "The Co-existence of the Christians and Muslims in Western Thrace" Eleftheros Typos, February, 18, 1993, Soltaridis Simeon, "Interview of Archbishop Damaskinos on the Relations between the Christians and the Muslims", Kiriakatiki Eleftherotypia June, 17, 1990.

[36]See, Decision Nos. 743 and 744/1990 respectively.

Sadik appealed to the Supreme Court (*Areios Pagos*) on October 24, 1990. He maintained that the charges against him were vague and that the national courts should have dismissed the prosecution. He also claimed that the Court of Appeal had not given sufficient reasons for its decision as Greek legislation required. In particular, he argued that the Court of Appeal had not made it clear why the use of the term "Turk" or "Turkish" was *per se* likely to create a climate of hatred or disturb public order. Lastly, he complained that the Court of Appeal did not provide sufficient evidence to link the events that occurred in Komotini and the use of the term "Turkish" to describe the minority, prohibited under Article 191 of the Criminal Code.

The Supreme Court dismissed his appeal on the grounds that Article 192 was adopted for the protection of public order and to uphold the rule of law in a democratic state.[37] Therefore, according to Articles 191 and 192 the offence of "disturbing the citizen's peace" could not be tolerated. The Supreme Court in its judgement described the objective and subjective element of the offence as provided in Article 191 of the Criminal Code. Accordingly, the objective element, the *actus reus* consists of the act of "provoking and inciting citizens to sow discord and thus disturbing the public peace." The subjective element of the offence is the offender's *means rea*, which means he must have acted knowingly and with the intent to provoke or incite the citizens to commit acts of violence, which would result in disturbing the public peace and order.

On the second point of the appeal, the Supreme Court held the Court of Appeal had provided detailed grounds as required by Article 93(3) of the Constitution[38] and Article 139 of the Code of Criminal Proceedings.[39] In particular, the Court explained that the Court of Appeal gave a full and clear account of the facts of the case as established at

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[37] See, Decision No. 281/1991.

[38] Article 93(3) of the Constitution, states that : "Every judicial decision should be reasoned and become publicly known. It is obliged by law to publish the dissenting opinion of the court. There is relevant legislation, which deals with the filing of the possible dissenting opinion of the court as well as for the rules and conditions of its publication."

[39] Article 139 of the Code of Criminal Proceedings, states that : "Every judicial and parliamentary decision, as well as the orders of the examining magistrate and of the public prosecutor, have to give detailed reasons for their decisions. Every convicting decision as well as a parliamentary decision has to specifically refer to the relevant article of criminal law being implemented. Only the repetition of the relevant law is not enough for any such decision to be reasoned. It is compulsory for all decisions, parliamentary decisions and orders to be fully and detailed reasoned, no exceptions are allowed. This not affected by the existence of a relevant law demanding to do so or if any such decisions are finally or impeached or whether their publication is left to the free and uncontrolled discretion of the judge which delivered them."

the trial, which constituted the subjective and objective element of the criminal offence as found in Article 191 of the Criminal Code. Accordingly, the Supreme Court stated that there was no contradiction between the reasons of the Court of Appeal and the operative provisions, since "provoking and showing discord" thus, disturbing the public peace are sufficient to establish the objective element of the offence for which they were sentenced.

More specifically, Sadik's *mens rea* is inherent in the commission of the acts that constitute the offence. It shows that he acted deliberately and knowingly in committing such an offence. Finally, the Court held that both accused were aware that if they attempted to raise this kind of issue in such a sensitive region the peace between Christian and Muslim Greeks would certainly be disturbed, which was indeed what actually happened.

However, the Court did not establish a sufficiently strong link between the terms used in the articles written and distributed by Ahmet Sadik and the disturbances that occurred later on. According to the ruling of the Supreme Court, Article 192 of the Criminal Code does not require proof that the public peace has actually been disturbed. Thus, it is sufficient that the words used could have had that effect. The decision of the Court and its actual reasoning is difficult to defend. This kind of limitation lacks proportionality in protecting the national interests and upholding the right to freedom to expression. In this manner, there are no safeguards to prevent Article 192 as interpreted in a way that would criminalize all forms of political speech.[40]

The judgement of the Supreme Court rests expressly on the terms of the Treaty of Lausanne, that there is only one recognised (religious) Muslim minority and that no

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[40]In a rather peculiar coincidence, the Supreme Court itself, in a previous judgement, (Decision No. 473.1988) used the term "Turkish minority" to describe the Muslim minority and the term "Turkish" to refer to Ahmet Sadik. However, the case was later corrected with Decision No. 1089/1988. In its ruling the Court held that the term "Turkish" and "Turkish minority," were used "wrongly and carelessly", instead of the correct terms "Muslim" and "Muslim minority". Therefore, it was demanded that this mistake was corrected, according to Article 145 of the Code of Criminal Proceeding: "Correction and Completion of a Decisions, an Order and a Court Record", which states, that : "When in a decision or an order a mistake or an omission have occurred, which do not invalidate the previous decision taken by the court, then the judge, who made the decision can order in his own capacity, or can apply to the public prosecutor, if the actual court proceedings do not in substance change or deteriorated ."

"Turkish" ethnic minority exists in Western Thrace. Although Article 45 of the Treaty of Lausanne provides for the protection of the "Muslim minorities to be found on Greek territory", it cannot be used to prohibit the use of any other term to describe the Muslim minority. In addition, it is commonly accepted that the use of the term "Muslim minorities" signifies the existence of three different groups: those of the Turkish ethnic origin (*tourkogeneis*) the Gypsies and the Pomaks. According to international law, a smaller Turkish ethnic-origin minority within a larger religious one appears to exist. [41]

One has to appreciate the difficult task the judges of the Court were faced with due to the particular nature and facts of the case. They had to deal with the 'creation' of an ethnic minority in Western Thrace, since several members of the Muslim minority; although they were Greek citizens strongly claimed that they belonged to a nation different from the rest of the population, which can threaten the national integrity of the state. In essence, the judgement of the Supreme Court ruled that some Muslims might be of Turkish ethnic origin but nevertheless, cannot collectively identify themselves as such.

However, the European Court of Human Rights has stated that freedom of expression "constitutes one of the essential foundations in a democratic society."[42] Accordingly, restrictions to the right to freedom of expression may be used in a strict manner, for example for reasons of national security. If one considers that the judgement of the Court was taken under consideration of national security, the use of a vague and wide interpretation of the limitation to fundamental human rights does not appear to be justified, especially in peacetime. [43]

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[41]Stephanos Stavros, "The Legal Status of Minorities in Greece Today: The Adequacy of their Protection in the Light of Current Human Rights Perceptions", Vol. 13, Journal of Modern Greek Studies, (1995) p. 14, *et.seq.*

[42] See, Handyside v UK, Series A, Vol. 24, Eur.Ct.H.R, (1976),the European Court of Human Rights, at paragraph. 49, held that: "Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive, but also to those that offend, shock, or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society."

[43]Stavros, *op.cit.*, p. 14.

The criminilasation of the expression of such complainants is contrary to the freedom of expression of the members of the Muslim minority. In any case, there is always a possibility for the decisions of the Greek national courts to be reviewed under the provisions of the ECHR by the supervisory authorities in Strasbourg.[44]

5.5: The European Court of Human Rights on the Case of Ahmet Sadik v Greece

Ahmet Sadik applied to the European Commission on July 11, 1991. He alleged that his conviction under national law constituted a violation of the right to right and liberty, (Article 5) the right to a fair trial (Article 6) and the right to freedom of expression (Article 10), religion (Article 9) and association (Article 11) under the ECHR. Ahmet Sadik further held that the treatment of the courts in his case constituted discrimination under Article 14 the ECHR.

The Commission considered that the main issue raised was the question whether there has been a violation of Article 10 and declared the remainder of the case inadmissible. In its report of April 4, 1995, expressed the unanimous opinion that there had been a violation of Article 10 of the ECHR.

Ahmet Sadik claimed that by using the term "Turkish" minority to describe the Muslim minority was exercising his freedom of expression and the restrictions imposed upon by the Greek government are without legal basis.[45] The case proceeded only to be interrupted by the applicant's death in 1995, in Komotini. His wife tried and finally succeeded in continuing the case on behalf of her late husband.

The Greek government contested the right of the applicant's widow and children to continue before the Court the proceedings the applicant had instituted. The government relied on the Commission's case-law that a violation of Article 10 is so closely and directly linked with the deceased applicant's person that his family could not assert any specific legal interest. [46]

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[44] Tsitselikis, *op.cit.*, p. 361.
[45] Series A, Eur.Ct. H. R. Vol. 5, (1996).
[46] *Ibid.*, pp. 1652-1653.

They claimed that the application of the late applicant based on an alleged violation of Article 10 is not transferable to his family, since it does not present a general interest and therefore, the case should be considered and declared inadmissible. Secondly, the Greek Government argued that the petition should be declared inadmissible according to Article 34 of the Convention[47] for non-exhaustion of local remedies. The Government said that the argument that Articles 191 and 192 of the Greek Criminal Code in the present case constituted a violation of the freedom of expression of the applicant had not been invoked before the national courts. Finally, they claimed that any restrictions placed by the national courts on the freedom of expression of the late applicant were within the legal limitations of Article 10(2) of the Convention. [48]

The lawyer for the deceased applicant's family invoked his client's pecuniary interest and the family's personal interest in continuing the proceedings only to be informed whether they were "members of the Greek minority of Muslim faith" or simply "members of the Turkish community". He maintained that the case of Ahmet Sadik went beyond the scope of an individual case, since it concerned the name and cultural identity of an entire minority.[49]

The Court while keeping in mind the Greek's government argument on the non-exhaustion of national remedies considered that Ahmet Sadik's wife and children had a legitimate moral interest in obtaining a ruling that his conviction infringed the right to freedom of expression, which he relied on before the Court.[50] The Court also considered that the late applicant's family had a pecuniary interest under Article 50 of the Convention, according to Ahmet Sadik's conviction by the Criminal Court of Rodopi. Therefore, the Court found that Ahmet Sadik's family had standing to continue with the proceedings on behalf of the applicant.

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[47] Article 26 of the Convention, states that : "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law and within a period of six months from the date on which the final decision was taken."

[49] See, note 12, *supra.* at p. 1653. Ahmet Sadik's lawyer cited the statement made by the Greek Government, before the European Court of Human Rights: "The case concerns important national issues and also raises complex legal problems, since it affects the Muslim minority in Western Thrace."
[50] *Ibid.*, p. 1652..

The Court held that according to Article 26 of the Convention, the supervisory machinery set up by the Convention is subsidiary to the national human rights protection systems.[51] The Court noted that the Convention forms an integral part of the Greek legal system where it takes precedence over every contrary provision of the law.[52] Thus, Article 10 of the Convention is directly applicable in the Greek legal system. Accordingly, Ahmet Sadik could have relied in the Greek courts and complained of a violation of Article 10 of the ECHR.

However, the applicant at no point relied on Article 10 of the ECHR or on arguments to the like effect on domestic law before the national courts dealing with this case. Ahmet Sadik only challenged the charge of disturbing the peace contrary to Article 192 of the Criminal Code. [53] The Court explained that it was not up to the national courts to examine the case on their own motion of the possibility of a violation of the right to freedom of expression.[54] It was specified that it was up to the applicant to bring an express application of an infringement of his freedom of expression. Therefore, the applicant had not exhausted national remedies and the Court could not consider the merits of the case. [55]

The case of Ahmet Sadik is a significant case on two grounds; firstly, regarding the identity of the minority and secondly regarding the right to freedom of expression as protected on a European and domestic level. The mere fact that Ahmet Sadik in his political speeches collectively identified the Muslim minority as an "ethnic Turkish" minority cannot be justified as to lead to his conviction under Articles 191 and 192 of the Criminal Code. The right to freedom of expression is a fundamental human right recognised under the ECHR. The national courts when dealing with minority cases must apply and conform to the provisions of the ECHR rather than using outdated legislation to criminalise all forms of political speech, which ultimately deny freedom of expression. Greece must harmonise its legislation within a European framework of current human rights and norms.

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[51] *Ibid.*
[52] See, Article 28(1) of the Greek Constitution, note 41, *supra.*, p. 1654 , at paragraph 31.
[53] *Ibid.* at paragraph 33.
[54] *Ibid.*
[55] *Ibid.* pp. 1654-1655, at paragraphs 33-34.

Although the case of Ahmet Sadik was declared inadmissible due to non-exhaustion of local remedies, it would have been interesting to examine the decision of the European Court of Human Rights on the right to freedom of expression and the ethnic identity of the Muslim minority. It would have been very useful for the European Court of Human Rights to have analysed the fundamental nature of the right to freedom of expression and the obligation the member states have to honour their obligations under the ECHR. Accordingly, any restrictions placed upon the right to freedom of expression must be made in a very restrictive and limited manner and must not violate the very essence of the right of every individual to freely express his or her opinion within a democratic context.

Greece is a democratic state within the European Union and has a duty to protect and promote freedom of expression and dissent and minority views must be heard without any fear of judicial sanctions. The Greek government must allow some space for a constructive dialogue between members of minority groups and the majority where such matters can be freely discussed and analysed with a view of resolving minority issues in a democratic manner based on the rule of law and human rights. In the contrary situation, freedom of expression will continue to be violated on a domestic level with limited opportunities of progress on the struggle of human rights on a universal basis.

5.6: The Right to a Fair Trial-The Case of Raif Oglu v Greece

The right to a fair trial is provided by Article 6(1) of the European Convention. In particular, Article 6(1) of the ECHR provides that: "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[56] The right to a fair trial plays an important role in safeguarding the civil liberties of individuals within the context of the ECHR. On this point, the European Court of Human Rights has referred to "the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention"[57]

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[56] In regard to the minimum guarantees under Article 6 during criminal proceedings and the use of a minority language, see Chapter 8, *infra*, section 8(3).
[57] See, De Cubber v Belgium, Series A, Vol. 86, Eur.Ct.H.R. (1984) at paragraph 30.

accordingly Article 6 should be interpreted in a generous manner and avoid any restrictive interpretations.

In the case of *Raif Oglu v Greece*[58], disciplinary proceedings were taken against a Muslim teacher working in a minority school in Greece. On February 26, 1987 the Regional Primary Education Board of the Prefecture of Xanthi imposed on Raif Oglu a disciplinary penalty of one year's suspension. According to the Supreme Court's judgement:

> In his capacity as a member of the committee of the Union of Muslim Teachers of Western Thrace he printed and distributed a document, in which he used the term "Turkish teachers" and old Turkish names of villages in breach of international agreements, the laws of the Greek State and a recent judgement of the Court of Appeal of Thrace.

An appeal lodged by the applicant before the Council of State was rejected as inadmissible.[59] The applicant complained to the European Commission of Human Rights that the state authorities had failed to comply with the right to a fair trial under Article 6(1) of the ECHR.[60] He further claimed that the authorities' handling of the case was related to the fact that he was a member of the Muslim minority. He invoked in this connection the principle of non-discrimination as provided by Article 14 of the ECHR.

The Greek government stated that the applicant, since he was rehired and was granted compensation could no longer claim to be a victim within the meaning of Article 26 of the Convention. Nevertheless, the applicant claimed that the compensation for the "real damage" he had suffered was not sufficient. [61]

The European Court of Human Rights held that the applicant instituted two sets of proceedings before the Administrative Court of Appeal. The first resulted in the annulment of the authorities' failure to assign to the applicant any duties and the

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[58] Series A, Vol. 30, Eur.Ct. H.R, No. 7 (2000).

[59] Christos Giakoumopoulos, "The Minority Phenomenon in Greece and the European Convention of Human Rights." Konstantinos Tsitselikis and Dimitris Christopoulos, (eds.) The Minority Phenomenon in Greece : A Contribution of Social Sciences, (Athens : Kritiki & KEMO) p. 57.

[60] Article 6(1) of the ECHR, states that : "In the determination of his civil rights and obligations everyone is entitled to a fair hearing by an independent and impartial tribunal established by law."

second in the annulment of his subsequent dismissal. As a result of these proceedings, the applicant resumed his duties to the minority school where he used to work. He was also compensated in respect of the salary and related benefits he had lost during the time he was dismissed from the school.[62] In these circumstances, the Court ruled that the matter had been resolved and it did not require continuing the examination of the application. The case was therefore struck out in accordance with Article 37(1)(b) of the Convention [63]

In regard to the right to freedom of expression in Greece, in the case of minorities, it may be concluded that a rather restrictive practice has been maintained. This kind of practice is not in compliance with the jurisprudence of the European Court of Human Right regarding minority rights or Greece's international legal obligations. Members of minority must be freely to declare the self-identity for themselves or the group as a whole without the fear of any sanctions or judicial interferences. Such discriminative practices seem to contradict the protection that members of minorities are entitled, including freedom of expression, which is considered a fundamental human right. Although, some progress might be recorded, there is still room for improvement in the treatment and status of minorities in Greece.

5.7: The Right to Freedom of Movement- The Case of Galip v Greece

The right of freedom of movement is protected by Article 5(4) of the Constitution as well as by the provisions of the international treaties that have been ratified by Greece. For example, Article 5(d)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination, guarantees "the right to freedom of movement and residence within the border of the State."[64] The freedom of movement is also protected by Article 2 of Protocol No.4 of the ECHR, however, Greece has not yet ratified the Protocol. [65] Article 5(4) of the Constitution states that:

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[61] See, note 54, *supra.*, p. 89, at paragraph 25.
[62] *Ibid.* paragraph, 26.
[63] *Ibid.*
[64] (G.A. Res. 2106(XX)/21.12.1965), entered into force on January 4, 1969, in accordance with Article 19).
[65]Protocol No. 4 of the ECHR, entered into force on May 2, 1968.: "Securing certain Rights and Freedoms other than those included in the Convention and in Protocol No.1" Article 2(1), states that : "Everyone lawfully within the territory of a State shall within the territory, have the right to liberty of movement and freedom to choose his residence." Whereas Article 2(2), states that : "Everyone shall be

"Individual administrative measures restrictive of the free movement or residence in the country and of the free exit and entrance therein of every Greek shall be prohibited. Such measures may be imposed in cases of emergency and only in order to prevent the commitment of punishable acts, following a criminal court ruling, as specified by law. In extremely urgent cases the ruling may be issued after the administrative measure has been imposed and within three days at the latest; otherwise it is lifted *ipso jure*."

The exercise of Article 5(4) has been quite problematic due to the provisions of Article 19 of Law No.3370/1955. Article 19 differentiated between ethnic Greeks (*omogeneis*) and non-ethnic Greeks (*allogeneis*).[66] The Greek government took a positive step and repealed Article 19 in June 11, 1998. The repeal, however, did not apply retroactively and has been used arbitrarily to deprive the Muslims and other non-ethnic Greeks of their citizenship. Furthermore, the Greek government promised that all those made stateless under Article 19, who still resided in Greece would be granted citizenship.

Successive Greek governments in the past have used Article 19 at the expense of minority members, who as a result were deprived of their citizenship. The application of Article 19 was a gross violation of the principles of equality before the law under Articles 4 of the Greek constitution and Article 40 of the Treaty of Lausanne.

Galip is a member of the Muslim minority living in Komotini. He was initially deprived of his citizenship on the basis of Article 19 for the reasoning that he left Greece without the intention of ever returning back. The Council of State cancelled the decision of the administration of Komotini and Galip was again registered in the registry of Komotini. However, two days later the administration of Komotini revoked his citizenship again on a new basis. This time the explanation given was

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free to leave any country, including his own." Article 2(3): "No restrictions shall be placed on the exercise of these rights other than such as are in accordance with the law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health and morals or for the protection of the rights and freedoms of others."

[66] See chapter three, *supra*, at section 3.2 (A).

that, according to Article 20 of the Citizenship Code the applicant was engaging in anti-Greek activities, which were contrary to the national interests of Greece. [67]

Galip applied to the European Commission of Human Rights against this decision. [68] He claimed that the revocation of his citizenship was a violation of his right to family and private life (Article 8), his right to freedom of religion (Article 9) and expression (Article 10) and his freedom from punishment of retroactive crimes. He further claimed that the decision of the national courts constituted an act of discrimination under the ECHR. The Commission held that the applicant never claimed any of the alleged violations before the national courts, therefore the case was declared inadmissible due to non-exhaustion of local remedies.

5.8: Concluding Remarks

The attitude of the national courts has been quite rigid towards minority cases. The international human rights instruments, which Greece has ratified, including the ECHR are directly applicable into national law and take precedence over any national conflicting legislation. Accordingly, the national courts when dealing with minority cases must apply and conform to the provisions of the ECHR and international human rights law. Article 191 of the Criminal Code was enacted during different times and under a suppressive legal regime that does not correspond to current human rights law for the protection of human rights, including minority rights.

According to the judgments of the European Court of Human Rights the national courts' decisions have violated the right to freedom of expression, freedom of association and freedom of religion. In most cases, the main claim was the ethnic identity of the Muslim minority, which was contested on different grounds by the members of the minority and the Greek government. On this issue, the European Court of Human Rights did not give a precise ruling, since for example, the case of Ahmet Sadik was declared inadmissible for non-exhaustion of local remedies. However, it was

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[67] Article 20(1) of the Code of Greek Citizenship, states that: "Someone can be declared forfeited of the Greek citizenship when: (a) He acquired the Greek citizenship in violation of Article 14 of this Code or when by his own will obtained a foreign citizenship (b) : He has obtained public service in a foreign State (c) : While he stays in a foreign State he acts in the benefit of that State and at the expends of the national interests of Greece ."

held that right to right to freedom of expression is a fundamental human right, which must be protected and safeguarded in every democratic society. Accordingly, the national courts should have examined the case according to the provisions of the ECHR in compliance with Greece's international legal obligations.

A more flexible and positive approach needs to be adopted both by the Greek government and courts in order to protect the rights of minorities in the Greek State. In addition, a set of special measures is required in order to promote the rights of the members of the Muslim minority. This set of special measures should be established within the context of European and international standards of protection regarding minority rights. The Greek government must look beyond the restrictive application of the Treaty of Lausanne and national legislation in the case of minorities in its territory. Thus, it should provide an effective implementation of minority rights in compliance with the international human rights documents it has ratified.

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[68] See, Application No.17309/90, European Commission of Human Rights, (Unpublished).

CHAPTER SIX: THE POSITION OF THE MUFTI IN THE GREEK LEGAL SYSTEM

6.0: General Background

The protection of human rights can be found in numerous international human rights instruments described as an international standard to be followed by all states. Several international instruments contain references to religion, in regard to terms of the principles of equality, non-discrimination, tolerance and respect for other people's religion and faith. However, it was not until after the end of World War II that the principle of religious freedom became an almost "universal" principle of international law and was established in the national constitutions and legislation of states.

International accepted standards protecting freedom of religion entail a commitment to non-discrimination against persons of different faiths and a declaration not to interfere with the right to worship and observance. The freedom of thought and conscience and the freedom to have or adopt a religion or belief of one's choice are protected unconditionally. There is no obligation to reveal one's religion or adherence to a religion or belief. At this point, Article 18 of United Nations Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief[1] can be compared to Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR)[2] on the right to hold opinions without interference. However, when it comes to freedom to manifest religion or belief the situation is quite different. The freedom to manifest religion or belief can be individually or in community with others, in public or in private and it generally encompasses a "broad range of acts".[3]

The Greek government respects the right to freedom of religion for all Greek citizens according to Article 3 of the Constitution.[4] The members of the Muslim minority of Western Thrace enjoy their right to freedom of religion according to the provisions of

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[1] G.A. Res. 36/55/25.11.1981.
[2] G.A. Res. 2200A (XXI) entered into force in March 23, 1976.
[3] Articles 1 and 6 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
[4] See, Chapter three, *supra,* section 3.2 (B).

the Treaty of Lausanne.[5] Their religious freedom is composed of "religious equality" and "freedom of religious conscience".[6] The Greek government allows the implementation of the religious law (*Sharia*) within the Muslim minority. In particular, Article 38 of the Treaty of Lausanne grants the Muslim minority the right to organise and conduct their religious affairs free from government interference. Article 40 of the Treaty of Lausanne outlines the rights of the Muslim minority to exercise their religion, to establish, manage and control their own religious and social institutions. Article 42 provides the right to the members of the Muslim minority to enjoy matters of personal and family character according to their own traditions.

According to Article 43 the members of the Muslim minority "should not be compelled to perform any acts contrary to their beliefs or religious customs." They also reserve the right to refuse to present themselves before a court of law or to commit a lawful act on the weekly day of rest." Freedom of religion is duly protected by Article 13 of the Greek Constitution, which can be analysed into two parts, first, the right to worship freely, in private or in public, any religion or creed whose practice is not contrary to public order and morals and secondly, the obligation the Greek government has in providing protection to churches, synagogues, cemeteries and other religious foundations of the minorities.[7] The co-existence between the Christians and the Muslims in Western Thrace is generally harmonious. In the area of freedom of religion the Muslims' main problem is the process of appointment of the Mufti (Islamic religious leader).

This chapter will examine the status of religious freedom of the Muslim minority in Western Thrace. A detailed description will be provided on the appointment of the Mufti and the division of his religious and civil duties. The main focus of the chapter will be placed on the relationship between the state and the religious rights of the Muslim minority in relation to the application of Islamic law in personal and family law cases between Muslims in Western Thrace. While religious freedom is provided according to the Treaty of Lausanne, it is the duty of the state authorities to examine

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[5] Legislative Decree 25/1923(FEK A' 311/30.10.1923): "On the Ratification of the Treaty of Lausanne"

[6] P. Naskou-Perraki, The Legal Framework of Religious Freedom in Greece, (Athens: Ant. N. Sakkoulas, 2000) p. 46.

[7] See Chapter three, *supra*, at section 3.2 (B).

the decisions of the Mufti to ensure they are in compliance with the Constitution and international human rights standards. Thus, a detailed analysis will be made regarding the jurisdiction of the civil courts, in examining the decisions of the Mufti, to ensure they are compatible with the Constitution and international human rights principles and norms.

6.1: Historical Background of the Institution of the Mufti

Muslim institutions in Western Thrace include religious education and the jurisdiction of the Mufti to decided cases of family and inheritance disputes, marriage and divorce and child custody based on Islamic Law. This kind of protective system is quite extensive in form and scope, collective in manner and includes positive obligations for the Greek government. It actually represents an exception in the framework of religious protection, since most international legal guarantees are limited to negative safeguards based on the absence of interference with the exercise of rights and do not entail positive measures to be taken by the states to provide resources and institutions that would enable a community to practise its faith.[8]

The study of the legal regime, which governs the position of the Mufti in the Greek legal system, brings into question a numbers of issues regarding the social and religious life of the Muslim minority.[9] The legal issues as well as their political consequences are essential points to examine regarding the protection offered by the Treaty of Lausanne for the religious freedom of the Muslim minority on a collective basis and the principle of equality and individual human rights under international human rights law. In some instances, Islamic law takes precedence over the Constitution and the Greek legislation in favour of a religious-Islamic legal order within the Muslim minority of Western Thrace.[10] For example, there have been a few instances where male members of the Muslim minority were bigamous.[11] According

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[8] Dia Anagnostou , "Religious Freedom and Minority Rights in the 'New' Europe : The Case of Muslim Courts in Western Thrace.", Paper delivered to the XV Modern Greek Studies , Association International Symposium on Modern Greece , Kent State University , Kent, Ohio, (November 6-9 , 1997) p. 5, *et seq.*

[9] Konstantinos Tsitselikis "The Position of the Mufti in the Greek Legal Order", Dimitris Christopoulos (ed.) Legal Issues of Religious Heterogeneity in Greece (Athens : Kritiki, 1999) p. 273.

[10] *Ibid.* p. 274.

[11] S. Soltaridis, The History of the Mufti of Western Thrace, (Athens: Nea Sinora, 1997) p. 178, *et.seq.*

to Greek family law polygamy is prohibited, if an individual contracts a second wedding while married the second wedding is void and the act constitutes a criminal offence. However, the Treaty of Lausanne requires that the religious freedom of the Muslim minority is protected allowing the existence of religious courts where the Mufti decides matters of family and personal law based on Islamic Law.

The function of the Mufti within the Muslim minority of Western Thrace has never been static but has been structured according to its historical path.[12] The institution of the Mufti was developed and established according to the Islamic law during the Ottoman Empire and later on by the newly established Turkish State until it was introduced in the Greek legal system in 1920 and there after. After the fall of the Ottoman Empire, Kemal Ataturk in the new state of Turkey made a strict separation of the state and religion by abolishing the Islamic religious law.[13]

The adoption of certain Muslim religious traditions inherited by the Ottoman Empire within the Greek legal regime together with the political and religious developments in Turkey all played an important part in the structure of the legal framework regarding the position and appointment of the Mufti. In Greece, the Islamic law affected only the Muslim minority and it has only been applied to them, since the time of the Ottoman Empire.[14]

The conflict between the conservative traditional Muslims and the secularist (Kemalist) Turks influenced the status of the position of the Mufti, who in Greece is regarded as the only religious leader of the Muslim minority. In particular, after the fall of the Ottoman Empire and the establishment of Turkey as a secular state, the application of Islamic law was strictly prohibited in Turkey. Thus, after 1928 Islamic law was no longer applied in Turkey and the Mufti did not have any judicial powers but was restricted to his religious duties. [15]

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[12] Tsitselikis, *op. cit*, p. 274.
[13] The Constitution of 1982 states that: "In favour of the principle of secularism, the religious feelings cannot have in any situation any involvement in the government or in politics."
[14] See, Tsitseliks, *op.cit.*, p.275.
[15] *Ibid.*

The political importance of the position of the Mufti in Western Thrace made these religious leaders, targets of political interests and motives. The current legal regime regulating the position the Mufti allows this kind of interference on an institutional basis. Therefore, the process of the appointment of the Mufti is critical due to the position and powers he holds within the minority.

Since the establishment of Greece as a sovereign state (1830) and during its gradual expansion until its current borders, the protection of the religious identity of the Muslims has been defined according to the geographical changes of borders and the relative legislation.[16] The institution of the Mufti in the Greek legislation has been shaped since 1881, regarding the Muslim minority, which was living in Thessalia after it was annexed by Greece.[17] This legislation was ratified with specific conventions, which were signed between Greece and Turkey in 1881 and were renewed in 1913.

The Convention of Constantinople was signed between the Great Powers and Turkey on July 2, 1881. [18] Accordingly, Thessalia was ceded to Greece.[19] Greece on its part undertook, amongst other things, to respect the lives, honour and property of the Muslims and to allow them autonomy and their own religious courts. The religious courts would be responsible for resolving any matters between Muslim-Greek citizens regarding family and inheritance law. According to Article 2 of the Convention of Constantinople "the life, property, religion and customs of the citizens of the countries annexed into Greece would be fully respected and inalienable." The Mufti would supervise the Islamic education and guide the Muslim minority on religious issues.

Law of June 22, 1882[20] implemented the Convention of Constantinople titled: "In Regard to the Spiritual Leaders of the Muslim Communities". It officially recognised the Mufties (the office of the Mufti) of Thessalia and defined the position of the Mufti by providing him with supervisory powers in relation to the Muslim schools (but not

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[16] *Ibid.*, pp. 274-276.
[17] *Ibid.*
[18] *Ibid.*
[19] With the cession of Thessaly into Greece the population of Greece was increased by 300, 000 inhabitants, bringing it to a total of 2, 187, 208 million people.
[20] Law of June 22, 1882(FEK A' 59/1.7.1882): "On the Ratification of the Convention of Constantinople."

legal jurisdiction)[21] and administrative powers regarding the Muslim property (*Vaklfar)* and also provided for the appointment and termination of the Mufti approved by a Royal Decree.

The Treaty of Athens on November 1913[22] established the right to freedom of religion for the Muslim minority. In particular, the Treaty provided that the legal issues would be resolved based on Islamic law. Accordingly, the Mufti constituted a judicial organ of the Muslim minority as well as a religious leader. Article 11 of the Treaty of Athens provided that the Mufti would be appointed by democratic proceedings after elections had taken place between all the members of the Muslim minority. The members of the Muslim minority would elect from a list of candidates those people, which they thought were best fitted for the post.

Article 11(4) of the Treaty of Athens, provided for the worship of Islam and that justice for the members of the Muslim minority would be carried out according to Islamic law (*Sharia*). It also safeguarded the non-interfering communication between the members of the Muslim minority. According to the Treaty of Athens the duties of the Mufti were increased on issues of jurisdiction on worship, education and the exercise of judicial functions. Within the framework of his Islamic judicial jurisdiction, the Mufti would act as president in Islamic family council with a right to vote and finally supervise any movable and immovable property of the Muslim charitable and religious institutions.[23]

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[21] According to Article 4, the Mufti was recognised as a public servant , who had administrative and supervisory powers as well as advisory powers on issues regarding Islamic law. However, it did not clarity whether the Mufti had judicial jurisdiction over the Muslims in Western Thrace.

[22] Law No. 4213/1913 (FEK A' 229/14.11.1913): "On the Ratification of Treaty of Athens."

[23] Article 11 of the Treaty of Athens, stated that: "The lives, property, religion and customs of the inhabitants of regions, which are now under Greek administrative control will be respected. They will enjoy the same civil rights and obligations as Greek subjects. The right to practise their religion freely shall be guaranteed to all Moslems. No attack shall be made upon the independence or organisation of existing or future Moslem communities nor on funds or buildings belong to them. Muslims shall be directly elected in their respective prefectures by Moslems with the right to vote. The Mufti in addition to their purely religious functions and the supervision of assets belonging to the *Vaklfar*, shall have competence to adjudicate in matters of marriage, divorce, alimony (*nefaca*), guardianship, rights of minors, Islamic texts and successors to the post of Mutevelli (Tevliet). Judgments delivered by the Mufti shall be executed by the competent Greek authorities. In the matters of successors, interested Moslem parties may, with prior agreement, have recourse to the Mufti who shall acts as arbiter. Such decisions may be subject to appeal before the national courts, unless expressly stipulated otherwise." See, also Appendix D: "An Analytical Description of the Religious and Judicial Duties of the Mufti in Western Thrace and Greek Civil Law", sub-section D.

In this legal context, the organisation of the religious courts was regulated by Law No. 2345/1920[24] until 1991.

The Treaty of Sevres, 1920[25] regarding minorities in Greece provided a wider framework of protection of the religious distinctiveness of the Muslims. In particular, Article 14(1) of the Treaty stated that: "Greece agrees to take all necessary measures in relation to the Moslems to enable questions of family law and personal status to be regulated in accordance with the Moslem usage."

The Treaty of Lausanne, although it does not directly regulate the issue of the Mufti, provides the obligation for Greece to protect the religious identity of the Muslims. In particular, during the Lausanne Conference Eleftherios Venizelos did emphasise the importance for the protection of the religious traditions of the respective minorities but also provided for the establishment of judicial organs for the Muslims.[26]

Greece shares a traditional respect for the religious liberties of the Muslim populations, which started with the Treaty of Constantinople in 1881 until recent Law No. 1920/1991. Based on this legal context, established between Greece and Turkey the religious rights and liberties of the Muslim minority were fully respected and the Muslim religious law was established mostly based on the internal cultural and social organisation of the Muslim minority.

6.2: The Appointment of the Mufti

The existence of the Mufti is important for the Muslim society of Western Thrace. The institutional adoption of the Mufti within the minority as well as the legal regime, which governs its position, remains as one of the issues with the most potential for conflict between the minority and the Greek government and even within the minority itself.

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[24] See, Law No. 2345/1920(FEK A', 148, 1920).
[25] Legislative Decree 29/1923 (FEK A' 311, 1923) : "On the Ratification of the Treaty of Sevres Concerning the Protection of Minorities in Greece".
[26] Tsitselikis, *op.cit*, p. 277.

After the exchange of populations took place in 1923, it became clear that the Muslim minority had to be modernised in order to be in harmony with the new regulations that were published after the annexation of Western Thrace into Greece. After several meetings in the Greek Parliament, Law No. 2345/1920 was enacted regarding the appointment of the religious leaders of the Muslim minority and the regulation of the Muslim property (*Vakflar*).[27] Law No 2345/1920 was composed of fifteen articles, which in an analytical manner regulated the issues regarding the organisation and administration of the Muslim minority and the appointment of the Mufti.

Article 2 of Law No. 2345 provided that "the Mufti would exercise his rights in accordance with the current legislation regarding the Muslim religious law and his religious duties." Under Article 6 of Law No. 2345, the Mufti were to be elected by the Muslim population after the head Mufti, the Minister Education and Religious Affairs and the governor general and/or prefect of the region have approved a list of candidates.

The applicants would have to be Muslim-Greek citizens, who have either served as Mufti or have a religious diploma titled "*Medresse*" and should not have a criminal record. The appointment of the Mufti would take place on the specific day provided by Article 5 of Law No. 2345 "through secret voting and through a ballot box". The Mufti who would ultimately have the majority of the votes would be announced by the First Instance Court of the capital- region of the Mufti. The right to vote was available to all Muslim-Greek citizens, who were registered in the electoral roll of the relevant district of the Mufteia. The supervision of the election was under the One-Member First Instance Court of each district, which would also announce the Mufti. According to Article 7 the Mufti could be terminated by a Royal Decree.

The Mufti was distinguished in three categories according to the degree of his position. The number, district and class of the Mufti in Greece are established by a Royal Decree.[28] Article 10(1) defined the duties of the Mufti, which besides the strictly religious duties he had to carry out also had a number of legal powers over the

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[27] See, Appendix D, *supra*, note 20.
[28] See, Presidential Decree 2/17-1-1928.

Muslim minority, such as the supervision of the Muslim property (the *Vaklfar*)[29] and the execution of family and inheritance cases based on Islamic law. Moreover, according to Article 10(2) the decisions of the Mufti were executed according to the approved decision of the president of the Court of First Instance of the relevant distinct. However, the court could only examine by means of judicial review the decisions of the Mufti, thus it could not examine the substance of the decisions taken in the religious courts of Western Thrace.[30] Finally, the decision of the First Instance Court could not be appealed against in a higher court.

Despite the democratic proceedings for the appointment of the Mufti, the practice of the regime of the Ottoman Empire prevailed thus, the public authorities directly appointed the Mufti.[31] Accordingly, the minority and the state had apparently worked out a consensus situation while not fully implementing Law No. 2345 but generally respecting the spirit of Treaty of Lausanne. The religious leaders from the minority were consulted and nominated a candidate for the position of the Mufti, which state authorities then confirmed in office.

In 1984 Mustafa Hussein was appointed Mufti of Komotini. In 1985 when he died the Greek government appointed a Mufti, *ad interim*. When he resigned due to the strong reactions of the minority, a second Mufti was appointed, *ad interim*. [32] Later, the President of the Republic confirmed the Mufti's post in Rodopi. On December 1990, the two independent Muslim Members of Parliament of Xanthi and Rodopi requested the state to organise the elections for the post of the Mufti in the two towns, as the law then in force provided. However, faced with a lack of response from the authorities, the two independent MPs decided to organise elections themselves by show of hands at the mosques on Friday 28 December 1990, after the prayers. Mehmet Emin Aga was 'elected' in Xanthi, while Ibrahim Serif was 'elected' as Mufti in Rodopi. [33]

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[29] See, Appendix D, *supra*, note 20.
[30] See Article 74 of the Code of Civil Procedure and also Law No. 2754/1954(FEK A' 26, 1954):."In Regard to the Age Limit of the Service and Position of the Mufti".
[31] Tsitselikis, *op. cit.*, p. 287.
[32] *Ibid.*, p. 289.
[33] Tsitselikis, *op.cit.* pp. 287-290, Soltaridis, *op.cit.*, p. 93.

Four days later, the President of the Republic on the proposal of the Council of Minister, according to Article 44(1) of the Constitution, adopted a legislative act (*praxi nomothetikou periehomenou*) by which the manner of the appointment of the Mufti was changed.[34] In particular, on December 24 1990, the Greek government introduced the legislative Decree No. 182, which allowed the state to appoint the Mufti of the Muslim minority and repealed Law No. 2345. The decree was approved by Parliament on January 26, 1991 and became Law No. 1920/1991.

Some members of the minority were not satisfied with the introduction of the new legislation. They claimed that the legal regime, which was valid until 1991 was in harmony with the Peace Treaty of Athens of 1913. Even though, Law No. 2345/1920 allowed the Mufti to be elected by the Muslim population, it was nevertheless enacted before the exchange of populations and the definition of the current borders of Greece as well as the minority's geographical location in Western Thrace.[35] In any case, as stated earlier, Law No. 2345 was never actually implemented, since the Mufti was still being appointed by the state.

However, in every democratic system elections are carried out in a fair and free manner and through a ballot box. The elections that took place in 1990 in the mosques did not represent the free will of all the members of the Muslim minority. On that day an informal committee composed of certain members of the minority organised those elections without a list of candidates, a ballot or even an election committee. Thus, due to the limited presence of Muslims in the mosques[36], the informal nature of the election and the lack of requisite religious education of the candidates, the issue became highly political and divisive.[37] Religious rights and institutions became the ground for ethnic claims and conflict not because they were violated but rather because the appointment of the Mufti adopted a symbolic dimension and became a

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[34] Article 44(1) of the Constitution states that: "In exceptional circumstances, when an extremely urgent and unforeseeable need arises, the President of the Republic may, on the proposal of the Council of Ministers, adopt legislative acts. These acts must be submitted to Parliament for approval within forty days."

[35] Soltaridis, *op.cit.*, pp. 93-97.

[36] According to Aidin Omeroglou "The Turks of Thrace and the Truth", the 6,000 votes of the Muslims on that day, represented only the 24% of the minority, the rest 76% was not involved. Quoted in Manolis Kottakis, Thrace: The Minority Today, (Athens: Nea Sinora, 2000) p. 95.

[37] *Ibid.*

political issue. It has recently become a "traditional habit" for the minority to elect its own spiritual leaders[38] in violation of Law No. 1920.

Regarding the process of appointment of the Mufti, Article 1.5 of Law No. 1920/1991, allows the state-appointed secretary general of the region to form an eleven-member commission headed by the local prefect, including "Greek Muslim religious officers and outstanding Greek Muslim members of the district." The committee nominates a list of candidates, which is forwarded to the state-appointed secretary general of Western Thrace. The secretary-general would then submit the list to the Minister of Education and Religious Affairs. The Minister makes the final appointment pending presidential confirmation. Under Law No 1920 "the committee will convene legally with the president and any number of its members." Article 1(7) provides that the Mufti is appointed for a period of ten years, he is a public servant and exercises his duties according to Islamic Law having authority over all Muslim-Greek citizens in Western Thrace on matters of family and inheritance law.

Law No. 1920 introduced quite high and demanding standards for the appointment of the Mufti.[39] There are several criteria that a candidate needs to fulfil in order to apply for the position of the Mufti. First, the candidates shall be Muslim-Greek citizens, holders of a degree from any Advanced Islamic Studies institution or holders of the degree called *Itzazet* or Imams, who have completed a service of at least ten years and who have distinguished themselves for their morality and theological competence.[40]

The institution of the Mufti and his position as a civil judge poses a number of questions. The variety of the duties of the Mufti demands a certain degree of competence and qualifications.[41] The standards for the post of Mufti vary so greatly that a candidate holding a high degree of Islamic Studies and a simple Imam can both be eligible for the same post. The Mufti will also be acting as a religious judge, which means he needs to have a substantial knowledge of Islamic Law and his civil duties.

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[38] The number of the Muslims who wish to 'elect' their own Mufti is very limited, see, Anangostou, *op.cit.*, p. 25.
[39] Tsitselikis, *op.cit.*, p. 291.
[40] Articles 1-2 of Law No. 1920/91.
[41] See, Tsitselikis, *op.cit.* at pp. 291-292.

According to Article 89(1) of the Constitution, judicial functionaries are prohibited from engaging in any other paid activity or practising any other profession.[42] However, Law No. 1920/1991 describes the Mufti as a public employee and also as a civil judge. Accordingly, he should be subjected to the age limit of sixty-five years old but also serve as a judge for life, according to Article 88 of the Constitution. But apart from the limit of ten-year service, Law No. 1920/1991 does not place any further limits in the renewal of the service of the Mufti neither does it set any age limit. [43]

Accordingly, one can see that the criteria for applying for the position of the Mufti are vague and confusing.[44] On the one hand, the highest spiritual leader of the Muslims, empowered with judicial functions in his district, should be a graduate of a highest institution. On the other hand, a candidate of an inferior religious school, for example, an Imam with ten years service can equally qualify. Thus, the law itself creates serious problems in the legal status of the Mufti.

The process for the appointment of the Mufti is also vague and general to the extent that its democratic proceedings can be brought into question.[45] The eleven-member committee, which controls the process for the appointment of the Mufti even though it functions as a collective advisory organ, is neither elected nor supervised by a higher committee. The reliability of its advisory powers needs to be reviewed due to the fact that it is directly controlled by the appointed Secretary-General of the local district and secondly all work of the committee is supervised by the presidency of the prefect without the external authority of a supervisory body. The qualifications of its members are ill-defined and at no point do they create any obligation towards the prefect, who he shares a wide degree of discretion for handling the proceedings of the committee. During the final stage of the appointment of the Mufti, the criteria for the post are not objective but are subject to a variety of interpretations.

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[42] Article 89(1) of the Constitution states that: "Judicial functionaries shall be prohibited from performing any other salaried service or practising any other profession."
[43] Tsitselikis, *op.cit.*, p. 313.
[44] *Ibid.*, p. 219.
[45] *Ibid.*, pp.291-292.

In regard to the process of appointment for the position of the Mufti, the Greek government claims that the Mufti is not only a spiritual leader, but also has several administrative and legal functions. Even so, many members of the minority feel that a Christian government should not choose the spiritual leader of the Muslim minority. The views on this topic are divided.[46]

Nevertheless, an analogy with the oldest process of appointment of the Mufti in the Ottoman Empire is not very easy to establish. On the one hand, one could argue that it would not be proper to compare the current democratic institutions, which characterise the Greek society and its legal regime with the political and religious structure of the Ottoman Empires, which within its context the Mufti was appointed by the religious hierchachy. On the other hand, the current standards are circumscribed by an absence of an organised religious (Muslim) hierarchy capable of appointing the Mufti.[47]

One could also argue that first, according to Islamic law the right of the state appointment of the Mufti is fully recognised even in non-Muslim states. The Muslims of Western Thrace themselves, since 1923 until recently never questioned the process of appointment of their religious leader, merely because he was appointed by the state. Finally, Law No. 2345/20 was created before the exchange of populations in 1923 where in Greece there were still seven hundred thousand Muslims. [48] Due to the changed demographics statistics, especially after Western Thrace was annexed into Greece, the legislation regarding the institution of the Mufti had to be reformed and synchronised with current times.

More specifically, Islamic law provides that in non-Muslim states the Mufti can be appointed as long as the government does not interfere in the religious duties of the Muslims. In Greece the appointment of the Mufti is done according to international standards under the Treaty of Lausanne, regarding freedom of religion and the current Greek legislation. A Mufti has never been elected in any state in the world whether that was Muslim or Christian. In Turkey the local prefect appoints the Mufti. The Turks are not subject to the Islamic Law, as in the case with all other Muslims in the

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[46] Human Rights Watch, "The Turks of Western Thrace: Denying Ethnic Identity" Human Rights Watch Report, (1999), (Internet Version) pp. 7-9.
[47] Tsitselikis, *op. cit.*, p. 292.

world.[49] They rather comply with the Turkish Civil Law as Kemal Ataturk developed it based on the Swiss Civil Code.[50]

6.3: The Office of the Mufti

Greece has now three operating Mufteies in Komotini, Xanthi and Didimotiho. In the past years, they used to exist in many more places in the Greek territory. However, the demographic statistics have changed dramatically after the exchange of populations took place between Greece and Turkey as well as the economic emigration, which occurred in the last decades within Greece. Accordingly, the need for the continuing existence of the Mufteies in various parts of Greece elapsed. According to Article 6 of Law No. 1920/1991, the number and the definition of the regional exercise of the jurisdiction of the Mufteies can be reversed by Presidential Decree after a recommendation by the Minister of Internal Affairs, the Minister of Justice and the Minster of Education and Religious Affairs.

The Muslim-Greek citizens, who live permanently outside of Western Thrace (almost twenty five percent of the minority lives in Athens, Thessaloniki and the Dodecanese Islands) do not have access to a Mufti.[51] For these Muslim populations jurisdiction over personal and inheritance matters is attributed to any of the Mufti of Western Thrace, according to the decision of the Supreme Court in 1980.[52] However, the decision of the Court does not specify, if a particular Mufti is assigned to them or if the litigants have the right to choose a Mufti of their preference.[53]

It would seem reasonable to assume that wherever there are a substantial number of Muslim-Greek citizens, for the state to provide for the peaceful and effective exercise and enjoyment of their religious rights and duties. In any case, those Muslims living

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[48] Soltaridis, *op.cit.*, p. 89.
[49] *Ibid.* pp. 97-111.
[50] *Ibid.* See also, Stamatis Georgoulis, The Position of the Mufti in the Greek Legal System, (Athens-Komotini: Ant. N. Sakkoulas 1993), pp. 90-95. In France, where four million Muslims live the Mufti is also appointed and there is a strict division between the state and the church and the duties of the Mufti are strictly religious. Moreover, in Germany where there is a large Muslim population, the institution of the Mufti does not exist. In Algeria, Egypt, Lebanon, Morocco, Tunisia and Jordan the Muftis are all appointed.
[51] Tsitselikis, *op.cit.*, p. 283. In regard to the implementation of the Treaty of Lausanne in the Dodecanese islands, see , Chapter one, *supra*, section 1.9.
[52] See, Decision No. 1723/1980, Nomiko Vima, (1981) p. 1217.
[53] *Ibid.*

outside Western Thrace enjoy the right to religious freedom under the Constitution and international human rights instruments, to which Greece is a party to, as the rest of the Greek citizens.

6.4: The Duties of the Mufti

The Mufti is a public servant, who is also empowered with judicial functions.[54] The Mufti is also exempted from military service.[55] The duties of the Mufti are defined by the Constitution as well as by national legislation governing public employees, according to Article 4 of Law No. 1920/1991.[56] The Mufteia is considered to be a public service. According to Article 7 of Law No.1920/91, the Mufteia is exempt from any postage costs and it is obliged to conduct all its official correspondence in the Greek language.[57] The jurisdiction of the Mufti covers a wide range of the Muslims social and religious life.

Article 5 defines the duties of the Mufti, which are divided into religious and civil ones. The Mufti exercises his religious duties according to Article 13(1) of the Constitution as well as Article 38(2) of the Treaty of Lausanne.[58] He functions as a religious leader of the Muslim minority through religious services and personal contact with the members of the minority. The Mufti is also the founder of the two religious minority schools. [59] Accordingly, the Greek government is obliged to respect and protect the religious traditions of the Muslim minority as provided by the Islamic Law and the provisions of the Treaty of Lausanne.

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[54] According to Article 45 of the Lausanne Treaty, in conjunction with Article 42, Law 147/1914 and Article 5 of Law No. 1920/1991.

[55] See, Article 6(1)(c) of Law No. 1763/1988.

[56] In regard to the religious and judicial duties of the Mufti, see Appendix D, *supra*, note 20, sections D.1 and D.2.

[57] See, Article 7 of Law No. 1920/1991.According to international law, minorities have the right to use their own language in their religious activities (for example see Paragraph (32.3) of the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, 1990, if public authorities were to prohibit minorities from exercising such a right it would constitute a violation of Article 27 of the ICCPR as well as Articles 7 and 8 of the Framework Convention for the Protection of National Minorities. In Greece although the Mufti is obliged to conduct all official correspondence in the official language, since it is considered to be a public service, in practice, the documents of a religious content are structured either in the Turkish or Arab language.

[58] Tsitselikis, *op.cit.*, p. 297.

[59] See Appendix D, *supra*, note 20.

The Mufti is not permitted to deal with cases between Muslims and Christians. In the case of a divorce between a Christian Orthodox and a Muslim, the First Instance Court of Xanthi[60] stated that the divorce issued by the Mufti was in violation of Islamic Law, since the Mufti was not competent to deal with cases where one of the two parties is not Muslim. Muslims, legally living in Greece, are subjected to the Greek civil courts, as any other aliens, according to the general provisions of the Code of Civil Procedure. However, they may call upon the Mufti to mediate or act as the advisory body on religious matters, offering his services *bona fide* (in good faith) but not his judicial powers.[61]

The judicial jurisdiction of the Mufti is supplementary and optional, meaning that the Muslims can choose between the civil courts and the religious courts. In particular, Article 8(2) of the Constitution, states that: "No person shall against his will be deprived of the judge assigned to him by law. Judicial committees and regular courts, with the use of any name are not allowed to be formed." Similarly, Article 87(1) of the Constitution provides that: "Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence."

Law No. 1920/1991 recognises the Mufti as an authentic interpreter of the Koran and the holy traditions of Islam. Accordingly, the Mufti constitutes a special judicial organ of the Greek government and also the natural judge of a certain segment of the population, according to the guarantees provided by Article 8 of the Constitution. At the same time, the right to freedom of religion and the relevant provisions are established by Article 13 of the Constitution.

6.5: The Control of the Civil Courts

The legal jurisdiction of the Mufti in Western Thrace is applied and functions inter-dependently with the civil one. The role of the Mufti primarily involves the task of reaching a satisfactory agreement or compromise between the two parties. The agreement reached by the Mufti is produced in the form of an opinion (*fetwas*), which

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[60] See, Supreme Court Decision No. 201/1993.
[61] Naskou-Perraki, *op. cit.*, p. 55.

cannot be equated to court decisions.[62] In Western Thrace, Muslims often object to the term "courts" claiming that the Mufti does not try in the "ordinary civil sense" of the term, but his role is mainly "consultative and compromising".[63] The application of Islamic law in Western Thrace is mainly based on the cultural and social organisation of the Muslim minority.

In an attempt to reconcile the traditional system of separate Muslim jurisdictions with the basic principles of public order in Greece, Article 5(3) of the Law No. 1920, provides that the courts are not allowed to enforce decisions of the Mufti by applying rules that violate the Constitution. Accordingly, the decisions of the Mufti are not executed automatically, since according to the Islamic law, they are merely advisory ones. Therefore, they do not create any legal results unless the civil court declares them valid.[64] The First Instance Court (*Protodikeio*) is responsible in examining the constitutionality of the decisions of the Mufti. [65]

The Court, however, cannot check whether the Islamic law was properly applied in each case. Accordingly, the Court can only examine, if any conflict arises between the principles of the Constitution and the decisions of the Mufti. The law explicitly provides that one can appeal against the decision of the One-Member First Instance Court to the State Court of Appeal, which can again only examine the process of the decision. This decision cannot be appealed against in a higher court.[66]

The task of the civil courts is rather complicated regarding the application of Islamic law in family law matters, which might contain discriminatory measures against women. In particular, substantial problems arise in matters dealing with the fundamental principles of the Constitution, as for example "the respect of the value of the human being", Article 2(1) of the Constitution and the "equality of all persons",

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[62] Anagnostou, *op. cit*, p. 24.
[63] *Ibid.*, p. 25.
[64] Tsitselikis, *op. cit.*, p. 309.
[65] See, Article 741 of the Civil Code.
[66] According to the legal regime, which governed the position of the Mufti during the Ottoman Empire, the decisions of the Mufti could not be appealed against, however there was a possibility of appealing to the Sultan. Similarly, Law No. 2345/1920, Article 10, did not provide any possibility of appeal against the decision of the Mufti to the civil courts, however it gave jurisdictional control over the substance of the decision of the Mufti to the Chief Mufti, however, this was never actually implemented.

Article 4(1) of the Constitution. The practice of Muslim family law, quite often entails discriminatory provisions against women contrary to the principles of equality and non-discrimination. These rules clearly violate the principle of equality of the Constitution and international human rights law. However, such family law practices are considered a part of the judicial process of the Muslim tradition.

Accordingly, there is a contradictory situation, on the one hand there is the Treaty of Lausanne, which obliges Greece to respect the religious rights and identity of the Muslim minority and on the other hand, Law No. 1920/1991, which demands that all decisions of the Mufti be in accordance with the Constitution, especially in regard to the principles of equality and non-discrimination. In any case, in every democratic state, the principles of the Constitution must be obeyed by all judges. Religious rules and customs of minorities cannot be enforced in violation of the national Constitution.

The decisions of the Mufti do not always reflect a strict application of Islamic theological principles but quite often take into considerations civil law principles, which have gradually blended with what is "socially acceptable and legitimate" in the Greek society.[67] There is a gradual shift between civil and religious jurisdiction reflecting a change in social identities and attitudes.[68] For example, in cases of family and inheritance disputes, the two spouses in dividing family property following a divorce often take their case to the civil court, if they cannot reach an agreement through the Mufti.

It is necessary to consider the degree of the margin of appreciation the civil judges have in order to validate a decision of the Mufti, since they do not have a right to examine the substance of the case. In any case, since the Mufti acts as a civil judge, he must act within his constitutional limits of his position. The task of the civil judge is very difficult for two main reasons. First, he does not have any jurisdiction over the substance of the decision and secondly, even if he did, he does not have any knowledge of Islamic Law. Accordingly, the right to appeal to the State Court of Appeal renders itself ineffective and often almost non-existent.

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[67] Anagnostou, *op.cit*, p.24, Tsitselikis, *op.cit.*, p. 314.

The judicial review of the decision of the Mufti is not properly regulated. In particular, in a case concerning alimony, the decision of the Supreme Court set in motion a number of legal issues, regarding the choice of the legal criteria, which should be followed during the judicial process in the religious courts in Western Thrace. The Supreme Court held that a judge of a civil court does not have the right to examine either the substance or the process of the decision of the Mufti. According to the Court's reasoning, the substance and process of the issues involved were so closely connected, that they composed an inseparable part of rules and judicial practices of Islamic Law.[69]

But the courts should exercise their jurisdiction to evaluate, if the decisions of the Mufti do not contradict public order according to Articles 904(1) and 223(2-5) of the Code of Civil Procedure. The principles found in the Code of Civil Procedures are designed according to the social and moral values of the Greek society. However, a certain degree of cultural tolerance is necessary. For example, the decision of the Mufti should not be rejected as contradictory to public order in the case when the divorce of a Muslim couple was issued for reasons that according to Greek family law do not constitute a reason for a divorce or if the Mufti did not provide reasons for his decision. [70]

The same cannot be claimed in regard to other rules of Islamic Law, which are incompatible with public order, as defined by the Greek and European legal framework.[71] Although, Islamic law does not constitute foreign law for the Greek citizens, its position within the Greek legal system cannot go beyond the limits of public order.[72] The control mechanism of the civil courts should be proportionate to the provisions of private international law in the implementation of foreign law when "the One-Member First Instance Court will declare valid a foreign title if it does not contradict the moral values of public order."[73]

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[68] *Ibid.*
[69] See, Decision No. 1723/1980.
[70] Tsitselikis, *op.cit.*, p. 320.
[71] See, Appendix D; chapter seven, *infra*, especially, sections 7.2 and 7.3 and 7.4.
[72] *Ibid.*, p. 321.
[73] See, Supreme Court Decision No. 439/1988.

The absence of power to exercise legal control over the substance of the decision of the Mufti by the civil courts due to Article 5(3) of Law No. 1920 as well as disregard for fundamental legal rules during the judicial process in the religious courts, brings into question the compatibility of the current legal system with fundamental human rights standards. However, the fundamental provisions of the Constitution should be respected at all times and by all judges in Greece. This is especially true in the case for the right to a fair trial, a basic civil right enjoyed in the context of Greek legislation Article 20 of the Constitution and Article 6 of the ECHR.[74]

According to Article 6(1) of the ECHR, every individual has the right to have access to an effective judicial hearing of his or her case. In the case of the decisions of the Mufti, the members of the Muslim minority do not have access to the European Court of Human Rights, therefore the basic principle of the right to a fair trial and the effective accessibility to the courts are seriously breached. According to Article 13 of the ECHR: "Everyone whose rights and freedoms as set forth in this Convention, are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

It is quite difficult, if not practically impossible, for a member of the Muslim minority to have immediate access to the European Court of Human Rights. The basic obstacle is that the rule of exhausting local remedies would not be satisfied, according to Article 34 of the ECHR. In such a way, the litigants do not have the possibility of examining and possible reforming the decisions of the Mufti on issues of family and inheritance law unless they decide to have their cases heard from a civil judge in which case, the provisions of Civil Code apply. A further possible reason is that their case was decided on the basis of Islamic law principles, which cannot be reviewed in a civil court.

The current legal situation seriously impedes the right of the Muslim-Greek citizens, who come under the jurisdiction of the Mufti but also the status of the Mufti, who applies Islamic Law without any effective supervisory control. A possible appeal against the decision of the Mufti, in regard to its substance and process creates a

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[74] The European Convention on Human Rights was signed in Rome on November 4, 1950 and entered

number of legal issues. However, the examination of the criteria and rules of the ECHR will have important consequences in relation to the content of the Islamic Law and the relative provisions of the Law No. 1920/1991.

Every judge must respect certain fundamental rules during the proceedings of a trial, in accordance with the principles of the Constitution and the ECHR such as the right to a fair trial and the effective means to appeal. Therefore, the Mufti should check the compatibility of his decisions to ensure they are in compliance with the Constitution and the fundamental rules of international law before this is done by the One-Member First Instance Court.

6.6: The Political and Social Elements of the Muslim Minority

The institution of the Mufti does not constitute the only social and religious element of the internal order of the Muslim minority. Muslim religion in Western Thrace defines the religious identity and cultural practices of the minority and establishes its social life and organisation.[75] The Muslim minority's multicultural composition, the maintenance of its cultural and religious identity and the relations between individual rights and collective identity are expressed through the social evolution of the minority itself.[76] The maintenance of traditional family relations through specific religious rules in effect make the Muslim society of Western Thrace "static" in time and only a few members have managed to escape. The "intense religiousness" of the minority has been achieved through its historical process that contributed towards the religious homogenisation and concentration around Islam.[77]

In Western Thrace, Islamic Law is a "powerful agent of socialisation", which has been incorporated with local conditions and civil principles in forming a kind of "practical religion", which governs social life.[78] It is generally agreed that compliance with the Mufti's judgements is based on the desire of the members of the Muslim

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into force on November 3 1953.
[75] Anagnostou, *op.cit.*, p. 5.
[76] Tsitselikis, *op.cit.*, pp. 323-324.
[77] *Ibid.*
[78] Anagnostou, *op.cit.*, p. 25.

minority to preserve their cultural and religious identity rather than the imposition of religious rules and practices by the minority group itself upon the individual members.

The development and maintenance of the cultural and religious identity of the Muslim minority in Western Thrace, stems from at least two main sources. First, there is the institutional existence of the religious jurisdiction of the Mufti and secondly, the social and cultural changes, which occur at the individual and family level.

However, there are several factors, which have hindered the progress and limited the options and possibilities of the members of the Muslim minority. One of the main ones is the geographical and economic isolation of the towns and villages in Western Thrace inhabited by minority members. In particular, during the 1980s the restriction of basic economic and civil rights[79] such as the right to property, the development of economic activity and freedom of movement ultimately any alternative options for individuals and families among Muslims were limited to small-scale tobacco agriculture.[80] In addition, the limited geographical and economic development of Western Thrace as a region in Greece has contributed to the closed economic and cultural environment of the minority. [81] Since the late 1980s and especially in the early 1990s regional funds and programs were designed to upgrade Western Thrace socio-economic status. In recent years, one can observe an intense "religiousness" in rural areas and an increasing "secularisation" in the towns of Komotini and Xanthi.[82]

The situation for the Muslim minority improved in the early 1990s when the principles of equality and non-discrimination were introduced in the minority.[83] Many working positions were offered to the members of the minority in Western Thrace but also in

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[79] See, Chapter four, *supra,* section 4.5. Although the members of the Muslim minority have, on separate instances, suffered state discrimination, their inter-personal relations with the majority population in Western Thrace mostly remain peaceful and friendly in their everyday life. In recent years, the Muslim and Christian youth seem to participate in more shared activities on an everyday basis in the context of inter-cultural exchange of ideas, knowledge and progress.

[80] Anagnostou, *op.cit.* p. 26.

[81] *Ibid.*, p. 26. See, chapter four, *supra*, section 4.5.

[82] *Ibid.*

[83] Ibid. See, chapter nine, *infra*, regarding the education of the Muslim minority. Law No. 2341/1995 FEK A' 208) provides that a particular percentage of Muslim students can enter universities and higher technical institutions with special examinations. (Article 2(1)). See, also Ministerial Decision F. 152.11/B3/790 (FEK B' 129, 1996)) where a 0, 5 quota/percentage is established for the members of the Muslim minority to enter higher education (Article 2(1)).

Athens and Thessaloniki. Accordingly, the Muslims of Western Thrace were provided with increased opportunities to work and live outside Western Thrace, a closed cultural environment and integrate in the Greek society under better living conditions and working prospects.

Islamic law obliges a husband to support his wife, since Muslim women do not usually work outside home due to religious and cultural practices, which require women to stay at home within their family and community.[84] It is quite commonly accepted in many Muslim communities, that wives should not go out to work and earn a living and that the husband should be solely responsible for the family's income. However, such restricted social conditions render the element of voluntarism in Muslim courts practically ineffective. More specifically, the members of the Muslim minority have the option of either choosing to have their case heard by the Mufti in a religious court or by a civil judge in the national courts. In the case of Muslim women, such optional system might not be very effective, since they mostly stay at home isolated from the majority society with very little education, which limits their options to choose between the religious courts and the Mufti's jurisdiction and the civil courts. In most cases, they will have chosen to have their case heard by the Mufti according to the minority's religious and cultural traditions and customs on a collective level.

Muslim women's work outside family is usually socially unacceptable in closed Muslim communities, such as the minority in Western Thrace. However, due to the increased dependence on agricultural tobacco family business by the members of the Muslim minority in Western Thrace, women began working as unpaid family members in the tobacco business. Accordingly, women became an important source of income while remaining isolated within the domestic domain, in accordance with the religious traditions and customs.[85] Under these circumstances, the relation between Islamic law, women's work and religious norms was re-enforced.

Two main factors have resulted in increasing women's opportunities in engaging in paid employment. First, factories have announced the need for more workers, thus

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[84] *Ibid.*

several positions have been opened to minority members. Secondly and most importantly current demands for family income have allowed Muslim women to work outside the house in paid activities.[86] In this context, the right to develop one's personality is established, which increases the chances of an effective participation in the social, political and economic life of the country by all members of the Muslim minority.

In the past ten years, Muslim women in Western Thrace have entered paid employment in "feminised" jobs such as self-employment at home (dressmaking), clothing and textile factories or tobacco processing.[87] The Mufti of Komotini has stated that Islam does not forbid women from working, if they are in all-female workplace environment and do not associate with workers from the opposite sex.[88] Overall, Muslim women's opportunities in working outside the house, economic opportunities and internal immigration might potentially re-establish the relation between women's rights and religious and family practices in re-defining the boundaries between social and religious traditions.

A second issue of political significance is the institutionalisation of certain "active" individual members of the Muslim minority within its legal and social order. The strong reaction of 1990 against the 'appointed' Mufti was not a direct reaction against the newly created legislation. Such a reaction was merely expressing the frustration of certain groups, which have traditionally controlled the religious hegemony over the Muslim minority.[89]

Differences still remain with the Muslim minority and between segments of the minority and the Government over the means of the election of Mufti. Mr. Cemali, told Human Rights Watch that the old law on electing Mufti was never applied. He stated that:

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[85] *Ibid.*, p. 27. See, also Appendix D, supra, note 20.
[86] *Ibid.*
[87] *Ibid.*
[88] Anagnostou, *op.cit.*, p. 27.
[89] Tsitselikis *op.cit.*, p. 325.

One of the major problems is the ongoing controversy around the selection of the Mufti. Law No. 2345/1920 relating to the selection of the Mufti speaks about the election of all the Muftis. However, no Mufti has been elected in Greece. In fact since 1400 in the Islamic world no Mufti was ever elected. I think the law of 1990 is a very good one in fact. The old system was not so good although the law was good but it was never applied. On the contrary the new law is good precisely because it is being applied.[90]

The Greek Government argues that it must appoint the Mufti, because in addition to religious duties, he performs judicial functions in many civil and domestic matters under Muslim religious law for which the state pays him. The Muslim minority appears to be divided with regard to the procedure for the choice of Mufti. The division within the Muslim minority on the procedure for the appointment of the Mufti seems to have a serious impact on the smooth conduct of its internal religious affairs.

It seems that conflicting relations are fomented between members of the minority. Accordingly, some Muslims accept the authority of the two officially appointed Muftis while other Muslims supported and influenced by Turkey, actively favour the 'unofficial' Mufti.[91] One could suspect that the main target is the political manipulation of the minority, therefore gaining control over the Mufti is necessary to achieve such a purpose.

Currently there are two Muftis in Xanthi and two in Komotini, one appointed and one elected. The existence of a parallel system maintained by the minority and the so-called "elected" Mufti is an essential one in examining the problems facing the Muslim minority and the Greek government. The problem of the process of the appointment of the Mufti is legal, political as well as social, which at the end constitutes a point of friction between Greece and Turkey. In 1991 Mehmet Emin Aga, the 'elected' Mufti of Xanthi and Ibrahim Serif, the "elected" Mufti of Komotini were convicted for usurping the authority of the "official" Mufti.[92] Consequently, the

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[90] Interview Komotini , September 1997, quoted in Human Rights Watch Report, *op.cit.*, p. 8.

[91] See, U.S. State Department Report 1999 on "Human Rights Practices for Greece" Section C: Freedom of Religion, (Internet Version) p. 22.

[92] In regard to the case of Mehmet Emin Aga, see, Amnesty International, "Possible Adoption of Mehmet Emin Aga as Prisoner of Conscience", Amnesty International News Release, 1998, (Internet Report), Amnesty International, "Greece: Freedom of Expression Must Be Upheld", Amnesty International Press Release, 2001, (Internet Report), The Turkish Times, "The Case of Mehmet Emin

Greek government has repeatedly prosecuted the "elected" Mufti for "usurping of authority" under Article 175and Article 176 of the Criminal Code. [93]

6.7: The Cases of the Ibrahim Serif and Mehmet Emin Aga

Ibrahim Serif, who is a theological school graduate was elected Mufti of Komotini in 1990 by members of the Muslim minority. The public prosecutor of Rodopi instituted criminal proceedings against him under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known religion" and for having publicly worn the uniform of such a minister without having the right to do so. The Supreme Court (*Areios Pagos*) considering that there might be disturbances in Rodopi and decided for reasons of national security that the case should be heard in Thessaloniki.[94]

In 1993 the public prosecutor of Thessaloniki summoned Serif to appear before the Single-Member First Instance Criminal Court (*Monomeles Pleimeleiodikeio Thessalonikis*) to be tried for the offences under Articles 175 and 176 of the Criminal Code. The Court found Serif guilty of "usurpation" of public authority. In particular, the Court held that these offences had been committed during January 17, 1991 and 28 February 1991, a period during which the applicant had discharged the functions of the Mufti of Rodopi by officiating at wedding ceremonies, preaching and engaging in administrative activities. In particular, the Court found that Serif had issued several messages to the Muslim minority mostly on religious holidays by signing them as "Mufti of Rodopi". The Court imposed on the applicant a sentence of eight month's imprisonment commuted to a fine.

Aga, Mufti of Xanthi: Freedom of Religion and Expression on Trial", A Publication of the Assembly of Turkish American Associations, 2000.

[93] Article 175(1) of the Criminal Code, states that: "A person who intentionally usurps the functions of the State or municipal official is punished with imprisonment up to a year or a fine. Article 175(2) states that: "This provision also applies when a person usurps the functions of a lawyer or a minister of the Greek Orthodox or another known religion." Similarly, Article 176, states that : "A person who publics wears the uniform or the insignia of a State or municipal official or of a religious minister of those referred to in Article 175(1) without having the right to do so... is punished with imprisonment up to six months or a fine."

[94] See, Articles 136 and 137 of the Code of Criminal Procedure.

Serif appealed against this decision. His case was heard by the Three-Member Criminal Court of Appeal of Thessaloniki (*Trimeles Poiniko Efeteio Thessalonikis*) sitting as a court of appeal. The Court rejected the appeal and upheld Serif's conviction by imposing on him a sentence of six month's imprisonment to be commuted to a fine

Serif appealed to the Supreme Court (*Areios Pagos*) where he submitted that the Court of Appeal had interpreted Article 175 of the Criminal Code erroneously. Serif claimed that under Article 10 of the ECHR, he had a right to issue written religious message, in particular he stated that: "The office of the Mufti represents the free manifestation of the Muslim religion." According to Serif, the Muslim minority had the right under the Treaty of Athens (1913) to elect its Mufti and therefore, his conviction violated Articles 9, 10 and 14 of the ECHR.

The Court ruled that Serif had committed an offence under Article 175 because, he behaved and appeared as the Mufti of Rodopi wearing the uniform, which in people's minds, belonged to the legally appointed Mufti. In particular, the Court held that an offence under Article 175 of the Criminal Code was committed: "When somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto." The Court did not particularly address the applicant's arguments under Articles 9, 10 and 14 of the ECHR.

Similarly, Mehmet Emin Aga, was "elected" as Mufti of Xanthi in August 1990 by Muslims gathered at mosques. Although a new Mufti was appointed by the authorities in Xanthi, Mehmet Emin Aga continued his religious activities. Since 1993, however, eight sets of criminal proceedings were instituted against the applicant under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known" religion. The Supreme Court, considering that there might disturbances in Xanthi decided under Articles 136 and 137 of the Code of Criminal Procedure that the proceedings should take place in other cities.[95]

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[95] See, Decisions No. 2206/1996 Single-Member First Instance Criminal Court of Agrinio (*Monomeles Pleimmeleiodikeio Agriniou*), No. 682/1998 , Three-Member First Instance Criminal Court of Agrinio (*Trimeles Pleimmeleiodikeio Agriniou*), No. 1336/1997 Single-Member First Instance Criminal Court of Lamia (*Monomeles Pleimeleiodikeio Lamias*), No. 641/1998 Three-member First Instance Court of Lamia (*Trimeles Protodikeio Lamias*), No. 1335/1997 Single-Member

The Supreme Court in 1999, rejected Aga's appeals. The Court held that Aga's conviction was not in violation of the right to freedom of religion and freedom of expression under the ECHR, since he had not been convicted for his religious beliefs or views[96], but for usurping the functions of the legally appointed Mufti. Finally, the Court held that Aga was properly represented throughout the judicial proceedings of the trial, thus there has been no violation of Article 6 of the ECHR.

However, regarding the last three set of proceedings that were taken against Aga, the Three-Member First Instance Criminal Court of Lamia (*Trimeles Pleimeleiodikeio Lamias*) acquitted Aga in the light of the European Court's of Human Rights judgment in the case of *Serif v Greece*.[97] In particular, the Court held that Aga by merely issuing religious messages to a group of people, who willingly and voluntarily followed him as their religion leader had not usurped the functions of a minister of a "known" religion. He had simply exercised his right to manifest his religion, "individually or in community with other members of his group" provided under Article 9 of the ECHR. [98] This judgement can be considered as a positive step taken by the national courts in complying with the provisions of the ECHR and protecting the rights of minorities based on current human rights norms.

6.8: The Decision of the European Court of Human Rights in the case of Serif v Greece

Both Aga and Serif appealed to the European Court of Human Rights, although separately and on different dates claiming that their rights under Articles 9 and 10 of the ECHR had been violated. [99] In this section, a detailed analysis will be provided of the judicial proceedings that took place during the case of *Serif v Greece*. However, in both cases the Government and the applicants made the same arguments and claims

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First Instance Criminal Court of Lamia, (*Monomeles Pleimeleiodikeio Lamias*) No. 640/1998 , Three-Member First Instance Criminal Court of Lamia, (*Trimeles Pleimeleiodikeio Lamias*) No. 23145/1996, Single-Member First Instance Criminal Court of Thessaloniki, (*Monomeles Pleimeleiodikeio Thessalonikis*) No. 14370/1998 , Three-Member First Instance Criminal Court of Thessaloniki, (*Trimeles Pleimeleiodikeio Thessalonikis*) Nos. 4460/1997, 2552/1998 and 4699/1997.

[96] See, Decision Nos. 592/1999, 594/1999, 1133/1999.

[97] See, Decision No. 38178/97.

[98] See, Decision Nos. 1000/2001, 1001/2001, 1002/2001.

[99] Vol. 31 E.H.R.R. No. 20, (2000), Aga v Greece, Eur.Ct. H., 17/10/2002, (unpublished).

and the European Court of Human Rights drew similar conclusions. In particular, the Court held that the applicants' convictions amounted to an interference with their rights under Article 9(1) of the ECHR "in community with others and in public, to manifest his religion in worship and teaching."

On December 1999, Serif appealed to the European Court of Human Rights. Serif claimed that there had been a violation of Article 9 and 10 of the ECHR.[100] The Government denied that there had been a breach of Articles 9 and 10. In their view, there had been no interference with the applicant's right to freedom of religion. Even if there had been such interference, the Government argued that it would have been justified under Article 9(2) of the ECHR.[101]

The Court of Human Rights examined the facts of the case to see whether the applicant's rights under Article 9 had been violated and if so, whether such interference was "prescribed by law", "pursued a legitimate aim" and was "necessary in a democratic society" within the meaning of Article 9(2) of the ECHR.[102]

The Government submitted that the applicant's conviction was prescribed by law, under Articles 175 and 176 of the Criminal Code. In the government's view, the issue of whether the applicant's conviction was prescribed by law was not related to Law 2345/1920 on the election of the Mufti[103], which was enacted at a time when Western Thrace had not yet acceded to Greece and in any case had been superseded after the Treaty of Lausanne in 1923. The applicant disagreed and held that the members of the Muslim minority had never accepted the abrogation of Law No. 2345.[104] The Court did not consider it necessary to examine this particular matter, since it was incompatible on other grounds with Article 9.

The Government argued that the applicant's conviction pursued a legitimate aim and was necessary in a democratic society. Given the fact that there were two Muftis in Rodopi at the time, the national courts had to convict the 'elected' one in order to

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[100] At paragraph. 33.
[101] At paragraph. 34.
[102] At paragraph. 35.
[103] At paragraph. 40.
[104] At paragraph. 41.

avoid any tensions among the minority, between the Muslims and Christians as well as between Greece and Turkey.[105] The Court agreed that the applicant's conviction served a legitimate aim under Article 9(2) of the ECHR, namely "to protect public order". The national courts, by protecting the authority of the lawful Mufti aimed to preserve order in the region of Komotini.

The Government further submitted that the Mufti exercised important judicial functions in Greece and judges can only be appointed by the state and not by the people. The Government also explained, the Supreme Court, convicted the applicant for the offence under Article 175, not simply because, he appeared as the Mufti. The Court considered that the offence was committed, when somebody actually discharged the functions of a religious minister. Thus, the national courts had to convict the "elected" Mufti in order to maintain public order and peace in Western Thrace. The applicant had questioned the legality of the lawful acts of the Mufti and the state had to protect the office of the Mufti. More specifically, the "election" of the Mufti had been flawed, since it did not follow any democratic proceedings and the applicant had been used by the local Muslims members of Parliament for their own political purposes and motives. [106]

The applicant argued that he held the support of the vast majority of the Muslims in Komotini. He claimed that the government's interference with the individual's choice in the field of personal conscience could not be justified as "necessary in a democratic society." Serif further claimed that his conviction amounted to discriminatory treatment against him, as a member of the Muslim minority by the Greek government.

The Court held that freedom of thought, conscience and religion is one of the foundations of a pluralistic democracy. Freedom of religion is an essential element on which pluralism depends on, even though in a democratic state, restrictions of freedom of religion are necessary, to reconcile the interests of various groups, such restrictions ought to correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued."

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[105] At paragraph. 43.

The Court noted that the applicant was convicted under Articles 175 and 176 of the Criminal Code for the offence of "usurpation of authority". The Court, on this point, stated that although, Article 9 of the ECHR did not require states to give legal effect to religious weddings and religious courts decisions, under Greek law, religious weddings initiated by ministers of "known religions" assimilated into civil ones and the Mufti had judicial jurisdiction over family and personal law status matters between Muslims. Thus, the state must take special measures to protect the legal relationships of those people who may be affected by the acts of religious ministers by deceit.[107] The Court did not further analyse this argument, since it considered that it did not arise in this case. The Court recognised that it was possible that tension was created in situations where a religious or any other community became divided. The role of the authorities in such circumstances was to ensure that the competing groups tolerated each other.[108]

In the Court's opinion, to convict a person for the mere fact that he acted as the religious leader of a group that willingly followed him is not compatible with the needs of religious pluralism in a democratic society.[109] The Court further ruled that the national courts did not make specific references to any disturbances that had occurred among the Muslims in Rodopi that had actually been or could have been caused by the existence of two religious leaders, except as a remote possibility.

Accordingly, the Court held that the applicant's conviction under Articles 175 and 176 of the Criminal Code had not been justified in the circumstances of the case by a "pressing social need". As a consequence, the interference with the applicant's right, to freely exercise his freedom of religion was not "necessary in a democratic society for the protection of public order", under Article 9(2) of the ECHR. However, the Court avoided the question of his legal status as Mufti.

6.9: Concluding Remarks

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[106] At paragraph. 48.
[107] At paragraphs. 50-52.
[108] At paragraph. 53.
[109] At paragraph. 53.

The remarks made in this chapter, regarding the effect and application of Islamic Law within the Muslim minority in Western Thrace should be considered according to the examination of the special legal regime of protection of the religious distinctiveness of the minority and the position of the Mufti, through two different perspectives. On the one hand, there is the need to protect the religious freedom of the Muslim minority, according to its own traditional institutions. On the other hand, there is the obligation to comply with the fundamental rules of human rights on a European and international level, including the right to freedom of religion.

In accordance with the legal context that regulates the position of the Mufti in Western Thrace, any issues regarding his position and duties should be resolved on an institutional level. Most importantly the legal system needs to be reformed in order to meet the specific social and religious needs of the Muslim minority, but also to prevent or abolish any political conflicts within the minority, between the minority and the Greek government and also between Greece and Turkey. The main aim of Law No. 1920/1991 was to ensure full equality of Muslim women and men, however, it would be difficult to criticise this new approach considered in isolation, since a modern minority policy requires a more balanced approach.

The Mufti retains an especially important role within the religious circles of the Muslim minority of Western Thrace where his position is socially required. It is essential to protect the distinctiveness of the Muslim minority, to facilitate its harmonious social integration within the Greek society and to safeguard the peaceful relations between the minority and the majority.

The maintenance of the judicial functions of the Mufti within the Greek legal system can be explained due to historical reasons. The institution of the Mufti needs to be reconsidered due to the cultural traditions of Islam, which are not compatible with the fundamental human rights rules. A long-term and effective solution to this problem might be the codification of Muslim personal law where certain rules would clearly have to be modified or disregarded in the light of current human rights standards.[110]

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[110] Tsitselikis, *op.cit.*, p. 327.

The codification and the systematic study of the Islamic Law is necessary for the fair administration of justice and the respect for the rule of law and human rights in the Greek legal system. Islamic Law can be presented as *sui generis* law without violating the fundamental human rights rules while at the same time contributing towards the maintenance of the religious and cultural distinctive characteristics and identity of the Muslim minority.

In search for a solution of the legal-cultural conflict between international human rights law and Islamic Law, the Mufti could be separated from his judicial powers. In particular, since the Muslim-Greek citizens have the option of resolving their cases by Greek civil law, the religious courts and the Mufti in Western Thrace could take the initial approach by offering counselling, mediation and arbitration resulting in a satisfactory settlement of the case. This could be accomplished either by means of Greek legislation, in particular by precluding the judicial recognition of Islamic rules, which violate human rights and the Constitution.

More specifically, such powers could be attributed to a religious judge with legal education, acting as a civil judge in the urban centres of Western Thrace with a high concentration of Muslim-Greek citizens. In such a way, the Mufti will no longer have to carry the heavy political weight neither will he concentrate any political aspirations from the people, who wish to manipulate and control such an institution. In the same legal context, the upgrade of religious schools into higher institutions needs to be strongly emphasised or even the establishment of a Class of Islamic Studies within the Special Pedagogical Academy of Thessaloniki.[111]

The Pedagogical Academy is aiming to secure the educational standards of the Muslim students, required for the exercise of the religious duties of the Muslim judges. In any case, Greek courts retain a certain degree of discretion, although limited, in declining to apply any Islamic rules, which they find manifestly contrary to public policy and the principle of equality. Similarly, it is open to an individual Muslim to reject any proposal or judgement by a religious court and seek adjudication in the Greek courts. However, this might not be easy to achieve, since some Muslims

might feel that that such an altered version of Islamic law is not acceptable and that only the undiluted classical law should be introduced.

It is worth emphasising that none of the reforms mentioned require Muslims to violate their religious duties. The proposed measures must take into account the value religion holds within the Muslim minority in Western Thrace. The members of the Muslim minority must feel confident that their religious, family and cultural values are protected and respected by the Greek legal system.

The religious suppression of minority rights can have serious consequences for the internal peace and stability As a matter of fact, all that is involved is a modification of legal principles in order to bring Islamic law to the same level as current human rights standards. However, this might not easy to achieve, since Islam does not make a separation between religious rules and legal principles. In any case, concentrated efforts need to be made for the possible reconciliation between Islamic rules and human rights, since in such a way the integration of the Muslims in Western Thrace could be successful achieved together with further progress and development on various levels.

Special attention needs to be taken by those offering mediation to safeguard the principle of equality and to ensure that no gender-based power is imposed upon women against their wishes. However, this might be a difficult task to achieve due to the social position women have in the Muslim minority of Western Thrace. Muslim women are mostly restricted in the home environment having received very little education and living under strict religious and cultural traditions of Islamic law. Thus, their position is rather vulnerable in the minority where men are viewed as superior to them by controlling the social and personal aspects of their lives.

The position of the Mufti carries great political and social value within the Muslim minority, whose members are identified by strong religious bonds. The incompatibilities and the legal problems discussed above are not very difficult to solve. Care is needed to effectively contribute to the harmonisation of the internal and

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[111] In regard to the function and operation of Academy of Thessaloniki, see Chapter nine, *infra*, section

external relations of the minority. The social integration of the minority remains an absolute pre-condition, in the search for an effective implementation of a policy, which will also assist towards the preservation of its religious, cultural and linguistic distinctiveness. Although the institution of the Mufti might seem an institutional "fossil" of the past, the reformation of his duties in a society, which is constantly evolving might provide the opportunity required to detach the Mufti from the problematic, which characterises the internal legal and social order of the minority.

9.8.

CHAPTER SEVEN: THE RELATIONSHIP BETWEEN RELIGIOUS FREEDOM AND UNIVERSAL HUMAN RIGHTS WITHIN THE MUSLIM MINORITY IN WESTERN THRACE

7.0: General Background

In traditional societies and communities, certain customs, religious beliefs, moral values and legal principles, which specifically regulate family and personal law matters are held in a very high esteem. They are often regarded as constituting an essential part of the distinctive culture of a group of people, something, which cannot be surrendered or abandoned easily. This could be the case when religious beliefs, legal principles and family relations are closely connected, as they are in Islamic law. The members of the Muslim minority of Western Thrace strongly believe that the best way of preserving their own religion and culture is by maintaining a separate system of personal and family law. In regard to the religious rights of the members of the Muslim minority, the Treaty of Lausanne provides collective rights, which ultimately undermine individual rights regarding the free choice of individuals to choose to live either according to their own religious consciousness or to live according to the cultural and religious traditions of their group.

Various discussions have taken place after the adoption of the Universal Declaration of Human Rights (UDHR)[1] regarding the "universal" nature of human rights and cultural relativism, which means whether human rights apply equally and universally around the world or whether culture or traditions can legitimately modify the rule of a minimum standard for everyone. [2]

Examples of the ongoing tension between the universality of human rights and the various cultures in the world, include conversion, recognition of religious communities, rights of women and children and conscientious objectors. Thus, the prevalence of some traditional ways of living and religious customs and ethics may clash with the modern understanding of human rights law. While, respect and

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[1] G.A. Res. 217A (III)/10.12.1948.

[2] Henry J. Steneir and Philip Alston, International Human Rights in Context (Oxford: Clarendon Press, 1996) 32nd edition, pp. 166-240, Jack Donnely, Universal Human Rights: In Theory & Practice, (London: Cornell University Press, 1989) pp. 118-124, Jose Ayala-Lasso, "The Universality of Human Rights" Warner Daniel (ed.), Human Rights and Humanitarian Law: The Quest for Universality, (Great Britain : Kluwer Law International, 1997) pp. 87-94.

tolerance is demanded in respect of various cultural and religious traditions, if fundamental human rights are violated, such as gender equality, the right to education, the right to change one's religion and freedom of expression and speech, then controversy will arise.

The 1993 Vienna Conference on Human Rights affirmed the "universal nature" of human rights as being beyond question.[3] However, the supporters of cultural relativism believe that although human rights are universal in nature certain national and region traditions and customs should be taken into consideration as well as various historical, cultural and religious backgrounds.[4] The same position was taken by the Mediterranean Centre for Human Rights, which stated that one of its basic aims was to have due regard for the "socio-cultural linguistic and religious differences in order to reinforce the universality of human rights."[5]

There are certain cultural customs and rules of behaviour of some religious and ethnic groups, which might conflict with the accepted norms of public order or morals in the society. In such cases judicial intervention might be deemed appropriate and necessary.[6] However, the concept of "morality" can be the subject of various interpretations depending on historical and cultural factors. Thus, it might vary in each society, since there is not an international standard, which might be accepted by all religions and cultures in the world. [7]

More specifically, the various societies in the world today differ as to their definition and understanding of what basic human rights are. As Philip Alston stated, there are conflicts among rights including religious rights and women's rights although there are many others as well.[8] Even though certain cultural and religious traditions and customs must be respected this does not mean the rejection of the 'universal' nature

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[3] UN Doc. A/CONF.157/23, Part I , paragraph. 5.
[4] See for example, the view taken by the Asian States at the World Conference Preparatory Meeting in Bangkok in April 1993, Doc. IOR 41/WU 02/93, in Philip Alston, "The UN's Human Rights Record: From San Francisco to Vienna and Beyond", Vol. 16 Human Rights Quarterly (1994) p. 374, *et.seq.*
[5] Lerner Natan, "Religious Human Rights under the United Nations" J.D. van der Vyer and J. Witte Jr. (eds.) Religious Human rights in Global Perspectives, (Hague: Kluwer Law International, 1996) p. 130.
[6] *Ibid.*, p. 92.
[7] *Ibid.* See also, Donna J. Sullivan , "Gender Equality and Religious Freedom : Toward a Framework for Conflict Resolution" New York University Journal of International Law and Politics Vol. 24 (1992) p. 819. *et.seq.*
[8] Alston, *op.cit.*, p. 383.

and implementation of human rights and the recognition of the need of a 'minimum' international standard.[9] Nevertheless, there is not yet an accepted international standard among the supporters of universalism that can legitimately be implemented when rules of universal application are incorporated into the diverse legal systems. Even though this issue goes beyond the area of religious human rights, religion has played a major role in these conflicting views.

Muslim religion is a very important, integrated feature of the culture and tradition of the Muslim minority in Western Thrace, since it defines the cultural identity of the minority and builds its distinctive socio-religious local life and organisation.[10] The issue of the relationship between the Islamic legal tradition and human rights becomes of great interest.[11] The application of Islamic law in family and personal law matters within the Muslim minority tends to ignore international human rights norms and instead is based on religious and cultural rules, which might violate fundamental human rights and the Constitution. The application of Shari'a law in Western Thrace is often regarded as "retrogressive and anachronistic"[12] that impedes the social and economic development of the minority.

In this chapter, current international human rights law will be compared in relation to the application of Islamic law in personal and family law matters by the Mufti in the religious courts of Western Thrace. The Muslim minority has its own distinctive way of living according to Islamic law and ideology, which has been developed in the context of local culture and customs. Therefore, it is important to evaluate the relationship of Islam and human rights, to ensure that none of the members of the Muslim minority, especially women, are being discriminated against according to religious criteria.

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[9] In regard to an analysis of the concept of universal human rights, on a cultural and ideological basis, with references to western and non-western nations, see, Pollis Adamantia and Schwab Peter (eds.) Human Rights: Cultural and Ideological Perspectives, (New York: Praeger, 1979) pp. 1-15.

[10] Dia Anagnostou, : "Religious Freedom and Minority Rights in the New Europe : The Case of Muslim Courts in Western Thrace." , Paper delivered to the XV Modern Greek Studies, Association International Symposium 1997 on Modern Greece , Kent State University, Kent, Ohio, (November 6-7, 1997) p. 5, *et.seq.*

Sex stereotyping is also an important element impeding women's rights and is often, at least, an implicit element in Islamic religion thus, its treatment in international law will also be examined. In particular, the relationship between Islamic law and the principles of international human rights affecting the status and rights of women will be analysed. This will be done, in the context of examining the status and rights of the Muslim women in Western Thrace, in the private sphere within the family and in public in relation to access to work and paid employment outside the house.

7.1: The Role of the United Nations and Islamic Law

The concept of 'individual human rights' was the product of a development of international law in the post-World War II period.[13] However, such a concept was not established in traditional societies, including the Muslim ones, instead individuals were given a position in a specific social context and were seen as "components of a family or community framework rather as autonomous persons."[14] In traditional societies, the emphasis is placed upon "duties" rather than on "rights". Any demands on individual freedoms were viewed as if individuals did not consider themselves being bound by the Islamic religion and they intended to use their own "weak human reason" to challenge the supremacy of religious teachings.[15] The aim of the Islamic law is the "well–being of the Islamic community or *umma*".[16]

The strong persistence of pre-modern societies and the heavy reliance on anachronistic views did not provide for the development of individual human rights on a universal basis. In particular, the application of Islamic law, especially in relation to family and personal law issues does not allow the members of the Muslim minority of Western Thrace to evolve and fully integrate within the Greek society. A point that needs to be emphasised is that although the Treaty of Lausanne provides for the

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[12]Stephanos Stavros, "The Legal Status of Minorities in Greece Today: The Adequacy of their Protection in the Light of Current Human Rights Perceptions." Vol. 13, Journal of Modern Greek Studies, (1995) p. 22.

[13]In regard to the relationship between human rights, dignity and justice, in relation to the concept of universal human rights in societies nowadays, see, Howard Rhoda, "Dignity, Community and Human Rights", Abdullah Ahmed An-Nai'im (ed.) Human Rights in Cross-Cultural Perspectives: A Quest for Consensus, (Philadelphia: University of Pennsylvania Press, 1992) pp. 81-84, 86-87, 90-91.

[14] Mayer, *op.cit.* p. 40.

[15] *Ibid.*, p. 42.

[16] *Ibid.*

religious rights of the minority, it does so on a collective manner, which might undermine the individual rights of the members of the minority on religious freedom. The effective integration of the Muslim minority in Greece does not necessarily entail the abandonment of the Islamic religion and culture. The religious practices of the minority, which might contain discriminatory practices against women should not be extended into the regulation of civil law matters and therefore, violate the Greek constitution and the international human rights instruments, which the Greek government is a party.

The application of Islamic family within the Muslim minority might violate international human rights rules and the principles of the Constitution, especially regarding the rights of women.[17] According to Islam, women should stay at home isolated within the domestic sphere. They must not be surprised by a male family member coming in the house without previously having given notice so the women would have time to properly cover themselves.[18] These kinds of protections for women contain implicit restrictions on women's rights. The Islamic provisions require that even at home there should be "female seclusion" and "veiling", which is supposed to protect the woman's duty to avoid indecency. There is an assumption that the world is "sexually segregated" and women should stay at home in isolation from men. [19]

These religious and family law rules cannot be regarded as part of the framework of modern international human rights law. They seem to express traditional notions of women's' obligations under the Shari'a, which include the duties to stay "segregated, secluded and veiled".[20] For example, in the context of Muslim values, the woman's right to have her chastity respected and protected is rather an ambiguous one in the context of current human rights rules, since it implies a regime of "sexual segregation, seclusion and female veiling" all of which practices are justified on the basis that they aim to protect the "woman's dignity and honour."[21] Thus, since no corresponding right exists in the current international human rights instruments, one may conclude

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[17] Abdullah Ahmed An-Na'im, "Human Rights in the Muslim World", Vol.3 Harvard Human Rights Journal, Vol. 13 (1990), p. 13, *et.seq.*

[18] *Ibid.*
[19] See, Anagnostou, *op.cit.* p. 5 ,Stavros, *op.cit.* p. 23.
[20] *Ibid.*
[21] *Ibid.*, p. 58.

that the religious practices and rules provided by Islamic law are not offering adequate protection for individuals in a human rights framework, especially in the field of women's rights.

7.2: The Conflict between Islamic Law and Fundamental Human Rights

The application of Islamic Law in personal and family law issues quite often introduces discriminatory regulations at the expense of women, in such a way that they violate the constitutional and international rules for the equality of the two genders[22] and the protection of the dignity of human beings.[23] There are two main issues that need to be considered in dealing with the jurisdiction of the Mufti and the Muslim courts in Western Thrace. First, it is necessary to consider whether the application of the Islamic law in the Muslim minority of Western Thrace violates the principle of equality; secondly, whether it involve norms and principles, which might prevent the social and economic integration of the minority.[24]

Muslim religion defines the social norms and family practices, which reinforce the community's cultural identity. The central conception of the Muslim culture is the family, which is considered to be the "central institution and transmitter of religious identity"[25] in which women are responsible for transmitting social and religious practices to their children. In Muslim societies, Islamic legislation and rules governing family relations and women's roles have been rigorously maintained.[26] According to tradition and religious rules the husband has the sole financial responsibility of the family whereas the wife has the role of child bearing. But certain rules of Islamic law tend to restrict certain aspects of women's lives, such as employment, physical movement and appearance. Accordingly, women must cover themselves and limit their physical movement and economic activity outside the house. Primarily, the

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[22] See, Article 2(1) of the Constitution.
[23] See, Article 4(2) of the Constitution and Article 5 of Protocol No. 7 of the European Convention on Human Rights, which entered into force on November 1, 1988 : "Concerning various Matters."
[24] Anagnostou, *op.cit*, p. 6.
[25] Fluehr-Lobban Carolyn , Islamic Society in Practice , (Miami : University Press of Florida, 1994) p. 61.
[26] Ida Nicolaisen, "Introduction" Women in Islamic Societies Bo Utas (ed.) (New York: Olive Branch Press, 1983) p. 7. Regarding the rights of women in Islam as well as the relation between human rights and Islam, see, Ahmad Farrag, "Human Rights and Liberties in Islam", Jan Berting, et. Al., Human

woman has a major role to play in socialising her children as "good Muslims" and to transmit cultural values in general.[27]

The reformors of the Civil Code according to Law No. 1329/1983 sought to bring Greece's legal system in compliance with the provisions of the European Convention on Human Rights and international human rights principles.[28] Law No. 1329/1983, firmly established the principle of equality between the two sexes, eliminated the concept of the male as the "head of household" and replaced it with the concept that both spouses are "equal and mutually" responsible for the family decisions and financial support. It further more abolished gender discrimination and the dowry system and institutionalised divorce on the basis of mutual consent. [29] In contrast, Islamic Law grants special benefits to males and disadvantages women in family disputes, divorces, inheritance and child custody.[30]

Polygamy is permitted under Islamic Law where a man can marry up to four women, in contrast with the Greek legal order and public morals.[31] Accordingly, under Islamic law, a Muslim man who is married to two women does not commit the crime of bigamy punishable under the Greek Criminal Code.[32] Polygamy cannot be accepted within the context of the Greek and European public order, since the woman is considered inferior to the status of man.[33] The concept of monogamy is based on a set of fundamental principles within the Greek society.

The process of divorce according to Islamic Law as well as the relationship between the spouses seems to discriminate against women, especially regarding the principle of equality and the free development of the human personality, enshrined in the

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Rights in a Pluralist World: Individuals and Collectivities, (London: Roosevelt Study Centre, 1990) pp. 133-143.

[27] Valentine Moghadam , Modernising Women: Islamic Society in Practice (Minami : University Press of Florida , 1994) pp. 100-102 , Fluer Lobban , *op.cit*, p. 69.

[28] Anagnostou, *op. cit.*, p. 19, see, also, Appendix D: "An Analytical Description of the Religious and Judicial Duties of the Mufti in Western Thrace and Greek Civil Law", section D.2.

[29] Tsitselikis, *op.cit.* p. 315, Basilis Ant. Vathrakokoilis, The New Family Law (Athens: P.N. Sakoulas, 2000) p. 57.

[30] *Ibid.*

[31] Naskou-Perraki, *op.cit.*, p. 53.

[32] See, Article 356 of the Criminal Code.

[33] See,Criminal Court of Xanthi, (*Poiniko Dikastirio Xanthis*) Decision No. 14/199/1995.

Constitution and in the wider European legal context.[34] The rules, which establish the principle of equality between the sexes and the protection of the dignity of every human being, are fundamental rules according to Greek legislation and international documents.

There is a conflict here between the application of Islamic family law that might come into conflict with the Constitution and international human rights, which ultimately burden half of the Muslim minority, Muslim women and a set of measures for the protection of the minority's cultural and religious distinctiveness. What actually happens is quite unorthodox, the violation of the fundamental rules of equality between the two sexes in favour of the respect of the protection of the minority's religious distinctiveness.[35]

Most European states find it difficult to accept Muslim religious rules and practices in cases of family law whereby a man can simply divorce his wife in an extrajudicial manner but an equivalent right to Muslim women is refused. Such issues bring into question the constitutionality of the Muslim courts and the significant legal aspects involved such as the cultural and social integration of the Muslim minority in the Greek society, the cultural-religious preservation and the relation between individual rights and collective identity.[36]

As to respect for the principle of equality, this situation is tolerated by the Greek administration and judiciary, since Muslim women have the right to choose between on the one hand, the jurisdiction of the Mufti and the application of the Islamic Law and on the other the jurisdiction of the civil courts and the application of Greek Civil Code. Initially, one could say that because of this, equality between the two sexes is accomplished. Nevertheless, one might also need to consider the kind of 'free choice' every Muslim woman has and the 'actual reality' of the 'optional' obedience to the Mufti. [37]

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[34] Naskou-Perraki, *op.cit.*, p. 53.
[35] Tsitselikis, *op.cit.*, p. 316.
[36] Anagnostou, *op.cit.*, 20.
[37] See, Tsitselikis, *op.cit,* p. 318.

The freedom of choice on such matters is usually restricted by the social and religious composition of the Muslim minority. Accordingly, although there is a choice between the legal jurisdiction of the civil judge and the Mufti most often the members of the Muslim minority prefer to resolve their case by the Mufti, according to Islamic Law. Under these circumstances, the choice of the members of the minority between Islamic law and the Civil law legislation does not necessarily arise from their religious faith of the minority but from a set of socio-religious practices established within the internal order of the minority

A review of the existence of the optional system of the judicial jurisdiction of the Mufti shows that within its own context it violates the fundamental rules of human rights, including minority rights.[38] The balance between the respect for the minority's distinctive identity and public order is expressed in Article 43 of the Treaty of Lausanne, which states that:

> Greek nationals belonging to Muslim minorities shall not be compelled to perform any act, which constitutes a violation of their faith or religious observance and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest. This provision, however, shall not exempt such Greek nationals from such obligations as shall be imposed upon all other Greek nationals for the preservation of public order.

It is submitted, that on the hand, what needs to be achieved is the protection of the religious and cultural traditions of the minority within its internal legal order and on the other hand, the compliance with fundamental rules of human rights, which will ultimately prove beneficial for the members of the Muslim minority.[39] In any case, the situation appears to have been improved by the enactment of Law No. 1920/1991. Its aim is to ensure full equality of Muslim women and men, however it would be difficult to consider this new approach in isolation.[40]

7.3: Islamic Restrictions on Human Rights

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[38] *Ibid.*
[39] *Ibid.*
[40] Naskou-Perraki, *op.cit.*, p. 54.

In traditional societies, collective bodies and institutions seem to control individual behaviour and choices.[41] International law provides specific standards regarding the limitations placed on human rights protection. Whereas in traditional societies, the framework of rights differs from that of international law, in the sense that limitations on rights are rather vague and broad, they allow a wide discretion in restricting human rights. [42] According to human rights law a certain degree of tolerance and understanding is encouraged regarding the protection of religious practices provided that fundamental international human rights and norms are not violated.

However, international law does not permit human rights to be restricted according to the requirements of a particular religion. The strong reliance on Shari'a of the Muslim minority in the field of family and personal law rules to limit human rights, means that rights that are established under international law are being qualified, according to standards that are not recognised in international law as valid bases for curtailing rights.[43] The use of Shari'a in family law matters in Western Thrace to limit human rights based on religious and cultural traditions cannot normally be justified in international law, which ultimately means that the rights involved are rendered ineffective.

The application of Islamic principles by the religious courts in Western Thrace can result in the nullification of human rights in areas where the *Shari'a* restricts rights and freedoms, such as women's rights, which places them to an inferior status to that of men.[44] As Abdullah Ahmed An-Nai'im has suggested, Islamic law needs to be "re-interpreted in the light of changed social and intellectual reforms in the contemporary world."[45] Thus, in the context of the application of Islamic family law in the Muslim minority of Western Thrace, the principles of equality and non-discrimination need to be firmly established within the context of Islamic law, since restrictions based on gender and religion are not permissible under current international human rights law. In any case, the decisions of the Mufti, as a judge, need to be compatible with the Constitution and national legislation.

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[41] *Ibid.*,p. 63.
[42] *Ibid.*, pp. 58-59.
[43] *Ibid.*, p. 64.
[44] *Ibid.*, p. 65, Anagnostou, *op.cit.*, p. 18-20.
[45] *Ibid.*

7.4: The Position of Muslim Women in the Light of International Human Rights

In today's society equality of women is not always fully respected due to certain religious practices and customs.[46] Numerous international and regional instruments have now incorporated clauses prohibiting discrimination based on gender or sex.[47] According to the UN Convention on the Elimination of All Forms of Discrimination Against Women[48], "the most comprehensive challenges mounted by states to the international norms guaranteeing women's rights and their application have been couched as defences of religious liberty."[49]

The principle of non-discrimination is not only limited to the acts of government but also reaches private behaviour. Such a principle might well now constitute a norm of customary international law. The principles of equality and non-discrimination may often conflict with religious traditions and customs, which are not prepared to give way to fundamental human rights but rather impose cultural and religious rules upon a community as a whole. [50]

The notion of 'equality' has different connotations for different people in different cultures and societies. The status and rights of women in the Muslim minority have been significantly influenced by *Shari'a.* The principle of equality in Islamic law is based on two aspects of the Islamic tradition, one "egalitarian" and the other providing "gender and religious discrimination".[51] Islamic law seems to distinguish in a number of areas between the rights of Muslims and non-Muslims, men and women, free

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[46] See, Appendix D, *supra*, note 29, section D.2.

[47] For example, see Article 2 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, Article 2 of the UDHR of Human Rights and Article 2 of the UN Convention on the Rights of Child.

[48]G.A. Res. 34/180/18.12.1979, entered into force on September 3, 1981, according to Article 27(1). Greece ratified the Convention in January 7, 1983. In regard to the text of the 1979 UN Convention, with comments as well as analysis of the UN Committee on the Elimination of Discrimination Against Women, see Rebecca Wallace, International Human Rights in Context, (London: Sweet & Maxwell, 1997) pp. 18-33, 15-137.

[49] Sullivan, *op.cit.*, p. 798. In regard to the rights of women in international law, see, Tomasevski Katarina, "Women" Eide Asbjorn, Catarina Krause and Rosas Allan, Economic, Social and Cultural Rights, (London: Martinus Nijhoff Publishers, 1995) pp. 273-288.

[50] Konstantinos Tsitselikis, "The Position of the Mufti in the Greek Legal Order", Dimitris Christopoulos (ed.) Legal Issues of Religious Othernes in Greece (Athens: Kritiki & KEMO, 2000) pp. 315-329, *et.seq.*

[51] Mayer, *op.cit,* .p. 79.

persons and slaves.[52] The *Shari'a* requirements of the traditional Islamic culture tend to de-emphasise the egalitarian features of Islam and to reinforce the hierarchical features of the Islamic social and cultural structure where women are viewed as inferior to men and their rights are rather limited in the context of international human rights on a universal basis.

Social and cultural conditions play a very significant role in the way people think about the principle of equality.[53] In traditional societies they claim that the principles of equality and non-discrimination can be accommodated within the context of Islamic law, since "Islam treats as equals all those who should be so treated."[54] Nevertheless, *Shari'a* law developed during the pre-modern era, which was associated with traditional patriarchal family societies that allowed men to control women's lives by placing them in an inferior status against men within the family and society at large. In contrast, people in the contemporary West seem to have established that the principles of equality and non-discrimination extend to all human beings, independently of gender, religion or ethnic origin. International human rights standards demand respect for the principles of equality and non-discrimination and do not permit any restrictions against women or minorities.

The principle of equality is closely related to the principle of equal protection under the law. In the context of the UDHR certain aspects of Islamic law seriously affect women's rights, since they seem to permit violations of the rights provisions of the UDHR.[55] In particular, Article 1 of the UDHR provides guarantees for the right to equality by stating that: "All human beings are born equal in dignity and rights." Article 2 of the UDHR, states that it is not permissible to discriminate on grounds of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Any legal measures that might discriminate against groups of people using these criteria would violate the UDHR safeguards for the principles of equality and equal protection. Article 7 of the UDHR provides that: "All are equal before the law and are entitled without any discrimination to equal

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[52] *Ibid.*
[53] *Ibid.*, p. 80
[54] *Ibid.*
[55] *Ibid.*, p. 117.

protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Article 7 seems to illustrate, the idea that non-discriminatory treatment under international law is due to all persons. Finally, Article 16 provides for the freedom to marry the partner of one's choice. In addition, the provisions of the International Covenant on Civil and Political Rights (ICCPR) seem to provide for the principle of equality and the prohibition of discrimination based among several grounds on religion, sex and ethnic origin. For example, Article 2 of the ICCPR states the prohibition of discrimination while Article 3 provides guarantees for the principle of gender equality. In addition, Article 26 provides for the principle of equal protection of the law without any discrimination based on several grounds, including sex and religion.

The Convention on the Elimination of All Forms of Discrimination against Women entered into force in 1981 (CEDAW).[56] According to standards set in CEDAW regarding the rights and status of women, women's rights in Islamic law seem particularly "deficient and retrograde".[57] Many Islamic states did not accept the provisions of the CEDAW and argued that it came into conflict with their traditional, cultural and religious values. Even though some Islamic states have ratified the CEDAW they have placed several reservations, which provide that domestic law prevails over the particular articles of the CEDAW.

The first five articles of CEDAW are considered to be significant for the fulfilment of its objectives. A number of Islamic states have made reservations to these provisions to the effect that CEDAW is not binding, if its provisions may conflict with *Shari'a* law or that the state party will comply with the provisions of CEDAW provided that such compliance will not be in contradistinction to the Islamic religion or tradition. However, these reservations are considered to be imprecise and indeterminate due to the lack of any certainty required for the acceptance of a legal obligation. Such

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[56] In regard to the status of ratifications of the UN Convention, especially by Islamic states, see Appendix F: "Status of Ratifications of the Principal International Human Rights Treaties."
[57] *Ibid.*, p. 118.

reservations are contrary to the object and purpose of the Convention and incompatible with the international law treaty.[58]

There are several rights provisions within the CEDAW that conflict with Islamic law. For example, the Preamble states that both parents have a role in the family and in the upbringing of children and specifically provides for the role of women in procreation, which should not be used as a basis for discrimination against them. In contrast, Islamic law provides that women have the responsibility for looking after the family and have a child-bearing role and that their procreative function is used as a justification for placing women in an inferior position to that of men.

Article 1 of the Convention defines gender discrimination as:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.

Article 2 of the Convention requires that states take all necessary measures to eliminate all discriminatory laws, customs and practices. Islamic law seems to 'permit and justify' gender discrimination, since it contains provisions that allow legal distinctions based on gender as well as imposing discriminatory measures, such as the compulsory "veiling for women and sexual segregation" that are meant to "protect female chastity and honour".[59] Accordingly, such practices violate the Convention's principles regarding the principle of equality between the two sexes and the prohibition of discrimination.

Article 16 of the CEDAW requires the elimination of discrimination between men and women in the family and thus, ensuring that men and women have the same rights and responsibilities during marriage and at its dissolution. Islamic personal law actually entails discriminatory measures and practices against women. According to *Shari'a*

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[58] The Vienna Convention on the Law of Treaties (1969) prohibits reservations, which are incompatible with the object and purpose of a particular treaty. Article 28(2) of CEDAW reiterates the Vienna Convention and prohibits reservations which are incompatible with its own object and purpose.
[59] *Ibid.*

personal law, women are isolated at home and are prevented from participating in many activities.[60] The application of Islamic personal law tends to violate Article 7 of the CEDAW, which provides for the elimination of discrimination.

The Committee on the Elimination of All Forms of Discrimination against Women has expressed great concern over the significant number of reservations placed on Article 16 of the CEDAW relating to equality in marriage and family relations, particular in those cases where a state party has also entered a reservation to Article 2. The Committee has urged state parties to eliminate any notions of inequality between men and women, provided either by religious or private law or custom and has encouraged them to progress to a level where reservations to Article 16 could be removed.

According to Muslim family law, men have the right to marry up to four wives and the power to exercise control over them during marriage up to the extent that they have the right to punish them for disobedience, if they deem necessary.[61] The phenomenon of polygamy in the Muslim minority of Western is limited and uncommon. However, the husband's entitlement under Muslim law and in actual practice might be discriminatory for it allows one of the spouses to take further wives with full legal recognition and therefore, fundamentally changes the nature of the couple's family, as it has developed in the Greek social and family context.

On the issue of divorce, a husband is entitled to divorce any of his wives; a wife is not entitled to a divorce except by judicial order on very specific and limited grounds. However, this kind of divorce, *talaq*, which allows a husband to unilaterally repudiate his wife without showing cause and without the need for recourse to any court or extraneous authority or even without the requirement of notification to his wife is clearly discriminatory, since it is not available to other spouse. [62]

Similarly, another discriminatory practice in Muslim personal status matters is found in the law of inheritance where the general rules are that women are entitled to half the

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[60] *Ibid.*
[61] See, An-nai'm , *op.cit,* p. 18,. Mayer, *op.cit.*, p. 95, Appendix D, *supra*, note 29.
[62] *Ibid.* (Appendix D)

share of men.[63] These kinds of principles and values play an extremely significant role in the socialisation of both women and men. The notion of women's inferiority is deeply embedded in the character and behaviour of both women and men from early childhood. Such views, anachronistic as they seem are based on culture and religion, which can further impede the integration of Muslim women into the Greek society.

In this traditional religious context, men are considered "as a group the guardians and superior to women as a group and the men of a particular family are the guardians of and superior to the women of that family."[64] *Shari'a* also states that women are disqualified from holding general public office, which involves the exercise of authority over men. Nevertheless, employment in the public field within the Muslim minority in Western Thrace has become common and even necessary for many women due to increasing demands of modern society.[65] This is, despite the views and beliefs of the Muslim conservatives, who argue that women should not work outside the home and that they should not be allowed in jobs where they will have contact with men, accordingly, they should only take jobs dealing with women and children.

Basic education in Greece is mandatory for nine years for both sexes, but it is interesting to examine how feasible such a right is within the Muslim minority, since due to cultural and religious factors, girls often receive very little education.[66] In particular, Islam law requires "sexual segregation" in education and that women should only be allowed to study subjects suitable for females, which will prepare them for a life within the home and family.[67] However, it could be argued that such views are influenced by traditional structure of society, which requires that women should be kept surrounded, subordinated and excluded. [68]

According to Shari'a law women are not permitted to participate in pubic life and must not mix with men even in public places. In particular, the status and rights of women is highly influenced by the notion of *al-hijab* (the veil).[69] This implies more than

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[63] *Ibid.*
[64] *Ibid.*
[65] Anagnostou , *op.cit,* p. 27 , Mayer, *op.cit.*, p. 96.
[66] See , Chapter nine, *infra*, sections 9.2 and 9.5.
[67] Mayer, *op.cit.*, pp. 95-96.
[68] *Ibid.*, p. 79.
[69] An-Nai'im, *op.cit*, p. 17.

requiring women to cover their bodies and faces in public. According to the Shari'a interpretations of certain verses of the Qur'an, it requires that women stay at home and not leave except when required by "urgent necessity".[70] When they are allowed to leave the home, they must do so with bodies and faces covered. *Al-hijab* further reinforces women's inability to hold public office and restricts their access to public life.

Within the social context of Greek society, the religious practices of the Shari'a law come into direct conflict with legal protection of the principles of equality, non-discrimination and the equal protection of the law, which are firmly established within the Greek constitution and legislation. Due to the high degree of religiousness within the Muslim minority in Western Thrace, arising from local culture and tradition this mostly results in the inferior treatment of women. These kinds of distinctions made in Islamic law between different groups of persons are seen as the "natural order of things". Under such circumstances, the actual patterns of discrimination on the basis of Islamic law need to be abolished in order to prevent violations of human rights, including women's rights.

In particular, Muslim conservatives believe that Islamic law does not contravene the principles of equality and non-discrimination even if women are accorded an inferior status.[71] Such views are not compatible with international human rights standards, since the principle of equality cannot be accommodated with a regime of discrimination against women.

These human rights principles and norms are firmly established in international law. They seem to extend protection on women's rights in eradicating all forms of gender discrimination. These measures require states to take positive action in combating all forms of discrimination based on gender. According to these international human rights standards, the application of Islamic law to the Muslim women in Western Thrace might need to be abolished in the light of current international human rights; in

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[70] *Ibid.*
[71] *Ibid.* p. 80.

favour of a uniform system of family law based on the Greek civil law and international human rights.[72]

The Mufti is vested with traditional powers to judge on the basis of Islamic law family law disputes between the members of the Muslim minority. But in order to reconcile Islamic law with the Greek legal system, Law No. 1920/1991, provides that the civil courts shall not enforce decisions of the Mufti, which are contrary to the Greek Constitution, legislation and international human rights.[73]

7.5: The Influence of Sex Stereotyping in International Law

The influence of sex stereotyping can have major consequences in the effective implementation of the principle of equality.[74] The CEDAW recognises that sex stereotyping constitutes an obstacle to realising full equality for women and requests that all governments attack attitudes and practices that stereotype women as inferior human beings, whose nature disqualifies them from enjoying freedoms on an equal footing with men. Accordingly, Article 5(a) states that the state parties shall take all appropriate measures:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

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[72] The Greek Helsinki Monitor and the Minority Rights Group in Greece made a joint appeal to the Greek government to abolish the anachronistic application of Islamic law on the Muslim women of Western Thrace. Both organisations, stated that Islamic law violates the principles of equality and non-discrimination as well as the rights of the child, regarding custody cases, where the father will take custody of the children after a certain age (see, Appendix D, *supra*, note 20) Recommendations were also made, for the abolition of the application of Islamic law in Western Thrace by the National Human Rights Commission, (a consultative body with the Prime Minister) as well as on the subject of the child custody based on Islamic Law. In addition, the UN Committee on the Rights of the Child, also made several comments on this matter. Ghalia Mohd Bin Hamad Al-Thani, a female paediatrician from Qatar and an expert in the Committee, made a very interesting recommendation, in regarding the application of Islamic law in Western Thrace. Al-Thani stated to the Greek Helsinki Monitor, that similar practices to those in Greece do not exist anymore in numerous Muslim countries. The application of Islamic law within the Muslim minority of Western Thrace is explained by Greek government, in accordance with Article 42 of the Treaty of Lausanne to provide religious freedom to the minority.

[73] See, Chapter six, *supra*, section 6.5.

[74] Mayer, *op.cit.*, p. 119.

In contrast, Islamic law seems to embody the idea that men and women have fundamentally different natures and roles and therefore they should have distinct rights and responsibilities.[75] In addition, Muslim conservatives seem to hold strong views that the distinct roles assigned to men and women in Muslim societies are those that God and nature provided for them.

The members of the Muslim minority seem to believe that the best way of preserving their own culture, tradition and customs is by preserving the application of *Shari'a* law in family and personal law matters. In such a way, they claim to protect their women by regulating their lives rather narrowly and strictly without any external influences. The structure of the Muslim family has been shaped on strong patriarchal premises where men have control and dominance over women. However, the historical conditions under which the *Shari'a* rules were interpreted needs to be taken into consideration, since they reflect the cultural conditions of traditional societies.

The application of the Islamic religion represents two social conditions of traditional societies: "men's advantage over and financial support of women."[76] However, the fact that men are physically stronger than most women is not relevant in modern times where the rule of law and human rights prevail over physical power.[77] In addition, modern circumstances have helped to promote women's economic independence. This means the advantages of physical might or financial power cannot be used as justifications for the authority of men over women. Thus, the application of Islamic law within the Muslim minority in Western Thrace needs to be reviewed in the light of current human rights standards.

The fundamental position of human rights is that all human beings are equal in worth and dignity regardless of gender, religion or race. Even though modern human rights law acknowledges the existence of certain group rights, it generally provides primary protection to the right of individuals and views a person's religious and ethnic background as part of the distinct identity of the particular individual.

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[75] *Ibid.*
[76] See, An'naim, *op.cit,*, p. 20.
[77] *Ibid.*

Family law is regarded as one of the most important social and legal functions in every society. The existence of a separate system of family law within the Muslim minority runs counter to the minority's development and full integration within the Greek society. In addition, it can also constitute a form of 'social' segregation'. The existence of a separate system of family law for the Muslim minority seems to conflict with the Greek unified system of family law where a set of rules applies regardless of one's origin, race or creed. At this point, it needs to be realised that a basic uniform system has helped in the past to create a more cohesive society and that is still needed today. In particular, a unified legal system has been an essential part of the process of nation-building required to integrate minorities into the general framework of Greek social and family values.

7.6: Concluding Remarks

The central issue of this analysis has been to consider whether Muslim family law and rules contain discriminatory rules, especially against women's rights. In particular, the application of Islamic law to the Muslim minority in Western Thrace seems to contradict the provisions of the Greek Constitution and national legislation regarding women's rights and thus violates fundamental human rights, which do not allow the discriminatory treatment of women or minorities.

Accordingly, one might conclude that the application of Islamic personal law within the Muslim minority in Western Thrace includes discriminatory practices against women. It might also be said that such an application violates the principles of the Constitution and international human rights such as the principle of equality between the two sexes and the prohibition of discrimination based on gender, religion or ethnic origin.

The application of Islamic law in Western Thrace does not seem to provide uniform treatment for all citizens, since it discriminates against a large segment of Greek citizens, Muslim women in Western Thrace. Although the right to freedom of religion is absolute and no restrictions can be placed upon it, religious manifestations and practices may be restricted according to recognised international standards, *inter alia*,

public order and the fundamental right of others. For example, Article 9(1) of the ECHR provides that:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching and practice and observance."

The second paragraph of Article 9 provides limitations to the exercise of religious freedom prescribed by law and necessary in a democratic society in pursue of a legitimate aim. Freedom of religion is a fundamental human right and any limitations placed by the state must be in a very restrictive and limited manner.

The right to gender equality in relation to marriage and family life is very specific and an unqualified right in international law. Article 16 of CEDAW provides that:

> "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount"[78]

Accordingly, the state is entitled to insist that no one should be subjected to gender discriminatory practices due to religious affiliation. Thus, the Greek government must review the application of Islamic Law to the Muslim minority in Western Thrace due to cultural and religious practices, which conflict with the Constitution and international human rights norms. Although the protection of the religious freedom of the Muslim minority is an essential consideration of the Greek government, it must

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[78] Article 16 of CEDAW also provides: "(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership,

also honour its international obligations, which primarily require respect for the principles of equality and non-discrimination, including women's rights. Thus, in the light of current international human rights state authorities must abolish the anachronistic application of Islamic family law within the Muslim minority in Western Thrace in favour of Greek family law, which safeguards the principles of equality and non-discrimination. State authorities must continue to protect the religious freedom of the Muslim minority in all other respects on a national and international level.

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acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

CHAPTER EIGHT: THE RIGHT OF THE MUSLIM MINORITY TO USE THEIR OWN LANGUAGE IN OFFICIAL AUTHORITIES UNDER THE GREEK LEGAL SYSTEM

8.0: General Background

Language is considered to be a fundamental element of personal and ethnic identity. In essence, language is closely related to the sentiments of community, culture, and identity.[1] Language is intimately connected to economic and social mobility in today's society. Accordingly, those whose primary language is that used by the state gain an enormous advantage over others.

In general, minorities view their language as the primary means of defining their distinctiveness. Individuals cannot easily change their language, since language plays a key role as the "marker of the community" for individuals; it becomes a factor of identification such as race or religion, viewing those who are different as potential targets of discrimination.[2] Rights, which are associated with language are essential. The right to use and perpetuate a language is the basic criterion by which attitudes, policies and activities of a government are judged. In many instances, the continued separate existence of a minority is seen as a function of the right to continue to use the minority or non-official language.

It has long been recognised in international law and in a growing numbers of states that minority groups have the right to freely use their language together with other members of their community.[3] In particular, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) provides[4] that "the members of a linguistic minority shall not be denied the right to use their own language *in community* with other members of their group." This reveals the 'communal' use of language; the extent of its effectiveness and the limits of its use are up to the national legislation and jurisprudence. Any step beyond the scope of Article 27 of ICCPR is deemed to be

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[1] Fernard de Varennes, Language, Minorities and Human Rights, (London: Kluwer Law International, 1996) p. 1, *et.seq.*

[2] *Ibid.*

[3] In regard to the concept of a 'minority' and the protection provided by the current system of international law to minorities, especially, in terms of using their own/minority language, see, Albanese Ferdinando, "Ethnic and Linguistic Minorities in Europe" Vol. 11, Yearbook of European Law, (1991), pp. 329-338.

appropriate for clarification in national or regional instruments where the ethnographic factors and psychological attitudes can be considered in creating more specific measures.

The right of persons to use their own language actually includes more than just speaking one's own language. Specific manifestations of this right include the right to state-sponsored education for one's children in their mother tongue and the right to hold meetings and to enjoy cultural activities in a language easily understood. It also encompasses the right to use one's own language in all forms of publications, including newspapers, journals and books and to broadcast radio and television programmes. Within the judicial system, language rights include informing a person of the charges brought against him in a language which he understands, making adequate facilities for a defendant to follow all aspects of a trial, including the evidence of witnesses and the verdict. Finally, in administrative proceedings with the government, members of a linguistic minority might wish to correspond, file forms and be informed of official regulations and activities in their own language.[5]

Freedom of expression and non-discrimination offer to individuals a form of basic protection regarding the free exercise of their human rights, including the rights of minorities to use their own language.[6] The right to non-discrimination provides for the positive duties of the state when there is sufficient demand for linguistic minorities to use their own language, in public and in private, in administrative and judicial authorities and education.[7]

In the use of a minority language, the Muslims have the right to freely use the Turkish language orally or written, in public and in private and in their communication with administrative and judicial authorities. The linguistic rights of the Muslims in Western Thrace are protected by a number of international treaties, including the Treaty of Lausanne. The right to participate in the economic and social life of the country is

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[4] G.A. Res. 2200A(XXI)/16.12.1966, entered into force on March 23, 1976, according to Article 49.
[5] Maria Tabory, "Language Rights as Human Rights" Vol. 10, Israeli Yearbook of Human Rights, (1980) p. 167, *et.seq.*
[6] In regard to the rights of minorities and freedom of expression in their own language, see Fernand de Varennes, "Language and Freedom of Expression in International Law" Vol. 15, Human Rights Quarterly, (1993) pp. 163-186.
[7] *Ibid.*, p. 127.

established under Article 5(1) of the Constitution[8] whereas the right to freedom of expression is provided by Article 14 of the Constitution, which represents a framework of protection for "linguistic expression". The right to freedom of expression is an inalienable part of the personality of every person as well as a means of communication and effective participation in the social, economic and cultural life of the community.

However, such a right might not be adequately protected, in certain instances, in the light of current international law regarding the protection of linguistic minorities. In particular, in the area of media, several minority journalists and publishers have been prosecuted regarding the substance and content of their articles in minority newspapers. This might be described as a direct violation of the right to freedom of expression and the independence of the media. In any case, in most instances most individuals convicted under Article 191 of the Criminal Code were finally acquitted, since the national courts were not able to prove a direct link between the content of such articles and the offence provided under Article 191.

In this chapter, an analysis will be provided of the rights of the Muslim minority to use their own language, in private and in public, in administrative and judicial authorities, in the media as well as the use of the minority language in the minority political parties. This analysis will entail a detailed description of international law instruments, regarding the protection offered to minorities on the use of their own language in the social and private functions of their everyday life. Secondly, the Treaty of Lausanne and the existing Greek legislation will be analysed as to the kind of protection offered regarding the linguistic rights of the Muslim minority in Western Thrace. The review of domestic legislation on this issue is essential, in order to examine the legal status of the minority in Western Thrace by emphasising the positive steps taken the Greek government and also to highlight the inadequacies of the existing legal framework in the light of current international law provisions.

8.1: Use of a Minority Language under International Law

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[8] Article 5 of the Constitution states that: "All persons have the right to develop freely their personality and participate in the social, economic and political life of the country, insofar as they do not infringe upon the rights or violate the Constitution and moral values."

Most of the international law instruments allow members of linguistic minorities to enjoy their own culture and to use their own language in public and in private life freely and without any kind of discrimination or interference. [9] The use of the mother tongue as well as the use of a minority language is subject to legislative regulations. In some cases, states will prohibit the use of a minority language in public places while permitting in the private sphere but Article 10 of the Framework Convention on the Protection of National Minorities (hereafter "Framework Convention") states:[10] "The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without any interference his or her minority language, in private and in public, orally and in writing."

Accordingly, there seems to be a common agreement as to the appropriate 'standard' to which governments have a legal and political obligation to conform.[11] It is widely accepted that public authorities have an obligation to use the language of minorities when required, given that the number and geographic concentration of the members of a linguistic minority justify it. According to Paragraph 63 of the Explanatory Report of the Framework Convention, the use of a minority language in "public life" is restricted to its use in public places or in the presence of others and is not connected with communications with public authorities or presumably, the use of the minority language in official context.

The entry into force of the European Charter for Regional or Minority Languages[12] (hereafter "Charter") the first international instrument directed solely at the question of language provided a positive step towards the protection and promotion of language rights on a universal basis. Although, the Greek government has not yet ratified the Charter, it is essential for the purposes of examining the right of minorities

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[9] For example, see Article 9(1) of the Framework Convention and Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (G.A. Res. 47/135/18.12.1992). See, also, the case of Ballantyne, Davidson and McIntyre v Canada Communication 359/1989, UN Doc. CCPR/C/47/D/359/1989 and 385/1989, United Nations Human Rights Committee.

[10] Council of Europe, November 1, 11, 1995.

[11] For example, see Article 10 of the Framework Convention and Paragraph (32.5) of the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, 1990

[12] Council of Europe, November 5, 1992. See, also Chapter, three, *supra*, section 3.2 (C) and (D).

to use their language, to offer an analysis regarding the protection offered to such minorities in a European context.

The Charter recognises that positive steps are required by states to meet "the need for resolute action to promote regional or minority languages in order to safeguard them."[13] According to the explanatory report, the Charter's main aim is to protect and promote the "autochthonous" languages of Europe all of which are characterised by "a greater or lesser degree of precariousness." The Charter, states in its Preamble: "The protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural, wealth and traditions."

However, the Charter attaches importance to language rights strictly in the context of the positive value attached to cultural diversity. In particular, one restriction of the Charter is its political character rather than being a rights treaty document. It leaves open the possibility for states to 'opt-out' of most of the treaty provisions in such as a way as to disregard the human rights of affected individuals such as the right to freedom of expression and non-discrimination.

Moreover, the right to have public authorities use a minority language where reasonable and practical is also included in a large number of resolutions, declarations and other documents of the Council of Europe, the Organisation on Security and Co-operation in Europe and the United Nations. Accordingly, this confirms the widespread acceptance and recognition of these rights as fundamental human rights, on a legal and political basis.

If public authorities do not allow the use of a minority language in private activities, this would entail a violation of a number of human rights in international law treaties and other documents such as the right to private and family life, freedom of expression, the principle of non-discrimination and the right of persons belonging to a linguistic minority to use their own language with other members of their group. This would mostly be because it would prevent them from using the language of their

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[13] See Article 7(1) of the Charter.

choice.[14] These provisions constitute examples of the private use of a minority language.

The same kind of protection applies to the case of the written use of a minority language or using such a language as a means of communication. Public authorities must not interfere with the rights of individuals to write or use a minority language in private correspondence or communications, including the use of a minority language in private business or commercial correspondence.[15]

Article 17(2) of the Framework Convention obliges states "not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels" is probably implicit in the rights to peaceful assembly and association. These provisions are likely to extend to protect the rights of linguistic minorities to use their language in economic and commercial life in the private sector. [16]

There are currently no cases under international law or the Council of Europe referring to situations, where public authorities have prohibited the use of a minority language in private correspondence or communication. In theory the only situation, where this might be possible is if such a restriction would be necessary according to recognised international standards.[17]

8.2: The Use of a Minority Language by Administrative and Public Authorities

The status of an official language in a state is provided by law. However, this does not mean that public authorities are prohibited from using any other language when it is necessary. In those states where there are a considerable number of individuals speaking a minority or non-official language, public authorities in regions where they

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[14]Fernand de Varennes, A Guide to the Rights of Minorities and Language (Hungary: Constitutional & Legal Policy Institute, 2001) p. 8, *et.seq.*

[15] *Ibid.*, pp. 9-10.

[16] For example, see, Article 13 of the Charter and Article 14 of the Framework Convention. For the non-binding documents see, Recommendation 12 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.

[17] Varennes (2001) *op.cit.*, p. 10.

are mostly concentrated should be able to respond to their requests as well as offer public services in their primary language. [18]

The basic aim is to reach a reasonable balance between the interests and obligations of the state and the rights, interests and obligations of affected individuals in matters relating to language by public authorities. More specifically, in local administrative districts where speakers of a minority language are concentrated, local authorities must provide for "an increasing level of services in their language as the number of speakers of a particular language increases."[19] According to Fernand de Varennes, the most suitable approach to adopt would be the "sliding-scale" approach, in order to arrive at a linguistic policy, which will not discriminate on the ground of language.[20]

When there is a sufficiently high number of individuals, whose primary language is not the official language, it would be discriminatory not to provide a level of services appropriate to the relative number of individuals involved. In the process of determining the proper policy, public authorities must strike a balance regarding the nature of service, the frequency of contacts with the public, the linguistic composition of the region to benefit and the importance of services involved and their effect upon the individuals. Ultimately, each public authority must adopt a non-discriminatory policy in relation to its language use. [21]

Although, each country's situation is unique and the number of issues are numerous and variable, each government must have a certain degree of a margin of appreciation

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[18] Vareness (1996), *op.cit.*, pp. 176-181, Giorgos I. Diakofotakis, Minorities and International Law, (Thessaloniki: Sakkoulas, 2001) pp. 396-406.
[19] *Ibid.* at p. 29.
[20] Varennes (1996), *op.cit*, pp.177-178. It can be concluded, that most international instruments include the concept of a "sliding-scale" approach. Article 10(2) of the Framework Convention provides that: "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.", Paragraph 34 of the OSCE Copenhagen Document and Article 10 of the Charter.
[21] According to Vareness (1996), *op. cit.*, p. 181, if one uses the "sliding-scale" approach starting from the lower end and move upwards, this would mean a number of things: "Firstly, state authorities would have to make available official documents and forms for groups of people, who use a non-official or minority language or they could provide bilingual versions of public documents. Secondly, state authorities would have to accept oral or written applicants in the non-official or minority language. Thirdly, public authorities would have to be able to respond in that language. Finally, the members of a linguistic minority should be able to use a minority language as an internal and daily language of work within public authorities."

in order to develop the proper mechanism to the unique situation of the state and its speakers of various minority languages[22]. These principles described above represent a 'minimum' set of guarantees for the right of individuals, who belong to a linguistic minority to use their own language in administrative and public authorities. They are a set of requirements, which public authorities must respect in implementing the right to non-discrimination, when there is a demographically significant number of individuals, who may suffer disadvantages due to the state's language policies or practices.

As far as the use of the Turkish language is concerned, in communication with the administrative authorities no relevant legislation exists.[23] In the region of Komotini where the demands are high, the absence of employment of Turkish-speaking people in public authorities makes it almost impossible for the members of the Muslim minority to communicate with the administrative authorities. In practice many administrative authorities in Western Thrace appear to operate interpreters' services.

The members of the Muslim minority seem to have a limited proficiency in the Greek language. One of the main factors, which contributes to such a situation is that in most aspects of their everyday life they do not come into contact or interact with members of the majority, because of their rather closed and isolated environment.[24] Accordingly, it would seem that these people are most likely to be disadvantaged in terms of the level of enjoyment of services and opportunities of employment.

Accordingly, the Greek government seems to have adopted the position of a positive response to the demographic reality within the region of Western Thrace, as a means of achieving equality and peace among the members of the Muslim minority and the rest of the population. No international instrument attempts to provide a demographical criterion for determining when exactly the use of a non-official or minority language by public authorities is an appropriate and reasonable response to the principle of non-discrimination. In essence, this means that the level of public services in a given language will depend on the relative numerical strength of the

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[22] *Ibid.*
[23] Tsitselikis, *op.cit* ,p. 340.
[24] See, Chapter nine, *infra*, generally.

population in a region, district, municipality or province, which uses a minority language. The right to have a minority language used by public authorities covers all areas of state involvement, including the judiciary, police education and where applicable public broadcasting and media.

8.3: Use of a Minority Language in Judicial Authorities

With regard to civil and political rights, most international treaties as well as most states provide for the use of a minority or non-official language in judicial proceedings.[25] The European Convention of Human Rights (ECHR) contains several provisions, dealing explicitly, with the protection of language rights.[26] Accordingly, Article 5(2) of the ECHR states that: "Everyone who is arrested shall be informed promptly, in a language he or she understands, of the reasons for the arrest and of any charges against him." This requirement applies to arrest on any ground, not just arrest in connection with criminal proceedings.[27] It extends to cases in which a person is recalled after release as well as to cases of initial detention.

In the course of criminal proceedings, Article 6(3)(a) stipulates that everyone who is charged with a criminal offence is to be informed promptly in a language which he understands and in detail, of the nature and cause of the accusation against him and to have the free assistance of an interpreter. These are the so-called "minimum rights" accorded to a person charged with a criminal offence dealing with his or her right to have a language, which he or she understands employed in the proceedings against him or her. These principles are almost reproduced in Article 14(3)(a) of the ICCPR..

The ECHR does not give the accused person a right to be charged or tried in the language of his or her 'choice.' Articles 6(3)(a) and (e) as well as Article 14 are

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[25] Article 252(1) of the Code of Civil Proceedings, states that :"When a witness, an expert or any parties to the action or the legal representatives lack knowledge of the Greek language, then an interpreter is hired." Article 252(2), states that : "If the language is not widely known, then a second interpreter can be hired." See, also Diakofotakis, *op.cit.*, pp. 406-412, Varennes (1996), *op.cit.*, pp. 181-192.

[26] The European Convention on Human Rights was signed in Rome on November 4, 1950 and entered into force on November 3, 1953.

[27] See , Van Der Leer v Netherlands, Series A, Vol. 170, Series A, Eur.Ct.H.R. (1990), at paragraph 27. The case concerned a "person of an unsound mind" on its facts, but the Court's reasoning extends to all

merely designed to ensure that language differences shall not prevent a fair hearing or be used in a discriminatory manner in the administration of justice. Even though the ECHR does not permit the accused to choose freely the language used in the proceedings, the phrase *"in a language which he understands"* refers not only to the 'linguistic' aspects but also to the 'nature' of the information. If the phrase "shall be informed" employs its ordinary meaning clearly a person, who understands only one language would not be duly informed, if the reasons for his arrest were explained to him in another. Therefore, the phrase used by Article 6 of the ECHR, indicates not only the choice of a language with which the accused understands, it also extends to the information passed on to the accused, which must provide a clear and readily understandable indication of the grounds on which he or she is being held.[28]

In regard to the use of the minority language in judicial proceedings in Greece, legal rules enacted in 1914(Royal Decree 148/1914) as amended by the Presidential Decree 28/31 of August 1933 provided for Turkish language interpreters' offices at the courts of first jurisdiction of Thrace and part of Macedonia appear to have been abandoned.[29] The members of the Muslim minority, who are not fluent in Greek can rely on general rules of procedure making obligatory the *ad hoc* appointment of interpreters in the case of all non-Greek speaking litigants. In practice, the process of translation from the Turkish into Greek mainly in criminal law cases in the courts of Western Thrace, is informally made either by the Turkish lawyers in the trial or by a third party.

In the religious court, the oral proceedings are wholly conducted in the Turkish language, the decisions are also written in the Turkish language, which are later translated by the One-Member First Instance Court for the decision to be executed.[30]

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cases of arrest or detention. The Court rejected an argument to the effect that the wording "an of any charge" implied that Article 5(2) was limited to Article 5(1)(c).

[28] See, Article 14(3) of the ICCPR.

[29] Tsitselikis, *op. cit.* at p. 340 , Stephanos Stavros , "The Legal Status of Minorities in Greece Today : The Adequacy of their Protection in the Light of Current Human Rights Perceptions" Vol. 13, Journal of Modern Greek Studies, (1998) p. 23.

[30] See, Article 8(2) and (3) of the Introductory Law of the Code of Civil Proceedings and Article 5 of Law No. 1920/1991 , in regard to the duties of the Mufti. See, also, Chapter six, *supra*, section 6.5. In regard to the use of the minority language in religious ceremonies under international law and the practice of the world churches in the use of a minority language, see, Diakofotakis, *op.cit.* at pp. 429-432. For example, Paragraph (32.3) of the OSCE Copenhagen Document states that : "Persons belonging to national minorities have the right to profess and practice their own religion, including the acquisition, possession and use of religious materials and to conduct religious educational activities in their mother tongue"

As far as the special position of the office of the Mufti in Western Thrace is concerned (Mufteia) Article 7 of Law No. 1920/1990, states that: "The Mufteia are public services, their correspondence is conducted in the official language of the State, as well as the acts and letters written by the Mufti." In practice, the official letters and acts of the Mufti are usually translated into Greek. Any texts or documents, which have a religious or administrative character and which exclusively related to the minority itself are written either in the Turkish or Arab language.

The international recognised standard is the application of the principle of equality and non-discrimination on the basis of language. In particular, in the course of a trial when the accused does not understand the language used in court he would suffer compared to an individual, who has the benefits of proceedings in his or her primary language. [31] Thus, this implies the application of the "sliding-scale" approach, which takes into account these disadvantages and a state's resources and ability to respond to such demands in a reasonable and justified manner.

8.4: The Right to Receive Information in the Mother Tongue

The access linguistic minorities can obtain to the media is vital in order to safeguard their rights. Today no minority language can keep its influence unless it has access to the new forms of mass communication. The strong presence of modern communications and media and their profound impact on language and linguistic patterns cannot be overemphasised. Article 27 of ICCPR provides the right to members of a minority to use their own language in the media and publications. Any prohibition on the part of public authorities would entail a violation of the freedom of expression.[32] Article 19(2) of ICCPR provides that the right to freedom of expression includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, through any other media of his choice." [33]

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[31] See, Article 9 of the Charter .
[32] Varennes (1996), *op.cit.*, pp. 163-164, Diakofotakis, *op.cit*, pp. 439-444.
[33] Article 9(1) of the Framework Convention provides that this freedom shall be enjoyed by members of national minorities through the medium of the minority language. Moreover, Article 9(3) of the Framework Convention requires states to ensure that members of national minorities have the possibility of creating their own radio and television broadcasting media.

According to Article 14(1) of the Constitution the right to receive information is established. In the ECHR, Article 10 provides for the right to receive and impart information, this right is echoed in Article 5(d)(viii) of the International Convention On The Elimination of all forms of Racial Discrimination.[34]

One important issue concerns the type of government control and allocation of radio and television frequencies. A state is prohibited under Article 27 of ICCPR from interfering in the use of language by members of a linguistic minority, however, this does not necessarily imply that linguistic minorities have unrestricted freedom to use any frequency they choose without being subjected to the regulatory supervision of the state. [35] In any case, the nature of Article 27 of ICCPR needs to be kept in mind, in order to appreciate the distinction between non-interference of the state and the allocation of resources of the state.

According to Article 27 of ICCPR a state should not be allowed to prevent or hinder in any way the efforts of a linguistic minority to establish a private radio or television station using the minority language aimed at a minority audience. However, in order for linguistic minorities to operate private media they need certain resources such as airway frequencies, which are considered to be public goods. In this case, public authorities must not act in a discriminatory manner in granting a license to members of a linguistic minority for private radio and television stations. If public authorities act otherwise, it would constitute a violation of Article 27 of the ICCPR.

In matters relating to language use and private media, three main questions are raised: First, the distribution of radio and television programmes by state authorities affecting the content and programme of the television or radio as well as the use of language,

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[34] G.A. Res. 2106(XX)/21.12.1965), entered into force on January 4, 1969, in accordance with Article 19.

[35] See, Article 9(4) of the Framework Convention, the Explanatory Report of the Oslo Recommendations Regarding to the Linguistic Rights of National Minorities, (the "Oslo Recommendations") provided by the Foundation on Inter-Ethnic Relations for the OSCE High Commissioner on National Minorities, states that: "The mechanisms developed by or on behalf of national minorities reflects the interests and desires of the community's members and is seen by them as independent". Moreover, Article 11 of the Charter, offers a wide set of measures with respect to radio and television broadcasting, which ranges from the creation of station or channel for a regional or

secondly, the allocation of broadcasting permits and finally the availability of funding to private media, relating to the issue of non-discrimination. Undoubtedly, the linguistic policies of the state will affect the employment opportunities in the state media of members of a linguistic minority using their own distinctive language. The needs and interests of these individuals would not be properly served by the exclusive use of the official language, if these individuals were denied the right to use their own language in the public media.[36]

According to these provisions, one may conclude that the right to receive and impart information in one's language is a fundamental right and any restrictions must be applied in a limited and strict manner and must be prescribed by law. Within the right to receive information, is included the use of a minority language through the media. In regard to private broadcasting, it is generally guaranteed in international law and the Council of Europe within the context of freedom of expression and the press.[37]

Law No. 2328/1995, regarding private television and local radio stations does not contain any specific provision for minority media or access of minorities to the media. It makes a very general and vague reference to the principle of "public common interest" but there is still no legal framework institutionalising minority media into the Greek media spectrum. Law No. 2328/1995 provides:

> Licensing for local radio stations is granted on the basis of the principle of common public interest and constitutes a public function. The television stations, which will be given licenses, will also have the obligation to take care of the quality of the program, the objective information, the securing of pluralism as well as the promotion of culture through the emission of programs which can be dedicated to art.[38]

Nevertheless, minorities' access in Greece to the mainstream media is sometimes restricted. Licensing is open to anyone, who fulfils the necessary standards: technological infrastructure, financial ability, experience, knowledge of the quality of the programme and respect for the journalistic code of ethics. By taking into

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minority language to the allowance of air-time for broadcasting in such languages on majority language media.

[36] See, also Article 11 of the Charter.

[37] Handyside case, Vol. 24, Series A, Eu.Ct.H.R., (1976).

[38] (FEK A' 159, 1995): "In Regard to Legal Regime of Private Television and Local Radio and the Regulation of Issues of Radiophone Market and Other Provisions"

consideration the required standards, one can realise how difficult it might be for a minority with limited resources, including human resources, to fulfil them. In addition, the fact that the Greek media contain no provision for partial subsidisation of independent minority media and use of the public broadcasting infrastructure for the production of independent minority programs makes it even more practically difficult for minority groups to have their own share of the Greek media spectrum.

It is widely recognised that individuals, including members of a minority group, are free to publish books or newspapers privately in a minority language. As far as the circulation of private newspapers is concerned, state authorities should not enter legislation or in anyway impede the publication and distribution of newspapers using a minority language. However, the state does not have any positive duty from a legal point of view to provide financial assistance or resources to the members of a minority group. But if the state provides financial or material assistance to private publication activities, it must do so in a non-discriminatory manner.

In Greece, the circulation of newspapers or magazines in a minority language is mainly restricted to the Turkish-speaking press.[39] There are also radio programmes broadcast in the Turkish language by state and private channels.[40] The use of satellite

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[39] See, Tstitselikis, *op.cit.* at pp. 341-342. The first minority newspaper was first published in 1924 by M. Hilmi titled; "*Geni Zia*", whereas in 1926 a second newspaper was published "*Geni Adem*". Later on, between 1931-1932 several 'nationalist' newspapers were published like "*Trakia*"(Thrace) and "*Milliet*" (Nationality). Since 1937 and after the following newspapers were published: "Moudafaei Islam" (Islamic Defence), "Hak Giol" (The Way to Justice), "Sebat" (Stability) and finally "Mouhafaziarak"(Conservatism). All these minority newspaper strongly defended the Kemalist regime. In 1957 the newspaper "Akin" (Attack) was published and more minority newspapers followed and continued to circulate: "Illeri" (Forward), "Trakianin Sesi" (The Voice of Thrace), "Bati Trakia Express" (The Express of Western Thrace), "Dialogue", "Elie Birlick"(Family Unit), "Baris" and finally the "Goudiem". Several minority magazines are also published, such as the "Arkadas", the "Tsozouk" and the "Hiour Haka Davet" They are published and circulated daily, weekly or monthly. They mainly express the different trends and ideologies of the Muslim minority. It is also worthy mentioning, that whereas, in Athens and Thessaloniki the Turkish press disturbed from Turkey, the same thing does not happen in Western Thrace.

[40] *Ibid.* These are: "Isik FM", owned by Abdulhamlim Dede. The radio station mainly broadcasts news three times a day and maintains a programme of a religious nature when five times a day it reads chapters of the Koran, also one hour is dedicated for preaching. Secondly, there is "Radio City Fm", the owner of which is Halil Ibraam. The radio station was created in 1992 and it plays a variety of music, including Turkish, Greek and from other parts of the world. Moreover, there is "Joy FM", owned by Boudour Tsegiz, established in 1994. This radio station mainly appeals to the Muslim youth and it mainly broadcasts, during election periods, programmes of a political nature. Finally, there is "Tele Radio FM", which is owned by Retzep Oglou Romadan and was established in 1994. It appeals to a large number of audience of all ages and it usually broadcasts political programmes and it also has an open line of communication with its audience on issues of religion, health and sports. Moreover, the minority station broadcasts chapters of the Koran every Thursday evening.

channels of the Turkish television is facilitated by the municipality of Komotini, which re-broadcasts signals to the Turkish-speaking population of the prefecture of Rodopi.

Certain positive measures taken by the Greek government in the field of minority media should be mentioned. The Greek State Radio launched, in February 2000, half-hour programs in 12 non-Greek languages usually broadcast by persons belonging to the respective linguistic groups. At the same time, in Komotini, the daily newspaper "*Paratiritis*" introduced in late 1990 Turkish and Russian language weekly supplements, which later turned into daily supplements.[41] The local radio also introduced news bulletins in the same languages. Finally, two years ago according to an initiative taken by the state television a special programme is broadcast concerning the Muslim minority, which is produced by the minority journalist Sami Karabougiouklou.

This is an important step towards promoting the multicultural identity of Greece within a European context. The media have an essential role to play in promoting the cultural identity and distinctiveness of minorities in a state, which would also ensure the harmonious and peaceful co-existence between the minorities and the majorities.

However, convictions in Western Thrace, over the content of several articles published in minority newspapers can bring into question the effective implementation of the right to freedom of expression in the media. In 1974, Selahedin Galip was convicted under Article 191 of the Criminal Code for dissemination of false information. He was subsequently deprived of citizenship, on the basis of Articles 19 and 20 of the Code of Citizenship.[42]

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[41] Russian is commonly spoken by refugees of Greek origin "Pontics" from the former Soviet countries. In regard to the relation between the Greek refugees and the Muslim minority in Western Thrace, see, Ebeirikos L, Ioannidou A. *et.al* (eds.), Linguistic Heterogeneity in Greece, (Athens: Minority Research Group & Alexandria, 2001) pp. 48-50.

[42] Joanna Kourtovik, "Justice and Minorities" Konstantinos Tsitselikis and Dimitris Christopoulos (eds.) The Minority Phenomenon in Greece : A Contribution of Social Science, (Athens : Kritiki, 1997) p. 257. For a greater analysis regarding the application of Article 191 in minority cases and in particular, the case of Galip , see Chapter five, *supra*, section 5.4.

Salih Halil, who is the owner and publisher of the minority newspaper "*ILeri*", in Komotini has been repeatedly prosecuted for disseminating false information under Article 191 of the Criminal Code. Initially, Halil was prosecuted for having used the Turkish name of Komotini (Gumulcine) an act, which is prohibited according to Law No. 1260/1972 but was later acquitted.

In 1977 Halil was convicted by the Three-Member First Instance Court of Rodopi (*Trimeles Pleimeleiodikeio*) and served a prison sentence.[43] The Court of Appeal of Thrace (*Efeteio Thrakis*) upheld his conviction.[44] Halil, appealed to the Supreme Court (*Areios Pagos*) where his appeal was rejected.[45] In 1978, he faced new charges for having criticised in one his articles, state land expropriations in Komotini, in order to create a university town. He was convicted and sentenced to three months imprisonment by the First Instance Court of Rodopi[46], but was later acquitted by the Court of Appeal. In 1979 Halil was once more prosecuted together with a minority politician Ibrahim Onsunuglou for having spread false rumours in regard to a declaration, which they had distributed in Komotini urging the shop-owners not to participate in a two-day strike, which was organised to take place in the beginning of 1979. In first instance, both defendants were sentenced to seven months imprisonment[47], but the Court of Appeal of Thrace acquitted them and the case was closed. [48]

Abdulhalim Dede, who is a minority journalist was repeatedly prosecuted between 1985-1998. In 1985 criminal charges were brought against him for spreading false information in one of his articles in the Turkish newspaper "*Hurryet*". He was convicted and sentenced to thirteen months by the First Instance Court. Later the same year, Dede was once more convicted for spreading false rumours about satirical sketches, which he published in his newspaper "*Trakyanni Sesi*". He was sentenced to ten months by the First Instance court, but was later acquitted by the Court of Appeal.[49]

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[43] Three-Member First Instance Court of Rodpi Decision No. 196/23.12.1978.
[44] Court of Appeal of Thrace Decision No. 276/1978.
[45] Supreme Court Decision No. 1177/1978 .
[46] First Instance Court of Rodopi Decision No. 294/.3.1979.
[47] Decision No. 627/31.5.1979.
[48] Kourtovik, *op.cit.*, p. 272.
[49] *Ibid.*

In 1996, a period of increased judicial interference in minority issues, Dede was once more prosecuted for spreading false rumours in relation to one of his articles in his newspaper "*Trakyanin Sesi*".[50] Dede heavily criticised the action of the Union of the Greeks in Constantinople, Tenedos and Imbros, for hindering the teaching of oriental languages by a language institution in the region of Thrace. His trial took place in Komotini on February 20, 1997 where he was acquitted.[51]

In the context of this analysis, public authorities in Greece have yet to develop a policy in the field of private media based on the principle of respect and independence of the media. Finally, they have yet also to encourage and facilitate the creation and maintenance of newspaper articles in the regional or minority language on a regular basis[52], free from arbitrary state interference.

8.5: Names and Topographical Designations in a Minority Language

Another application of Article 27 of ICCPR relates to the use of personal names in the minority language. A person's name is an important marker that a he or she belongs to a community and any state restriction on the use of a person's name in a minority language would constitute direct intervention in what is by its very nature an extremely private affair. [53]

The right of individuals to use their personal name in a minority language forms part of the right of ethnic and linguistic minorities under Article 27 of ICCPR.[54] An increasing number of treaties and international instruments inspired by Article 27 of ICCPR have recognised the importance of this type of right. The UN Human Rights Committee has made it clear that the notion of privacy includes:

> The sphere of a person's life in which he or she can freely express his or her identity be it by entering into relationships with others or alone. The

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[50] *Ibid.*
[51] Kourtovik, *op.cit.*, pp. 271-272.
[52] See, Article 11(1) of the Charter and Article 9 of the Framework Convention.
[53] Charles Taylor, Human Agency and Language-Philosophical Papers I, (Cambridge : Cambridge University Press, 1985), p. 237.
[54] Diakofotakis, *op.cit.*, pp. 415-419.

> Committee is of the view that a person's surname (and name) constitutes an important component of one's identity and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name.[55]

Moreover, the Charter, Article 10(5) states: "The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned." One limitation of the Charter is that it only provides rights for national minorities and not for minorities, in generally. However, this exclusion of non-nationals or more recently established minorities by no means implies that they can simply be forced to forsake their names and surnames.

The Framework Convention in Article 11 provides that members of national minorities have the right to use their surnames and first names in the minority language and they also have the right to official recognition of these forms of their names. Therefore, a state cannot prevent an individual from having a name or surname in a minority or non-official language, since names and surnames constitute an essential part of the identity of individuals within their families and community and form an inseparable part of private affairs. As the Human Rights Committee has indicated, any restrictions must be justified and reasonable.

It is not absolutely certain whether the right to privacy necessarily includes, in a European context, the obligation of states to officially recognise the use of a name or surname in a minority language, which is subject to the national legislation of each state. However, it might still be possible that if public authorities refuse to officially recognise or use a person's name in a minority language, this could constitute discrimination. This right is also recognised by other minority treaties and other documents.[56]

The issue of toponomy, which involves the naming of places, is slightly more complex and can be a source of conflict. There is a distinction between the private use

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[55] See, Coeriel v Netherlands , United Nations' Human Rights Committee , Communication No. 453/1991 , U.N. Doc. CCPR/C/52/D/453/1991.

[56] For example, see Article 11 of the Charter and Article 2 of the UN Declaration on the Rights of Persons Belonging to a National or Ethnic, Religious and Linguistic Minorities.

of place-names in a minority language and official toponomy in state areas and activities.[57] While the former in conformity with Article 27 of ICCPR would prohibit the state from interfering in the individual use of toponomy in a minority language for non-state functions, it would not be the same in respect to the state's use of place-names. The issue of topographical designations is more difficult to deal with, since there are practical considerations that would limit a state's ability to respond to all the demands of all minority groups. Article 11(2) of the Framework Convention states that members of national minorities also have the right to display in their minority language signs, inscriptions and other information of a private nature visible to the public.

This requirement is geographically limited to such areas inhabited by a substantial number of individuals using a minority language and it is only provided based on "sufficient demand" and all states are expected to do is to "endeavour" to meet the obligation. The state would remain entitled to require the use of place-names it has chosen in respect to official activities or areas.

In Greece the use of topographical designations in Western Thrace in the Turkish language is prohibited, according to Article 1(2) of Legislative Decree 1260/1972.[58] This might conflict with international standards that provide that state authorities must allow the individual use of toponomy in a minority language for non-state functions by members of a minority group. Nevertheless, this requirement is provided only where there is sufficient demand and state authorities must only endeavour to meet such an obligation. But in any case the Greek governments must take positive steps to harmonise its laws and practices in a European and international framework of human rights. The members of the Muslim minority, however, are free to use their personal

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[57] Varennes (1996), *op.cit.*, p. 162, Diakofotakis, *op.cit.*, pp. 420-429.

[58] (FEK A' 194, 1972) : "In Regard to the Modifications of Legislative Decree 17/2.9.1926, Regarding the Toponomy of Villages, Cities and Towns." See, also, Royal Decree 317/1968(FEK A' 101): "In Regard to the Re-Naming of Towns and Cities", according to which the names of places in the religions of Rodopi, Ilias, Corinth and Lefkada, were changed into Greek from Turkish, Slavic, Albanian or Latin respectively, Presidential Decree 1123/1977(FEK A' 363/25.11.1977): "In Regard to the Re-Naming of Places in the County of Rodopi" according to which hundreds of Turkish and Albanian villages and towns were changed into Greek, see also, Royal Decree, 20.9. 1955(FEK A' 287, 1955): "In Regard to the Re-Naming of Towns and District" and Royal Decree 29.12.1953(FEK A' 5, 1954): "In Regard to the Re-Naming of the Districts of Argolidas and Ioanninon".

names and surnames in the minority language in public and in private, as it has developed under international law.

8.6: Political Activities, Electoral Process and Official Use of Minority Languages

The members of a minority group have the right not to be excluded from running for or holding political office at the local, regional or national level due to language requirements. Due to the importance of the free and democratic process in a European context, open to all citizens, the exclusion of individuals, from being candidates or from holding an elected position, because of linguistic requirements imposed by state authorities would be a grave exclusion.

Another requirement related to the electoral process and language is the right not to be excluded from the right to vote by an official language requirement. If public authorities deny an individual's right to vote, because of insufficient knowledge of the official or majority language this would constitute an "unreasonable restriction" regarding the right to vote. Accordingly, this would be inconsistent with the rights expressed in international human rights treaties and would also be a violation of the principle of non-discrimination based on language in international law, since it would exclude individuals using a minority language from the right to vote.[59]

Moreover, official ballots, voting ballots and other official activities connected to the electoral process regarding the activities of public authorities must also be available in minority language when this is justified and reasonable. Essentially, this requirement would be expected of the state when there are sufficient or substantial numbers of speakers of a minority language living in a specific geographical location with a strong desire to maintain their own language. This principle is contained in various treaties and documents dealing with the administrative activities of public officials and the "sliding-scale approach."[60]

A positive measure in favour of the Muslims in Western Thrace is the presence of Turkish language interpreters in polling stations during national elections. According

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[59] For example, see Article 25 of the ICCPR.

to Article 17 of the Legislative Decree 65/1974[61], a translator is appointed in the election centres of the Muslims in Western Thrace. This is the only right in favour of the use of the minority language in Western Thrace, which has received some statutory recognition, outside the field of education.[62] This is mainly, in order to facilitate the election proceedings and to avoid any possible conflicts, which would result in the cancellation of the election results.

It is important to emphasise that this right does not deal with an individual's private conduct but the response of public authorities. When involving a private activity, freedom of expression and other rights referred to in the private sphere would guarantee an individual's linguistic rights. However, when demanding that public officials use a minority language for the purposes of an election the matter involves public activities not private conduct.

The basic difference between public activities and private action has been clearly expressed in a number of European decisions where it was stated that neither freedom of expression nor the non-discrimination provision of the ECHR guarantee a right to use any minority language, in official activities connected to the electoral process. For example, the European Court of Human Rights has held that there is no unqualified obligation for public authorities to accept the registration of a political party in a minority language.[63]

The registration of a political party by public authorities is an administrative act. When dealing with a numerically important or territorially concentrated minority, it could constitute an unjustified or unreasonable restriction for public authorities not to use a minority language to some degree.[64] According to the "sliding-scale" approach, public authorities would have to use a minority language in the registration of parties

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[60] See, Vareness, *op.cit.* pp. 177-178, note 20, *supra.*
[61] Legislative Decree 65/1974 (FEK A' 263, 1974): "In Regard to the Modifications and Completion of Royal Decree 592/1963 ("In Regard to the Codification of the Prevailing Provisions of Legislation Regarding the Elections of Deputies"). It was subsequently codified in the Electoral Code.
[62] Stavros, *op. cit.* , p. 23.
[63] See, Fryske Nasjonale v Netherlands, Vol. 46, European Commission of Human Rights, DR, (1968), at p. 243. Nevertheless, the decision of the European Court for Human Rights could have been different had it considered or applied the Framework Convention, the Charter or even the general non-discrimination provision contained in Article 26 of the ICCPR.

and other aspects of the electoral process as might be required regarding the principle of non-discrimination and equality. Although there is also a right to use a minority language in the activities of elected governmental bodies (commune, municipality, local or regional legislative body) this right does not necessarily arise in every situation.[65]

8.7: Concluding Remarks

The right of individuals belonging to a linguistic minority to use their own language with other members of their group has become a significant part of international law. As far as the content of this right is concerned, it only requires from the states not to interfere in the use of a language by a minority community and its members. However, certain positive duties are required by the states, especially in the field of education, the media and in public authorities, in order to provide effective protection for the linguistic rights of minorities.

The right to freedom of expression and the right of the members of a linguistic minority to use their own language with other members of their group as well as with pubic authorities are fundamental human rights, which the state must ensure and respect. However, state authorities might impose certain restrictions or limitations on the free use of a minority language in order to maintain public order and peace. As far as the use of an official language is concerned, the prohibition of non-discrimination prevents the exclusive use of a single language by the state as a shield against the need to respond to any language demands by its citizens. State authorities must not prohibit the use of a minority language in public or in private, especially when demands are high, since this would constitute a complete disregard for fundamental

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[64] In regard to the history and action of the Muslim minority political parties in Western Thrace, see Chapter four, *supra.* section 4.5.

[65] For example, see, Mathieu-Mohin and Clerfayt v Netherlands, Series A, Vol. 113, (1987), Eur.Ct. H. R. (1987), at p. 25 , where elected politicians were prevented from taking a parliamentary oath in Dutch. The European Court of Human Rights indicated, that such a linguistic requirement affecting the principles contained in Article 3 of Protocol No. 1 of the European Convention on Human Rights could not be deemed to be unreasonable and therefore discriminatory, under Article 14: "The aim is to eliminate the language disputes in the country by establishing more stable and decentralised organisational structures. In any consideration of the electoral process in issue, its main context must be always be kept in mind." The system does not appear not be unreasonable regarding the intentions it presents and the state's margin of appreciation within the Belgian parliamentary system. Protocol No. 1 of the European Convention on Human Rights, entered into force on May 18, 1954 : Enforcement of certain Rights and Freedoms not included in Section I of the Convention."

human rights. In the course of public services by the state the principles of non-discrimination and equality are quite significant.

In examining the minority policy of the Greek government, regarding the protection offered to the use of the minority language in Western Thrace, several factors need to be considered. For example, the increasing demands for the use of the Turkish language in Western Thrace would entail the increasing level of public services offered in that language. Generally, the right to use of the minority language by the members of the Muslim minority, in public and judicial authorities as well as in the media would have to be protected on a legal basis. However, the Greek government, as already mentioned has taken some positive measures, especially in the field of the media regarding the promotion the minority language in Western Thrace. The crucial factor that needs to be achieved is the realisation of the mutli-cultural identity in Greece and its protection in a European and international legal framework.

In this context it might be concluded that other minority groups in Greece that use a minority language must be entitled to use their own language in public or in private, the press, education and other cultural activities. In addition, those Muslims who live outside Western Thrace and are protected by the international human rights instruments which Greece is a party, must be able to freely use their language and have sufficient opportunities to learn their own language in school. This would entail a broader protection of minority languages in the Greek territory on the basis of universal human rights, including minority rights.

CHAPTER NINE: THE EDUCATIONAL RIGHTS OF THE MUSLIM MINORITY UNDER THE GREEK LEGAL SYSTEM

9.0: General Background

There exists a vast number of recent treaties and documents dealing with human rights, expressly referring to the right of the members of linguistic minorities to use their own language as the medium of instruction in public schools when justified and reasonable.[1] The right to education is included in the Universal Declaration of Human Rights (UDHR)[2], Article 26 and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[3], Articles 13 and 14. In particular, more detailed provision on the aims and objectives of the right to education in international law can be found in Article 29(1) of the UN Convention on the Rights of the Child[4] whereas Article 28 recognises the right to education mainly aimed at the development of the child's personality and his or her preparation for a responsible life in a free society.

Most importantly, regarding the right to education for the members of a minority group, Article 30 of the UN Convention on the Rights of the Child provides for the right of a child, who belongs to a minority for his or her right to "enjoy his or her own culture, to profess and practice his or her own religion and use his or her own language."

On a regional level, Article 2 of Protocol No.1 of the European Convention on Human Rights (ECHR) focuses on the liberty of parents to ensure education in conformity with their own religious and philosophical convictions.[5] However, language or the linguistic preferences of the parents are not mentioned in the Protocol. The scope and aim of

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[1] For example, see Article 14 of the Framework Convention for the Protection of National Minorities, 1995 (Council of Europe, November 11, 1995) Article 8 of the European Charter for Regional or Minority Languages, (Council of Europe, November 5, 1992) and Article 4 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (G.A. Res.47/135/18.12.1992). In regard to the right and value of education, see, Nowak Manfred, "The Right to Education" Eide Asbjorn, Catarina Krause and Rosas Allan, Economic, Social and Cultural Rights, (Dordrecht: Martinus Nijhoff Publishers, 1995) pp. 189-213, Halvorsen Kate, "Notes on the Realisation of the Human Right to Education" Vol. 12, Human Rights Quarterly, (1990) pp.341-364.

[2] G.A. Res. 217A (III)/10.12.1948.

[3] G.A. Res. 2200A (XXI)/16.12.1966, entered into force on March 23, 1976, according to Article 19.

[4] G.A. Res. 44/25/20.11.1989, entered into force on September 2, 1990, according to Article 49.

[5] The European Convention on Human Rights was singed in Rome on November 4, 1950 and came into force on November 3, 1953. Protocol No.2 of the European Convention on Human Rights, came into force on September 21, 1970.

Article 2 of Protocol No1 was analysed in great depth in the Belgian Linguistics case, which will be examined later in the discussion.

The exact degree of use of a minority language as the medium of instruction required will vary according to the particular context of each situation such as the extent of demand for such instruction, the degree of use of the medium of instruction and the state's ability to respond to these demands.

The European Charter for Regional or Minority Languages (hereafter "Charter) provides a guideline provision, which states that the numbers of a minority group must be "sufficient" in number for this purpose. Accordingly, the mere presence of a small group of individuals would not automatically give rise to a right to be taught in a minority language in a public school. In the light of the current European and international human rights standards, which refer to the state's obligation regarding the protection of the cultural and linguistic characteristics of minorities, it would seem that the term "sufficient" should be interpreted in a rather generous and flexible way, especially when a state's resources make it reasonable and practical to do so.

Muslim students receive a bilingual system of education in the minority schools. The right to receive instruction in the mother-tongue is provided by the Treaty of Lausanne and the educational bilateral agreements: the Educational Agreement (1951)[6] and the Cultural Protocol (1968) signed between Greece and Turkey. However, due to certain particularities in the educational system the minority students do not seem to have adequate opportunities to gain knowledge of the Greek or Turkish language.

The major problems the Muslim minority is facing in education include: a mixed system of administration, outdated textbooks, a poorly-educated teaching staff and the absence of an efficient school curriculum. The administrative interventions on the part of the Greek government against the members of the Muslim minority until the beginning of the 1990s had as a result the creation of an economic, social, political and

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[6] The 1951 Educational Agreement between Greece and Turkey was ratified accoridng to Law No. 2073/23.4/1952 (FEK A' 103, 1952) was abolished in 2000 by the Greek-Turkish Agreement on Cultural Co-Operation.

educational isolation of the Muslim minority in Western Thrace.[7] In addition, the students' external environment such as their family's poor educational and social level creates further problems in the students' adoption and progress at school. Finally, there is no constant and proper supervision of the school progress of the students. [8]

However, the reformation of the minority education is not only a problem regarding the Muslim minority but it also constitutes a wider problem of the Greek society. The advancement and improvement of the minority education will not only benefit, the Muslim minority but it would also facilitate its integration in the Greek society, a situation which would be beneficial to both the minority and the majority. The persistence of a minority group living in an isolated community can quite often create 'fanaticism' among the members of the minority and can also bring tension between the relations of the Christians and Muslims of Western Thrace as well as between the state and the minority.

The focus of this chapter will be on the system of education provided to the Muslim students. An analysis will be provided regarding the existing legislation for the education of the minority students, which will expand on the main framework under which the minority schools operate. Secondly, an examination will made on the level and status of the minority education in the light of current international human rights documents for the protection of minorities and the right to education. Accordingly, the existing inadequacies of the educational system will be addressed. Education needs to be made available and accessible to the members of a minority group and most important it needs to adapt to their linguistic and cultural needs.

9.1: The Belgian Linguistics Case

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[7]Dia Anagnostou, "Collective Rights and State Security in the New Europe : The Lausanne Treaty in Western Thrace and the Debate About Minority Protection" Constantine Arvanitopoulos (ed.) Security Dilemmas in Eurasia, (Athens : Institute of International Relations-Panteios University of Social and Political Science, 1999) p. 131.

[8] For example, the large number of school holidays (the accumulation of both Christian and Muslim religious and national holidays) and the absence of control over the absences of the students.

In the *Belgian Linguistics* case, the linguistic implications of the ECHR were analysed in depth.[9] This served as a test for various issues affecting linguistic minorities. The applicants consisted of Francophone inhabitants of the predominantly Flemish part of Belgium and the Brussels periphery where the official language of the local administration and the public school system is Dutch. The same principle of territorial 'unilingualism' also applied in Wallonia where French was declared the sole official language. Both national languages are used in the bilingual capital, Brussels and in the operation of the country's central administrations. They claimed that they were compelled by existing legislation to have their children educated at the local schools in the Dutch language of the majority. They alleged that the Belgian Acts of 1932 and 1963 concerning the use of languages in schools infringed upon Articles 8 and 14 of the ECHR and Article 2 of Protocol No. 1.[10]

The Court in its judgement therefore had to examine whether there existed any unjustified distinctions affecting the exercise of the rights guaranteed by Article 2 of Protocol No. 1 read in conjunction with Article 14 of the ECHR. In regard to five of the six questions, it concluded that despite certain hardships the Belgian legal and administrative measures maintained a proper balance between the requirements of the collective interest of the public and the individual rights guaranteed by the ECHR.[11] These measures mainly aimed to achieve linguistic unity within the two large regions of Belgium in which a majority proportion of the population spoke only one out of the two national languages. The European Court of Human Rights unanimously held that there had been no violation of the ECHR, in relation to five out of the six complaints made of which it was seized.[12]

On the fifth question, the Court decided that Section 7(3) of the Belgian Act of 2 August 1963 did not comply with the requirements of Article 14 of the ECHR read in conjunction with the first sentence of Article 2 of Protocol No. 1 Section 7(3) of the said Belgian Act provided that the language of instruction in the six communes is

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[9] See, Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium, Series A, Vol. 6, Eur. Ct. H.R., (1968).

[10] Protocol No. 1 of the European Convention on Human Rights, "Enforcement of certain Rights and Freedoms not included in Section I of the Convention" 1954.

[11] Bruno de Witte, "Surviving in Babel? Language Rights and European Integration", Vol. 21, Israeli Yearbook of Human Rights, (1992) pp. 104-113, *et. seq.*

Dutch. Nevertheless, it requires the organisation for the benefit of children, whose maternal or usual language is French of official or subsidised education in French under certain conditions. Such education, however, was not available to children whose parents lived *outside* the communes under consideration. In principle the Dutch classes in these communes accepted all children regardless of their language or parent's place of residence.

According to the Court's opinion the residence condition in the case of the applicants proceeded solely from consideration relating to language rather than for administrative or financial reasons. In particular, the Court held that: "it is not justified in the light of the requirements of the ECHR in that it involves elements of discriminatory treatment of certain individuals, founded even more on language rather than residence."[13] The Court pointed out that the impossibility of entering official or subsidised French-language schools in the six communes "with special facilities" affected the children of the applicants "in the exercise of their right to education", especially since no such schools existed in their own communes."[14]

In the Court's view, the right to education, particularly the right of access to existing schools was not in respect to the question under consideration secured to everyone without discrimination on the ground of language.[15] Thus, the Belgian Act was held to be incompatible with the first sentence of Article 2 of Protocol No. 1 read in conjunction with Article 14 of the ECHR. The Court found indeed, that the right to education guaranteed by the first phrase of Article of the Protocol contained an implicit language component: "The right to education would be meaningless if it did not imply, in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages as the case may be."[16]

The Court gave a detailed interpretation of Article 14 of the ECHR. It stated that Article 14 has no independent existence, in the sense that it relates only "to rights and freedoms set forth in the Convention". However, a measure, which is in conformity

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[12] See, *supra*, note nine, paragraphs. 2-25, for the first four questions and paragraphs. 33-42 for the sixth complaint.
[13] *Ibid.* p. 70, paragraph. 32
[14] *Ibid.*
[15] *Ibid*

with a given article of the ECHR setting forth a certain right *per se*, may violate the same article when read together with Article 14 on the ground that it has a discriminatory effect. It seems that the latter forms an integral part of each of the articles and freedoms.[17] Therefore, in addressing itself to the question of the limits of the applicability of Article 14, the Court determined that discrimination is prohibited in measures designed to implement the rights embodied in the ECHR, even if such measures are not themselves required by the ECHR.

The Court did not choose to provide a wide interpretation of Article 14. This would entail any legal and administrative provisions, which do not secure to everyone complete equality of treatment in enjoying the rights and freedoms recognised as contrary to it. The Court considered that where the contracting parties intended to confer upon everyone within their jurisdiction specific rights regarding the use or understanding of a language as in Article 5(2) and Article 6(3)(a) and (e) they did so in clear terms. [18] It concluded that if the parties had wished to create a specific right with respect to the language of instruction, they probably would have does so in Article 2 of the Protocol.

In the absence of such express terms, the Court ruled that Article 14 read in conjunction with Article 2 of Protocol No. 1 does not have the effect of guaranteeing to a child or parents the right to education in a language of his or her own choice. The object of these two articles read in conjunction is more limited. It is to ensure that each contracting party shall secure the right to education within their jurisdiction on the ground of language. It is not discriminatory *per se,* to limit the number of languages used as a medium of instruction

9.2: The Right of the Muslim Minority to Use their Own Language under International Law

Freedom of language, in education, *per se* is not among the freedoms guaranteed by the ECHR. However, the ECHR does set forth circumstances under which the use of a

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[16] *Ibid.* p. 31 .
[17] *Ibid.* at p. 34 paragraph 9.
[18] *Ibid.*. at p. 35 , paragraph. 11

person's own language is protected. The European Court of Human Right's judgment on the Belgian Linguistic case serves as an indicator of the limits within which the provisions of the ECHR are applicable.

Most international instruments and treaties contain provisions concerning the right to education in a non-official or minority language where required by the number of speakers. The acquisition of the majority or official language must also form part of a state's non-discriminatory educational policy.[19] Otherwise, the members of a linguistic minority would be isolated from the larger society and its benefits and would suffer from low fluency in the majority language.

It is recognised that some type of equilibrium should be reached between the overall number of individuals sharing the same language and a state's corresponding obligation to provide schooling in their language when this is practical and reasonable. Recent treaties such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities[20] and the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE[21] acknowledge this type of balancing process for the protection of minority rights.

Article 8 of the Charter provides that states should seek a level of use of a minority language, which best fits their demographic reality, since Article 8 is applicable "according to the situation of each language". Accordingly, the larger the number of speakers of a regional or minority language and the more linguistically homogenous the population in a region the stronger the option that should be adopted.

Several factors ought to be considered in examining the sufficiency of numbers in a territory, such as the geographical location, the availability of transportation and the age of children.[22] However, if one looks beyond the purely demographic factor, there are other reasons as well in favour of a more generous attitude towards a particular

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[19]Charles, Ammoun, Study of Discrimination in Education (New York: United Nations Publications, 1957) p. 90.
[20] G.A. Res. 47/135/18.12.1992.
[21] Conference on Security and Co-operation in Europe, 1990.

minority such as the proximity of a kin-state and the political tensions in the region. Accordingly, states should adopt a favourable and generous attitude towards the protection of minorities' rights in their territories, especially to those minority groups who have been long established in a territory.

This would seem to be a fair and balanced response to the linguistic needs of a minority group and thus would not constitute a discriminatory educational policy. Other valid reasons of preventing the use of a particular language as a medium of instruction are the shortage of educational materials, the lack or shortage of suitably trained teachers, the state's financial resources and economic conditions and the possible refusal from the members of the linguistic minority itself, for the use of their mother tongue as a medium of instruction. Even when the number of a minority is large enough to require complete education in public schools in their language, the state would still be responsible to provide some instruction of the official or majority language. The state authorities would have to ensure that these individuals are not excluded from participating in the larger society and to avoid any inequalities by prohibiting them from having access to the activities and benefits tied to the majority.

There is no right providing complete 'freedom of choice' as the medium of instruction in either public schools or an unrestricted access to a particular type of public education.[23] A state's non-discriminatory educational policy would have to provide public schooling in the primary language of the students, since it recognises that one's primary language is the best medium of instruction, at least in the first years of schooling when justified and reasonable.

International law instruments also require that state authorities must provide education to minority students in the official language of the state.[24] It is essential that the members of a linguistic minority learn the official language of the state, since otherwise they would be excluded from future employment and educational opportunities and they would also suffer isolation from the rest of the community. This kind of situation would ultimately constitute a discriminatory policy against

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[22] Fernard de Varennes, Language, Minorities and Human Rights, (Hague: Martinus Nijhoff Publishers, 1996) p. 205.
[23] See *supra*, note five.
[24] See, Paragraph (34) of the OSCE Copenhagen Document (1990).

current international human rights standards. It is essential that this policy reflects the demographic and linguistic facts of the country.

The UNESCO Convention against Discrimination in Education (hereafter "Convention")[25] prohibits discrimination based on several grounds, including language.[26] According to Article 1(2) of the Convention, education refers to all types and levels, including access to education. The right to education granted to "persons or group of persons", includes the establishment and maintenance for religious or linguistic reasons of separate educational systems and institutions offering an education in keeping with the wishes of the student's parents.

The basic goals of education are also designed by Article 5(1)(a) of the Convention[27] similar to Article 2 of Protocol No. 1 of the ECHR. Article 5(b) of the Convention further recognises the right of parents to choose the education of their children in conformity with their own religious and philosophical convictions. Finally, according to Article 5(c) of the ECHR members of national minorities have a right to carry out their educational activities, including establishing their own schools and the right to use their own language as well as to receive instruction in their mother-tongue. This depends on the educational policy of each state as a long as it is not exercised in a

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[25] The UNESCO Convention Against Discrimination in Education, was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation, December 14, 1960, during its 11th session..

[26] Article 1(1) of the UNESCO Convention states that: "For the purposes of this Convention , the term "discrimination" includes any distinction , exclusion , limitation or preference, which being based on race, colour, sex , language, religion, political or other opinion, national or social origin, economic condition or birth has the purpose or effect of nullifying or impairing equality of treatment in education and in particular :

(a) Of depriving any person or group of persons of access to education of any type or at any level ;
(b) Of limiting any person or group of persons to education of an inferior standard ;
(c) Subject to the provisions of Article 2 of this Convention of establishing or maintaining separate educational systems or institutions of persons or groups of persons ; or
(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

[27] Article 5(1)(a) of the UNESCO Convention Against Discrimination in Education, states that: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace."

manner, which prevents the members of the minority from understanding the culture and language of the majority.[28]

It is submitted that the right to receive instruction in a minority language is made dependent upon a state's educational policy. Although certain uniformity must be kept on the school policy in every state, minority schools may require a greater degree of autonomy to carry out their educational activities for the preservation and protection of their language and culture. The right to choose education is directed for the benefit of the individual. In essence, the right is effective only in the context of a minority group, which is free 'collectively' to maintain separate schools, since the choice of different languages by members of the community might lead to 'linguistic' confusion.

Moreover, Article 27 of the International Covenant on Civil and Political Rights appears to be a "long-established and continuous legal continuum"[29] regarding the rights of linguistic minorities to use their language amongst themselves. In particular, one might argue that it might also include the right to establish, manage and operate their own educational institutions where their language is used as the medium of instruction. This right has been recognised in international treaties even before the creation of the United Nations. In the case of the *Minority Schools in Albania*[30], the Permanent Court of International Justice suggested that the rights of minorities to operate private schools is more consistent with the principle of assisting minorities, which might suffer some disadvantage, because of their status. These factors seem to confirm that if public authorities do permit a linguistic minority to carry out its own educational activities in its own language, the state has great potential for destabilisation.

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[28] Article 5(1) of the UNESCO is subject to certain limitations. First, the state must prescribe certain rules and limitations. Secondly, the maintenance of separate educational activities must not prevent members of national minorities from understanding the culture and language of the community as a whole and from participating in its activities or engage in activities, which prejudice national sovereignty. Thirdly, the standard of education must not be lower than the general standard approved by the competent authorities. Finally, attendance to minority schools should be optional.

[29] Varennes, *op.cit.*, p. 158.

[30] See, Advisory Opinion on Minority Schools in Albania, Series A, No. 64 Permanent Court of International, (1935). For a more detailed analysis of this case , see Chapter two, *supra*, section 2.2.

The ability for a minority to create and operate private schools where the medium of instruction is their language is one of such importance where strictly speaking neither freedom of expression nor non-discrimination would be of much assistance, especially if such private schools were forbidden. Although, public authorities are not obliged to provide any financial assistance to private schools, if they nevertheless decide to do so, minority educational facilities would also have to be treated in a non-discriminatory manner.

9.3: The Minority Educational System of the Muslim Minority under the Treaty of Lausanne

The Muslim minority in Western Thrace is the only minority group in Greece, which enjoys a special educational programme such as the right to receive instruction in their mother tongue and use their own language at school.[31] The level of education provided to the Muslim students depends on a legal and political level on the standard of education provided for the Greek minority in Istanbul on the basis of reciprocity, as provided by the Treaty of Lausanne. The Turkish government has often exercised political persecution and economic discrimination against the Greek minority. This had as a result the dramatic decrease of the number and size of the minority population. The Greek minority witnessed the closing of many of their schools. This situation had a negative effect on the status of the Muslim schools in Western Thrace.[32]

The Muslim minority presents a very low-level of education in comparison to majority population in Greece. The principle of reciprocity upon which the minority educational system is based represents a serious obstacle to the constructive learning

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[31] Since the 1920s there were eighty-six minority schools in operation, which were mainly taught the Koran. According to official statistics, during the school year 1929-1930 there were 305 Muslim schools where all the subjects were taught in the Turkish language. The Greek language, which was not yet established as a compulsory subject was only being taught in twenty-eight minority schools. During the same academic year, the Greek government financially supported the minority schools by granting them 4, 489, 000 Greek drachmas. Memorandum of the Greek government to the General Secretary of the League of Nations for the status of the Muslim minority in Western Thrace on March 5, 1925, LN/C. 130.1925 VII "Comparative Examination of the implementation of the minority provisions of the Treaty of Lausanne in Greece and Turkey", this memorandum was prepared by the Ministry of Foreign Affairs for the Greek prime minister Eleftherios Venizelos, (Venizelos File, MMAEB/58).

[32] See, Chapter four, *supra*, section 4.5, Appendix C: "A Historical Analysis of the Status and Rights of the Greek Minority in Istanbul and the Greek Inhabitants of Imbros and Tenedos", section C.1.

of the Muslim students. The text of the Treaty of Lausanne does not seem to correspond to the educational needs of the Muslim students. The minority system of education requires to be reconstructed, according to the principles of multiculturalism and multilinguism. In this context, Muslim students would have more opportunities to learn the official language as well as to receive instruction in the Turkish language.

One of the main problems the Muslim minority in Western Thrace is facing today is the very low-level education provided in the minority schools. According to the Cultural Protocol, the use of the mother tongue in the context of education is provided. [33] However, among the most dramatic consequences is the high level of Muslim students, who tend to drop out, because of the burdensome and inappropriate educational practices. Many Muslim students leave school at an early stage or choose to emigrate usually to Turkey, to another educational system due to their isolation from the general system of communication in Greece.[34]

Under Greek law, the right to education is provided by Article 16 of the Constitution.[35] Article 16(1) of the Constitution defines the scope and aim of education, "for the development of an ethnic and religious consciousness." However, it is not very clear, whether Article 16(1) refers exclusively to the 'Greek ethnic consciousness' or to the 'minority ethnic consciousness' that Greek citizens and

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[33] Paragraph 1.2 of Part I of the Greek-Turkish Cultural Protocol, 1968, expressly refers to the use of the minority language : "With the reservation of the provisions of sub-paragraph (a) of paragraph(I) the teaching of students in the schools of the minority language will be allowed without any restrictions."

[34] Ibrahim Onsounoglou "Critique of the Minority Education: The View of the Minority" Vol. 63, Contemporary Issues, (1997) pp. 61-64. One the one hand, the number of minority students, who continue their studies in Turkey are almost 4.000, which is about ¼ of the total number of children of school age a quite substantial number. On the other hand, those minority students, who study in primary schools in Turkey are about 1,000. However, it is only the wealthier and more educated families that can financially afford to sent their children to study in Turkey, since the cost of studying abroad for their children is quite high and not all Muslim families in Western Thrace can afford to do so, due to their low socio-economic level. In any case, the immigration wave towards Turkey has seemed to decrease, since 1991-1992, when the Greek minority policy started to changed its policy, by introducing the principles of "*isonomia*" and "*isopolitia*" (equality and equal protection of the law) together with the introduction of Law No. 2341/1995, regarding the facilitation of minority students into Greek universities.

[35] Article 16(1) of the Constitution states that: "Art and science, research and teaching are free. Their development and promotion constitutes an obligation of the State. Academic freedom and the freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution." Moreover, Article 16(2): "Education constitutes a basic mission of the State and shall aim at the moral, intellectual professional and physical training of the Greeks, the development of national and religious consciousness and their formation to free and responsible citizens."

members of a minority group share. The concept according to the intentions of the legislature would have to refer to the promotion and development of a 'Greek ethnic consciousness'.[36] Similarly, Article 1(1) of Law No. 1566/1985 "In regard to the Structure and Function of Primary and Secondary Education", the aim of education is also described.[37] In particular, Article 1(1)(a) states that education should help students, "to have faith in the genuine elements of the Orthodox-Christian tradition."

According to Article 2 of Law No. 694/1977, the aim and scope of the minority school is defined as: "The development of the mental and moral personality of the students according to the basic aims of general education and the principles, which apply to the programmes of the respective public schools of the State."

The Cultural Protocol of 1968 provides for the principle of 'non-interference' with the ethnic identity and religious faith of the Muslim students. However, this is subject to the obligation the Muslims have to remain loyal to the national laws of the country they are living in.[38] The 1951 Educational Agreement signed between Greece and Turkey provides for educational exchanges between the two countries and allows the mutual recognition of diplomas received in each other countries. As a consequence, many Turkish-speaking people from Greece went to Turkey received teaching degrees and then returned to work in minority schools.

The Preamble of the Educational Agreement refers to the co-operation between the two countries "on an educational, scientific and artistic level". Nevertheless, the 1951 Agreement is characterised by the absence of concrete legal obligations.[39] Most of its articles start with the phrase: "as they wish..." highlighting the lack of any specific

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[36] According to the provision of Article 16(2) of the 1952 of the Constitution, the aim of primary and secondary education was: "On the basis of the ideological directions of the Greek-Christian civilisation." However, after the abolition of the 1952 Constitution and the restitution of democracy, according to the 1975 Constitution, this assertion was replaced by the term "the development of a religious and ethnic consciousness."

[37] According to the Article 16 of the Constitution: "The aim of primary and secondary education is to contribute to the overall harmonious and balanced development of the mental and physical talents of the students, so they can, independent of their gender and origin, have the possibility to evolve to completed personalities and have a creative life."

[38] See Ministerial Decision 55369/16.05.1978(FEK B' 501, 1978): "In Regard to Registration, Transcription, Studies, Examinations, Degree Titles and other Student Issues of the Minority Schools of the Muslim minority in Western Thrace." Article 17 establishes the principle of non-interference with the religious identity of the Muslim students, on the basis of reciprocity.

legal obligations. Thus, the wording of the Educational Agreement can be described as rather general and vague. According to Article 18(1) the process of implementation of the Educational Agreement was left up to the Mixed Commission.

The only article that is legally binding is Article 8 of the second part of the Educational Agreement, which refers to the possibility of each contracting party establishing educational institutions in the territory of the other. Article 8 of the Educational Agreement refers to the rights of minorities and provides for the recognition of academic diplomas received in each other's country. The recognition of diplomas does not take place automatically but only after each state has set such conditions for recognition.

The 1951 Educational Agreement between Greece and Turkey was replaced in 2000 by the bilateral Agreement on Cultural Co-operation (hereafter "Cultural Agreement"). The 2000 Cultural Agreement is based in the context of strengthening friendly relations between Greece and Turkey and promoting a climate of co-operation in the fields of education, science, culture, arts, sports and the mass media. According to Article 1(a) of the Cultural Agreement there will be a direct co-operation between the universities and higher institutions of the both countries on a scientific and research basis. Moreover, there shall be an encouragement of teaching the language and literature of each country on a university level. Similar to the 1951 Educational Agreement, there shall be an exchange of teachers and experts from primary and secondary education as well as administrative educational personnel. In addition, there shall be an exchange of teaching and scientist personnel from universities, higher institutions as well as between students, scientists, experts, researchers and professors.

Another important provision of the Cultural Agreement is the co-operation between the two countries in the teaching of history, geography, culture and economics in each other's schools and universities. On this point, a Mixed Commission of Experts will be composed, which will examine the school books for the purposes of accuracy on

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[39] According to the introductory report of the Greek government to the Parliament, the Agreement complies with the recommendations made by the Council of Europe for the Member States to form educational agreements between them.

such sensitive points.[40] A Mixed Commission is to be created for the execution and observance of the Cultural Agreement, which is to meet every three years interchangeable in each other's capital, to present, develop and structure the provisions and educational programmes of the Cultural Agreement.[41] The educational and friendly co-operation between the two countries will be based on the level of the Council of Europe, the OSCE and UNESCO[42].

9.4: The Legal Status of the Minority Schools

Article 40(1) of the Treaty of Lausanne established the framework for the minority education of the Muslims. According to Article 40(1), the Muslims have a right to establish, manage and supervise, at their own expense any schools and educational institutions where they can freely use their own language.[43] The right to establish and manage private schools or other educational institutions is also found in Article 16(8) of the Constitution [44] and is regulated by Law No.682/77.[45]

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[40] See, Article 1(8) of the Agreement.
[41] See, Article 8 of the Agreement.
[42] See, Article 3 of the Agreement.
[43] See, Appendix A: "The Treaty of Lausanne", Konstantinos Tsitselikis, The International and European Status for the Protection of the Linguistic Minority Rights and the Greek Legal Order, (Athens: Ant. N. Sakkoulas, 1996) pp. 361-362, Kiriakos N. Kiriazopoulos, Restrictions in the Freedom of Teaching Minority Religions, (Thessaloniki: Sakkoulas, 1999) at pp. 343-345. This right was implemented with the establishment and maintenance of two religious schools with five years studies. The first religious schools were established in Komotini in 1949 and in Ehinos, which has started to re-function, since 1956. They both function as private educational institutions in the context provided by the Legal Decree 2203/1952. The founder of these schools is the Mufti of each district. According to Articles 13(3) and 16(8) of the Constitution, the Greek government exercises its supervision over the functional mechanisms of these schools. The funding for schools is provided by the contribution of the members of the minority and from governmental subsidises. The graduates of the religious schools are appointed as religious teachers in the minority schools for the teaching of religious classes. The teachers of the religious schools are either ethnic Greeks or Muslims. The Muslim teachers are graduates of universities in Saudi Arabia. This is most probably because Egypt and Saudi Arabia are very religious and maintain active religious groups to provide teachers for the teaching of Islam. See also Ministerial Decision Z2/0210/24.12.1987(Unpublished): "In Regard to the Registration of Muslim Students of Religious Schools in Ehinos and Xanthi into Christian High Schools." And Ministerial Decision C2/5560/25.11.1999(FEK B' 2162, 1999): "The School Program of the Religious Minority Schools"

[44] Article 16(8) of the Constitution states that : "The conditions and terms for granting a license for the establishment and operation of schools not owed by the State, the supervision of such and the professional status of teaching personnel therein shall be specified by law."
[45] Law No. 682(FEK A' 244/1.9.1977): "In Regard to the Function of Private Schools of General Education and School Accommodation."

The legal nature of the Muslim minority school is characterised by a mixed legal status.[46] Its provisions relate to both public and private education. Law No. 694/1977 is one of the most basic laws regulating the minority education. The creation of laws No. 694 and 695 of 1977 established the structure and form of the minority education.[47] Article 1(1) of Law No. 694/77, describes the co-existence of two legal situations in the administration of the minority primary schools. It states that the minority education is public according to the Treaty of Lausanne under the provisions of Law No. 1566/1985[48] and the relevant provisions provision of Law No. 694.[49]

Article 4 of Law No 694[50] states that the provisions that regulate the establishment, supervision and function of minority primary schools are those that are also for the private general education, albeit with the reservation of the relevant provisions of the Law No. 694. [51] In addition, Article 1 of the Ministerial Decision 55369/1978, firmly states that any matters relating to the registration, transfers, school subjects, degree titles, etc. are regulated by the relevant provisions of private education. Thus, the minority schools function on a semi-autonomous status.

The members of the Muslim minority view this mixed system of administration as a major detriment.[52] They believe that it allows the state to interfere with their internal affairs without providing the necessary means of support. They further believe that the minority is not able to effectively participate in the decision-making process regarding

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[46] Poulis P. "The Legal Framework of Operation of the Minority Schools in Western Thrace" Vol.5, Dikoitiki Diki, (1994) pp. 1001-1017.

[47] Law No. 694/77(FEK A' 264, 1977): "In regard to minority schools of the Muslim minority in Western Thrace." Law No 695/77(FEK A' 264, 1977): "In regard to issues concerning the teaching and supervising personnel of the Minority Schools and the Special Pedagogical Academy."

[48] Law No. 1566/1985(FEK A' 167, 1985): "In Regard to the Structure and Function of the Secondary and Primary Education and Other Provisions."

[49] Article 1(1) of Law No. 694/1977: "The Education of the Muslim minority in Western Thrace is regulated, according to: (a) The Provisions of the Treaty of Lausanne 1923, (b) the provisions of Law No. 309/1976 (as amended by Law No. 1566/85) (c) under the present law, on the basis of the principle of reciprocity. See, Law No. 309/1976(FEK A' 100, 1976): "In Regard to the Organisation and Administration of General Education"

[50] Article 4 of Law No. 694/77, states, that: "The provisions which regulate the establishment, function, supervision and inspection of the minority schools of primary education are those which are valid and for the private General Education, with the reservation of the provisions of the present law."

[51] Article 32(1) of Law No. 2009/92 (FEK A'18, 1992): "National System of Professional/ Educational Training and Other Provisions"(It was modified according to Law No. 2817/2000, FEK A' 78, 200) Articles 1(1)(a) and (b) of Law No.695/77: "In regard to the education of the Muslim minority in Western Thrace is provided by: (a) The provisions of the Treaty of Lausanne 1923 (b) Under Law No.309/1976 : "In regard to the organisation and administration of General Education."

[52] Onsounoglou, *op.cit.*, p. 62.

the minority education. However, it must also be kept in mind that all schools in Greece are under the supervision and control of the Ministry of Education and Religious Affairs.[53]

Similarly, the minority schools are under the supervision of the Minister of Education as provided by Article 3 of Law No. 694/77[54] together with the relevant provisions regulating private education.[55] The substantive control over the minority schools is conducted by the Co-ordinate Office of Primary and Secondary Minority Education, which is based in Kavala and has supervisory powers.[56] There are also two offices of primary education in Komotini and Xanthi with administrative competencies.[57]

The application of Article 41(1) of the Treaty of Lausanne is defined by Article 1(2) of Law No. 694/1977, according to which the terms "minority", "minority member" and "members of a minority" are referring exclusively to the Muslim minority of Western Thrace. The establishment of minority schools is connected with the territorial principle, which means that a substantial number of Muslim people have to exist in a specific administrative region. Law No. 694/1977 specifically defines the area of application of Article 41(1) in accordance with the aim and intent of the Treaty of Lausanne, which applies exclusively to the Muslim minority in Western Thrace and the Greek minority in Istanbul.

Nevertheless, in considering the modern circumstances of population movement the territorial principle may no longer be sufficient in practice for the effective protection

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[53] See, Necessity Act No. 129/1967(FEK A' 163, 1967) : "In Regard to the Organisation and Administration of General Education and Other Such Provisions."

[54] Article 3 of Law No.694/1977: "The minority schools function under the control and supervision of the Ministry of National Education and Religious Affairs."

[55] Article 4 of Law No.694/77: "For the establishment, function, supervision of the minority schools of primary education the provisions of private general education are valid, always with the reservation of the provisions of the present law."

[56] Ministerial Decision Z2/365/11.08.1992 (FEK B' 544, 1992): "In Regard to Issues of the Co-Ordinate Office of Minority Schools of Primary and Secondary Education." See, also Ministerial Decision Z2/239/11.6.1999(FEK B' 1269, 1999): "The Structure of the Official Office of the Minority Education" , Legislative Decree 27.5.1953(FEK A' 176): "In Regard to the Appointment of Supervisors in the Muslim Schools of Western Thrace".

[57] Baltsiotis Lambros M, "The Greek Administration and Minority Education in Western Thrace", Konstantinos Tsitselikis and Dimitris Christopoulos (eds.), The Minority Phenomenon in Greece, (Athens: Kritiki & KEMO, 1997) pp. 316-339.

of the linguistic rights of the Muslims.[58] In particular, a substantial number of the members of the Muslim minority have migrated to the major cities. However, the Treaty of Lausanne does not apply to those minorities, which live outside the specified geographical limits of Western Thrace or Istanbul. Therefore, the members of the Muslim minority, who live outside Western Thrace do not have sufficient opportunities to receive instruction in their own language. In view of the difficulties involved in the extension of educational provisions for minority languages outside their traditional territorial base such measures should be justified by the number and geographical concentration of the speakers of the minority language [59]

The establishment of a minority school is provided for by Law No. 694/77 in conjunction with Article 4 of Law No.682/77 "In regard to Private Education".[60] The provisions of both articles apply on the basis of reciprocity. Article 4 applies only as far as the exercise of the right to establish a private school is concerned and does not extend for the right to provide education in the minority language. More specifically, Article 5(1) and (2) of Law No. 694, regulate the process of establishment of a minority school.

Accordingly, the parents or guardians of the Muslim students have to make an application to the supervisor of the Muslim minority schools. The supervisor will then examine the application and pass it on to the local prefect, who will grant permission for the school to be established. The local prefect will only grant permission after the Minister of Education and Religious Affairs has confirmed his approval. The local prefect will issue the "founding act of the school" by appointing as the "founder" of the school one of the applicants.[61] The "founder" of the school would have to be the

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[58]For example , the internal migration of the members of Muslim minority towards larger urban centres, such as Athens in such large numbers has increased demands for the Muslim students to receive instruction in their own language.

[59] See , Article 8 of the European Charter for Regional or Minority Languages ; Explanatory Report of the European Charter for Regional or Minority Languages ,Council of Europe 1993 (Internet Version).

[60] Article 4 of Law No.682/77: "The Private Schools have the same organisation like the respective public schools and follow the same school hours and analytical programme of teaching."

[61] According to the Ministerial Decision No. 70464/1978(FEK B ' 579). See, also Tsitselikis, *op.cit.*, pp. 346-348. The management of the minority schools is run by three-member governing committees. The members of the governing committees are selected by the local representative of the government, from a list of persons directly elected by the minority parents. Each committee manages a special fund that is maintained by contributions required from the parents of the pupils in the form of fees out of which are paid the expenses of the school including salaries of some of the teachers. See, Ministerial Decision

parent or guardian of a student in that school. Usually, in primary minority schools, a member of the Muslim minority is appointed as the principal of the school with a Christian vice-principal[62] whereas the total number of teachers is in proportion to the number of students in those schools. [63]

It is important to note that parents- members of the minority have the possibility to register their children in a Greek-speaking public school, if they wish to do so.[64] In the last years the 'elite' of the Muslim minority has been sending its children to non-minority schools.[65] However, it is a quite usual phenomenon, that if a Muslim family decides to register their children in a Greek public school, they most often face exclusion from the rest of the minority. Very few students, exclusively those, who live in urban areas attempt to study in non-Muslim schools. Those students, who do so experience a cultural conflict directly between their family and their community and indirectly between the family itself and the Muslim minority.

52447/8.05.1978(FEK A' 579, 1978): "In Regard to the Duties and Tasks of the Governing Committees of the Minority Schools."

[62] See, Ministerial Decision 16827/1978(FEK B' 139, 1978): "In Regard to the Appointment of Principals and Vice Principals of the Minority Schools and the Duties and Tasks of the Vice Principals of Such Schools." See, also Ministerial Decision Z2/411/8.11.1995)(FEK B' 954, 1995): "The Duties and Tasks of the Official and Disciplinary Council of the Educational and Administrative Personnel of the Minority Education."

[63]See, Ministerial Decision 5567/7(FEK B'501) : "In Regard to the Composition of Teaching Personnel of Minority Schools in Western Thrace." (It was modified according to the Ministerial Decisions Z2/72/1982 and Z2/201/1982 and was later abolished by the Ministerial Decision Z2/182/1999(FEK B' 55, 1999). As far as the tuition fees of the minority schools are concerned, the students are obliged to pay fees on an annual basis, according to Article 14 of the Ministerial Decision 55369/1978. However, the terms of this provision are contradictory to the public character of the minority education as provided by the Treaty of Lausanne. It further, opposes Article 2(6) of Law No. 1566/85, which states that, public education shall be available free. The fees of the minority schools are determined by the founder of the school, in accordance with the approval of the local prefect. The cost of the fees is established according to the income of each family and their financial status. In practice, they are directly collected from local or other sources and government subsidiaries. The equivalence between minority schools and public schools is not created automatically, but it has to be determined by the Minister of Education. Accordingly, a relevant application has to be submitted to the Minister of Education by the local co-ordinator of the minority schools, with the context of the principle of reciprocity and the Greek-Turkish Educational Agreements. Article 5(6) of Law No. 694/1977: "The equivalence between minority schools and public schools is determined by the Minister of Education and Religious Affairs, according to the proposal of the relevant Co-ordinator, with the reservation of the principle of reciprocity." See, also, Tsitselikis, *op.cit.*, pp. 344-345.

[64] *Ibid.*, p.348. According to the spirit of the Ministerial Decision 55369/16.5.1978. During the school year 1991-1992 almost 700 Muslim students had registered in Greek-speaking public secondary schools in Thrace (480 students in the country of Xanthi and 199 in the country of Rodopi and 15 in the country of Evros).

[65] See, "Hronos" (local newspaper) July 24 , 1997 for more details. In the school year 1994-1995, there were sixty Muslim students studying in the 7th grade of secondary school in the town of Iasmos,

The family itself will also suffer pressure from the wider Muslim community, since the act of sending their children to a Greek school, constitutes a 'rejection' of the Muslim identity and culture by allowing their children to study in a 'Christian' school. According to the members of the Muslim minority, there has always existed a strict separation between the minority schools for the Greek-Muslim students and the Greek schools for the Greek-Christian students.[66]

The Muslim students, who decide to study in Greek schools are treated with suspicion by the school authorities and are also faced with prejudice against them. The students of primary education study in ethnic minority schools, so they are not directly exposed on a personal level to any such prejudice.[67] This type of discrimination is reproduced on an institutional level in the educational system itself. In any case, it might be advisable for the Muslim students to attend minority schools during their primary education, since it might be essential for their self-identification, religion and culture.

Here one can observe a type of 'cultural' conflict within the Muslim minority on a collective and individual level. The minority as a group feels threatened that the majority language and culture could dominate and ultimately lead to language shift. However, it is in the personal interests of the individual to be bilingual mostly for economic and social reasons. The society the individual is living in would expect that he or she should have a certain level of competence in the majority language in order to profit from any available economic opportunities. At the same time, the members of a minority group need to maintain a sense 'solidarity' and 'ethnic identity'. This part of the individual's life and identity needs to be in harmony with the traditions and maintenance of the minority as a 'group' as well aiming towards his or her social integration in the Greek society.

9.5 Secondary Education of the Muslim Minority in Western Thrace

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as opposed to only 16 Christian students. During the school year 1996-1997, there were 30 Muslim students studying in the technical institutions of Komotini.

[66]Onsonoglou, *op.cit.*, p. 63.

[67] See, Legislative Decree 3065/1954(FEK A' 239, 1954): "In Regard to the Establishment and Function of the Turkish Schols of Basic Education of Western Thrace and the Regulation of Issues Regarding the Supervisors of these Schools" (It was supplemented by the Legislative Decree 1109/1972(FEK A', 1972), Ministerial Decision 142951/1957(FEK B' 162, 1957): "In Regard to the School Programme of the Minority Primary Education."

According to the Treaty of Lausanne, the Greek government is obliged to provide a special system of education for the Muslim minority in their own language during their primary education.[68] However, the Greek government after the Second World War expanded the special minority status to secondary education[69], since compulsory education had already been determined on a national level for at least nine years.[70] There are now two minority high schools, one in Komotini[71], the "Celal Bayar High School" and one in Xanthi.[72]

They provide places for approximately four-hundred students despite the fact there are eight-thousand five-hundred students attending minority primary schools.[73] The Greek government argues that under the Treaty of Lausanne, it must only provide a bilingual education through primary school. According to modern needs, basic education is considered to be both primary and secondary. [74] The shortage of spaces in the two minority high schools has effectively resulted in many children of the Muslim minority

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[68] According to official government statistics, when the Treaty of Lausanne was signed in 1923, there were only 86 minority schools operating in Western Thrace where only the Koran was being taught in Arabic. Today, the picture of the minority schools, has quite improved. According to the figures of the Ministry of Education and Religious Affairs, there are 227 primary minority schools with almost 8.500 pupils. From these, 115 are Turkish-speaking schools, 72 Pomak-speaking, 6 Roma Gypsy schools and 34 are mixed schools, which means that students from all three ethno-linguistic groups attend them. See, also Ministerial Decision Z2/152/25.5.1996(FEK B' 422, 1996): "The Process of Registration of Students in the First Grade of Minority High Schools"

[69] Ministerial Decision C2/933/3.3.2000(FEK B' 372, 2000): "The School Programme of the Minority High Schools.

[70] Article 16(3) of the Greek Constitution states that : "The number of years of compulsory education shall not be less than nine."

[71] The Celal Bayar High School was established, according to the Legal Decree 2203/1952(FEK A' 222/15.8.1952: "In Regard to the Establishment of the Celal Beyar High School in Komotini." (It was modified by the Legislative Decree 2256/1953, FEK A' 240, 1953.) The minority high school in Komotini, was the first minority school to be established in Western Thrace during the period of rapprochement between Greece and Turkey in the 1950s, accordingly, it was named after the Turkish Prime Minister Celal Bayar.

[72] The high school in Xanthi was established, according to the decision of the Minister of Education and Religious Affairs, Decision 2867/1965(FEK C' 142, 1965): "In Regard to the establishment of the Minority High School in Xanthi."

[73] According to Mr. Lambakis, state co-ordinator of the minority schools in Thrace, about 98 percent of the minority youth attend minority primary schools .No more than 2 to 3 percent of minority children attend non-minority primary schools. Approximately 1.000 minority students, however, attend non-minority, Greek-language high schools because, of the limited number of places in the two minority high schools.

[74] When the Treaty of Lausanne was signed in 1923, a primary school education was the norm in most of the industrialised world. However, in recent years high school education is considered to be the standard in most parts of the world.

not completing the mandatory nine years of education, let alone to enter into higher education. [75]

Ahmet Emin stated that the shortage of spaces in minority high schools disproportionately affects girls mostly due to religious and cultural factors. The Muslim religion does not allow for the free association of male and female students in mixed schools. In particular, a Muslim family in Western Thrace would not allow their daughters to attend a non-Muslim school. [76] Under these circumstances, the female members of the Muslim minority possess almost no knowledge of the official language. In addition, due to the particular position Muslim women have in society, they are faced with numerous problems in their personal, family, social and economic life, since they are totally dependant on the male members of their family.[77]

However, even the male students usually do not continue into secondary education. Most often, they chose to immigrate into Turkey where they can continue their studies.[78] In any case, there are a substantial number of minority students, who attend minority high schools or religious high schools. The Muslim students, who choose to study in Greek high schools find it very hard to compete with their fellow Christian students, due to their poor and insufficient knowledge of Greek and their previous 'cultural' and 'linguistic' isolation in the minority educational system.[79]

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[75] There are also five Greek-speaking schools, in the mountainous areas of Rodopi. These schools cannot be included in the framework of minority education, since the only class taught in Turkish is the subject of religion. These high schools are in: Sminthi, Glafki, Ehinos, and Thesmon, in the county of Xanthi and Organi in the county of Rodopi.

[76] Ahmet Emin is a New Democracy Party prefecture councilman for the Orgoni municipality.

[77] See, Chapter seven, *supra* generally, Appendix D: "An Analytical Description and Comparison of the Religious and Judicial Duties of the Mufti of Western Thrace with the Greek Civil Law", section D.1.

[78] See , Association of the Friends of Nikos Raptis, "The School education of the Minority in Thrace : According to the Experience of the Educators", Vol. 63, Contemporary Issues, (1997) pp. 54-60.

[79] Evagelia Tressou, "The Minority Education in Western Thrace : The Reasons for its failure" Vol. 63, Contemporary Issues, (1997) pp. 49-53. Nevertheless, the student population of Western Thrace is divided into two separate groups, the Muslim and the non-Muslim students, whom do not seem to interact with each other almost throughout their school education. The development of the minority education is greatly influenced by the geographical location of the minority population, since in the northern and semi-northern villages and towns, the status of education suffers from an element of isolation on a geographical, social, economic and cultural level.

The existence of only two high schools in the region of Western Thrace does not seem to facilitate access to education for the Muslim students.[80] A positive step taken by the Greek government was the abolition of the introductory examinations into high school[81] and their replacement with the system of lottery.[82] However, none of these systems can be seen as having facilitated access for all minority students into secondary and higher education.

The legality of this decision needs to be examined on the basis of the content of the nine years compulsory education, which is valid in Greece. [83] In particular, the system of access to secondary education by lottery needs to be compared with Article 2(1) of Law No. 1566/85, which states that: "primary education is provided into nursery school and primary school." It also states that primary and secondary education is compulsory. According to Article 2(3) anyone, who has custody of the student and omits the registration or supervision for his or her studies is punished according to Article 458 of the Criminal Code.[84]

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[80]Kanakikou, The Education of the Muslim minority in Western Thrace: Critique of the Educational System and General Suggestions (Athens : Ellinika Grammata, 1997) pp.. 95-96 Less than 10% of the students after they finish their primary education will continue their studies in a minority secondary institution. Every year almost 1, 300 students graduate from primary schools, from which 400-maily girls ultimately abandon school. Almost 370 students will continue to high school (gymnasium) or to a technical school and only 180 will finish high school (lyceum). Finally, only a 0.2 percent will be introduced to higher education in Greece, whereas the percentage of introduction to universities is almost nil.

[81] See Law No.129/1967, according to Article 7(3), students would be introduced into secondary education, after they had successful passed their exams at their final year of elementary school. However, this law was abolished for all Greek schools, expect minority schools, something which went beyond the limits of constitutionality.

[82] See Ministerial Decision Z2/205/20.5.1993: "In regard to the Procedure of Registration of the Students in Minority High Schools." See, also See Human Rights Watch, "The Turks of Western Thrace: Denying Ethnic Identity" Human Rights Watch Report, (1999) (Internet Version). Mr. Lambakis, the minority school co-ordinator, confirmed that there is a very high level of students among the minority who never complete the nine-year mandatory schooling and drop out after primary school. Adem Bekiro, the chairman of the Minority Scientists' Association, argued that the situation regarding secondary schools is even worse than in primary schools: "There are first of all only two of them (high schools) Students are chosen after their name is drawn from a lottery. There are forty-five places in Xanthi and forty-five places in Komotini. So we have more than 1.000 children graduating every year from the primary minority schools of Xanthi and Komotini. Of these, only 150 in Komotini and 100 in Xanthi can apply to go to minority high schools. Most of the others stop their education, very few go to Greek high schools and a few more go to ones in Turkey. As a result the nine year mandatory education for all children in Greece is not applied for most of the minority children."

[83] Tsitselikis, *op.cit*, pp. 357-358.

[84] Article 458 of the Criminal Code: "Anyone who intentionally violates a mandatory imperative law or a prohibited administrative legal provision is punished with fine of at least 20.000 drachmas."

The establishment of pre-school education is not provided even though it forms part of primary education. The adoption of pre-school education in the special educational system of the Muslim minority would help the minority students to adapt more easily in their bilingual and bicultural environment. The concept of pre-school education has not been established in the education of the Muslim minority despite the fact that it constitutes an essential condition for the minority students to familiarise themselves with the majority language and culture. Pre-school education should but does not function as a "bridge" of reconciliation between the two different cultural environments of the Muslim students. On the one hand, the students can develop their own Muslim culture in their family and community environment. On the other hand, they also need to adopt and familiarise themselves with the culture of their wider social environment.

All efforts made by the Greek government to establish pre-school minority education for the members of the minority have been met with strong resistance by the members of the Muslim minority, since they believe such an educational establishment would constitute a 'cultural' and 'religious' assimilation into the Greek society. In any case, the very few minority kindergarten schools operating in Western Thrace have contributed to the positive development of Muslim students into primary and secondary education and their integration in the majority culture and language. Arguably, it would be advisable that at this early stage students do not suffer confusion as to their cultural or religious identity.[85] Accordingly, the Greek government in the context of establishing minority pre-school education should consult the minority on such issues, since their consent on these kinds of matters is crucial for the maintenance of the harmonious relations between the minority and the state.

9.6: Higher Education of the Muslim Minority in Western Thrace

[85] Kanakidou, *op.cit.*, p.108. According to Eleni Kanakidou the teachers of kindergarten schools should be members of the Muslim minority, who would be educated in the Pedagogical Section of the University of Thrace in Alexandroplc with a special regime of training and employment for at least two years.

The previous system of introduction into higher education, which indirectly led to the exclusion of Muslim students from the national education has been greatly improved.[86] The Greek government in a positive step adopted Law No.2341/1995, which aims to overcome the almost prohibitive obstacle of insufficient knowledge of the Greek language, which has been making it a lot more difficult in the competition of the Muslim students with Greek native speakers in the university entrance exams.[87]

The provisions of law No. 2341/1995 permit the Minister of Education to give special consideration to Muslim students for admission to universities and technical institutions. According to Article 2(1) Muslim high school graduates are afforded preferential treatment in universities and technical institutions, as was the case before for other 'classes' of Greek citizens such as children of immigrants and repatriates. A university entrance quota (0.5%) and special examinations for admission to universities have been fixed in order to raise the educational level of the minority and to facilitate its integration in the social fabric of the country.[88] Law No. 2341/1995 has overcome the previous obstacle for the Muslim students, who would return to Turkey and continue their studies in Turkish universities due to the system of university entrance exams. Thus, Law No. 2341/1995 has contributed to the decrease of Muslim students graduating from Turkish universities and the decrease of the Turkish ethnic ideology 'imported' from Turkey. [89]

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[86] According to the Ministerial Decision Z2/277/17.5.1984(FEK B' 316, 1984) (explanatory of the earlier Ministerial Decision C2/640/6.3.1984.) According to the implementation of the Legal Decree 460/10.8.1983, the language of the qualifying exams into higher educational institutions is exclusively conducted in the Greek language with the provision of a special system of exams for those students, who had studied in minority high schools. Therefore, due to the insufficient knowledge of the Greek language most minority students chose to return to Turkey to continue their studies in Turkish universities.

[87] Law No. 2341/1995(FEK A', 1995): "Regulations of Issues of the Educational Personnel of the Minority Schools of Thrace and the Special Academy of Thessaloniki and Other Provisions."

[88] See, Article 2(1) of Ministerial Decision F.152.11/B3/790/28.2.1996(FEK B' 129, 1996). Tsitselikis, *op.cit.*, p. 359. In 1992, only 22 Muslim students had taken part in the university exams, whereas in 1996, the first year of implementation of Law No. 2341, 140 Muslims students applied to enter higher education with specific preferences to law, medicine and science. In 1998, 124 Muslims were admitted into the Greek universities. Finally in 1999, 123 Muslim students entered Greek universities and technical institutions. Approximately 1.7000 other Muslim students entered via the national examination process open to all Greek and were attending universities and technical schools.

[89] However, this measure might need to be reviewed under the introduction of the recent Law No.2525/1997(FEK A' 188, 1997): "In Regard to the Entrance Process of Students into Higher Education, Evaluation of the Educational System and other Provisions" which provides access into higher education based on the point average of the school certificate and the exams taken throughout the last two school years.

This provision on the one hand, covers the principle of equal opportunities and on the other hand, it contributes towards the integration of the future generation of the Muslim minority, consequently of a higher educational status. It has been observed that those students who continue into university education in their majority belong to the higher socio-economic elite of the Muslim minority.

The Government seems to also pay attention to the improvement of the skills of the Muslim children in the Greek language.[90] Two research programmes funded by the European Union were applied in 1999 and both seemed to produce positive results. In fact, bilingual education programmes can be seen as making the integration process more efficient by assisting the Muslim students into the smooth transition into the Greek-speaking mainstream system. [91]

9.7: The Teachers of the Minority Schools

In the minority schools the teaching personnel is composed of Christian and Muslim teachers.[92] The Christian teachers are appointed for the teaching of Greek-speaking classes[93] whereas the Muslim teachers are responsible for the teaching of Turkish-speaking classes. The legal position of the Christian teachers whether they are permanent (*monimoi*) or temporaries (*prosorinoi*) is that they are public employees.[94] The legal context, which regulates the position of the Muslim teachers is characterised by the existence of a different status.[95]

First of all, the Muslim teachers, who are graduates of the Special Pedagogical Academy of Thessaloniki (*EPATH*), are hired as public employees. In the process of

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[90] E. Ebeirikos, A. Ioannidou, (eds.), *et. al.* Linguistic Heterogeneity in Greece (Athens : Alexandria & Minority Research Group, 1998) pp. 40, 64.

[91] Giles H, Language ,Ethnicity and Intergroup Relations, (London : Academic Press , 1977) p. 269.

[92] Ministerial Decision Z2/103/8.4.1996(FEK B' 327, 1996): "In Regard to the Process of Appointment of the Teaching Personnel in the Minority Schools"

[93] See, also Ministerial Decision Z2/412/8.11.1995(FEK B' 954, 1995): "Transfers of Educators of Primary and Secondary Education"

[94] Presidential Decree 39/1992(FEK A'19, 1992): "The Regulation of Issues Concerning the Minority Education in Thrace." In the context of primary minority education, there are 760 teachers hired, from which almost 430 are Muslims. The procedure of hiring Christian teachers is determined according to the provisions of Article 15 Chapter A' of Law No.1566/85. The process of hiring teachers for both primary and secondary education is subject to the decision of the Minister of Education and Religious Affairs.

hiring Muslim Greek citizens in the minority schools the Co-ordinator of Minority Schools[96] makes a proposal to the local prefect, who takes the final decision. Any issues relating to their post are regulated by the Employees' Code,[97] Law No. 1566/77 and Presidential Decree 1024/79.[98]

There are a substantive number of Muslim teachers, who are working on a private contract. They are hired for one to three years in minority schools with the approval of the local prefect in the context of the legal authorisation of Article 7(1) of Law No.694/77.[99] However, this contract financially burdens the minority schools, which are subsidised by the parents, the minority itself or the government. Accordingly, this kind of situation might contradict Articles 2(6) and (8) of Law No.1566, which provide that "primary education is available free from the government" and "the functioning of the schools is subsidised by the government to the local self-administration authorities, which have the responsibility of managing those money." Further problems are created, by the unequal payment of the teachers, who have automatically renewable contracts (*monimoi dimosiou dikaiou*) and those who are paid according to a private contract (*simvasi idiotikou dikaiou*).

According to the 1951 Educational Agreement and the Ministerial Decisions 55369/1978 and Z2/219/1993, Greece and Turkey may exchange thirty-five teachers to provide instruction in minority schools in the context of educational exchanges between the two countries. However, Greece has limited their number to sixteen, because of the limited number of teachers needed by the Greek minority schools in Istanbul due to the rapid decrease of the Greek community.

9.8: The Educational Status of the Teachers

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[95] Ministerial Decision 55368/16.05.1978(FEK B' 520, 1978): "In Regard to the Appointment of Muslim Teachers" (It was abolished with the Ministerial Decision Z2/19/1993.)

[96] According to Article 3(1) of the Presidential Decree 1024/1979 (FEK A' 288, 1979): "In Regard to the Position and Status of the Muslim Teachers of the Minority Schools of Western Thrace"

[97] Presidential Decree 611/1977.

[98] Presidential Decree 1024/19.12.1979(FEK A' 288, 1979): "In Regard to the Position and Status of the Muslim Teachers of the Minority Schools of Western Thrace."

[99] See, also Ministerial Decision Z2/219/25.05.1993(FEK B' 172, 1993): "In Regard to the Appointment of Muslim Teachers based on Private Law Regulations"

The Christian teachers are graduates of Educational Academies with a two-year degree. The training of the Muslim teachers is conducted in the Special Pedagogical Academy, which was established in Thessaloniki in 1969[100](*EPATH*) whose graduates are appointed as teachers in the primary minority schools.[101] However, the Christian teachers have not systematically attended an educational training on multicultural education. They do not posses any knowledge or expertise in issues relating to linguistic minorities and education. It seems, therefore, they are having difficulties in functioning between two different cultures. The Muslim teachers seem to lack scientific educational training, since most of them have graduated from schools or universities of a religious orientation and education.[102]

The Christian teachers, who serve at the minority schools have not been provided with the proper education, information and support for teaching in the minority schools. They have not received any special training in issues of cultural or linguistic minorities. Thus, they seem to be facing difficulties working in a multi-cultural environment due to the lack of any specialised knowledge or scientific support. This kind of situation contributes to a climate of 'indifference' towards the minority education and schools. The teaching qualifications in such sensitive and complex working environments need to be quite demanding requiring special knowledge on issues of minorities and bilingual education as well as the demonstration of a strong desire to work in such a sensitive but very interesting area.[103]

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[100] According to Royal Decree 31/22.10.1968(FEK A' 8, 1969): "In Regard to the Establishment of the Special Pedagogical Academy of Thessaloniki" See, also Royal Decree 725/1969(FEK A' 226, 1969): "In Regard to the School Curriculum of the Special Pedagogical Academy of Thessaloniki." And also, Legislative Decree 842/1971: "Regarding the Organisation and Function of the Special Pedagogical Academy of Thessaloniki." (It was Supplemented by the Legislative Decree 842/1971(FEK A' 37, 1976): "In Regard to the Re-Organisation and Supplementary Legislation of such Institutions"

[101] Ministerial Decision 61320/30.05.1978(FEK B' 523, 1978): "In Regard to the Entrance Exams of the Candidate Students for the Special Pedagogical Academy of Thessaloniki" (It was modified according to the Ministerial Decision Z2/1125/1980, FEK B' 308, 1980.)

[102] Ministerial Decision 61318/30.05.1978(FEK B' 527, 1978): "In Regard to the Internal Function of the Special Pedagogical Academy of Thessaloniki"

[103] Anna Fragoudaki, Thaleia Dragona and Alexandra Adrousou, "Bi-cultural Education and Education of Teachers" Vol. 63, Contemporary Issues (1997) pp. 70-75. The Christian teachers seem to be divided into two categories regarding their opinion and attitude for the future of the minority education and the progress of the Muslim students. In the first category, there are those teachers, who do not view in a positive way the cultural and religious differences regarding the members of the Muslim minority in Western Thrace. They also seem to think that the social and economic integration of the minority members in the Greek society is very difficult or even impossible to accomplish. However, in the other category, there are those teachers, who feel more accustomed and positive regarding the cultural and religious differences of the members of the Muslim minority. They seem to have adopted to the cultural mixture of their local community. These educators, although they view the integration of the minority population quite difficult, they still believe it is possible to be achieved and maintain a more optimistic

In the context of *EPATH*, the establishment of a Religious Muslim Department is provided by Article 8 of Law No.1920/1991.[104] Its aim is the best possible training of the Muslim *Mullahs*. Since the development of the Academy, the status of the minority education has been improved. In the Academy, the students have either graduated from high school or from Muslim religious schools. The latter firstly attend the foundation class of EPATH.[105] As far as the training of the students of EPATH is concerned (two or three years degree depending on the institution the students graduated from) it can only be characterised as inadequate and unorthodox for the teaching of classes in the Turkish language in primary minority schools. This is due to the fact that the language of instruction at EPATH is Greek even though the teachers will be providing instruction in Turkish. The responsibility of appointing Muslim teachers is exclusively left to the discretion of the local prefect. This contrast with what it is valid for the Christian teachers in the respective positions at the same schools.[106]

It might be concluded that the Pedagogical Academy aimed at the gradual replacement of the various types of teachers in the minority primary schools. Judging from recent experience, the practice of the Academy has been to exclude the minority teachers, who have graduated from the universities in Turkey. The Greek policy has mainly been to exclude the teachers, who would carry with them a 'Turkish ethnic' ideology. The training of the teachers at the minority schools must be provided in a neutral and positive manner free from any nationalist or ethnic considerations, which could distort the aim of education and lead to separatism and division between the Christian and Muslim population in Western Thrace. In the sensitive region of Greek Thrace such a situation could endanger the territorial integrity and security of the Greek state, disturb the relations between the minority and the state and create confusion and mistrust between the minority and majority in that region.

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view towards the advancement and progress of the Muslim students. The main reason, they view as difficult the integration of the Muslim minority is the climate of suspicion and mistrust that has been created between the minority and the government and during different times between the majority and the minority, mostly due to the systematic political intervention of Turkey in the internal minority affairs in Western Thrace. See also, Omilos Filon Nikou Rapti, "The School Education of the Minority of Thrace: The Experience of the Educators." Vol. 63, Contemporary Issues, (1997) pp. 58-60, *et.seq.*

[104] FEK A' 182, 1991

[105] Ministerial Decision 61319/30.05/1978(FEK B' 523, 1978): "In Regard to the Organisation of the Foundation Classes of the Special Pedagogical Academy of Thessaloniki"

However, the sharpest criticism on the part of the minority has been directed at the graduates of the Academy. The Muslim minority believes that the Christian teachers, who come from EPATH practice a policy of assimilation through education. Most members of the minority do not accept teachers who are not of Turkish origin to teach at the minority schools, since they do not consider them qualified to teach at the minority schools.[107] The main target of attack towards the graduates of EPATH is that they do not know Turkish sufficiently well but also for being state representatives. Most members of the minority believe that the Muslim-Turks of Western Thrace, who have studied at Turkish universities should be the primary teaching personnel in the minority schools. Accordingly, they refer to the 1951 Educational Agreement between Greece and Turkey, which intended to provide educational exchanges between the two countries.[108]

In the case of the minority in Western Thrace, the educational system on a structural level should promote the cultural and linguistic expression of the minority. However, it fails to provide the students with the required knowledge, which is necessary for their integration in the wider society they are living and their future access to the cultural, scientific and social goods of the country.[109]

The lack of communication between the Muslim and Christian teachers is one of the main factors, which contributes to the poor minority educational system available in Western Thrace. This kind of institutional gap between the Christian and Muslim teachers has started at an early stage, since they both receive education in different institutions with different study programmes. This separation gap between the Muslim and Christian teachers ultimately works against the Muslim students and their future social integration in the Greek society.

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[106] According to Article 4(2) of the Presidential Decree 1024/1979.

[107] Tsitselikis, *op.cit.*, p. 350-351. However, the graduates of the Turkish Academies have ten years of education, the Greek Muslims eleven and the EPATH teachers fourteen. Article 2 of the Royal Decree 539/1969 (FEK A'165, 1969): "In regard to the Entrance Examinations into the Special Pedagogical Academy of Thessaloniki", According to Article 2(1), they must have graduated from high school (gymnasium or lyceum) or be graduates of commercial or an equivalent institution. See also, Article 3(8) of Law No.695/1977.

[108] Ministerial Decision 6132/30.05/1978(FEK B' 527, 1978): "In Regard to the Duties and Tasks of the Principals, Vice-Principals and Teachers of the Special Pedagogical Academy of Thessaloniki."

Nevertheless, according to the provisions of Article 1(2) of Law No.2341/1995, the teachers in minority schools will receive special income and will be mostly hired in minority schools after a special examination has taken place for each appointment. The terms of this provision will essentially improve the quality of the education. The knowledge and abilities of the teachers for the positions demanded would have to be clearly defined.

9.9: The School Curriculum of the Minority Schools

Article 41(1) of the Treaty of Lausanne obliges the Greek government to provide adequate facilities in primary minority schools for the instruction of Muslim students in their own language. The teaching of the minority language constitutes an essential framework for the protection and promotion of the cultural and linguistic identity of the Muslim minority. According to international law and the Treaty of Lausanne, there exists a bilingual system of education in the schools where students receive instruction in the minority language as well as in the official one.[112] According to Article 7(1)(e) of Law No. 694/77, the Minister of Education is responsible for the division of teaching hours in the Greek and Turkish language.[113] The establishment of the Turkish language as the 'mother tongue' of the Muslim minority has reinforced the ethnic consciousness and identity of the Muslims transforming it into a 'cultural entity'. Nevertheless, this provision does not prevent the Greek government from making the teaching of the Greek language obligatory in the minority schools.

The books that are used for the Turkish part of school curriculum are provided by Turkey, according to the 1968 Greek-Turkish Protocol. However, there are long delays in their delivery therefore; it has become common practice to use photocopied material. Formally, the Muslim students come in contact with the Greek language for

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[112] See, Legislative Decree 2567/1953(FEK A' 239, 1954): "In Regard to the Teaching of the Greek and Turkish School Subjects in the Minority Schools.) (It abolished Law No. 2203/1952, FEK A' 22, 1952.)

[113]Tsitselikis, *op.cit.*, p. 353. The curriculum in the minority primary schools is bilingual. Greek, history, civics, geography and environmental education are taught in Greek. Mathematics, physics, chemistry, religion, Turkish, art and physical education are taught in Turkish. If the school is large enough, English instruction is provided. An overwhelming number of minority children attend minority

the first time at a school level. The books used are designed for students, who are familiar with the Greek alphabet and have adapted to the Greek language through their family and social environment.

One may conclude that under these conditions of education the Muslim students do not have adequate opportunities in gaining sufficient knowledge of the official language. This may result in inequality of treatment in the minority system of education by providing minority students with the same facilities and textbooks as those students, who are already familiar with the Greek language. The teaching material available to the Muslim students for the teaching of the Greek language is wholly incomprehensible and almost meaningless, since these students feel excluded from the educational system of Greece.

Under these circumstances, it is almost impossible for the Muslim students to follow the school curriculum in secondary education. Accordingly, this explains the great decrease in numbers of students, who do not continue their education after elementary school and the small percentage of students, who actually graduate from secondary education and continue into higher education. This kind of situation further obstructs the integration of the members of the Muslim minority into the Greek society and contributes to their marginalasation and isolation, especially the young members of the minority.

The cultural and linguistic composition of the wider Muslim minority does not correspond to the current legal implementation of the Treaty of Lausanne. The exclusion of the two other minority languages used by the Pomaks and Gypsies violates the right of the Pomaks and the Gypsies to use their language in education. These two minority groups may experience the most difficulties in adapting to a bilingual education organised in Greek and Turkish. According to the Treaty of Lausanne and the two bilateral educational agreements signed between Greece and Turkey, the Turkish language became the 'official' language of the minority as the language of instruction in schools, in administrative and judicial authorities, despite

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primary school. See, See also Ministerial Decision Z/15/9.11.1985(FEK A' 20, 1985): "In Regard to the Teaching of Environmental Education in the Minority Muslim Schools of Western Thrace."

the fact, that half of the students attending the minority schools do not belong to the Muslim-Turks.

For a great number of students Turkish is not even their own language, since the Pomaks who speak a Bulgarian dialect, form a distinct linguistic minority.[114] However, according to the Cultural Protocol and the principle of reciprocity Greece was obliged to conduct the school curriculum in Greek and Turkish to the disadvantage of the other two linguistic groups. Accordingly, the Pomak language became the 'secondary' minority language and the Gypsy language is in an even worse position. The Turkish language and culture have been allowed to dominate within the Muslim minority in Western Thrace.

In particular, the Pomaks are bilingual citizens, who due to their common religion with the Muslim-Turks and the principles of the Treaty of Lausanne tend to identify themselves with the Muslim-Turks.[115] Under the current educational system, the minority students are taught the Turkish-language, which ultimately shapes their ethnic-consciousness and identity. However, the Muslim-Turks' group is quite hostile to any attempts or proposals by the Greek government to introduce the Pomak language into the minority schools cirriculum. The increase of the Turkish-ethnic consciousness among the minority through the mediums of language and religion would ultimately facilitate the recognition of an "ethnic" minority in Western Thrace. Even though a substantial proportion of the minority identifies itself as 'Turks', this does not prevent the differentiation of three groups of the wider Muslim minority, regarding their cultural and linguistic identification.[116]

The relation between nationality and language is a rather complicated one. In the context of the particular geographical area of Greek Thrace, the choice of the criterion during the compulsory exchange of populations was religion and not ethnicity or language. In the case of the Pomaks, they tend to identity themselves in reference to their ethnic background, religion or language within the Muslim minority and the Greek society. The socio-economic value or position of language needs to be

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[114] See, Appendix B: "An Analysis of the Social Status and Origin of the Muslim Minority in Western Thrace", section B.2.
[115] *Ibid.*
[116] E. Ebeirikos, *op.cit.*, p. 32.

considered. In the Greek society, as in every other society it is essential and beneficial to learn the official language, which will facilitate one's possibilities and success in the employment and social field. Accordingly, the status and value of a language needs to be realised in relation to its social and cultural environment.[117]

With regard to the status of minority education, one can observe the absence of an efficient education for the members of the Muslim minority in Western Thrace as well as the increase of educational inequalities between the system of education provided to the Christian students and the Muslim ones. The Muslim minority's level of education is apparently very low. In the case of the Muslim minority in Western in regard to the relations between the minority and the state, the two basic elements that characterise the three groups of the Muslim minority, language and religion do not constitute a source of enrichment and development. In contrast, they have resulted in illiteracy, rejection and social exclusion of the Muslims due to the low-level of education and the isolation and discrimination the minority has suffered during different times.

9.10: The Position of the Religious Classes in the Minority Schools

According to Article 39 of the Treaty of Lausanne classes in religion are to be offered in the minority schools. The position of the religious classes in the minority schools, the interpretation of the Koran, the ethics of Islam and its religious history are directly related to the nature and role of Islam in the internal relations of the Muslim minority. The teaching of the Koran in primary schools relates to the religious distinctiveness of the minority and contributes towards its religious identity.

The teaching of religious classes in the minority schools is highly valued by the Muslims. According to Article 2 of Ministerial Decision 14251/1957, it aims towards the "development of a religious feeling" of the Muslim students. The Turkish language, especially through the class of religion develops a symbolic and emotional

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[117] Moreover, the geographical and social mobility of the minority plays an important role in the choice of language. For example, in the district of Rodopi, due to the population movement from the villages into the urban centres, one may observe a gradual abandonment of the Pomak language in favour of the Turkish language, because of the higher concentration of the Muslm-Turcophones in that district. However, in the district of Xanthi the presence and use of the Pomak language is much stronger, which can be evidenced by the publication of grammar books of the Pomak language, dictionaries, school books, as well as Pomak newspapers and radio stations programmes.

character for the Muslim students. However, the students also need to realise the practical and social character of the Greek language mostly through the means of education.

A *Mullah* is appointed for the teaching of the religious classes, which constitutes a positive factor for the integration of the students in the Muslim community. However, this high degree of religiousness and the preservation of a particular way of life are much easier to reproduce in a small and isolated social environment, like the Muslim minority in Western Thrace. Accordingly, any prospect of adapting to the Greek society becomes more difficult to achieve. It further limits the possibilities of the Muslims to participate in the economic, political and cultural life of Greece.

9.11: The School Textbooks of the Muslim Minority

As far as the textbooks of the minority schools are concerned, the main problem for both the teachers and students is their outdated material, which has not yet been replaced with current editions. The poor quality of books used for the Turkish part of the school curriculum is still evident nowadays. Most books used by each minority are outdated and there seem to be long delays in their distribution to the minority schools.

The Cultural Protocol regulates the production and use of textbooks in minority schools for both the Muslim minority of Western Thrace and the Greek minority in Istanbul.[118] The text of the Cultural Protocol is formed on the basis of a series of recommendations. The wording of the recommendations provide for the flexible implementation of the Cultural Protocol. It is quite obvious that both states recognise the need to reach an agreement on the educational issues of their respective minorities but, nevertheless, refuse to enter into their legislation a set of substantive regulations. The implementation of the Cultural Protocol is also based on the principle of reciprocity.

Under the Cultural Protocol (Articles 11 –17) each state is responsible for providing the books for the teaching of the official language for their respective minorities.

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[118] See, also Ministerial Decision Z2/238/8.11.1982(FEK B' 888, 1982): "Issues Regarding the School Books of the Minority Schools" and Ministerial Decision 55369/1978, art. 15.

According to Article 7(1)(e)(2) of Law No.694/77 the writing of the books is assigned to educational personnel according to a proposal made by the Co-ordinator of the Minority schools to the Minister of Education, who gives the final decision on the matter. Article 15 of the Cultural Protocol is designed to regulate the process by which books are to be exchanged. Nevertheless, the climate of co-operation between Greece and Turkey, according to the spirit of the Cultural Protocol for the writing and publishing of school textbooks has not proved efficient. In particular, Turkey has not honoured its international obligations under the Cultural Protocol; between 1979 until 1993 it has not sent any books to the Muslim minority. The last books that were sent by Turkey were rejected for containing texts and images of Turkish nationalism.

In 1992 the Minister of Education and Religious Affairs took a positive initiative and published school textbooks to be used by the minority schools for the learning of the Turkish language. However, there was an organised reaction movement by the Muslim-Turks of the Muslim minority not to accept those textbooks. Ahmet Sadik and Hadjiorhan Ahmet were accused as the principal perpetrators under Article 191 of the Criminal Code for inciting the citizens to sow discord, disturbing the public peace and theft. Ahmet Sadik and his co-defendant organised massive intrusions into the schools and destroyed the textbooks and any other educational materials that were intended for distribution in the minority schools. However, the case closed after the death of Ahmet Sadik.[119]

The books that are published by the Greek Ministry of Education are those, which are distributed and used by the ethnic-Greek schools. However, they do not meet the particular linguistic, cultural, religious and social needs of the students, since they are not properly adapted to the special cultural circumstances of a bilingual education. The non-adaptation of the school textbooks to the particular demands of the Muslim students constitutes an important factor of the significant ineffectiveness of the education currently provided in the minority schools.

The correct and in-depth teaching of the mother tongue of the Muslim minority as well as of the official language is not very difficult to achieve. However, what is actually needed is to revise the school curriculum by paying particular attention to the

school books used by the Muslim students to ensure that they correspond to the educational needs of students, who come in contact with the Greek language for the first time on a school level. The new books would need to take into consideration, the fact that the mother tongue of these students is not Greek as well as their special cultural and social environment, the Muslim culture, tradition and ethics.

The training of the teachers has to provide them with an opportunity to be able to teach and work in a multicultural environment. It would also be advisable to increase the teaching hours of the Greek language to help students cope with any difficulties they might be having in their learning and understanding Greek. Under no circumstances, however, this should be done at the expense of the Turkish but in the context of the substantive learning and teaching of both languages within a multicultural and multilingual education.

9.12: Concluding Remarks

The existence of a separate educational system for the members of the Muslim minority in Western Thrace has resulted in creating an exclusive 'ethnic' Turkish character for its members. In addition, it has contributed to the isolation of the minority education and has prevented the collective social and economic integration of the members of the Muslim minority within the Greek society.

The system of minority education in Western Thrace does not seem to effectively teach and educate its students. On the contrary, it seems to operate as a rather 'dysfunctional' system due to the absence of political will of both sides, Greece and Turkey, to improve their bilateral relations in order to advance and upgrade the education provided to the Muslim and Greek minority respectively. It is essential for linguistic minorities to learn the official language of the state they are staying while at the same time, retaining their minority language, religion and culture, according to the principles of multicultural education on a European and international level.

In the field of education, the Treaty of Lausanne does not seem to be adequate, since it does not allow the Muslim students to acquire a proper and full knowledge of the

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[119] For the political action and court cases of Ahmet Sadik, see Chapter five, *supra*, section 5.4.

Greek or Turkish language. A review of the Treaty of Lausanne as well as of the Educational and Cultural Agreements might be required, in order to determine in a decisive manner the future of the minority education beyond the formal rules provided in such instruments, which might no longer correspond to modern needs and trends. The improvement of the teaching of the Greek language as well as the educational and cultural training of both the Muslim and Christian teachers is deemed to be necessary, according to the current international standards for the protection of minorities. The educational system of the Muslim minority in Western Thrace needs to be upgraded in order to meet the demands of the students to learn efficiently both languages and secure a future for them to meet their economic and educational demands and opportunities.

The Greek government needs to look beyond the administrative control of the minority educational system and realise the importance of its substance. The demonstration of a strong political will is required to restore equality and equal opportunities in education. However, in order for this to be accomplished the members of the minority group need to realise that there is no potential 'threat' of assimilation and loss of identity, if they learn and use the official language of the state and start to participate in the society in which they live.

The political and cultural reality of the region of Western Thrace and the particular status that characterises the minority education due to the bilateral agreements signed between Greece and Turkey requires a very careful approach towards its improvement and educational planning. The minority education requires sufficient opportunities for co-operation between the Christian and Muslim teachers to create together educational programmes regarding their student population. Although, there are several cultural characteristics, which differentiate these two groups there are other elements, which can unite them. A 'culture of respect' has to be maintained and promoted regarding the right to be different and the principle of non-discrimination. The accomplishment of this target requires a satisfactory level of education, which will take into consideration the special social and cultural characteristics of its members but will also aim towards their integration within the Greek society.

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CHAPTER TEN: CONCLUDING ARGUMENTS ON THE ADEQUACY OF THE TREATY OF LAUSANNE FOR THE PROTECTION OF MINORITIES IN GREECE

10.0: General Background

The protection of minority rights has become a matter of international concern and international relations. In Greece, the status of human rights and the protection provided for the cultural, religious and linguistic identity of minorities has been brought under intense scrutiny in the light of current international human rights standards. The protection of minorities is less manifested in multilateral instruments of the post-World War II period than it was under the system of the League of Nations. The only treaty of the interwar period, which survived until now is the Treaty of Lausanne. Since the Treaty of Lausanne was signed after the First World War under the auspices of the League of Nations, it was written in positive terms providing collective rights for the protected minorities. The text of the Treaty of Lausanne was based upon the idea of collective minority rights, which would undermine any separatist movement and limit the aspirations of kin-states to interfere in the minority internal affairs and therefore, initiate conflicts between the state and the minorities found in their territory.

The section on the "Protection of Minorities" of the Treaty of Lausanne consists of substantive minority rights on a collective basis. For example, Articles 40 to 42 provide the right of the minorities to maintain and establish their own educational and religious institutions as well as requiring positive action by the two parties in effectively implementing these provisions. From this perspective, the Treaty of Lausanne is quite exemplary and pioneering for its time in granting religious freedom and minority education, which is extensive in form, positive in content and collective in manner.

However, with the end of World War II, the system of the United Nations was established on individual human rights and the principles of equality and non-discrimination. The Universal Declaration on Human Rights (UDHR) does not address itself to the question of minority rights and the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities does not concretely

contribute towards this direction. While "negative equality" is firmly embodied in the various Post-World War II, international instruments considered "positive equality" is lacking as regards the development of minority consciousness. This arguably affects state practice in terms of the preservation of the ethnic identity of a minority group. Similarly, current regional human rights instruments provide rights for the individual written in negative terms and based on the principle of non-discrimination. For example, the European Convention on Human Rights (ECHR)[1] although it does not make any reference to minorities, Article 14 strictly forbids discrimination based on ethnic origin, language, religion, gender and association with a national minority on an individual basis.

However, Article 14 does not have a separate standing in the ECHR but can only be claimed in connection with another provision of the ECHR. The Council of Europe in 2000, enacted Protocol No. 12 to the ECHR that for the first time provide a right to non-discrimination separate from the other articles of the ECHR. Article 1 of Protocol No. 12 states that :

> "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

As can be seen, "association with a national minority" is among the grounds prohibiting discrimination but when Protocol No. 12 comes into force there will not be a need to show a link between discrimination and one of the other rights in the ECHR. However, Protocol No. 12 is parasitic to the ECHR, "the application of Article 14 does not presuppose a breach of those[other Convention] provisions-and to that extent it is autonomous-[but] there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter."[2] Member states are entitled to a certain degree of margin of appreciation to regulate domestic issues when

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[1] The European Convention on Human Rights, was signed in Rome on November 4, 1950 and entered into force on November 3, 1953.

[2] *Jewish Liturgical Ass'n Cha'are Shalom Ve Tsedek v France*, 27417/95, Eur.Ct.Hum.Rts. (Grand Chamber), 27 June 2000 at p. 86. See , also Tlimmenos v Greece, Vol. 15, E.H.R.R. No. 15, p. 40 (2001).

the Court considers if Article 14 has been breached. Although not every difference in treatment constitutes discrimination under Article 14 of the ECHR[3] but only those which there is a considerable and objective justification, nevertheless, the state's margin of appreciation is not unlimited under Article 14.[4] In the case of *Chassagnou v France* the Court held regarding what was necessary in a democratic society that a balance needs to be reached between the "fair and proper treatment" of minorities to avoid any abusive behaviour from the majority population. Accordingly, this test may be applied in the case of the minority groups in Greece to reach a satisfactory and effective balance between the cultural or religious rights of minorities with the rest of the majority population to avoid any abusive treatment due to the minority's vulnerable status in society.

In a study submitted to the UN Human Rights Commission in 1950, the UN Secretary General, stated that treaties entered by states regarding the treatment of minorities after the World War I had ceased to exist. Although, the study found that no substantial changes had occurred in the case of the Treaty of Lausanne, it did conclude that the treaties that were concluded at the end of First World War were no longer valid since the creation of the United Nations. The treaties of the United Nations are based on the idea of universal and individual human rights. Thus, it is not only a few minorities in certain countries that are entitled to special protection but all human beings everywhere in the world that are entitled to the full protection of universal human rights.

The historical and political relations between Greece and Turkey seem to be an essential factor affecting mutual respect for minority rights. It may indeed be presumed that the Muslim minority in Western Thrace as well as the Greek minority in Istanbul are 'hostages' of the Greek-Turkish relations. As a matter of fact both states have made "minority rights an apple of discord in inter-state relations and often a pawn in the chessboard of their geopolitical antagonisms."[5] The principle of

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[33] *United Christian Broadcasting Ltd. v United Kingdom*, Application No. 44802/98, Eur.Ct.Hum.Rts (Third Section) November 7, 2000, *Murdock v United Kingdom*, Application No. 44934/98, Eur.Ct.Hum.Rts. (Third Section) January 25, 2000.

[4] *Chassagnou et.al. v France*, Vol. 29, E.H.R.R. 615 (2000).

[5] Anagnostou Dia, "Collective Rights and State Security in the New Europe: The Lausanne Treaty in Western Thrace and the Debate about Minority Protection.", Konstantine Arvanitopoulos (ed.) Security Dilemmas in Eurasia, (Athens: Nireefs Press , 1998) p. 129.

reciprocity upon which the Treaty of Lausanne is based has provided Greece and Turkey with an opportunity to interfere in each other's internal affairs regarding the implementation of minority rights. It is important for the Greek government to realise that by continuing to advance the equal treatment and opportunities to the Muslim minority of Western Thrace, it will secure the better treatment and equality for the Greek minority in Istanbul. In particular, in the field of education, the principle of reciprocity and the bilateral educational agreements have unfortunately, had detrimental effects on the education of the minority students in both countries. [6]

Both Greece and Turkey have exercised strong political pressure as kin-states, in order to increase their influence in each other's legal and minority affairs. Rather than having a positive effect, this has resulted in the deterioration of the minorities' status and well-being. This is particularly evident in the case of the Greek minority in Istanbul. Presumably, in response to the continuous persecution and discrimination against the Greeks in Istanbul, the Greek government engaged in a series of adverse administrative measures against the Muslim minority in Western Thrace between the 1960s-1980s, especially in the field of economic and civil rights.

In the final analysis, both states are responsible for the maltreatment of each other's minority groups. It has been observed that Turkey seeks to employ the plight of the Muslims in Western Thrace as political means for its own benefit. Greece, however, pays insufficient attention to the needs and rights of the Muslim minority. Due to these circumstances, the Muslims have been living marginally on the fringes of Greek society and have been subjected to intolerance. The Greek government continues to link their treatment to the conditions of the Greek minority and the Orthodox Patriarchate in Istanbul, which have been subjected to intolerance and discrimination. Therefore, due to the principle of reciprocity imposed by the Treaty of Lausanne the status of the Muslims in Western Thrace and the Greeks in Istanbul have become ossified into institutionalised discrimination.

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[6] Gerasimos Kouzelis, "From the 'Non-Recognition' to the 'Over-Recognition' of the Distinctiveness: General Thoughts on the Minority Educational Policy", Vol. 63, Contemporary Issues, (1997) pp. 45-46, *et.seq*. In regard the low-level of the Muslim minority and the need to replace the Treaty of Lausanne, see, Christidou-Lionadraki Sevasti, "Stereotypes of the Minority Education." Vol.63, Contemporary Issues, (1997) pp. 76-78.

It would seem that religion has been used as an instrument of politics and has resulted in intolerance and discrimination. It is pertinent to impress upon both states that it is far more desirable and indeed rewarding for the state to strictly adhere to the dictates of full compliance with the letter and spirit of the majority of pertinent human rights instruments rather than assume policy positions that are based upon a fixed insistence upon reciprocity.

The Treaty of Lausanne is based on the premise of collective rights in the form of religious-ethnic protection and arguably has lead to confusion between cultural rights and ethnic identity. Accordingly, state-minority relations and the relations between a national state and an ethnic kin-state became rather antagonistic and hostile, especially regarding issues of territorial integrity and state security. Quite often political obstacles pose the main barrier to the promulgation of minority rights beyond the legal guarantee of non-discrimination. This is mostly due to the fear of the "national integrity" or "sovereignty" of the states. It is therefore, necessary to suggest further development in legal instruments on the international, regional or domestic level.

Under these circumstances, the adequacy of the special rules for the protection of minorities in Greece needs to be examined. The degree of protection offered to minorities by the current regional and international human rights instruments also needs to be considered. These instruments are merely written in negative terms, strictly granting rights to individuals without due regard to the collective dimension of minority rights. The Greek government currently recognises the existence of one minority in its territory, the Muslim minority in Western Thrace. However, many minority groups in Greece are not officially recognised by the Greek government. Due to this lack of official recognition, several minorities in Greece do not seem to enjoy the same set of special rules, which the Muslims do. Greece has not yet ratified international instruments that provide for the protection of minority rights. It is very likely, that the Greek State would eventually carry out the necessary ratifications. It is indeed recommended that Greece does so, since it is contemporary wisdom that the more 'humane' a state is with its entire population the better it is for its long-term prosperity and national interests.

10.1: The International Community

The international community has created certain expectations as to the protection of minorities. Accordingly, Greece and Turkey have to raise their standards as to the treatment of their minorities in order to meet these international expectations. Most international instruments are based firmly upon the principle of non-discrimination. States are obliged to take the appropriate measures to ensure that the enjoyment of rights set by international law are enjoyed by everyone on the principle of equality and non-discrimination. States are forbidden to limit the enjoyment of rights of a person (or group of persons) in a discriminatory manner. International law requires equal treatment for all minority groups in a state. This would seem to oblige Greece to consider extending to all existing minorities the same special measures that were adopted for the protection of officially recognised groups.

The rights to practice one's religion, use one's language and enjoy one's culture constitute fundamental principles of equality and are important elements of the ethnic identity of a minority group. They entail both individual and collective rights as well as public and private dimensions based on fundamental civil and political rights, such as freedom of assembly, freedom of movement and expression. However, states quite often regard collective rights as a threat to their security and sovereignty. This primarily stems from the assumption that a positive commitment to collective rights may give rise to claims of cultural autonomy and self-determination and may even lead in extreme cases to national separatism and session.

A number of individual human rights are protected in a number of European and international instruments such as OSCE Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension[7], the European Convention on Human Rights[8] and the UN Declaration on the Rights of Persons Belonging to Ethnic or National, Religious or Linguistic Minorities.[9] Most human rights instruments and documents established after the Second World War provide limited protection regarding minority rights, since they are expressed in negative terms only requiring

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[7] OSCE, 1990.
[8] The European Convention on Human Rights was signed in Rome on November 4, 1950 and entered into force on November 3, 1953.
[9] G.A. Res. 47/135/18.2.1992.

the states to refrain from preventing the peaceful enjoyment of the cultural and religious rights of the minorities. They are mainly based on a broad consensus to refrain from discrimination against individuals on religious, ethnic and cultural beliefs and traditions.

However, these regional instruments are based on individual human rights and the principles of equality and non-discrimination while allowing space for the provision of special measures for the factual equality between minorities and the majority population in a state. They also seem to entail a greater number of choices for the members of a minority group to decide to live according to their consciences. They can decide to either fully integrate into the society they are living in and declare that they no longer wish to be considered a minority or decide to remain within their own group based on a sense of strong solidarity and cultural ties, they share among the members of the minority group.

Otherwise, a minority treaty based on collective rights will necessarily limit the choices of the members of a minority group and may lead to a series of potential conflicts between the minority and the state. Even though the Treaty of Lausanne seems to oblige states to undertake positive measures for the protection of the Muslim and Greek minority, it is based on a set of ideals and trends that are no longer applicable in current times.

10.2: The Principle of Reciprocity

The most controversial provision of the Treaty of Lausanne is the principle of reciprocity, which has shaped the status and state policy against the Muslim minority in Western Thrace and the Greek minority in Istanbul. The principle of reciprocity has had long-lasting political consequences, since it established a legal basis for the parties to intervene in each other's internal legal and minority affairs. Throughout the years, it has been interpreted so as to mean that each country's actions and violations against any of the minority groups can be justifiably reciprocated. The Turkish government's gross violations of the minority rights of the Greeks in Istanbul have seriously distorted the aim and purpose of the Treaty of Lausanne.

The European Commission on Human Rights in the case of *Austria v Italy*[10] regarding the concept of European "public order", including the concept of "democratic society" as understood by the European Convention on Human Rights stated that:

> "The purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to establish *a common public order of the free democracies of Europe* with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law."[11]

International human rights instruments are no longer based on the same principles as the Peace Treaties under the League of Nations, such as sovereign equality and the principle of reciprocity.[12] In particular, the Inter-American Court of Human Rights also made a few observations regarding the antiquated nature of the principle of reciprocity and the character of current human rights based on a universal and individual basis:

> "Modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the Contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality both against the State of their nationality and all other Contracting States."

Accordingly, the Treaty of Lausanne which provides collective minority rights on a reciprocal basis does no longer correspond to the demands of current human rights norms based on universal human rights that provide a wider framework of protection to all individual including members of minorities.

The principle of reciprocity has had adverse consequences for the rights of the Greek minority in Istanbul and the Muslim in Western Thrace. In particular, the Greek government has often referred to the continuous persecution and discrimination of the

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[10] European Commission on Human Rights, Application No. 788/60, Vol. 4 Yearbook of the European Convention on Human Rights p. 116 (1961).
[11] *Ibid.* p. 138.
[12] Ireland v UK, European Court of Human Rights Series A, Vol. 25, para. 239, (1978), Soering v UK, European Court of Human Rights, Series A Vol. 161, para. 87 (1989)

Greek minority in Istanbul, especially during the 1950s and the 1960s as providing justification to violate the rights of the Muslim minority in Western Thrace. Accordingly, with the deterioration of the Greek-Turkish relations in the 1960s the Greek government engaged in discriminatory measures against the members of the Muslim minority regarding the acquisition of property, in economic activity and in the local administration.

In the area of education the Muslim minority of Western Thrace is provided with a special educational system. The minority education rests entirely on the provisions of the Treaty of Lausanne. In addition, a series of domestic laws (e.g. Law No. 694/77[13]) have been created in compliance with the Treaty of Lausanne together with some bilateral agreements, such as the 1951 Educational Agreement[14] concerning the equivalence of university degrees and exchange of teachers and the 1968 Cultural Protocol concerning the use and issuing of textbooks for the minority schools. There can be no doubt therefore, that the entire minority educational system operates on the principle of reciprocity; impeding the Muslim students' school progress and future integration in the Greek society. Accordingly, most members of the Muslim minority choose to immigrate into Turkey and continue their education there.

Greece might appear to neglect the education of the Muslim minority in response to the current situation of the Greek minority in Istanbul. As a result, the Muslim minority is not always satisfied with the education offered by the Greek State and several complaints have made been. The main problems of the Muslims in the area of education is a mixed system of administration, outdated textbooks, poorly educated teaching staff and shortage of secondary minority schools. In this regard, the minority educational system needs a more general consideration towards improving the quality of education offered to the Muslim students and raising the standards of the minority schools, so as to satisfy the demands of a modern education and to avoid unacceptable discrimination.

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[13] FEK A' 264, 1977.
[14] Law No. 2073/23.4/1952 (FEK A' 103, 1952) was abolished in 2000 by the Greek-Turkish Agreement on Cultural Co-Operation.

Despite the enactment of national legislation to implement the Treaty of Lausanne in the internal order, the application of its provisions remains insufficient. In the field of education, the Muslim-Greek students do not acquire the appropriate knowledge of either the Turkish or the Greek language. This unique and peculiar case of linguistic underdevelopment will of course, have dire consequences on the educational, social and cultural life of whole generations of minority Muslims.

The compulsory use of the Turkish language in the minority schools has seriously undermined the linguistic and ethnic identity of the two other groups of the minority namely the Pomaks and the Gypsies. The Pomaks and the Gypsies due to a common educational system and religious institutions have been homogenised with the Muslim-Turks on religious, linguistic and cultural terms. Accordingly, the minority educational system under the Treaty of Lausanne has set the basis for the development of collective ethnic ties between these two groups. It has encouraged the association and contact of the two groups and has led to their homogenisation as a single group with ethnic Turkish solidarity. These two groups have been socially and politically influenced by the ethnic Turkish model incorporated within the Muslim minority, through education, the various minority unions and associations, the Turkish Consulate of Komotini as well as the intervening policy of Turkey within the minority internal affairs.

A set of dependencies connect the Pomaks and the Muslim-Turks of the Muslim minority with Turkey, which until recently controlled the minority's access to education and socio-economic progress and advancement. The placement in law and in fact of minority rights with inter-state relations has had detrimental consequences on the substance of such rights. The balance of the Greek-Turkish relations is quite sensitive and complex, therefore, in state-minority conflicts it constitutes prior concern over fundamental issues regarding the effectiveness of the minority protection mechanisms, particularly the promotion of the minority's distinctive identity and characteristics. For example, the Greek government's initiative in 1990 to issue new books for the Muslim minority was viewed with suspicion and was strongly resisted by the Turkish government and the ethnic movement of Western Thrace. Accordingly, educational and cultural rights became the basis of ethnic

claims and conflict mainly being motivated by inter-state balance rather than fundamental issues regarding the protection and preservation of minority rights.

The educational system perceived from this perspective leads to the observation that the provisions on minorities of the Treaty of Lausanne, which provide for the educational rights of the minority must be regarded as inadequate in modern terms. Despite this reality, the principle of reciprocity has prevailed in the Greek-Turkish regime. It is therefore, essential for the overall improvement of the rights of the Muslim and Greek minority in Western Thrace and in Istanbul respectively that a new fundamental change of circumstances is recognised. This will necessitate amendments to the existing provisions of the Treaty of Lausanne. Greece would have to adopt a more flexible approach regarding the protection of minorities based on modern international law. In the field of education, current human rights instruments oblige states to ensure that persons belonging to minorities have adequate opportunities for instruction in their mother-tongue as well as to receive instruction in the official language of the state.

Accordingly, a minority education system should ensure the smooth transition from the mother tongue into the Greek linguistic mainstream. Article 16 of the Constitution, which provides for the right to education, regards the development of the "national and religious consciousness" as one of the main goals of education. Although recent international documents request that minorities remain loyal to the state they are living, states are encouraged to promote the development of the minorities' separate cultural and religious identity. Article 16 of the Constitution, states that education aims at the development of "free and responsible citizens." It would be reasonable to conclude that educational policy, in the case of the Muslim students in Western Thrace should regard Muslims as loyal Greek citizens. In addition, adequate allowances must be made for the recognition of their separate cultural and religious identity.

The relations between the Muslim minority and the Greek State have usually been quite tense. This is due to two main reasons. First, it is the way the Muslims are perceived as a social group. The Muslim minority is mainly an agricultural community attached to traditional Muslim value living in specific areas in Western

Thrace and is very little exposed to the wider society in Greece. Secondly, the Greek government has not made any substantial or significant efforts to improve the socio-economic situation of the Muslims. It may be argued that the Greek government has not encouraged the participation of the minority in the social and economic life of the wider Greek society.

Turkey has also been perceived as an external threat by the Greek government. Unfortunately, the position of the Greek government has been reinforced by the maltreatment and the continuing violations of the human rights of the Greek minority in Istanbul. The Greek minority in Istanbul is currently threatened with extinction and its population is mainly composed of elderly people. Successive Turkish governments have through various acts of omission and commission violated the Treaty of Lausanne, the European Convention on Human Rights, OSCE documents and other international human rights laws that are binding on Turkey.

This may well have influenced the degree of protection offered to the Muslim minority in Western Thrace. The Greek minority and the Muslim minority in Western Thrace and Istanbul respectively have been caught in the middle of the Greek-Turkish relations. Due to concerns about subversion, the Greek government is deeply suspicious of the Muslim minority. Nevertheless, a series of positive measures have been taken in the late 1980s and early 1990s, illustrating the Greek government's positive intentions to improve the situation of the Muslim minority.

Although constant efforts are made by the Greek State to integrate the Muslim population living in its territory into the national mainstream of the Greek society, the main question remains whether Greece recognises full compliance of growing ethnic, linguistic and religious diversity in its territory and adapts its laws and policies accordingly to these new realities. A special problem is raised by a traditionally high degree of religious homogeneity in Greece and the composition of the society has raised limited tolerance for minority or dissent views except where particular rights are guaranteed by law or under the Constitution. Although the courts are quite willing to protect minority rights against any unconstitutional encroachment by the state and its agencies, judicial interpretation of minority issues still remains narrow and literal. Accordingly, Greece has to become aware of its multicultural composition within a

European context, which although it promotes uniformity and integration also encourages cultural, religious and linguistic diversity and individuality.

10.3: Cultural Rights and the Treaty of Lausanne

In regard to the use of collective rights, Will Kymlicka has drawn two important distinctions as their meaning.[15] First, they refer to "internal restrictions" namely "the right of a group to limit the liberty of its own members in the name of group solidarity or cultural purity." Secondly, they refer to "external protections" namely "the right of a group to limit the economic or political power exercised by the larger society over the group, to ensure that the resources and institutions on which the minority depends are not vulnerable to majority decisions."[16]

This distinction may be used, in regard to collective rights within the context of the Treaty of Lausanne to explain the ethnic conflicts and minority claims in the context of the educational rights and ethnic identity in Western Thrace since the mid-1980s. The Turkish nationalist movement, which exclusively appeals to the Lausanne Treaty mostly reflects the concept of "internal restrictions." The ethnic movement of Western Thrace was represented in the 1989-1991 "independent" ballot as well as by a segment of the minority leaders that actively supported Turkey's foreign policy within the minority. The moderate-reformist section of the minority is more oriented towards the "external protections." This difference in approach is rather more clearly pronounced in the conflict over the schools textbooks in 1991 as well as in the broader debate regarding the status and quality of the minority educational system.

As a result of the 1968 Cultural Protocol between Greece and Turkey, school-books were written in Turkey and sent to Greece. The Greek government subsequently approved and distributed them to the minority schools in Western Thrace. However, by the late 1980s Turkey had not renewed these textbooks. The Turkish government argued that the textbooks sent to the minority schools were not accepted by the Greek authorities as a result of the claim that they consisted of nationalist content. Indeed,

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[15] Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford: Clarendon Press, 1995) p.7.
[16] *Ibid.*

when the books were returned to Turkey together with the requested changes the Turkish authorities refused to make any of the recommended changes. Accordingly, both states accused each other for the failure to supply the minority schools with up-to-date textbooks and materials. In 1991, the Greek government in response to this situation decided to write new books for the minority schools, which would take into account current educational and pedagogical approaches as well as improve the quality of the textbooks.

Predictably, when the books were distributed to the minority schools in Western Thrace, they were actually rejected by the nationalist segment of the minority as well as by teachers and parents in a large number of schools. There was absence from schools and several demonstrations took place in Komotini where the Muslim population protested against the use of the new books. In particular, a committee composed of fifty-one members of the minority went to Athens to return the books to the Ministry of Education. A lot of damage to the cause of the protesters may be said to have been done by the fact that the demonstrations were mainly led and directed by the nationalist minority deputies and the Turkish Consulate of Komotini and much of their opposition arose simply, because the books were written by the Greek government. Such sentiments are exemplified by the statements of writers that state categorically that: "we will not let our children use a book written by a Greek", "we want books printed in Turkey not in Greece" or "they want to make us infidels with this book."[17]

The former vice president of the independent party argued that the writing of the schools by the Greek educators was not right, since it deprived the minority of its cultural identity. He further claimed that all the minority was asking for was the protection of their rights as guaranteed by the Treaty of Lausanne.[18] It was claimed that the views of the independent political parties were based on their political position in the Greek-Turkish relations. They intended to promote Turkish nationalism through various means within the Muslim minority of Western Thrace,

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[17]Ibrahim Onsounoglou, "The education of the Muslim minority as seen through the Minority Press" Vermund Aarbakke, Unpublished Paper (36), where he states that this position is not practical and prevents the search for effective solutions: "It is the book itself, which is important and not where it is printed."

[18] Anagnostou *op.cit.*, pp. 135-136.

however, due to this political stand any possible solutions for the minority issues were prevented and obstructed.

Clearly, it may be reasonably argued that these kinds of extreme nationalist reactions of the segment of the minority primarily came from their particular point of view in the Greek-Turkish relations. It is no wonder then that such contributions do not constitute part of the solution but part of the problem, in finding effective means for the overall advancement of the socio-economic and educational status of the Muslim minority in Western Thrace. A more positive and probably more effective model may be detected in the arguments of the moderate minority activists and individual members of the minority. They argued more forcefully that the thrust of the education provided by Greece as well as the existing Greek-Turkish cultural and educational agreements are ineffective and inappropriate to meet the real needs of both minorities.

It is hard not to support their belief that all forms of modern education must be based on respect for ethnic origin, religion and language as well as on present day European standards. Similarly, they rightly opposed the current educational system provided to the Muslim minority as established under the Treaty of Lausanne as well as Turkey's hegemonic role in the minority's education without due regard for the substantive status and scope of modern day education. It may in fact be within reasonable contemplation that upon closer inquiry the textbooks and syllabus that are offered by Turkey to the minority in Greece may be of less relevance compared to the ones it uses at home.

There are also good reasons to support the Muslim member of the Greek Parliament, Mustafa Mustafa, who pungently criticised the Treaty of Lausanne for permitting states to use minorities as a motive to pursue their own interests without proper consideration for the protection of minority rights. In addition, he referred to the limitation of the Greek laws and policies in regulating the education of the minority in comparison to European and international legal instruments. Accordingly, he recommended that educational reforms were needed based on the principles of equality and non-discrimination.

Another strong supporter of this moderate approach, Dr. Ibrahim Onsunoglou, argued that the books published by the Greek authorities were not accepted mainly by the nationalist segment of the minority and the minority circles connected with the Turkish Consulate of Komotini. He also correctly notes that a reason for this reaction was the fact that the Greek authorities did not consult the minority before writing these textbooks but argued that this was not a sufficient reason for a total and reductionist rejection. Things could have been different, if the books and materials were rejected for being offensive to the Muslim religion or culture but this was clearly not the reason. Dr. Onsunoglou further argues that it is mainly the duty of the Greek government to write the books for the Turkish-part of the school curriculum, since the members of the minority are Greek citizens and that "the minority will never be able to influence its fate if it wants everything regulated by the Greek-Turkish agreements."[19]

It is therefore submitted that the minority's moderate reforms support policies, which provide "external protections" but do not include "internal restrictions." Such measures would improve the minority's educational system on a national and European level. Accordingly, these measures would provide for the collective protection of the minority's culture but would not restrict the individual's freedom in the name of ethnic solidarity or bilateral reciprocity. Instead, the freedom of the individual as a member of a minority group would be protected in regard to matters of education and socio-economic advancement in Greece and Europe.

10.4: Concluding Remarks

As has been shown, the application of the Treaty of Lausanne in Western Thrace based on the principle of reciprocity has intensified negative aspects of state security encouraged inter-state conflict and has led to extreme nationalism and antagonism. Accordingly, the relations between Greece and the minority remain infused with suspicion and mistrust. The Treaty of Lausanne placed cultural rights in the form of collective and minority rights, thus creating a minority group, which shares a common religion, language and education but remains oblivious, if not hostile to the

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[19] Vemud Aarbakke *op.cit*, pp. 37-39.

dominant majority culture. The Treaty of Lausanne in establishing the existence of a Muslim minority merged religious and linguistic ties, which did not entirely correspond with an ethnic-national minority. Accordingly, it sets the basis for ethnic claims of a monolithic minority where one no longer exists.

Education is an instrument for the economic and social advancement of any minority. In accordance, with the various international documents on the protection of minorities, the main goal of a progressive minority policy would be to give to each minority member a real opportunity to either live according to the traditions of the group or to integrate. Moving from this premise, education in Western Thrace should present both the Islamic way of life and a more modern vision. Both alternatives and choices deserve equal consideration.

The Treaty of Lausanne arguably does no longer correspond to the current demands and needs of the Muslim minority in Western Thrace and the Greek minority in Istanbul. In providing religious and linguistic rights with a minority framework based on inter-state relations rather than on existing public international and European law, the Treaty of Lausanne has distorted the aim of protecting cultural rights in Western Thrace and simply renders it an issue of foreign policy. Under these circumstances, a large segment of the Muslim minority, quite unrealistically appear to rely on Turkey to meet its needs and protect its rights.

A climate of suspicion, mistrust and hostility is created between the two states as well as between the state and the minority. Accordingly, these issues bring the Greek government and the minority in conflict on various issues such as the status of education, religious freedom and the exercise of basic civil and political rights. Moreover, the compulsory teaching of the Turkish language has resulted in undermining the ethnic, linguistic and religious identity of the Pomaks and the Gypsies within the wider Muslim minority.

The Greek government for its part will have to adopt a more positive attitude to its people with divergent ethnic, religious and cultural background. It should seek through bilateral agreements to replace the antiquated system of protection arising from the Lausanne Treaty with the current framework of international human rights

documents. As has been demonstrated, both Greece and Turkey have exploited the principle of reciprocity contained in the Treaty of Lausanne in respect of their obligations towards the minority groups in Turkey and Greece. The principle of reciprocity has been an obstacle for the effective protection and promotion of the rights of the Greek minority in Istanbul and the Muslim minority in Western Thrace. In any case, it must be impressed on both states that as parties to the European Convention on Human Rights, there is sufficient basis for successful challenges to their existing policies and general conduct to minority groups within their territory.

In general, Greece's legal commitment to human rights and minority rights tends to comply with the European standards. However, a minimum set of standards requires to be adopted by the Greek government for the protection and promotion of the rights of minorities in its territory. The creation of a modern Greek policy should aim towards the encouragement of individuality and diversity. Otherwise, the subordination of the individual to the state results in the denial of individual autonomy, which creates the potential for the violations of human rights.[20] The concepts of pluralism and diversity need to be incorporated into the Greek concept of the nation (*ethnos*) in order for Greece to abide by the current concept of international human rights. In fact, this holds true not just for ethnic minorities but the predictable changes in Greece's religious national life. Under the current changing circumstance world-wide, freedom of religion and cultural identity need to be freely accommodated in every modern society.

The protection of minority rights in Greece must be based on the principle of equality before the law and a modern special system of additional protection to balance the distinctive needs of all minorities. These two main factors ought to constitute the framework for the protection of minorities in Greece today. The Greek government must set aside any antiquated legalisation, which quite often leads to discriminatory treatment for its minorities. The judicial authorities must treat minority cases with a higher degree of toleration and flexibility and overthrow their current rigid and narrow position in applying the law before them.

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[20] Adamantia Pollis, "Greek National Identity: Religious Minorities Rights and European Norms", Journal of Modern Greek Studies, Vol. 10, (1992) pp. 173-175.

Linguistic and cultural diversity in Greece must be protected within the legal European framework set of rights. As a matter of fact, for Greece it may indeed be argued that the stakes are higher and the burden more onerous, because it is now a long-standing member of the European Union. For the advancement of the case of the Muslims in Western Thrace, Greece needs to comply with the jurisprudence of the European Court of Human Rights as well as in accordance with the general European philosophy of the rule of law.

As previously shown, the members of the Muslim minority have been on several occasions, restricted in the excrcise of freedom of movement, freedom of expression and religious liberty. For example, in the case of the Muslim minority in Western Thrace, the Greek government has not acknowledged the right to self-identification. Accordingly, a number of cases have reached the European Court of Human Rights dealing with violation of a series of rights provided by the European Convention of Human Rights. This is mainly due to the discriminatory practice of the administrative authorities as well as the decisions of the courts in dealing with minority cases.

It seems obvious that the Treaty of Lausanne must be reviewed and replaced within a European framework of minority protection. The principle of reciprocity, upon which the Treaty of Lausanne is based has adversely affected the rights of minorities and has restricted the minority problems into an ethno-nationalist conflict, which hinders any future economic development, social cohesion and integration. The development of minority rights and the preservation of minority cultural identity can only be promoted in a society built on the principles of pluralism and freedom of speech.

The legal protection of minorities in Greece needs to be reconstructed according to international human rights standards, by taking for example the model proposed by the OSCE documents, the Council of Europe the United Nations Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities and the European Charter for Regional or Minority Languages.[21] In the context of the Council of Europe the Greek government must proceed without any further delays with the ratification of the Framework Convention for the Protection of National Minorities.[22]

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[21]Council of Europe, November 5, 1992.
[22] Council of Europe, November 1,1995,

In the vital field of education concentrated efforts must be made for the ratification of the UNESCO Convention Against Discrimination in Education.[23]

The Greek government must engage in a consultation process with the members of the Muslim minority to resolve any conflicting issues and improve the legal status and rights of the minority. For example, in the area of education, the books used for the Turkish part of the school curriculum could be written by Greek-Muslim teachers in co-operation with the Ministry of Education, this might improve the quality of the textbooks and provide an opportunity for the members of the minority to effectively participate in the decision-making process on educational issues. In addition, special attention needs to be paid in writing the school books for the Greek part of the school curriculum by taking into consideration the cultural and linguistic needs of the Muslim students. Once more the educators of the Muslim minority must be consulted in order for the books to be accepted by the members of the minority and to produce some positive results in the education of the Muslim students.

In area of religion, although Law No. 1920/1991 provides for the principles of equality and non-discrimination regarding the decisions of the Mufti in order for them to be in compliance with the Constitution, it has also resulted in the strong and negative reaction from several members of the Muslim minority. Accordingly, it would advisable that the state authorities and the minority co-operate on this matter to find a form of solution where they can both agree and to avoid any conflicts and judicial interferences on the religious freedom of the minority.

Therefore, it might be concluded that a forum must be created where the Muslim minority and the Greek government can effectively co-operate to resolve any conflicting issues and effectively encourage the participation of the members of the minority in the decision-making process on issues that directly affect them. State authorities must protect the rights of the Muslim minority in Western Thrace beyond any political, ethnic or cultural factors but on a universal human rights basis for the wider and more effective protection of minority rights in Greece.

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[23] General Conference of the UN Educational, Scientific and Cultural Organisation, December 14, 1960 during its 11th session.

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TEXT BOUND INTO THE SPINE

APPENDIX A: THE TREATY OF LAUSANNE

ARTICLE 37

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

ARTICLE 38

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.
All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

ARTICLE 39

Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.
Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employment, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

ARTICLE 40

Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

ARTICLE 41

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for

ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

ARTICLE 42

The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions any of the necessary facilities which are guaranteed to other private institutions of that nature.

ARTICLE 43

Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

ARTICLE 44

Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

ARTICLE 45

The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.

APPENDIX B: AN ANALYSIS OF THE SOCIAL STATUS AND ORIGIN OF THE MUSLIM MINORITY IN WESTERN THRACE

B. 1 The Muslim-Turks

The Muslim-Turks population shares a Turkish ethnic consciousness. Since the time that the Ottoman Empire lost its control over the area of Thrace, the Turkish foreign policy has aimed towards the ethnic autonomy in that region. In August 31, 1913, Western Thrace still belonged to Bulgaria, the Ottoman notables had temporarily formed a government until the arrival of the Bulgarian army. During the period of November 19-23 1919 was under the control of the Allied Powers armies.

The Turkish government played a major role in organising and encouraging such autonomy movements within the Muslim minority in the Western Thrace. The aim of the foreign policy of Turkey was the creation of an ethnic Turkish minority in Western Thrace, despite the provisions of the Treaty of Lausanne, recognising the existence of two religious minorities in Western Thrace and Istanbul. The language used by the Muslims-Turks is the Turkish language, which is also considered the 'formal' language of the minority and is being taught at the minority schools. The Muslim-Turks people comprise the largest population of the Muslim minority. They are mainly live in the urban centres of the prefecture of Rodopi.

B.2 The Pomaks

During World War II the Bulgarians once again implemented a "*Bulgarisation*" campaign among Pomaks with some collaboration of the latter. As a consequence the post-war Greek governments introduced a "restricted military zone" in the northern mountain villages in Rodopi.[1] From the beginning of the Cold War border crossings to Bulgaria had been closed in the two departments with significant Pomak populations, as Greek authorities wanted to avoid Bulgarian infiltration of the Pomaks in Western Thrace. Accordingly, most Pomaks lived in a military "restricted zone", access to which required a special permission. The inhabitants of the villages within the zone have had special identity cards, which restricted their freedom of movement

within the limits of the department, if they wished to travel or resettle elsewhere; they needed a permit from the authorities, although this provision was never strictly enforced. In late 1995, Greece and Bulgaria agreed to re-open these crossings.

The Greek minority policy could be described as a double effort to keep the Slav-speaking members of the minority away from the influence of Bulgaria and secure the Greek sovereignty in the northern borders. An important fact, which implemented such policy was the written statistics of the Pomak language during the 1928 population census where the members of the Pomak group are referred as "Muslim-Bulgarians" whereas in the 1951 population census it was stated that they spoke "Pomakika."[2]

The Pomaks compromise one fifth of the total population of the Muslim minority and live in the mountainous counties of Xanthi and Rodopi and are mostly occupied with agriculture and stock-breeding. [3] The ethnic background of the Pomaks has been the concern of historians, since the nineteenth century.[4] The historical origins of the Pomaks is rather doubtful and very little is known about their evolution. Their Islamic faith, Slavic dialect and ancient Thracian culture make them an ideal object of diverse national claims.[5] Although, there have not been any official statistics, since 1951 the best estimate for the number of the Pomaks is thirty thousand. The mother tongue of the Pomaks is *Pomakika* (name in Greek) *Pomakci* (name in their language). The Pomak language belongs to the linguistic family of the Southern-Slavic languages. The most common terms for Bulgaronphone Muslims in the mountainous areas of

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[1] *Ibid.* at p. 4. See, also Article 5(3) of Law No. 376/1936(FEK A' 546, 1936): "In Regard to the Security Measures in Strategic Areas."

[2] See Greek Helsinki Monitor/Minority Rights Group-Greece Report, November 13, 2001, (Internet Version).

[3] Sevasti Troubeta, Establishing Identities for the Muslims of Thrace: The Example of the Pomaks and Gypsies, (Kritiki &KEMO : Athens, 2001) p. 94, Milonas Polis A., The Pomaks of Thrace, (Athens: Nea Sinora/A. A. Livani) 1990.

[4] In regard to the ethnic background, origin and history of the Muslim-Turks, Pomaks and Gypsies, see, Hugh Poulton, "Changing Notions of National Identity among Muslims in Thrace and Macedonia: Turks, Pomaks and Roma" Poulton Hugh and Suha Taji-Farouki (eds.), Muslim Identity and the Balkan State, (London: Hust & Company, 1997) pp. 82-92.

[5] See, Greek Helsinki Report, *op.cit.* at p. 2, Lazaros Achilleas G., "The Origin of the Muslims of Western Thrace" Elefthero Vima, July, 13, 1989,

Rodopi are "Pomaks" or "Agarjani". Each is interpreted differently by Bulgarian, Greek and Turkish historians.[6]

Greek authors consider Pomaks to be the descendants of ancient Thracian tribes, which were first Hellenised, Latinised, Slavised and Christianised and finally Islamised. Most of the Pomaks were assimilated by invading populations, but those who stayed in the mountains areas succeeded in remaining "pure" descendants of the ancient tribes and have many Greek even Homeric words in their vocabulary.[7] Greek historians refer to Greek words that are preserved in the Pomak language that Modern Greek has partly lost.[8] According to Greek historians the word "Pomak" is a derivative of the ancient Greek word "*Pomax*" (drinker), which reflects the Thracians' known habit of drinking and "*Achrjani*" is a derivative of the ancient Thracian tribe of "*Agrianoi*".[9]

Accordingly, the Greek historians aim to describe the common ethnic background of the Pomaks with the ancient Thracian tribe. The Pomaks are viewed as predecessors of ancient Thracians and therefore are considered as "original" Greeks.[10] Certain customs and traditions of the Pomaks are used to describe their cultural survival throughout time. Another theory, regarding the Pomaks is connected with a great historical time of the national Greek history, namely the expeditions of Great Alexander. The word "Pomak" seems to constitute a paraphrase of the word "Veteran" according to which the soldiers of Great Alexander were described when they returned from the battles.[11]

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[6] *Ibid.* at pp.2-4 ; Troubeta, *op.cit.*, pp. 80-83, Tatjana Seyppel, "Pomaks in Northeastern Greece: An Endangered Population" Vol. 10, Journal of Institute of Muslim Minority Affairs, No. 1, (1989) p. 42, Nathanail M. Panagiotidis, The Muslim Minority and National Consciousness, (Alexandrople: Topiki Enosi Dimon kai Koinotiton N. Evrou, 1995) pp. 33-42.

[7] *Ibid.* at p. 2.

[8] Gianni D. Makrioti, "Pomaks or Rodopians", Thracian Series, (1980) pp. 42-64. He argues that the Pomaks are Rodopians, who have been settled in Rodopi for 3000 years and he lists 92 Greek words in their dialect. However, some of these words are also part of the modern Bulgarian standard language. In any case, the mutual syntactic and lexical penetration of Balkan languages is well-known. However, one may say that he Pomak language is much closer to the Bulgarian language, rather than the Greek.

[9] Greek Helsinki Report, *op.cit.*, pp. 2-3.

[10] Troubeta, *op.cit.* at p. 83.

[11] *Ibid.* A substantial number of studies regarding the ethnic origin of the Pomaks have as main study object the use of racial characteristics. The Pomaks are predominantly fair, have light skin and deep-lying blue eyes, their cheekbones are not extended like the Mongols and the Turkish tribes. This might indicate their Indo-European descent and distinguishes them from Turkish-Mongolian race. See also Magriotis, *op.cit.* at pp. 43.

Bulgarian historians refer mainly to the Pomak language, which is a variant of Bulgarian, but with some different characteristics. They mainly view Pomaks as Islamised Bulgarians, who were forced into Islam during the seventeenth and eighteenth century.[12] The dialect used by the Pomaks in Western Thrace has been interspersed with many words from the Turkish and Greek language, but still contains a linguistic pattern of its own. Another characteristic of the Pomak language is that it contains a multitude of archaic Bulgarian constructions,[13] which survived due to their isolation in the northern region of Rodopi therefore, they speak a "purer" Bulgarian language.

In Bulgarian there are two names given to the Pomaks, namely "*Pomaci*" and "*Achrjani*". According to Bulgarian historians the name "Pomaci" relates to the Turkish word "*Pomagac*", which means "helper" reflecting the social position of the Pomaks in the Ottoman period.[14] According to similar interpretations the name "*Pomaci*" derives from the word "*Pomachamedanci*", which means "Islamised".[15] Similarly the origin of the word "*Archjani*" is based upon the ancient Bulgarian word "Agarjani", which means "infidels".[16]

Finally, Turkish historians have based their argument on religion. They claim that the Pomaks are descendants of various ancient Turkish tribes (Pecheneges, Avars and Kumans), which established themselves in the Southern Balkans during the eleventh century.[17] According to this theory, the Pomaks are the oldest Turkish population in Europe and perhaps "pure-blooded" Turks.[18] The word "Pomak" in this version comes from the Turkish "*Pomagac*", which means "helper" and "Achrjani", from the Persian word "*Ahiyan*", which means "the known religious fraternities." [19]

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[12] *Ibid*., p. 82, Greek Helsinki Report, *op.cit*., p. 3, Syppel, *op.cit*., p. 42.
[13] *Ibid*. According to the theory of the Bulgarian scientists, there is no difference between the dialect of the "Bulgarian Mohamendans" and their Christian "blood-brethren". Therefore, the Pomaks speak a 'purer' Bulgarian language.
[14] *Ibid*.
[15] *Ibid*.
[16] *Ibid*.
[17] Greek Helsniki Report, *op.cit*. p. 3, Troubeta *op.cit*., p. 83, Syppel, *op.cit*., pp. 42-43.
[18] *Ibid*.

Each of the historical theories described presents the ethnic background of the Pomaks in very different ways. This description will help to identify the position of the Pomaks in the Greek society and within the Muslim minority.

B.2.1 Self-Identification of the Pomaks

Pomaks seem to mostly identify themselves with the Muslim-Turks. They possess a "double identity": an ethnic Pomak and a Turkish one.[20] It is argued that the Muslim minority's ethnic and linguistic homogenisation was due to the Greek government's decision in 1951 to distance them from the Bulgarians by introducing Turkish-language education in the minority schools. In addition the Pomaks believe that if they identify themselves, as Muslim-Turks they will be empowered within the Muslim minority and will no longer be a "minority within a minority".[21]

The Pomaks tend to identify themselves either as "Muslim-Turks" or as "Pomaks", the latter might reveal the desire of the Pomaks to be identified as a separate minority group within the wider Muslim minority in Western Thrace.[22] The Pomaks have demonstrated a strong desire to integrate within the Greek society.[23] From an early age they learn to speak Greek and Turkish. The Turkish language is viewed as a language of higher status and power within the Muslim minority of Western Thrace, mostly for political reasons. However, the Pomaks realise that the learning of the Greek language is essential for their integration and progress in the Greek society. The Pomaks living in Western Thrace do not seem to identify themselves as "Bulgarians" and have not developed a national affiliation towards Bulgaria. [24]

A. Self-identification as "Turks"

The development of an 'ethnic' Turkish identity for the Pomaks in Western Thrace is divided into two phases. The first phase refers to the discrimination the members of the Muslim minority have experienced on the part of the Greek government, which

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[19] *Ibid.*
[20]
[21] See, Greek Helsinki Report, *op.cit.*, p 5.
[22] Troubeta, *op.cit.*, p. 120.
[23] *Ibid.*
[24] *Ibid.*

helped shape their ethnic consciousness on a collective level.[25] The second phase refers to the social identity of the minority, which was transformed into a political identity on an ethnic basis.

The Greek minority policy did not realise, until the late 1980s, the significance of protecting and promoting the cultural identity of the Pomaks and Gypsies with a separate political and ethnic consciousness within the wider Muslim minority. [26] In contrast the Greek government encouraged the cultural and religious 'merging' of the various groups of the Muslim minority by providing a minority educational system in Turkish and in Greek. This fact alone cannot contribute to the self-identification of the Pomaks as "Muslim-Turks". It has been mostly the political discrimination and marginalisation, which the members of the minority had suffered, that made the Pomaks and the Gypsies identify themselves with the numerically but also politically stronger group of the wider Muslim minority, the Muslim-Turks. [27]

In the recent years, the Pomaks have emigrated in the urban and plains of Western Thrace. Accordingly, the socio-economic gap between them and the majority of has decreased.[28] However, the Pomaks have quite often felt victims of discrimination in the new places they established themselves. Thus, it was easier for the Turkish government to extend its foreign policy by introducing the ethnic Turkish ideology into a substantial number of the Pomaks. [29]

The social and economic status of the Muslim minority constitutes one of the major factors of the Greek-Turkish relations. On the one hand, Greece blames the 'cultural' isolation and marginalisation of the minority to the interference of Turkey and the increase of Turkish nationalism within the minority. On the other hand, Turkey uses the social 'disintegration' of the minority as a sign of social suppression and discrimination on the part of the majority.[30]

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[25] *Ibid.*, p. 121.
[26] *Ibid.*
[27] Ibid , p. 122.
[28] *Ibid.*, p. 119.
[29] *Ibid.*, p. 122.
[30] *Ibid.*

The Turkish government together with some members of the minority 'independent' political parties and the Turkish Consulate of Komotini have used the Pomaks for their own political interests in creating an ethnic Turkish minority within Western Thrace. Among the various ways, which the Turkish policy has achieved its aim was by granting scholarships to the Pomaks to study at Turkish universities.[31] In addition, Turkey has accepted Pomak refugees in its territory. [32] The use of satellite television in Pomak homes has contributed to the increase of the Turkish ethnic model within the Muslim minority.

The influence of the Turkish foreign policy within the Muslim minority is also evident by the Pomaks electoral behaviour.[33] The Pomaks seem to vote for the minority 'independent' political parties, which began to appear in the mid-1980s.[34] The Pomaks as the rest of the Muslim minority are quite caught between the Greek-Turkish relations. The electoral behaviour of the Pomaks can be described as an effort to assimilate into the Muslim-Turks group and increase their status within the Muslim minority. However, even though, the Pomaks might not always feel that they belong to the Greek nation they wish to be accepted by the Greek society.[35]

B. Self-Identification as "Pomaks"

A substantial number of the Pomaks wish to be self-identified as a separate minority group in Western Thrace.[36] They do not often call themselves "Greeks", but they prefer to be self-identified as "Pomaks" or "Greek-Pomaks."[37] Many Pomaks declare that they wish to fully integrate into the Greek society and accept the Greek historian's theory regarding their ethnic origin and background. [38]

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[31] *Ibid.*, p. 123.
[32] Troubeta, *op.cit.*, p. 125.
[33] *Ibid.*
[34] D. X. Dodos, The 'Electoral' Geography of the Minorities: Minority Parties in the Southern Balkan Peninsula-Greece, Bulgaria, Albania (Exadas : Athens, 1994), pp. 27-40.
[35] Troubetta, *op.cit.* p. 165.
[36] *Ibid.*
[37] *Ibid.*, p.126.
[38] Aggeliki Damigou, "Research on the Pomaks of Thrace: How do they fell and What do they think" Eleftheros Typos, 23.12.1991.

During the early 1990s, many Pomaks began to study at Greek secondary schools It has been observed that that influence of the Greek policy in the Pomak population is stronger in Xanthi rather than in Rodopi. For example, the introduction of special school classes, such as music, sports and the teaching of foreign languages was more welcomed in the minority schools Xanthi rather than in Rodopi. The members of the Muslim minority in Rodopi argued that the introduction of such classes would increase the number of Greek-Christian teachers in the minority schools and change the cultural balance in the minority educational system in favour of the Greek-Christian tradition and ethics.[39]

The Pomaks consider the learning of the Greek language as an essential for their future development, progress and integration in the Greek society. The religious element is very strong in the community of the Pomaks and has played a major role in regulating their lives. Religion has always been used by the Pomaks as distinguishing factor between them and the rest of the majority. They are devout Muslims, who place religion in a high hierarchy for their socialisation both in their public and private life. Their absence from the mosques and their religious duties can result in their isolation from their community. The close relationship between religion and community organisation within the Pomaks becomes apparent. Although, the Pomaks are Muslims and their religious services are held in Arabic, some distinct Pomak festivals in the Rodopi and Evros regions have been reported.[40]

B. 3 The Muslim Gypsies

There are about fourteen-thousand Gypsies living in settlements in the three prefectures of Western Thrace. In the first case, there are the groups of Gypsies, who have been permanently established in the region of Western Thrace, since the time of the Ottoman Empire.[41] They were exempted from the compulsory exchange of populations under the Lausanne Convention. They use the Turkish language as their

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[39] Troubetta, *op.cit.* p.127.
[40] *Ibid.*, pp. 132-133 ,Greek Helsinki Report, *op.cit.*, p.. 6 .
[41] Ibid. p. 165.

mother-tongue and also the Greek language. In the second case, numerous settlements of Gypsies were created in Western Thrace just a few decades ago.[42]

A substantial number of families and individuals settled from the neighbouring Balkan countries just before or after 1923. Many settlements were also created just before or after Second World War, when various tribal groups were concentrated in the same region. Finally, many families from Bulgaria were established in northern Greece during the Cold War. All the groups were placed within the Muslim minority, even though they initially held a residence permit. The various groups of Gypsies that were established a few decades ago, abandoned their cultural characteristics, including their language, which they replaced with the However, the emigration of the Gypsies has constituted an important factor for their socio-economic advancement and progress.

Each Gypsy settlement constitutes a closed social community mostly due to the isolation (ghetto) that has been imposed upon them by their external environment. They are the most marginalized group within the Muslim minority, as in the areas they live their poor socio-economic status is evident. However, the prohibition of mixed marriages has also played a major role in the development and character of such communities. The situation is rather more flexible now. [43]

In every settlement of the Muslim Gypsies there is a distinction between the more or less wealthy families. The wealthier Gypsy families live in the central areas of the settlement whereas the less wealthy families are scattered in marginal areas. The Muslim Gypsies constitute a very small minority group in the labour market. They are mostly occupied as unqualified labour force.[44] In the context of labour, they come into contact with the members of the majority population where they find themselves in a rather disadvantaged position.[45] The majority of the Muslim Gypsies mostly live under conditions of poverty and social inequality. In particular, their access to the economic and social benefits of society is very limited. Accordingly, the Gypsies are placed at the poorest social structure in Western Thrace.

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[42] *Ibid.*, p.. 163-166.
[43] *Ibid.*, pp. 167-168.
[44] Troubeta, *op.cit.*, p. 166.

Within the group of the Gypsies, they are a few intellectual and educated members, mostly from the older settlements, but constitute the exception rather than the rule. They are mostly occupied in the minority education in the region of Western Thrace and are graduates of the Special Pedagogical Academy of Thessaloniki. [46]

B.3.1 Immigration and Movement of the Muslim Gypsies

Due to their seasonal occupation the Muslim Gypsies move quite frequently, since very few of them work in regions near their settlements. During the 1980s, most Muslim Gypsies immigrated in the urban centres of the courtly, [47] mostly to Kavala and Athens where they were offered working positions. The Muslim Gypsies mostly established themselves in the western suburbs of Athens were they continue to sufferer isolation, marginalisation and poor living conditions. [48] A large number of Gypsies also immigrated to Western Europe.

B.3.2 School Education and Child Labour within the Muslim Minority

Child labour constitutes a widespread phenomenon in the region of Greek Thrace, among the members of the Muslim minority. With the exception of the Pomaks, most minors work under adverse conditions with low-paying salaries. An extreme example of this situation constitutes the children of the Muslim Gypsies to whom absence from school is a rather usual phenomenon.[49]

Most of the children of the Muslim Gypsies do not attend school or do only occasionally.[50] Their deficient school attendance is mainly due to their struggle to earn a living. The children of the Muslim Gypsies are working to contribute to the family income, because of their poor economic situation by travelling with their parents during their seasonal occupation.

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[45] *Ibid.*, pp. 170-175.
[46] *Ibid.* , pp. 175-177.
[47] *Ibid.*
[48] *Ibid.*
[49] Troubeta, *op.cit.*, p. 177.

The concept of "education" needs to be defined as a cultural value in the socialisation of these children. The children of the Gypsy families come from a very poor socio-economic background and their parents have not passed on the value of education to them. Another important factor in preventing these children from attending schools is the deficient knowledge of the Greek language, which adversely affect their communication with their classmates and increases their social isolation and margnilasation in the region of Western Thrace and the rest of Greece.

Most Muslim Gypsy families have now realised that most negative experiences they suffered in their search of work were due to their lack of education and are encouraging their children to go to school and receive a good education. However, there are a few Muslim Gypsies, who attend secondary education most of them are citizens of the older settlements in Western Thrace.

B.3.3 Self-Identification of the Muslim Gypsies

The Gypsies being members of the Muslim minority are inevitably caught in the Greek-Turkish conflict regarding the identity of the minority. The interest of Turkey towards this group is due to their small numerical size and poor socio-economic level within the wider Muslim minority. However, the interest of Turkey for the Muslim Gypsies is restricted insofar as they live in Greece and particularly in Western Thrace. The Turkish society is not prepared to accept the Muslim Gypsies as a minority group in contrast with what is happening with the Muslim-Turks and the Pomaks.

Since the mid-1980s the Turkish policy has been directed in creating or strengthening a 'Turkish ethnic' consciousness in the minds of the Muslim Gypsies. These efforts are based on the low social and economic position the members of the Muslim minority share in Western Thrace as well as on the common religion and language within the Muslim minority. [51] In the case of the citizens of the older settlements they have been using the Turkish language as their mother-tongue, since the time of

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[50] *Ibid.* It has been observed that many Muslim students in Western Thrace are not in schools duirng school hours.

the Ottoman Empire. However, in the case of the citizens of the newer settlements, television programs broadcasted by the Turkish satellite channels have increased the use of the Turkish language, in particular in the case of the chidden, whose parents still use their own Romany dialect.

The Turkish foreign policy in the case of the Muslim minority in Western Thrace has been facilitated by two main factors first, the absence of social welfare for the Muslim Gypsies and secondly, the marginalisation of this group due to their low social position. Turkey provides this group a modern ethnic identity which at least on an ideological level absolves them derogative term "Cingene", which people use to address them.

The Greek government in order to achieve the social integration of the Gypsies in the Greek society would have to fulfil two main aims.[52] First, it would have to eliminate the negative stereotypes and ideas, which surround the Gypsies in the Greek society. Secondly, the Greek government would have to distance the Muslim Gypsies from the Turkish political and ethnic mainstream by mostly emphasising the cultural identity and characterises of that group.

However, the situation with this group is quite different compared to the Pomaks, since the "*hellenisation*" of the latter is based on their ancient Greek background; this is not true for the Muslim Gypsies, who do not share a common ethnic background with the Christian-Greek citizens. The Muslim Gypsies are not characterised as being very religious members of the Muslim minority even though, they are Muslims they do not follow the Sunni Islam, but belong to a Muslim religious sect.[53]

A .Self-Identification as "Gypsies"

The self-identification as "Gypsies" is mainly used by the citizens of the newer settlements. The choice of such as an identity stems from the Greek-Turkish conflict for the identity of the Muslim minority. The self-identification as "Gypsies" might

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[51] *Ibid.*, p.185.
[52] *Ibid.*, p. 186.
[53] Panagiotidis, *op.cit.* p. 144.

reveal the desire of the group to integrate into the Greek society. Several elements that encourage such a choice is the rejection, they experience almost on a daily basis by the Muslim-Turks as well as by the Turkish government, when they immigrated into Turkey.

The Gypsies' students although, they wish their language to be taught in the minority schools, they do not consider it very functional in the region of Western Thrace and the rest of Greece.[54] They favour the teaching of the Greek language as the official language of the state, which would facilitate their progress and development in Greece.

B. Self-Identification as "Turks"

A substantial number of Muslim Gypsies are being self-identified as "Turks". Within a historical and political framework the citizens of the older settlements were being self-identified as "Turks", since the time of the Ottoman Empire. This kind of identification has been passed on to the next generations where in the context of the Greek-Turkish relations adopts elements of an ethnic character.[55]

During the last fifteen years the citizens of the newer settlements have abandoned their own cultural characteristics, especially their language in favour of the Turkish language and culture. The introduction of national elements in the self-identification of the Gypsies is related to the Greek-Turkish conflict for the identity of the minority as well as the negative connotation that the term "*Cingene*" has developed by its external environment. However, the choice of self-identification of the Gypsies, includes more elements of a social nature than political and ethnic ones, in order to advance their own status and position within the Muslim minority and the Greek society.

C. Self –Identification as "Muslims"

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[54] Troubeta, *op.cit.*, pp. 206-207
[55] *Ibid.*, pp.208-210.

The self-identification of the Gypsies as "Muslims" is based on the choice of the religious criterion.[56] This choice might reveal a neutral position on the part of the Gypsies to avoid any conflict regarding the identity of the Muslim minority in Western Thrace, since the Muslim Gypsies are not a very religious group, due to their own particular nature and tribal life.

[56] *Ibid.*, p. 210-211.

APPENDIX C: A HISTORICAL ANALYSIS OF THE STATUS AND RIGHTS OF THE GREEK MINORITY IN ISTANBUL AND THE GREEK INHABITANTS OF IMBROS AND TENEDOS

C.1 The Greek minority in Istanbul

The Turkish government has not provided the Greek minority with effective religious, linguistic and educational rights as established by the Treaty of Lausanne. The Turkish government after it took control of Constantinople in October 2, 1923 severely restricted the civil and political rights of the Greeks in violation of Article 39 of the Treaty of Lausanne.[1] The Turkish authorities restricted the participation of the Greek minority in the political life of Turkey on a national and local level. In particular, most Turkish public services were not accessible to the members of the Greek minority in Constantinople as well as several banks and multi-national companies were forced under the government of Kemal Ataturk to replace a great number of experienced Greek employees with Muslims.

The new administration of Kemal Ataturk enacted several laws and regulations imposing a number of obligations upon the Greek educational institutions contrary to Articles 40 and 41 of the Treaty of Lausanne.[2] In particular, in 1925 the Turkish government closed down a great historical institution: the Greek Philological Association of Constantinople and transferred its valuable library and hand-written documents to Ankara.[3]

The teaching of the Turkish language in the minority schools was extended to all school courses[4], which resulted in restricting the teaching of the Greek language to the disadvantage of the Greek sutudents, who did not have sufficient opportunities to learn

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[1] See, Appendix A for the full text of the Treaty of Lausanne.
[2] *Ibid.*
[3] Alexis Alexandris and Thanos Varemis, The Greek-Turkish Relations, (Athens: Gnosi & E.L.A.M.E.P, 1988) pp. 40-41. See, also detailed report of the educational attaché, Mr. Stilianopoulous, 8.2.1924, AYE/B./33. Between 1923-1924 one hundred and fifty-six Greek teachers were fired, because they were described as "inappropriate to teach at the schools of the Turkish Republic."
[3] See, Government Report on the minority schools, the text of which was published in the newspaper, Tevhit, 23-12-1923. For more information see, F. Konstandinidis, "The Education of the Greeks in Turkey from the Treaty of Lausanne until Recent" Yearbook of Western Thrace, (1984) pp. 179-182.

their own language.[5] The Greek teachers were also obliged to take exams in the Turkish language before a special commission in order to receive new permits to teach.[6]

The most serious violation of Articles 40 and 41 of the Treaty of Lausanne was the implementation of the Kemalist law in 1921, which provided that minority schools would function under the supervision of the "founder" of the schools and school buildings and property would registered under his name. However, the Turkish authorities placed as "founders" people of their own choice. Thus, the direct relation between the minority schools and the governing/community councils that belonged to the Ecumenical Patriarchate was prohibited.[7] The Patriarchate constitutes a great historical and cultural symbol of the Greeks in Istanbul.

The Turkish government demonstrated a preference in hiring Turkish teachers in the Greek schools as well as offering them higher salaries compared to those offered to the Greek teachers. The high payment of the Turkish teachers caused great difficulties in the minority schools, which were subsidised by the members of the Greek minority. The Turkish authorities also imposed a special "education tax", which was a heavy economic burden upon the members of the Greek minority in Istanbul. Moreover, the Turkish authorities between 1925-1926 prohibited the function of a historical Greek school in Istanbul, *Zapeio*, because there were Greek statues in its classrooms.[8]

The Turkish authorities also prohibited the function of several other business and technical schools of the Greek minority.[9] This measure had serious and long-lasting results, since it deprived the Greek students from receiving education in their own private schools.[10] Thus, the number of the Greek students attending the minority schools was dramatically decreased.[11]

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[5]Alexandris, *op.cit.*, p. 41.
[6] See, Turkish Government Report No. 3109/2110/26.9.1926.
[7] See, Turkish government report, No. 5446/263/ 26.9.1926.
[8] *Ibid.*
[9] Alexandris, *op.cit.*, p. 43. For example, the Turkish authorities closed the Patriarchate Accounting School, the Greek Accounting School of Halki, and the Private Linguistic School of Apostolidis.
[10] An observation of the English representative, Samuel Hoare, 24.10.1926, FO 371/11541/E 2055.
[11] Alexandris, *op.cit.*, p. 43. For example, during the academic year 1920-1921, there were 24, 296 students in 166 Greek minority schools whereas duirng 1923-1924 the number had decreased to 15, 766. According to the official statistics reports, the number of Greek students had greatly decreased

In contrast with other Kemalist reformations the introduction of the Swiss Civil Code adversely effected the personal and family life of the Greek minority on a legal basis as provided by Article 42(1) of the Treaty of Lausanne.[12] The Greek minority reacted against the enactment of such legislation, but the Turkish authorities exercised strong pressure on the minority. Finally on November 27, 1925, a commission composed of several members of the minority accepted the amendment of Article 42(1) of the Treaty of Lausanne, since it was decided it was no longer valid after the adoption of the Swiss Civil Code.[13] However, the Treaty of Lausanne does not constitute a contract between the Turkish government and the members of the Greek minority, but an international act, which is equally binding upon all its parties and can only be reformed according to the conditions set in Article 44 of the Treaty itself. [14]

Despite the friendly relations between the two countries Turkey continued to take arbitrary measures against the Ecumenical Patriarchate and the Greek minority in Istanbul. In 1934, Law No. 2596 forbade the priests to wear their religious gowns outside church. However, this law did not only refer to the Greek-Orthodox priests, but to all priests of the various religions including the Muslim ones. Such measures, resulted in the mass immigration of the members of the Greek minority as well as the Greek citizens of Istanbul and weakened the status of the Patriarchate.

The Greek public opinion reacted strongly against this new legislation and in November 29, 1930, the Greek Minister of Foreign Affairs requested the exemption of the Greek-Orthodox priests.[15] However, the Turkish government did not satisfy this request, but stated that this new measure would not disturb the friendly relations between the two countries.[16] The enactment of Law No. 2596/1934 seriously violated Article 43 of the Treaty of Lausanne, which provided for the protection of the religious rights of the respective minorities.

According to Law No. 2762/1936 on *Vaklfar* property all the minority institutions were placed under the supervision and control of the General Administration of

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during the period of 1923-1929 thus, in the academic year 1928-1929 there were only 5, 923 Greek students in Istanbul.

[12] See, *supra*, note one.

[13] *Ibid.*

[14] *Ibid.*

[15] See, "Elefthero Vima", 9.12.1934.

Vaklfar. In particular, Law No. 2762 provided that all administrative tax committees of the minority institutions were obliged to submit to the General Administration of Vaklfar a declaration, which would include the full details of the community incomes, the conditions of their charter and the details of their philanthropic institutions and immovable property.[17] Similarly, Law No. 2007/1935 provided that no one could any longer donate property to the churches or the Greek charitable institutions.

In 1967 the Turkish government introduced a *Vakif* (charitable foundation), namely Law No. 903/1967, which imposed several restrictions in the functioning, administration and independence of the valkfar property of the Greek institutions. In particular, Article 74(2) provided that communal property funded by a group aiming towards "the enforcement of a certain race or minority" would no longer be recognised as a charitable foundation. Moreover, Law No. 903 decreed a surtax of five percent on the income of communal organisations in addition to the government and municipal taxes. The Turkish Supreme Court, in 1971, held that the minorities did no longer have the right to establish any new Vakif properties. In 1978 Law No. 502 was also enacted, which stated that none of the donations made to the Greek hospitals after 1936 had been or would be registered by the government as such donations disturbed public order.[18]

The Turkish government did not recognise a legal personality to the Patriarchate, aiming to prevent the legal representation of the property of the Patriarchate.[19] The Turkish authorities refused to allow the elections of the priests (especially the Patriarch), which considered them unqualified to administrate the Patriarchate property. This measure had as a result depriving the Patriarchate from participating in the administration of the vaklfar committees.

Similar problems were created by the introduction of Law No. 2525/1934, which requested all Turkish citizens to adopt a surname. However, when the members of the

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[16] Nevertheless, the Ecumenical Patriarch was exempted from this law and could wear his religious gown outside church.

[17] Law No. 2762/1935 was published in "Rsmi" Gazete, No. 3027/ 13.6.1935. This declaration is known as "Declaration of 1936."

[18] Alexandris, *op.cit.*, p. 290.

[19] *Ibid.*, p 97.

Greek minority attempted to register their surnames, which had Greek roots, the Turkish civil servants recommended they were changed into Turkish ones. Meanwhile, a new campaign had began in Istanbul where all Greek and Jewish were being harassed and were obliged to pay fines when they were using their mother-tongue in public.

The increase of Turkish nationalism was greatly influenced by the extreme nationalist movements in Germany and Italy. These kinds of measures and psychological pressure upon the members of the Greek minority let most Greeks to abandon Istanbul and immigrate into Greece. The crisis of the Turkish economy during the period of 1924-1934 as well as the Kemalist campaign in Istanbul obliged the Turkish government to adopt certain restrictive measures, which above all adversely affected the members of the Greek minority, but mostly the Greek citizens of Istanbul. The Turkish National Committee enacted Law No. 2007/1.6.1932, which prohibited the exercise of most professions to non-Turkish citizens. This new law greatly effected the Greek citizens that constituted the largest group of foreigners in Turkey. [20]

A tragic consequence of this law was the great wave of immigration of the Greek citizens, who left Istanbul together with a large number of members of the Greek minority.[21] The massive exodus of the Greek citizens from Istanbul created great frustration in Greece in the context of the Greek-Turkish friendship. The Greek government succeded in safeguarding the exception of certain professions, such as doctors, opticians, lawyers and shop-owners, but the main legal issues were not raised. The prohibition of the right to work and the deportation of ten-thousand Greeks from Istanbul during the period of 1934-1935 was a gross violation of the principle of the 'numerical balance' of the minorities under the Treaty of Lausanne.

In addition, the Turkish government undertook certain adverse measures against the Greek minority schools. During the school year 1936-1937 the teaching of all subjects was conducted in the Turkish language except the subject of the Greek language.

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[20] The catalogue of the professions was issued by several decrees in 1933-1934. Despite several requests by the Greek government, in July 26, 1934, the Turkish government began to implement such measures.

[21] According to the estimations made by the British Embassy in Turkey the number of the members of the Greek minority, who left Istanbul during 1934-1935 was 10,000. These estimations were made according to the official Turkish population statistics. Therefore, on the 1927 census there were 26, 431 Greek citizens in Turkey whereas their number decreased to 17, 642 in the next census, 1935.

During the same period, the subject of military was added taught by Turkish military officers whereas the minority schools were obliged to hire a Turkish "assistant principal", who was awarded the title of "educational principal". The position of the Greek principal was undermined, since the Turkish assistant principal was accountable to the Turkish Minister of Education on all school matters and also had the personal supervision of the school curriculum, books and documents in the Turkish language.[22]

The Greek government did not take a strong stand on the minority problems in Istanbul in favour of maintaining friendly relations between the two countries on a political and cultural level. The main goal of the Greek foreign policy was to avoid raising any issues regarding the minorities, which might harm the Greek-Turkish friendship and result in the mistreatment and discrimination of the Greek minority in Istanbul.[23]

The minority policy of Turkey worsen after the death of Kemal Ataturk in November 1939. With the beginning of the Second World War a strong nationalist and anti-minority spirit developed in Istanbul, which reflected the influence of the racist theories developed in Germany. There were several extreme nationalist groups in Turkey supported by the government successfully cultivated the idea that the Greeks, Armenians and Jews were the cause of the bad financial situation and the continuous increasing population of Turkey.

The nationalist expressions against the minority population became more evident on November 11, 1942, with the imposition of property tax Law No. 4305/1942. Law No. 4305 provided for the composition of a committee of civil servants under the presidency of the deputy, who would determine the tax amounts without providing the right of the taxpayer to contest. Law No. 4305 also gave the right of the tax inspector to confiscate the movable and immovable property of the taxpayer if he or she did not pay the amount due within two weeks of the notice. However, the Muslims only had to pay a symbolic tax whereas the non-Muslim minorities had to pay the largest part of the tax property. One of the most tragic consequences of this law was against the

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[22] Kostandinos Spanoudis, "The Greek-Turkish Relations: What do they comparisons reveal", Elefthero Vima, 16.2.1935.
[23] Alexandris, *op.cit.*, p. 101.

economic rights and status of the Greeks in Istanbul and a clear violation of the provisions of the Treaty of Lausanne for the protection of minorities.

The city of Istanbul is divided into sixty-two areas composed of a local council in charge of the administration of the local charititable institutions and schools. However, since 1969 the Turkish government has not allowed the elections on the boards of the councils. When board members left Turkey or died the councils were left without a sufficient number of board members to administer their affairs. Thus, the Greek minority did not have the ability to administer its own institutions.

In 1960 three central Greek-Orthodox governing committees were abolished. The main aim of these committees was the administration of the Greek minority associations in each district. However, in 1954 the Ministry of Foreign Affairs had approved these governing committees had the right to administrate the common property of the Greek minority institutions in Istanbul. Thus, the Turkish authorities had issued the committees valid certificates. In any case, the Greek governing committees in Istanbul could have been considered as corresponding to the Administrative Committees of the Muslim property in Western Thrace on the basis of reciprocity.

With the introduction of Law No. 222/1961 all minority schools were automatically classified as private schools under the Ministry of Education, which meant that they would not receive any government subsidies, but would remain under the control of the government. In particular, during 1964-1967, the Turkish government adopted a series of discriminatory measures against the educational and philanthropic institutions of the Greek minority in Istanbul. For example, in 1964 three Greek high school principals were dismissed from their duties as well as eleven Greek teachers. Moreover, in 1964 Protocol No. 410/16, prohibited Orthodox clerics from entering the premises of the Greek minority schools and well as the celebration of Christian religious holidays.

Protocol No. 3885 of November 1964 abolished the Morning Prayer from the Greek schools, the Greek textbooks and encyclopaedias. In addition, in 1964 the Turkish government refused permission for the repairs of minority school buildings and

withdrew legal recognition of the elected school boards of the Greek minority.[24] According to Law No. 8459/1964 Greek students were not allowed to speak Greek during class breaks. In 1965, the Turkish authorities did not employ Christian teachers who had graduated from the Greek Pedagogical Academies and universities, such as the Holy Theological Academy of Halki into the minority schools. Finally, in 1967, thirty-nine educators were fired and six Greek minority schools were forced to close.[25]

Despite the 1951 Educational Bilateral Agreement regarding the exchange of teachers between the two countries, the Turkish government has often prevented Greek teachers from coming to Istanbul. According to the members of the Greek minority, the Greek teachers do not often arrive in Istanbul until the middle of the school year. The Greek students are deprived of their right to receive instruction in their own language, in accordance with the Treaty of Lausanne and international law.

The school textbooks for the Greek language are very old, out of date and in poor condition. However, the Turkish Government states there is no shortage of schoolbooks and that they have not received any complaints from the members of the Greek minority. The use of the minority language is restricted in the school buildings and halls where the students are forced to use the Turkish language.

According to the Treaty of Lausanne the Greek minority has a right to control its own educational institutions and establishments. However, the Ministry of Education takes all decisions for the administration of the schools. For example, the Greek teachers are forbidden to teach Greek history nor can the Greek minority control the appointment of the Greek teachers in the minority schools. In addition, the repairs of the school buildings provided with funds by the Greek minority cannot be made unless the Ministry of Education has granted permission. Although, the school administrators state that permission is also needed in the private Turkish schools such permission is usually granted easier to Turkish schools rather than Greek schools.

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[24] Due to these measures, the number of the Greek students decreased dramatically. In 1923 there 15, 766 students in Greek schools whereas in 1964 there only 5, 000; 1978 1, 147; 1980 816 and in 1991 only 410.

[25] Alexandris, *op.cit.*, pp. 513-514.

The Greek minority schools have both Greek and Turkish directors. The Turkish government, in violation of the Treaty of Lausanne, introduced a legal decree in 1964 that provided for the appointment of a Turkish assistant headmaster in the Greek elementary and secondary schools.[26] However, when a Greek director retires or dies the government does not longer appoint a new Greek director, but the Turkish one is placed in that position. The members of the Greek minority report that there are only three Greek directors in the ten minority schools.

A similar situation regarding the educational system provided to the Muslim minority of Western Thrace can be observed. Even though, the Muslim minority has a right to control its own educational institutions, according to the Treaty of Lausanne all schools in Greece are under the control and supervision of the Minister of Education. Accordingly, both countries have a similar system of supervising and controlling their schools, including the minority ones. However, the minority school curriculum in the minority schools in Western Thrace is divided between Greek and Turkish providing the Muslim students with equal opportunities to learn their mother-tongue and freely use it in public or in private.[27]

The Turkish authorities have often attempted to take over the schools buildings that can no longer be used for their original purpose due to the rapid decrease of the Greek minority. More specifically, in the case that a building is not used for its original purpose the Turkish authorities declare it abandoned and expropriate it. This situation has caused great frustration to the members of the Greek minority.

In 1994 almost one-hundred Greek students in Istanbul were not allowed to register in the Turkish universities, although, they had successfully passed their national university exams. The reason provided for this discriminatory decision was that they had not attended the course of physical education in the previous school year. However, the Turkish authorities had prevented the entrance of the Greek teachers in the minority Greek high schools in violation of the Treaty of Lausanne.

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[26] *Ibid.*, p. 286.

The governor of Istanbul in 1991 allowed for the first time after twenty years the election of the board members of the Greek hospitals. A list of candidates was prepared by the Patriarchate as required and was submitted to the Istanbul governate. Nevertheless, only twenty-five out of thirty-two candidates were not allowed to run for election as they received a letter from the Turkish authorities saying that: "You cannot run for election." As a consequence only the remaining seven candidates were elected on the board. The members of the Greek minority claim that the administration of the hospitals is mostly run by people chosen by the Turkish government.

In addition, there are a number of "springs or shrines" in Istanbul, which are considered to be holy by the Greek Orthodox adherents. Several years ago, there were as many as 514 "holy springs." However, the Turkish government has destroyed most of them during the last years. As a result in 1991, there were only 30 shrines left. A reason used by the Turkish authorities to destroy these holy places was in order to widen the roads, but in most cases these roads were never built and other buildings have replaced the churches.[28]

In 1986, the Greek government set as a basic condition the abolition of the discriminatory measures against the Greek citizens imposed by Turkey in 1964. Finally, in 1989 the Turkish Prime Minister, Turgut Ozal, lifted the ban on sale transactions. Similarly, since the late 1980s the situation for the Muslim minority in Western Thrace has improved in many ways. For example, working positions were offered to the members of the Muslim minority, according to their educational and professional qualifications in Western Thrace and other parts of Greece.

C.2 The Greek Inhabitants of Imbros and Tenedos

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[27] In regard to the educational system of the Muslim minority, see chapter nine, *supra*.

[28] See, Human Rights Watch: Denying Human Rights & Ethnic Identity-The Greeks of Turkey (New York: Helsinki Watch Report, 1992) In the report a Turkish-Muslim human rights activist stated that the Greek churches were torn down while still in use. She also stated that in 1990 the municipality of Sarriyer had torn down a church annex while still in use, reportedly to build a parkway. In regard to the religious freedom in Turkey, see, U.S. Department of State, Annual Report on International Religious Freedom for 1999: Turkey, Bureau of Democracy, Human Rights and Labour (Internet Report).

Imbros and Tenedos are two small islands on the north-east corner of the Aegean Sea, near the Dardanelle straits. After the Greek-Turkish war Turkey retained these islands. Article 14 of the Treaty of Lausanne provided a special status of autonomy and self-administration for Imbros and Tenedos, including local administration, a local police force and the protection of persons and property.[29] The Greek residents were allowed to remain in these islands, according to the protection offered by the Treaty of Lausanne.

However, Article 14 of the Treaty of Lausanne was never implemented in the two islands. The Turkish government took over the administration of the islands, including the judiciary, the police, the port authorities and customs officers. In addition, the local governments were resolved and mayors and local officials were expelled. Accordingly, the Turkish authorities arbitrarily appointed a new administrative council composed of members of their choice.

The properties of the Greeks, who had left the island, were confiscated and their owners were not allowed to return.[30] These measures were against Protocol VIII of the Lausanne Conference regarding amnesty. Finally, in 1927, according to a Local Government Act No. 1151/1927, the regime of autonomy was revoked. In particular, Article 1 of Act No. 1151, provided for a special system of governing of the two islands whereas the remaining twenty articles referred to the functioning of the local administration. The administrator of the islands was given wide powers without any provisions for his election from the local population. The candidates for the administrator position had to have excellent knowledge of the Turkish language. However, since very few Greeks spoke Turkish the aim of this law was their exclusion from the local administration. Moreover, Articles 15 and 16 of Law No.

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[29] Article 14 of the Treaty of Lausanne states, that: "The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organisation composed of local elements and furnishing every guarantee for the native non-Muslim population in so far as it concerns local administration and the protection of persons and property. The mainstream of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and place under its orders. The agreements which have been, or may be, concluded between Greece and Turkey relating to the exchange of the Greek-Turkish populations will not be applied to the inhabitants of the islands of Imbros and Tenedos" See, Appendix A for a full text of the Treaty of Lausanne.

[30] Accordingly 64 Greek inhabitants of Tenedos were not allowed to return to their birthplace. See, Alexis Alexandris, "Imbros and Tenedos : A study in Turkish Attitudes toward two Ethnic Greek Island Communities since 1923" Journal of Hellenic Diaspora , Vol VII, No. 1 (1990) pp. 10-19.

1151 permitted the Turkish government to import officers, guards and policemen from Turkey into the islands.

The main provision of Law No. 1151 was Article 14 regarding the educational system for the Greek students of the islands, which prohibited the teaching of the Greek language in the minority schools. The Turkish authorities, in violation of Article 14 of the Treaty of Lausanne established an educational system based on the Turkish model of education in Imbros and Tenedos where the teaching of the Greek language and the Orthodox religion were restricted to one hour a day as an extra-curriculum subject. In pursuance of Law No. 1151, on February 20, 1927, the Turkish authorities closed down the Greek high school in Imbros, claiming that since it functioned as a lyceum, appropriate qualified teaching personnel had to be appointed.

However, the Turkish government did not approve the Greek teachers and the Greek lyceum closed and re-opened the following academic year functioning as a Turkish national school where the Greek students were taught exclusively the Turkish language and Kemalist ideology.[31] This measure was in direct violation of Article 41 of the Treaty of Lausanne, which provided for the school instruction in a minority language as well as Article 40, which granted the minorities the right to control their own educational institutions.[32]

The Greek government reported the situation of the two islands in a memorandum to the League of Nations. The main concern of the Greek government was the non-implementation of Article 14 of the Treaty of Lausanne by the Turkish government. However, the members of the League of Nations stated that they have been observing the situation in the two islands, but refused to take any active part. Due to the complex geographical location of the two islands, the Turkish authorities were not prepared to

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[31] Alexandris, *op.cit.*, p. 55.

[32] *Ibid.* Before the annexation of the islands to Turkey, Imbros had ten schools with 1, 385 students and Tenedos had two schools with 450 students. Ten years later, in 1928, in Imbros there were only five elementary schools with 750 students whereas in Tenedos the two Greek schools had already closed since 1923. Due to the decline of the educational system in the islands the elite Greek families sent their children to school in the islands of Limnos and Lesvos to continue their studies.

implement a regime that would promote the Greek national character of these islands.[33]

The status and rights of the Greeks in the islands varied according to the Greek-Turkish relations. In 1951, during a period of rapprochement between Greece and Turkey, Law No. 1151/1927 was abolished and replaced by Law No. 5713/1951. According to this new law, the Greek language was once again taught in the minority schools, which operated on the same level as the minority schools in Greece and Turkey. During the academic year of 1952-1953, the Greek curriculum was established in the minority schools and the Greek teachers returned back from Istanbul. However, with the second crisis of the Cyprus affair in 1963, the Turkish authorities took adverse measures against the Greek communities in the two islands. According to Law No. 502/1964, the minority educational system was abolished and the teaching of the Greek language was prohibited. Moreover, Law No. 502 forbade community ownership of property including schools except for church buildings. The Greek inhabitants of the two islands were obliged to immigrate in massive numbers to Istanbul or Greece where their children would be able to receive education in their own language.[34]

In 1965 the Turkish government established in Imbros an open agricultural prison for Turkish mainland convicts. Greek-Orthodox communal property was expropriated, between 1960-1990, almost two-hundred churches and chapels were destroyed. [35] A large number of Greek inhabitants of the islands left.[36]

According to the Constantinopolitan Society of Athens the Greek inhabitants of the islands are almost four-hundred and eight, most of them being elderly, in contrast to

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[33] A comparison of statistical evidence reveals that during that time the decrease of the Greek population in those islands had already began. In 1912 in Imbros they were 9, 207 Greeks and in Tenedos they were 5, 420 whereas in 1927 there were only 6, 762 Greeks in Imbros and 1, 631 in Tenedos. Several statements were made by the Turkish officials that the co-habitation of the Turkish and Christian population was not possible in the two island, thus both islands must adopt an exclusive ethnic Turkish character.

[34] *Ibid.*, p. 517. Before the introduction of Law No. 502/1964 there were only 83 students in the Greek high school of Imbros. However, ten years later, in 1973 there were only seven Greek students.

[35] *Ibid.*, pp. 25-26/ In particular, in 1966, 13, 444 dekars of fertile land were expropriated for the prison.

[36] *Ibid.*, p. 27. In 1920 there were 9, 000 Greeks living in Imbros and Tenedos, in particular, Imbros was exclusively inhabited by Greeks and Tenedos was inhabited by eighty percent Greeks. During the early 1970s there were only 2, 622 Greeks living in Imbros and about 1, 400 in Tenedos

seven thousand Turks living in Imbros. The Greek inhabitants of Imbros and Tenedos also experience similar human rights violations to the Greek minority in Istanbul. Since the mid-1964, the Greek government made several efforts to inform the international community of the suppression and discrimination suffered by the Greeks in Imbros and Tenedos.

On July 24, 1964 the Greek government sent a letter of complaint to the Turkish government regarding the violation of Article 40 of the Treaty of Lausanne, which provided for the right to education in the minority language. In this document, the compulsory expropriations of land were also mentioned in violation of the general recognised principles of international law and the European Convention of Human Rights. A similar document was concluded on August 26, 1964 as well as a series of letters for the discriminative measures of the Turkish government against the Greek population of Imbros and Tenedos.

The Greek government also by sent informative memorandums and letters to the General-Secretary of the United Nations. The Greek government requested for these letters to be distributed to all the United Nations member states.[37] On July 29, 1964 a United Nations memorandum was distributed informing the international community regarding the abolition of the Greek education in the minority schools of the two islands. In addition, the Greek government sent another memorandum referring to the prohibition of the Greek education in connection with the Turkish authorities' efforts to deteriorate the national character of the two islands.[38]

Moreover, the Greek government applied to UNESCO asking the organisation to examine the status of the Greek education in Imbros and Tenedos. Accordingly, the General Assembly of UNESCO, during its thirteenth session met to discuss two main issues, first the abolition of the Greek education and secondly, the 'Turkish-nationalisation' of the Greek minority schools in Imbros and Tenedos. The decision of UNESCO was not entirely satisfactory for the Greek government. The General Assembly of UNESCO requested Greece and Turkey to take all the necessary

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[37] See, Security Council Documents S/58444 on 29.7.1964, S/5933 on 5.9.1964 and S/5956 on 9.9.1954.

measures to provide effective education to both minorities in the two countries. However, the General Secretary of UNESCO agreed to distribute between the legal representatives of the member states the informative memorandums of the Greek government in the form of NATO documents.[39]

Turkey continued its foreing policy aiming towards the demographic and ethnic deterioration of the Greek population in Imbros and in Tenedos. The Turkish press played a major role in encouraging the spread of nationalism in these islands.[40] On the ond hand, the Turkish government viewed with suspicious the presence of a Greek population in the sensitive military region near the Dardanelle straits. On the other hand, the Greek government was quite sensitive regarding the Greek minority in Istanbul and the two islands. Such a fact made the Greek official authorities less inclined towards taking drastic measures on the issue of Cyprus. [41] When the Greek government tried to internationalise the minority problems in Imbros and Tenedos, Turkey raised the issue of the "Turkish minority rights in the Dodecannese islands."[42] In such a way, the Turkish government managed to avoid any references of the minority education in Imbros and Tenedos in the Cultural Protocol of 1968.

However, the rights of the Greek minorities in Imbros and Tenedos are provided by Article 14 of the Treaty of Lausanne, in particular and Articles 37 to 44 in general, the limited number of the Muslim population of Rhodes and Kos is not mentioned in the Treaty of Paris by which the Dodecannese islands were annexed into Greece. Therefore, there can be no confusion between the Greeks of Imbros and Tenedos and the Turks of the Dodecannese islands.[43]

The Turkish authorities prohibited the entrance to foreigners to Imbros and Tenedos, unless they obtained a special permission from the mayor of Dardanelle. In practice,

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[38] See, Memorandum of the Greek Permanent Representative of the United Nations, Al. Dimitropoulou to the United Nations General Secretary S/5997 on 2.10.1964.
[39] Moreover, due to the pressure of the Allied Powers, the Greek government agreed to cancel its application to the International Court of Justice, in pursuance of Article 44 of the Treaty of Lausanne. For the same reasons, the application to the European Commission of Human Rights was also cancelled.
[40] Alexandris, *op. cit.*, p. 521.
[41] *Ibid.*, p. 280.
[42] See, Chapters one *supra*, section 1.9.
[43] Alexandris, *op.cit.*, pp. 521-522.

foreign journalists were granted permission with great difficulties. However, the Turkish authorities after several claims made by the Greek government, allowed the Greek consular of Istanbul to visit Imbros on May 1966. Two months later, the Greek ambassador of Turkey also made an official visit in Imbros.

The two official visits of the Greek diplomats were not very constructive for the Greeks, since their contact with the representatives of Greece made their position with the Turkish local authorities more vulnerable. When the Greek council advisor in Imbros expressed his dissatisfactions regarding the situation of the island, the Turkish authorities expelled him to Dardanelle where his was convicted and imprisoned for two months for defamation of the Turkish nation.[44]

The absence of any diplomatic efforts by the Greek government to demand a Greek consulate in Imbros was detrimental for the Greek inhabitants of the island. The Greek government had the opportunity to do so during the Treaty of Lausanne in 1923 and the 1930 Greek-Turkish Covenant of Friendship. In any case, the Greeks of Imbros and Tenedos, who immigrated into Greece and other parts of the world were determined to protect and promote the rights of the Greek inhabitants of the two islands. Accordingly, they created two unions one in Athens; Union of the Imbros People of Athens, (*Sillogos Ibrianon Athinas*) and one Thessaloniki; Union of Imbros: Macedonia-Thrace (*Ibriaki Enosi Makedonias-Thraki*) as well as in Africa, the United States of America and Australia.

The status of self-administration provided by the Treaty of Lausanne has been seriously violated, since Turkey took control over these islands in 1923. There are almost no Greeks left now in Tenedos or Imbros. The absence of organised and effective action from the Greek government as well as the geographical isolation of the two islands, have resulted in their rapid cultural and socio-economic deterioration.

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[44] *Ibid.*, p. 523.

APPENDIX D: AN ANALYTICAL DESCRIPTION OF THE RELIGIOUS AND CIVIL DUTIES OF THE MUFTI OF WESTERN THRACE AND GREEK CIVIL LAW

D.1 The Religious Duties of the Mufti

In this section a detailed analysis will be provided regarding the religious duties of the Mufti in initiating weddings, dealing with divorces, Islamic wills and the administration of the *Vaklfar* property.

A. Matrimonial Proceedings

The Mufti has competence to issue wedding licenses and initiate weddings between Muslim-Greek citizens according to Islamic religion.[1] A Muslim wedding (*nukah*) is conducted by an oral process in front of two witnesses, which must be Muslim male adults. The Muslim wedding is not composed of a religious speech, but of an exchange of an official declaration between the bride and the groom. If the bride is still a minor the permission of her father is required or a representative of his; the permission of her mother is not sufficient. In the case that the bride is abducted, the wedding cannot take place unless the approval of her father is obtained.

A Muslim wedding may also occur without the bride or the groom being present at the ceremony. The wedding can take place simply through an exchange of declarations between representatives acting on behalf of the couple. However, the state needs to ensure that both parties have freely consented to the marriage.

The age of majority according to Islamic law is fifteen years old. An agreement is also formed between the bride and the groom of a certain amount of money as well as the return of the wedding contracts in case the wedding is dissolved. Such an agreement is composed by the Mufti and is annexed in the wedding licence. After the wedding license is issued the Mufti enters in his official books the "wedding gift", which the groom owes to give to the family of the bride. According to Islamic law marriages between Muslim women and non-Muslim men are prohibited, however, a Muslim

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[1] See, Article 14 of Law No. 147/1914(FEK A' 25, 1914): "In Regard to the Implementation of Legislation in the Annexed Territories and their Administrative Organisation."

man may marry a non-Muslim woman. Moreover, Islamic Law allows bigamy and every Muslim man is allowed to marry four women.

B. Advisory Functions

The Mufti has advisory powers regarding issues of family law based on Islamic law. The civil courts can ask the Mufti to provide is advisory opinion on family and personal law cases, where he does not have any judicial powers. However, in many instances the Mufti has arbitrarily used his power, but his decision was accepted by the First Instance Court.[2]

C. Appointment and Termination of Muslim Religious Leaders

The Mufti is at the top of the hierarchy of the Muslim religious leaders. He can exercise his powers to appoint and terminate the religious leaders of his district while retaining a wide degree of discretion on their responsibilities and duties. The Mufti can also issue a confirmation for the Muslim religious leaders not to serve in the army, because their work and participation is necessary for the religious functions of the mosque.

D. Control of Private Charitable Foundations (Vaklfar)

The *Vaklfar* are private charitable foundations used to support education, minority activities and social welfare.[3] Article 40 of the Treaty of Lausanne provides the right for the members of the minority to control their own religious foundations:

> In particular they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and

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[2] Constantinos Tsitselikis "The Position of the Mufti in the Greek Legal System" Dimitris Christopoulos, Legal Issue of Religious Otherness in Greece (Athens: Kritiki & Kemo, 1999) p. 299.

[3] The term *Vaklfar* means: "Property, which belongs to God, but the right of ownership and use belongs to human beings." See Gregory Egonopoulous: Manual regarding Turkey on Immovable God'' property, Constantinople 1905 . at p. 63. According to Article 2 of Law No. 1091/1980 *Vaklfar* means: "The devotion of immovable property or financial income to a philathropic or religious institution for a holy, religious or social welfare purpose."

> education, with the right to use their own language and to exercise their own religion freely therein.

In addition, Article 12 of the Treaty of Athens 1913[4] obligated the Greek government to respect *Vaklfar* property.

E. The Religious and Legal Regime of the Vaklfar Property:

The *Vaklfar* gained much significance in the Islamic world being establishments of a legal and religious character that exercised great influence in the economic and social life of the Muslims. The main purpose of establishing *Vaklfar* was to assure the "salvation of the soul" by helping their fellow human beings in the name of Allah. Historically, the *Vaklfar* began to appear at the times of Islam.

Vaklfar means: "holy, inalienable, forbidden."[5] According to the Islamic theory of the world, the state owes to respond to the needs of its citizens. The state can do so in numerous ways, for example help them to find an occupation, spread the teaching of Islam, take precautionary measures for those who turn against Islam and the state, protect the widows and orphans, establish schools, hospitals, mosques and social welfare institutions. The Muslim people aid the work of the state by helping their fellow citizens. The act of giving constitutes an essential part of the Muslims' life, which will bring them prosperity in their present life and on judgement day.

Thus, the habit of devoting property to religious institutions especially pieces of land, as bequests was established. However, it constitutes a tradition, which existed in the pre-Islamic Arabia and in the Christian part of the Middle East. Islam respected the Christian monasteries, the *Vaklfar,* as they were later known. Consequently, many Christians devoted their property as *Vaklfar* in those monasteries in order to protect it.

The act of devoting property to the *Vaklfar* was based on religious and moral values. According to the Islamic law, the piece of land where the property was devoted was

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[4] Law No. 4213/1913(FEK A' 229, 1913): "On the Ratification of the Peace Treaty of Athens between Greece and Turkey".

[5] Simeon Soltaridis , The History of the Mufti of Western Thrace , (Athens: Nea Sinora, 1997) p. 157

no longer considered to be the property of the devotee, but it constituted "a holy and inalienable place", which belonged to the religious establishment where it was devoted and could not be violated, trespassed or expropriated. During the Ottoman Empire, the establishment of *Vaklfar* took great dimensions, since it fulfilled two main functions of the state, a social and national one. According to the social view, the *Vaklfar* maintained villages and towns whereas according to the national view, the income of the *Vaklfar* was used to facilitate the act of proselytism towards the enslaved Christians, who having no other means to survive would join Islam.[6]

According to the policy of philanthropy, the Ottoman Empire would sponsor poor-houses, orphanages, and feed the poor. For the maintenance of these welfare institutions villages and towns were transformed into *Vaklfar*. The transformation of such regions into *Vaklfar* was equated with national interests due to the fact that Islamic tradition and customs prevailed in all aspects of activity: religious, social, economic and ideological. The Ottoman Empire was aiming to the religious and ethnic deterioration of the population composition in certain strategic regions. The next step was the transformation of the temples into mosques due to the increased number of the Muslims. In such a way, the *Vaklfar* would attract the religious population aiming at the prevalence of the ethnic Turkish model in those regions.

According to Law No. 429/1924, the regime of the Ottoman-Turkish system of the *Vaklfar* changed and the office of the General Administration of the *Vaklfar* was established, which was directly controlled by the Prime Minister of Turkey. Later on, Law 2762/1935 was enacted and amended earlier legislation. According to Law No. 2762/1935, the *Vaklfar* were divided into two categories: first, there were the "*moulhak*" and secondly the "*mazboud*" there were both administrated by the General Administration of the *Vaklfar*. Finally, according to Law No. 5404/1935, the Turkish administration decided that the *Vaklfar* belonged to private individuals and municipalities, which were to be governed by an elected council composed of private individuals and supervised by an elected administrator or appointed by the council. The main control of the *Vaklfar* remained with the General Administration. Every

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[6]M. Staimova, The Ottoman Empire: the System of Government Management, the Social and National and Religious Problems, (Moscow, 1986). This study describes in detail of how proselytism would take

"*moulhak*" would develop its own internal regulations and be administered by a commissioner (*Mutawils*).

The same legal regime for the *Vaklfar* existed in Western Thrace until its annexation to Greece in 1920. Elefterios Venizelos adopted a policy based on the aim and purpose of the Treaty of Athens, 1913. According to Article 12 of Law No. 235/1920, the *Vaklfar* was recognised as common property of the minority and their administration was granted to the Muslim minority. More specifically, Article 12(1) stated that: "In regard to the organisation of the Muslim communities they are governed by the Managing Committees composed of seven to twelve people elected by the members of the minority."

Article 12(2) referred to the duration of the Managing Committees for three years. Article 12(4) provided that the committees would be responsible for the income of the *Vaklfar*, which would was used to subsidise the Muslim minority schools. Moreover, the Managing Committees would also appoint and terminate the teaching personnel and the employees of the Muslim communities except the religious leaders and the personnel of the religious courts that the Mufti enjoyed exclusive jurisdiction.

In addition, to these regulations Royal Decree: 16-6/29.7.1949[7] provided that:

> The Managing Committees of Article 12 of Law No. 2345/1920 would be divided into three committees in Komotini and Xanthi each composed of twelve members and in Didimotiho composed of seven members. The elections would be conducted on time in order for the service of the committees to begin on July 1st.

The date of the elections was announced by the General Secretary of Western Thrace, which would be published in the minority newspapers of each district and bill-posted in the mosques. The candidates would submit their applications and a list of candidates would be formed and passed to the local prefects and to the general administration

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place: "My noble master, your loyal slave is a Christian. I came to adopt Islam. Please offer some financial aid and clothes as the law provides" and the signature of the person would follow.

[7] "In Regard to the Implementation of Article 1 of Law No. 2345/1920 for the Process of Appointment of the Chief Mufti".

where the date of the elections was set.by Royal Decree 10/10.7.1953[8], which stated that "The General Secretary of Thrace can postpone the elections up to three months."

On October 20, 1980, Law No. 1091/1980[9] was introduced. It is composed of twenty-three article and provides that:

> The *Vaklfar* is a welfare institution. The Managing Committee is composed of five members (Article 5) with a three year service and the president of the Managing Committee represents the *Vaklfar*. If the *Vaklfar* is on a region with very few candidates, the nearest Managing Committee will appoint a commissioner for the managing of this property, according to the approval of the prefect (Article 17). For the managing of the school, there existed school committees.

Article 11 permits the state-appointed prefect of the region to create a single *Vaklfar* board in an area where there is more than one foundation. Law No. 1091 also had a strong impact on the financial existence of the foundations. Article 20(1) states that: "The existing Managing Committees boards or where lacking the acting *Mutawils* are obliged to submit a statement of the *Vaklfar*'s properties and those that it administers localities."

Article 14 states that in the event of death or resignation of the commissioner, if no other candidate exists and there is no refusal from the members of the Muslim minority, the prefect will appoint a Muslim-Greek citizen for this position" Moreover, Article 16 of Law No. 1091 gives the prefect and his office wide-ranging control over budgetary matters. In the area of finance, Article 18 states that the local prefect supervises the commissioner.

Article 25 provides the right to the state to make appointments, if elections are not held:

> In the case of a member of the managing committee's declination of appointment, death, resignation or dismissal and lacking a substitute member, the said member is replaced by another, selected by the prefect

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[8] FEK A' 5, 1953: "In Regard to the Process of Category and Degree of the Position of the Personnel of the Mufteies according to the Ministry of Education and Religious Affairs".

[9] See Law No. 1091/1980(FEK A' 267, 1981): "In Regard to the Administration and Management of the *Vaklfar* Property of the Muslim Minority of Western Thrace"

> from the ranking table. If the table is exhausted or all recorded individuals refuse, the prefect appoints a Muslim-Greek citizen possessing the proper qualifications. In the case that the elections fail to produce a result or the appointment stipulated above does not occur for any reason or in the case of any appointment member's resignation, death or dismissal, the prefect appoints the local financial tax inspector as manager.

However, certain 'active' members of the Muslim minority reacted in a hostile manner against the enactment of Law No. 1091. Several demonstrations followed outside the Mufteia of Komotini. The most leading and active members of the minority sent a complainant letter to the president of the Greek Republic requesting for Law No 1091 not to be implemented.[10] In practice, the Mufti is actively involved in the administration of the Muslim property with the informal permission of the authorities. More specifically, the Mufti ratifies the appointment of the members of the Managing Committee of the *Vaklfar* and supervises the administration of the *Vaklfar* in order to be in accordance with the spirit of the Koran. The Greek authorities have allowed for this arrangement to protect the religious freedom of the Muslim minority and respect the traditions of Islamic law.

The use of *Vaklfar* property for any purposes contrary to Islamic Law, for example the consumption of alcohol, night-clubs or for any kind of frivolous entertainment is forbidden. The approval (*fetvas*) of the Mufti is required for the use of the *Vaklfar* and every property transaction. The Mufti supervises the use of the *Vaklfar* and can prosecute the members of the Managing Committee if the usage is contrary to the spirit of Islam. This issue is important, the *Vaklfar* property is used to subsidise the Mufteies, the mosques and the minority schools.

The duties of the Mufti for the *Vaklfar* property are currently governed by Law No. 1091/1980 and Islamic law. However, need to be homogenise and codify the relevant legal rules is required to prevent any vague interpretations of the duties of the Muftis, which may lead to confusion and cause further problems between the state and the minority,

The Muslim minority of Western Thrace is composed of four communities: Komotini, Xanthi, Alexandrouple and Didimotiho. The Managing Committees administer these

four communities. Regarding the election of the members of the Managing Committees several legislative changes have occurred.

The Greek administration provided for the Muslim properties and *Vaklfar* to be rendered by reserving the fair management in the hands of the Muslims.[11] However, since 1939, a commission has been composed in order to deliver its opinion "in regard to the regulation of the income of the Muslim *Vaklfar*. Ever since then, several pieces of land of the Muslim property have been expatriated for the purposes of common benefits. This has been done according to the unanimous opinion of the Managing Committees and with the provision of a fair and full compensation as well as by taking into consideration the feelings of respect for the *Vaklfar* regime.

The property donations of the Muslims continued after the annexation of Western Thrace to Greece, which had as a result the increase of the *Vaklfar* property. The main income was the gathering of rent of various shops, tobacco fields and places of pasture, or donations and interest bank deposits. The aim of such dedications was the strengthening of the economic status of the Muslim minority and the introduction of the ethnic-Turkish model in the Muslim minority of Western Thrace.

F. The giving of alms (Zakat) [12]

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[10] Tsitselikis, *op.cit.* p. 281.

[11] See the Document of the General Administration of Western Thrace, A.Y.E,. 1926/C/68/VI. A.Y.E./B/Politics 1930/Western Thrace, A.Y.E. 1928/b/37. See also , the Conference of the Parliament M/20-5-1921, p. 968

[12] There are five basic obligations or "pillars" that each Muslim must follow. The first pillar is the profession of faith called "*sahadet*": "There is no God but God and Mohamed is his Prophet". It is always recited in Arabic and is repeated during prayer and rituals. The second pillar called "*namaz*" The prescribed prayers are recited in Arabic and are accompanied by a series of prostration to demonstrated submission to God. Muslims say the prayers five times a day always facing the direction of Mecca. Prayers are proceeded by ritual purification of the body and the ground. Although, it is possible to pray anywhere, men pray in congregation at mosques. The Friday prayer is considered to be the most important. Women are encouraged to pray at home, but may also go to mosques where there are separate sections for men and women. In Turkey, after sixty years of a secular state the majority of Turks continue to recite prayers. Mosque attendance in urban areas has historically been much less than in rural areas, but has increased considerably in the past two decades. The third pillar is almsgiving called "*Zakat*" (Arabic ; Zakah). This is required of all Muslims, who must give a proportion of their wealth on a annual basis. This is often collected by mosques and distributed to the people in need. The fourth pillar is fasting called "*oruc*", (Arabic: sawn). The fifth pillar is the pilgrimage to Mecca, called the "*hac*" (Arabic: hajj). Every Muslim, who is physically and financially able is expected to make a pilgrimage to Mecca, at least once in their life. One of the most important sites in Mecca is the Kaaba, the sanctuary believed to have built by Abraham to honour God. During the "*hac*" many pilgrimages sacrifice animals and distribute the meat to the people in need. After

The Islamic law puts special emphasis on the contribution of a certain percentage of each Muslim's property wealth on an annual basis in the form of a gift. The aim of Zekat is the economic justice or fairness, which is effected by the redistribution of wealth. The Mufti plays the main role in collecting and redistributing the money or goods, which the Muslims bring together.[13]

2. The Judicial Jurisdiction of the Mufti

In this section a detailed analysis will be provided regarding the judicial powers of the Mufti over family and personal law cases between Muslims in Western Thrace. In doing, so a brief comparison will be made regarding the Greek civil law regulating family law matters. This is essential to illustrate the cultural differences between the two legal systems when conflicts occur between the national legislation, international human rights law and Islamic Law. In substance, the legal content of the various judicial functions of the Mufti is as follows:

A. Matrimonial Proceedings

Under Greek law, a marriage is a formal agreement by which a man and a woman enter into a certain legal relationship with each other, which creates mutual rights and responsibilities. According to Article 1350(2)(a) of the Civil Code, a valid marriage can only be contracted, if both parties have reached the legal age of majority, eighteen years old.[14] The principle of monogamy is firmly established in the family law in Greece, which means that neither party may contract a valid marriage while he or she

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successful completion of the "*hac*", the pilgrimage is entitled to use the honoured "*haci*" (Arabic: Hajj) before his or her name; this title indicates the successful completion of the pilgrimage.

[13] For example in 1987, after the celebration of Ramada, the Muftis of Xanthi and Komotini, called upon the Muslims to give a percentage of their property as a form of "*zekat*", which would be distributed to the poorest members of the Muslim minority.

[14] See also Article 12 of the European Convention on Human Rights, on the right to marry, which states: " Men and women of marriageable age have the right to marry and to found a family, according to the laws governing the exercise of this right." The European Convention on Human Rights is directly binding on Greek Law. According to Creek Civil law if two people wish to marry have but not yet attained the age of majority an application can be submitted to the court providing for a very "important reason" to get married. The application is submitted by the people, who have custody over the two minors and the minors themselves, provided the have reached the ago of sixteen (Law No. 742 of the Code of Civil Proceedings.) Law No. 1359(2(b), states that the court will decide after it has heard the bride and the groom as well as the people who have custody over them.

is still married. If a person has already contracted one marriage, he or she cannot contract another until the first spouse dies or the first marriage is annulled or dissolved. Consequently the second marriage will be void.

For a valid marriage to be concluded certain conditions need to exist that are divided into positive and negative ones. The positive ones are that: one party must be male and the other female, both parties must be over the age of eighteen (Article 1350(2) of the Civil Code) and both parties must be in full legal capacity (Article 1351, 1352.) As can be seen, these conditions refer to individual qualities of the individuals. The negative conditions refer to social qualities of the individuals: neither party must be already married, (Article 1354) and the parties must not be related within the prohibited degrees of consanguinity (Article 1356) or affinity (Article 1357) or adoption (Article 1360).[15]

According to Law No. 1350(1) an agreement needs to exist between the bride and the groom where both freely and expressly declare they wish to marry. Law No. 1350(1)(b) of the Civil Code provides that the wedding declaration needs to be made in person. The introduction of Law No. 1250/1982[16] legally recognised the civil wedding in the Greek family law.[17] The adoption of Law No. 1250 was a very positive step towards the respect and recognition of the right to freedom of religion in compliance with Article 13(1) of the Constitution and Article 9 of the European Convention on Human Rights. In the case of a civil wedding, the wedding ceremony takes place before the mayor or the president of the municipality.

The details of the civil wedding ceremony are regulated by Presidential Decree 391/1982.[18] In the case of a religious wedding, ceremony takes place before a religious official of any "known" religion in Greece, who will also initiate the wedding (Article 1367(1) and (3) Civil Code). A wedding cannot occur by

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[15] According to Article 1372, if a wedding is conducted in violation of Articles 1350, 1351, 1354, 1357 and 1360 will be void. According to Article 1375 and 1376 a wedding will be declared voidable by a court decision if it was conducted under thereat, force, deceit or against good morals.
[16] FEK A' 46, 1982.
[17] Efi Kounougeri-Manoledaki, Family Law (Thessaloniki: Sakkoulas, 1998) pp. 106-108, Basilis Ant. Vathrokoilis, The New Family Law, (Athens: Sakkoulas, 2000) pp.101-103.
[18] FEK A' 73, 1982.

representatives of the parties. The prohibition of representation in weddings is a civil law rule, which takes precedence over any possible conflicting religious rules. [19]

According to Article 1367(3)(1), the wedding ceremony is conducted either by a declaration between the two parties that wish to marry (civil wedding) or by a religious ceremony before a Christian orthodox priest or any other religious official of a "known" religion in Greece (religious wedding).

In the case of a marriage between two people of different religions, it used to be that the wedding ceremony must take place according to the religion or dogma of both parties (Article 1371 of the Civil Code.) However, the religious wedding celebration, according to the religion of only one of the parties would not be complete, thus the marriage would be rendered voidable. Article 1371 was replaced by Law No. 1250/1982, which provides that the religious wedding ceremony of only one religion is capable of creating a valid marriage[20]. The two parties have the right to choose between a civil or a religious wedding. [21]

The Muslim family law in Greece is regulated by Law No. 14/1914 titled: "In regard to Weddings between Muslims: The Legal Formation and Dissolution of the Wedding and the Personal Relations of the Spouses are Governed according to Islamic Law."[22] The Mufti recognises the existence and legal composition of a Muslim wedding. Polygamy is allowed according to Islamic law and custom but in contrast to Greek legal order.[23] However, in practice the phenomenon of polygamy has rarely appeared in Western Thrace probably, because it is not socially and normatively accepted by the Muslim minority in Western Thrace and the Mufti has set stringent conditions to accept a man's request to have a second wife.

B. Arranged marriages and forced marriages

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[19] Deligianis I. Family Law, Issue A, (2nd edition), 1980, p. 154.
[20] See, Law No. 1250/1982(FEK A' 46, 1982): "In Regard to the Establishment of the Civil Wedding"
[21] Bathrokoilis, *op.cit.*, p. 101.
[22] *Ibid.*, p. 100.
[23] Law 147/1914 applies exclusively to the members of the Muslim minority in Western Thrace. Law No. 147 is restricted by the principle of public order and human rights within the meaning of the Constitution and international law.

TEXT BOUND INTO THE SPINE

In order for a divorce by mutual consent to be issued there are certain legal requirements that need to be met.[28] According to Article 1441(2) these conditions are first, that the wedding must have lasted at least one year before the two spouses submit their application to the court, secondly, there needs to exist a mutual agreement between the two spouses to divorce, thirdly, the agreement between the two spouses must be declared in court, in person or by a power of attorney, in two hearings, which will take place in intervals of six months (Article 1441(2)). In the case of minor children the two spouses must provide the court with a written agreement to regulate the custody of their children. According to Article 1513, the agreement is ratified by the court and is valid until the final decision is issued. The court will also take into consideration the bests interests of the child according to the international obligations of Greece.[29]

According to Article 1439 both the wife and husband have a right to ask for a divorce, as long as they can prove that the marriage has irretrievable broken down for either a reason relating to the behaviour of the respondent (subjective ground) or both applicants (objective ground). A divorce based on the ground that the marriage has irretrievable broken down can be presumed in the case of bigamy, adultery, desertion, or threat of life. The petitioner might show that the marriage has irretrievably broken down by proving that the respondent has deserted the petitioner without a reasonable reason for a continuous period of at least two years immediately preceding the divorce petition (Article 1439(2)). According to Article 1493(3) a four-year separation of both spouses may constitute an irrebutable presumption that the marriage has irretrievable broken down; the separation time is not affected by interval periods of reconciliation.

Article 1440 provides that the petitioner may ask for a divorce if the other party has been declared missing and cannot be traced. This fact alone cannot lead to a divorce, as it would normal be the case under Article 48 of the Civil Code, which constitutes the presumption of death, but a petition for divorce is required to that effect, on the ground that the marriage has irretrievably broken down. According to Law No.

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[28] Vathrokolis, *op.cit.*, p. 400.

[29] See the UN Convention on the Rights of the Child (G.A. Res. 44/25/20.11.1989 entered into force on September 2, 1990, in accordance with Article 49).

Arranged marriages are valid in themselves. However, if there is an element of compulsion in an arranged marriage, so that the marriage is being forced upon one of the parties against his or her wishes, the marriage is voidable (Articles 1374, 1375 of the Civil Code.) Moreover, the lack of consent to marry can also occur if the elements of threat, deception, and deceit exist thus, renders the wedding voidable. According to Article 1375 a wedding based on these reasons can be declared voidable by a court decision.

In the Muslim marriage, the consent of both parties is an essential element. However, there are instances, where a minor child may be validly married simply on the basis of his or her guardian's consent, without him or her having any choice in the matter.[24] Where such a marriage occurs, Muslim law grants the child the "option of puberty", which means that upon subsequently attaining puberty the minor may elect to have the marriage set aside, provided the marriage has not yet been affirmed by voluntary consummation.

C. Divorces[25] and Alimonies[26]

According to Article 1438 of the Civil Code a wedding may be dissolved only by the death of one of the parties or by divorce pronounced by a competent court. Article 1438(b) states that the court decision is final to avoid any legal complications, which might arise. There are two grounds for divorce, the first ground is divorce by mutual consent and the second ground is that the marriage has irretrievably broken down. According to Article 1441(1) of the Civil Code, the two spouses submit a common application to the court asking for their marriage to be dissolved. The court is the One-Member First Instance Court.[27]

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[24] Nasir J., The Islamic Law of Personal Status, (London: Graham & Norton, 1986) p. 46.
[25] See, the Decision of the Religious Court of Didimotiho, (*Thriskeftiko Dikastirio Didimotihou*) 16/23.10.1987, Decision of the One-Member First Instance Court of Orestiada (*Protodikeio Oresteiadas*) 604/93/29.9.1989, Supreme Court Decision, (*Areios Pagos*) 14/1938 and the Decision of the Muftiea of Komotini, (*Mufteia Komotinis*) 50/1998 , 74/1987 , 3/1989 .
[26] Decision No. 7, 23/2.7.85, Religious Court of Didimotiho, (*Thriskeftiko Dikastirio Didimotihou*) 119/1975, 29/25.8.1986 , 87/1980 and 30/17.5.1989 all decisions of the Mufteia of Komotini (*Mufteia Komotinis*).
[27] See Articles 39, 22 and 23 of the Code of Civil Procedure.

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28 Vathrokolis, *op.cit.*, p. 400.

29 See the UN Convention on the Rights of the Child (G.A. Res. 44/25/20.11.1989 entered into force on September 2, 1990, in accordance with Article 49).

1329/1983 adultery[30] does no longer constitute a criminal offence and is not concrete ground for divorce. [31] Nevertheless, according to Article 1439(1) and (2), it can be used as evidence that the marriage has irretrievable broken down.

In the case of divorce by mutual consent both spouses have a right to ask the court to terminate the marriage as long as the legal requirements are met.. The right to divorce is regulated by Article 281 of the Civil Code, which states that the exercise of the right to divorce is prohibited, if it against good faith, good morals and the social or economic aim of such a right.

Article 1442 of the Civil Code regulates the process of alimony, which requires certain conditions to be met, on the part of the spouse, who is making a claim. First, the age and the state of health of the entitled spouse that does not allow him or her to work, secondly if he or she has custody of a minor child and therefore, cannot engage in a particular profession to earn money, thirdly, if he or she cannot find a stable job or requires educational training. In the last two conditions there is a time-limit of three months from the time the divorce was issued. According to Article 1487(1) there is no duty to pay alimony, on the part of the spouse, who is not in a financial position to do so. However, according to Article 1444 the contraction of a new marriage or the death of the entitled spouse can terminate the payment of alimony.

In Islamic law, the Mufti has a right to terminate a wedding, according to a application made by either spouse or both spouses together. The Mufti also regulates the process of returning the "wedding gift" and wedding contracts, according to the terms of the agreement formed during the wedding ceremony. According to Islamic Law a divorce can be obtained in a number of different ways, notably extrajudicially through *talaq* (unilateral repudiation by the husband), *khul* (divorce at the instance at the instance of the wife with the husband's agreement and on the basis that she will forego her right to dower) and *mubar'a* (divorce by mutual consent.) The Mufti can issue a divorce, without any reasons to be provided, only in the case of the husband.

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[30] Bathrakokoilis, *op.cit.*, p. 426.

[31] Law No. 1329/1983(FEK A' 25, 1983): "On the Ratification of the Legislative Code Regarding the Implementation of the Constitutional Principle of Equality Between Men and Women of the Civil Code, the Introductory Civil Code, Commercial Code and the Code of Civil Procedure as well some Modifications of the Civil and Family Code"

However, in certain instances, the Mufti can issue a divorce in favour of the wife and oblige the husband to pay alimony (*nefaka*).[32]

The husband is obliged to support his wife during the three-month period of (*iddat*) when the wife is not allowed to re-marry. In Greek family law, according to Law No. 1329/1983 the woman does no longer have to wait for ten months after the divorce has been issued to re-marry.

D. Guardianship, Custody and Emancipation of Minors[33]

The Mufti has the power to appoint and terminate a guardian of a minor. With the dissolution of the wedding the Mufti regulates issues regarding custody of minor children. According to Islamic Law, the boys will stay with their mother up to the age of seven whereas the girls will stay until the age of nine. The father will take custody of the children until they reach the age of majority.

E. Islamic Wills

The legal jurisdiction of the Mufti in regard to inheritance matters is as following:

(a) Any issues governed by an Islamic will (*vesagiet*) as well as the status of the will itself. Islamic law allows everyone to make a will, but the bequest must not exceed more than three percent of the inheritance. The Mufti, who will act as a solicitor in the presence of two witnesses, may compose the will as long as such issues relate to Islamic Law. According to Islamic law, the male children will inherit double the share compared to the share the female children will inherit and the widow is only allowed one-eighth of the inheritance, (increased to one-quarter if there are no children or agnatic

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[32] Such cases include: alcoholism, adultery, abuse, etc.

[33] See, Decision Nos. 38/17.7.89, 48/28.8.98 Religious Court of Didimotiho, Decision 70/23.9.1963 Mufteia of Komotini, 33/25.4.1969, 48/13.5.1968, 68/5.7.1968, 63/17.5.1969, and 87/18.9.1971 and all decisions of the Muftiea of Xanthi (*Mufteia of Xanthi*). See also Supreme Court Decision (*Areios Pagos*) 198/1924 and Court of Appeal of Thessaloniki (*Efeteio Thessalonikis*) 56/1924.

grandchildren.) When the heirs are only girls the inheritance goes to the brothers and uncles of the inheritor.

(b) Any issues governed by Islamic law relating to immovable property. The Mufti has no jurisdiction over public wills, which are governed by the Civil Code.

APPENDIX E: RESEARCH STUDY AND INTERVIEWS IN WESTERN THRACE

In order to write an original thesis on the topic, it was decided that innovative research strategies, such as field visits and interviews would only further enrich the work. Therefore, research visits were concluded to cover the area of research, Western Thrace; Xanthi and Komotini. The following is a personal report of my observations after the field visits and interviews.

When I travelled to Western Thrace, Xanthi and Komotini, I was able to meet with the members of the Muslim minority and discuss with them the various problems they are facing. They complained about the current system of education, which does not provide them with sufficient opportunities to learn the Greek language and prevents their progress, development and integration in the Greek society.

E.1: Minority Education

It was discovered that many members of the Muslim minority, both men and women displayed less than average linguistic competence and proficiency in both spoken and written Greek. This is probably because very few had completed their secondary education. Some Muslim students drop out of school either due to the current deficiencies of the educational system or because they have to work and contribute to the family's income, especially if they come from a poor socio-economic background. Therefore, a large number of the Muslim minority does not complete the nine years mandatory education in Greece. The elite of the Muslim minority tends to send their children to Greek high schools where they will receive an effective education and acquire good knowledge of the Greek language.

The case for the Muslim girls was worse. Many girls had little proficiency in Greek, since they only attended elementary school and did not continue to secondary education. The reasons provided were based on cultural and religious factors. The members of the Muslim minority do not view education for girls as essential for their future. Instead, Muslim girls in Western Thrace marry at an early age and stay at home to take of the children. It was very confusing and distressing to see young Muslim girls and women, born and living in Greece not being able to use and speak the Greek language on a native level. However, many young Muslims, boys and girls, have realised the importance of learning the Greek language and attend evening classes to learn Greek as a second language. The Greek authorities in order to educate the Muslim population and facilitate their progress and development in a modern world of education and opportunities provide these classes, which are funded by the European Union.

E.2: Freedom of Religion

In the area of freedom of religion the most serious problem of the Muslim minority is the choice of the Mufti. Many members of the minority claim that the 'elected' Mufti simply provides spiritual advice and guidance to the members of the minority and does not exercise the functions and duties of the officially appointed Mufti. This problem has not been solved yet between the minority and the state and continues to constitute a source of conflict between them. It is only a segment of the minority that

follows and supports the 'elected' Mufti mostly controlled and manipulated by Turkey. The rest of the minority seems to follow the legally appointed Mufti. In addition the application of Islamic law in family and personal law issues violates the principles of equality and non-discrimination, especially in the area of women's rights, as provided by international human rights law and the Constitution. The anachronistic application of Islamic law in the Muslim minority of Western Thrace constitutes a further impediment in their integration to Greece and increases their closed and isolated environment.

The members of the minority are very religious despite the Kemalist reformations and the ethnic ideology imported from Turkey. The Muslims attend the mosque prayers on a regular basis in a very religious and traditional manner. The high degree of religiousness in the minority can be viewed from a positive and negative perspective. From a positive perspective, the members of the minority have preserved their religion and culture and exercise their religious duties in a peaceful manner. From a negative perspective, the geographical concentration of the minority in the region of Western Thrace has re-enforced their cultural and religious consciousness by creating an obstacle for the future development and progress in Greece. Due to such religious and cultural factors many Muslim girls do not finish school and many Muslim women are excluded from paid employment outside the house except if they work in all feminine environment or when increased demands of modern economy make it necessary for them to engage in paid employment outside the house.

E.3 Social Relations between the Christians and the Muslims

The youth population of Muslims and Christians in Komotini do not socialise with each other and engage in different cultural or social activities. Although, the situation has slightly improved in the last years, there are several reasons that keep the Muslim and Christian youth apart. First, the cultural and religious tradition where Muslims and Christians were raised was different even though they were both born and live in Greece (Komotini). In addition, Muslim students mostly study in minority schools whereas Christian students study at national schools, thus they spend their childhood years separate and the feelings of prejudice and discrimination are easier to be re-produced in a closed environment. However, the members of the minority have the option of registering their children in Greek schools where they will be able to acquire sufficient knowledge of the Greek language and also interact with Greek-Christian students on a regular basis. At national universities, especially in Athens, Christian and Muslim students study together and socialise with no particular problems being reported. This maybe due to the fact that the students meet in a neutral environment distant from the political or ethnic tensions in the region of Western Thrace.

Secondly, during different eras in the socio-political history of these areas the relations between the Christians and the Muslims have been disturbed by a climate of mistrust and suspicion whipped up by certain ethno-political interests between these two groups. Thirdly, most Muslims live in the northern regions of Komotini in isolated 'Muslim villages' that have contributed to the cultural and social isolation of the two populations. The elite of the minority lives in the urban centres of Komotini and has more opportunities to interact with the members of the majority on an everyday basis. Fourthly, Muslim girls are not allowed to socialise with Christian boys or form relationships with them. Most Muslim girls in Komotini (and Xanthi)

are socially obliged, by the members of the minority, to wear a scarf when they leave home and are only permitted to take it off in the company of women or first degree male relatives. Muslim women must also wear a scarf when their pictures are taken in fear that a man that is not a close relative might see them. One may also observe that young Muslim girls dress in European clothes whereas Muslim women of older generations wear traditional clothes.

The cultural and social conditions of the Muslim minority have not allowed them to progress and integrate in the Greek society on an equal basis with the rest of the Greek citizens. Such conditions are partially created by the treatment of the Greek government against the minority and partially by the interference of Turkey in the internal affairs of the minority in keeping them isolated and manipulating certain members of the group in achieving its ulterior purpose; the creation of an 'ethnic' Turkish minority in Western Thrace.

The overall result of the political relations of Greece and Turkey in the context of the Muslim minority in Western Thrace has been to produce a number of people isolated from the Greek society with very few educated members, women rights suffering serious human rights violations from the application of Islamic law in family law issues and a number of Greek citizens having insufficient knowledge of the official language of the state. The feeling of social and cultural isolation is vivid if one visits the Muslim villages in Komotini. Although, it is positive for the members of the minority to maintain their religious traditions and customs such strong perseverance may further impede their integration in the Greek society where they will be able to take advantage of the social, educational and economic benefits of a modern society.

It may be observed that there is much scope and fertile ground for further socio-political as well as economic research on the various facets and dynamics of life in Western Thrace. Thus, it is recommended that scholars in various fields of academic endeavour should embark on closer and more detailed research of this interesting region of Greece.

APPENDIX F: MAP OF GREECE IN THE CONTEXT OF NEIGHBOURING STATES

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES

As of 07 July 2003

The international human rights treaties of the United Nations that establish committees of experts (often referred to as "treaty bodies") to monitor their implementation are the following:

(1) the International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights;

(2) the International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee;

(3) the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee; and

(4) the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP).

(5) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination;

(6) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women;

(7) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP);

(8) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture;

(9) the Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child;

(10) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict;

(11) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography.

(12) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), which was adopted by the General Assembly in 1990 and will enter into force when 20 States have accepted it;

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an "s" and the date of signature) to the United Nations human rights treaties listed above. Self-governing territories that have ratified any of the treaties are also included in the chart. As at 07 July 2003, all 189 Member States of the United Nations and 4 non-Member States were a party to one or more of these treaties.

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Afghanistan	24 Apr 83[a]	24 Apr 83[a]			05 Aug 83[a]	04 Apr 03		26 Jun 87		27 Apr 94		19 Oct 02[a]	
Albania	04 Jan 92[a]	04 Jan 92[a]			10 Jun 94[a]	10 Jun 94		10 Jun 94[a]		28 Mar 92			
Algeria	12 Dec 89	12 Dec 89	12 Dec 89[a]		15 Mar 72[•]	21 Jun 96[a]		12 Oct 89[•]		16 May 93			
Andorra		*s:05 Aug 0*	*s:05 Aug 02*		*s:05 Aug 02*	14 Feb 97[a]	14 Jan 03	*s:05 Aug 02*		01 Feb 96	12 Feb 02	18 Jan 02	
Angola	10 Apr 92[a]	10 Apr 92[a]	10 Apr 92[a]			17 Oct 86[a]				04 Jan 91			
Antigua and Barbuda					25 Oct 88[d]	31 Aug 89[a]		18 Aug 93[a]		04 Nov 93		30 May 02	
Argentina	08 Nov 86	08 Nov 86	08 Nov 86[a]		04 Jan 69	14 Aug 85	*s:28 Feb 00*	26 Jun 87[•]		03 Jan 91	10 Oct 02		
Armenia	13 Dec 93[a]	23 Sep 93[a]	23 Sep 93		23 Jul 93[a]	13 Oct 93[a]		13 Oct 93		22 Jul 93[a]			
Australia	10 Mar 76	13 Nov 80	25 Dec 91[a]	11 Jul 91[a]	30 Oct 75[•]	27 Aug 83		07 Sep 89[•]		16 Jan 91	*s:21 Oct 02*	*s:18 Dec 01*	
Austria	10 Dec 78	10 Dec 78	10 Mar 88	02 Jun 93	08 Jun 72[•]	30 Apr 82	22 Dec 00	28 Aug 87[•]		05 Sep 92	12 Feb 02	*s:06 Sep 0C*	
Azerbaijan	13 Nov 92[a]	13 Nov 92[a]	27 Feb 02[a]	22 Apr 99[a]	15 Sep 96[a]	09 Aug 95[a]	01 Sep 01	15 Sep 96[a]		12 Sep 92[a]	03 Aug 02	03 Aug 02	01 Jul 03[a]
Bahamas					05 Aug 75[d]	05 Nov 93[a]				22 Mar 91			
Bahrain					26 Apr 90[a]	18 Jul 02[a]		05 Apr 98[a]		14 Mar 92[a]			
Bangladesh	05 Jan 99[a]	06 Dec 00[a]			11 Jul 79[a]	06 Dec 84[a]	22 Dec 00	04 Nov 98[a]		02 Sep 90	12 Feb 02	18 Jan 02	*s:07 Oct 9E*
Barbados	03 Jan 76[a]	23 Mar 76[a]	23 Mar 76[a]		08 Dec 72[a]	03 Sep 81				08 Nov 90			
Belarus	03 Jan 76	23 Mar 76	30 Dec 92[a]		08 May 69	03 Sep 81		26 Jun 87		31 Oct 90		23 Feb 02[a]	
Belgium	21 Jul 83	21 Jul 83	17 Aug 94[a]	08 Mar 99	06 Sep 75[•]	09 Aug 85	*s:10 Dec 99*	25 Jul 99[•]		15 Jan 92	06 Jun 02	*s:06 Sep 0C*	
Belize	*:06 Sep 0C*	10 Sep 96[a]			14 Dec 01	15 Jun 90	09 Mar 03[a]	26 Jun 87[a]		02 Sep 90	*s:06 Sep 0C*	*s:06 Sep 0C*	01 Jul 03[a]

07 July 2003

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Benin	12 Jun 92 [a]	12 Jun 92 [a]	12 Jun 92 [a]		30 Dec 01	11 Apr 92	*s:25 May 0C*	11 Apr 92 [a]		02 Sep 90	*s:22 Feb 01*	*s:22 Feb 01*	
Bhutan					*s:26 Mar 7*	30 Sep 81				02 Sep 90			
Bolivia	12 Nov 82 [a]	12 Nov 82 [a]	12 Nov 82 [a]		22 Oct 70	08 Jul 90	22 Dec 00	11 May 99		25 Jul 90		*s:10 Nov 01*	01 Jul 03 [a]
Bosnia and Herzegovina	06 Mar 92 [d]	06 Mar 92 [d]	01 Jun 95	16 Jun 01	16 Jul 93 [d]	01 Oct 93 [d]	04 Dec 02	06 Mar 92 [a]		06 Mar 92 [d]	*s:07 Sep 0C*	04 Oct 02	01 Jul 03 [a]
Botswana		08 Dec 00			22 Mar 74 [a]	12 Sep 96 [a]		08 Oct 00		13 Apr 95 [a]			
Brazil	24 Apr 92 [a]	24 Apr 92 [a]			04 Jan 69 [*]	02 Mar 84	28 Sep 02	28 Oct 89		24 Oct 90	*s:06 Sep 0C*	*s:06 Sep 0C*	
Brunei Darussalam										26 Jan 96 [a]			
Bulgaria	03 Jan 76	23 Mar 76	26 Jun 92 [a]	10 Nov 99	04 Jan 69 [*]	10 Mar 82	*s:06 Jun 0C*	26 Jun 87 [*]		03 Jul 91	12 Mar 02	12 Mar 02	
Burkina Faso	04 Apr 99 [a]	04 Apr 99 [a]	04 Apr 99 [a]		17 Aug 74 [a]	13 Nov 87 [a]	*s:16 Nov 01*	03 Feb 99 [a]		30 Sep 90	*s:16 Nov 01*	*s:16 Nov 01*	*s:16 Nov 01*
Burundi	09 Aug 90 [a]	09 Aug 90 [a]			26 Nov 77	07 Feb 92	*s:13 Nov 01*	20 Mar 93 [a]		18 Nov 90	*s:13 Nov 01*		
Cambodia	26 Aug 92 [a]	26 Aug 92 [a]			28 Dec 86	14 Nov 92 [a]	*s:11 Nov 01*	14 Nov 92 [a]		14 Nov 92 [a]	*s:27 Jun 0C*	30 Jun 02	
Cameroon	27 Sep 84 [a]	27 Sep 84 [a]	27 Sep 84 [a]		24 Jul 71	22 Sep 94		26 Jun 87 [a]		10 Feb 93	*s:05 Oct 01*	*s:05 Oct 01*	
Canada	19 Aug 76 [a]	19 Aug 76 [a]	19 Aug 76 [a]		15 Nov 70	09 Jan 82	18 Jan 03 [a]	24 Jul 87 [*]		12 Jan 92	12 Feb 02	*s:10 Nov 01*	
Cape Verde	06 Nov 93 [a]	06 Nov 93 [a]	19 Aug 00 [a]	19 Aug 00 [a]	02 Nov 79 [a]	03 Sep 81 [a]		04 Jul 92 [a]		04 Jul 92 [a]	10 Jun 02 [a]	10 Jun 02 [a]	01 Jul 03 [a]
Central African Republic	08 Aug 81 [a]	08 Aug 81 [a]	08 Aug 81 [a]		15 Apr 71	21 Jul 91 [a]				23 May 92			
Chad	09 Sep 95 [a]	09 Sep 95 [a]	09 Sep 95 [a]		16 Sep 77 [a]	09 Jul 95 [a]		09 Jul 95 [a]		01 Nov 90	*s:03 May 02*	*s:03 May 02*	
Chile	03 Jan 76	23 Mar 76	28 Aug 92 [a]		19 Nov 71 [*]	06 Jan 90	*s:10 Dec 99*	30 Oct 88		12 Sep 90	*s:15 Nov 01*	06 Mar 03	*s:24 Sep 9*
China	27 Jun 01	*s:05 Oct 9*			28 Jan 82 [a]	03 Sep 81		03 Nov 88		01 Apr 92	*s:15 Mar 01*	03 Jan 03	
Colombia	03 Jan 76	23 Mar 76	23 Mar 76	04 Nov 97 [a]	02 Oct 81	18 Feb 82	*s:10 Dec 99*	07 Jan 88		27 Feb 91	*s:06 Sep 0C*	*s:06 Sep 0C*	01 Jul 03
Comoros					*s:22 Sep 0C*	30 Nov 94 [a]		*s:22 Sep 0C*		21 Jul 93			*s:22 Sep 0C*

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Congo	05 Jan 84 [a]	05 Jan 84 [a]	05 Jan 84 [a]		10 Aug 88 [a]	25 Aug 82				13 Nov 93 [a]			
Cook Islands										06 Jul 97 [a]			
Costa Rica	03 Jan 76	23 Mar 76	23 Mar 76	05 Jun 98	04 Jan 69 [*]	04 May 86	20 Dec 01	11 Dec 93 [*]		20 Sep 90	24 Feb 03	09 May 02	
Croatia	08 Oct 91 [d]	08 Oct 91 [d]	12 Jan 96 [a]	12 Jan 96 [a]	08 Oct 91 [d]	09 Oct 92 [d]	07 Jun 01	08 Oct 91 [d]		08 Oct 91 [d]	13 Jun 02	13 Jun 02	
Cuba					16 Mar 72	03 Sep 81	*s:17 Mar 00*	16 Jun 95		20 Sep 91	*s:13 Nov 00*	18 Jan 02	
Cyprus	03 Jan 76	23 Mar 76	15 Jul 92	10 Sep 99 [a]	04 Jan 69 [*]	22 Aug 85 [a]	26 Jul 02	17 Aug 91 [*]		09 Mar 91		*s:08 Feb 01*	
Czech Republic	01 Jan 93 [d]	01 Jan 93 [d]	01 Jan 93 [d]		01 Jan 93 [d]	24 Mar 93 [d]	26 May 01	01 Jan 93 [d]		01 Jan 93 [d]	12 Feb 02		
Côte d'Ivoire	26 Jun 92 [a]	26 Jun 92 [a]	05 Jun 97 [a]		03 Feb 73 [a]	17 Jan 96		17 Jan 96 [a]		06 Mar 91			
Democratic People's Republic of Korea	14 Dec 81 [a]	14 Dec 81 [a]				29 Mar 01 [a]				21 Oct 90			
Democratic Republic of the Congo	01 Feb 77 [a]	01 Feb 77 [a]	01 Feb 77 [a]		21 May 76 [a]	16 Nov 86		17 Apr 96		27 Oct 90	12 Feb 02	18 Jan 02 [a]	
Denmark	03 Jan 76	23 Mar 76	23 Mar 76	24 May 94	08 Jan 72 [*]	21 May 83	22 Dec 00	26 Jun 87 [*]		18 Aug 91	27 Sep 02	*s:07 Sep 00*	
Djibouti	05 Feb 03 [a]	05 Feb 03 [a]	05 Feb 03 [a]	05 Feb 03 [a]		01 Jan 99 [a]		05 Dec 02 [a]		05 Jan 91			
Dominica	17 Sep 93 [a]	17 Sep 93 [a]				03 Sep 81				12 Apr 91	20 Oct 02 [a]	20 Oct 02 [a]	
Dominican Republic	04 Apr 78 [a]	04 Apr 78 [a]	04 Apr 78 [a]		24 Jun 83 [a]	02 Oct 82	10 Nov 01	*s:04 Feb 85*		11 Jul 91	*s:09 May 02*		
Ecuador	03 Jan 76	23 Mar 76	23 Mar 76	23 May 93 [a]	04 Jan 69 [a]	09 Dec 81	05 May 02	29 Apr 88 [*]		02 Sep 90	*s:06 Sep 00*	*s:06 Sep 00*	01 Jul 03 [a]
Egypt	14 Apr 82	14 Apr 82			04 Jan 69	18 Oct 81		26 Jun 87 [a]		02 Sep 90		12 Aug 02 [a]	01 Jul 03 [a]
El Salvador	29 Feb 80	29 Feb 80	06 Sep 95		30 Dec 79 [a]	18 Sep 81	*s:04 Apr 01*	17 Jul 96 [a]		02 Sep 90	18 May 02		01 Jul 03
Equatorial Guinea	25 Dec 87 [a]	25 Dec 87 [a]	25 Dec 87 [a]		08 Nov 02 [a]	22 Nov 84 [a]		07 Nov 02 [a]		15 Jul 92 [a]		07 Mar 03 [a]	
Eritrea	17 Jul 01 [a]	22 Apr 02 [a]			30 Aug 01 [a]	05 Oct 95 [a]				02 Sep 94			
Estonia	21 Jan 92 [a]	21 Jan 92 [a]	21 Jan 92 [a]		20 Nov 91 [a]	20 Nov 91 [a]		20 Nov 91 [a]		20 Nov 91 [a]			

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Ethiopia	11 Sep 93[a]	11 Sep 93[a]			23 Jul 76[a]	10 Oct 81		13 Apr 94[a]		13 Jun 91[a]			
Fiji					11 Jan 73[d]	27 Sep 95				12 Sep 93			
Finland	03 Jan 76	23 Mar 76	23 Mar 76	11 Jul 91	13 Aug 70[•]	04 Oct 86	29 Mar 01	29 Sep 89[•]		20 Jul 91	10 May 02	*s:07 Sep 0C*	
France	04 Feb 81[a]	04 Feb 81[a]	17 May 84[a]		27 Aug 71[a]	13 Jan 84	22 Dec 00	26 Jun 87[•]		06 Sep 90	05 Mar 03	07 Mar 03	
Gabon	21 Apr 83[a]	21 Apr 83[a]			30 Mar 80	20 Feb 83		08 Oct 00		11 Mar 94	*s:08 Sep 0C*	*s:08 Sep 0C*	
Gambia	29 Mar 79[a]	22 Jun 79[a]	09 Sep 88[a]		28 Jan 79[a]	16 May 93		*s:23 Oct 85*		07 Sep 90	*s:21 Dec 0C*	*s:21 Dec 0C*	
Georgia	03 Aug 94[a]	03 Aug 94[a]	03 Aug 94[a]	22 Jun 99[a]	02 Jul 99[a]	25 Nov 94[a]	01 Nov 02[a]	25 Nov 94[a]		02 Jul 94[a]			
Germany	03 Jan 76	23 Mar 76	25 Nov 93[a]	18 Nov 92	15 Jun 69[•]	09 Aug 85	15 Apr 02	31 Oct 90[•]		05 Apr 92	*s:06 Sep 0C*	*s:06 Sep 0C*	
Ghana	07 Dec 00	07 Dec 00	07 Dec 00		04 Jan 69	01 Feb 86	*s:24 Feb 0C*	07 Oct 00		02 Sep 90			01 Jul 03
Greece	16 Aug 85[a]	05 Aug 97[a]	05 Aug 97[a]	05 Aug 97[a]	18 Jul 70	07 Jul 83	24 Apr 02	05 Nov 88[•]		10 Jun 93	*s:07 Sep 0C*	*s:07 Sep 0C*	
Grenada	06 Dec 91[a]	06 Dec 91[a]			*s:17 Dec 81*	29 Sep 90				05 Dec 90			
Guatemala	19 Aug 88[a]	05 Aug 92[a]	28 Feb 01[a]		17 Feb 83	11 Sep 82	09 Aug 02	04 Feb 90[a]		02 Sep 90	09 Jun 02	09 Jun 02	01 Jul 03
Guinea	24 Apr 78	24 Apr 78	17 Sep 93		13 Apr 77	08 Sep 82		09 Nov 89		02 Sep 90[a]			01 Jul 03[a]
Guinea-Bissau	02 Oct 92[a]	*s:12 Sep 0*	*s:12 Sep 0C*		*s:12 Sep 0C*	22 Sep 85	*s:12 Sep 0C*	*s:12 Sep 0C*		19 Sep 90	*s:08 Sep 0C*	*s:08 Sep 0C*	*s:12 Sep 0C*
Guyana	15 May 77	15 May 77	10 Aug 93[a]		17 Mar 77	03 Sep 81		18 Jun 88		13 Feb 91			
Haiti		06 May 91[a]			18 Jan 73	03 Sep 81				08 Jul 95	*s:15 Aug 02*	*s:15 Aug 02*	
Holy See					31 May 69			26 Jul 02[a]		02 Sep 90	12 Feb 02	18 Jan 02	
Honduras	17 May 81	25 Nov 97	*s:19 Dec 66*		09 Nov 02[a]	02 Apr 83		04 Jan 97[a]		09 Sep 90	14 Sep 0[illegible]	08 Jun 02[a]	
Hungary	03 Jan 76	23 Mar 76	07 Dec 88[a]	24 May 94[a]	04 Jan 69[•]	03 Sep 81	22 Mar 01[a]	26 Jun 87[•]		06 Nov 91			
Iceland	22 Aug 79	22 Nov 79	22 Nov 79[a]	11 Jul 91[a]	04 Jan 69[•]	18 Jul 85	06 Jun 01	22 Nov 96[•]		27 Nov 92	12 Feb 02	18 Jan 02	

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
India	10 Jul 79[a]	10 Jul 79[a]			04 Jan 69	08 Aug 93		*s:14 Oct 97*		11 Jan 93[a]			
Indonesia					25 Jul 99[a]	13 Oct 84	*s:28 Feb 0C*	27 Nov 98		05 Oct 90	*s:24 Sep 01*	*s:24 Sep 01*	
Iran (Islamic Republic of)	03 Jan 76	23 Mar 76			04 Jan 69					12 Aug 94			
Iraq	03 Jan 76	23 Mar 76			13 Feb 70	12 Sep 86[a]				15 Jul 94[a]			
Ireland	08 Mar 90	08 Mar 90	08 Mar 90	18 Sep 93[a]	28 Jan 01[•]	22 Jan 86[a]	22 Dec 00	11 May 02[•]		28 Oct 92	18 Dec 02	*s:07 Sep 0C*	
Israel	03 Jan 92	03 Jan 92			02 Feb 79	02 Nov 91		02 Nov 91		02 Nov 91		*s:14 Nov 01*	
Italy	15 Dec 78	15 Dec 78	15 Dec 78	14 May 95	04 Feb 76[•]	10 Jul 85	22 Dec 00	11 Feb 89[•]		05 Oct 91	09 Jun 02	09 Jun 02	
Jamaica	03 Jan 76	23 Mar 76			04 Jul 71	18 Nov 84				13 Jun 91	09 Jun 02	*s:08 Sep 0C*	
Japan	21 Sep 79	21 Sep 79			14 Jan 96[a]	25 Jul 85		29 Jul 99[a]		22 May 94	*s:10 May 02*	*s:10 May 02*	
Jordan	03 Jan 76	23 Mar 76			29 Jun 74[a]	31 Jul 92		13 Dec 91		23 Jun 91	*s:06 Sep 0C*	*s:06 Sep 0C*	
Kazakhstan					26 Sep 98[a]	25 Sep 98[a]	24 Nov 01	25 Sep 98[a]		11 Sep 94	10 May 03	18 Jan 02	
Kenya	03 Jan 76[a]	23 Mar 76[a]			13 Oct 01[a]	08 Apr 84[a]		23 Mar 97[a]		02 Sep 90	12 Feb 02	*s:08 Sep 0C*	
Kiribati										10 Jan 96[a]			
Kuwait	21 Aug 96[a]	21 Aug 96[a]			04 Jan 69[a]	02 Oct 94[a]		06 Apr 96[a]		20 Nov 91			
Kyrgyzstan	07 Oct 94[a]	07 Jan 95[a]	07 Jan 94[a]		05 Oct 97[a]	12 Mar 97[a]	22 Oct 02[a]	05 Oct 97[a]		06 Nov 94[a]		12 Mar 03[a]	
Lao People's Democratic Republic	*07 Dec 0C*	*s:07 Dec 0*			24 Mar 74[a]	13 Sep 81				07 Jun 91[a]			
Latvia	14 Jul 92[a]	14 Jul 92[a]	22 Sep 94[a]		14 May 92[a]	15 May 92[a]		14 May 92[a]		14 May 92[a]	*s:01 Feb 02*	*s:01 Feb 02*	
Lebanon	03 Jan 76[a]	23 Mar 76[a]			12 Dec 71[a]	21 May 97[a]		04 Nov 00[a]		13 Jun 91		*s:10 Oct 01*	
Lesotho	09 Dec 92[a]	09 Dec 92[a]	06 Dec 00[a]		04 Dec 71[a]	21 Sep 95[a]	*s:06 Sep 0C*	12 Dec 01[a]		09 Apr 92	*s:06 Sep 0C*	*s:06 Sep 0C*	
Liberia	*:18 Apr 67*	*s:18 Apr 6*			05 Dec 76[a]	16 Aug 84				04 Jul 93			

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Libyan Arab Jamahiriya	03 Jan 76 [a]	23 Mar 76 [a]	16 Aug 89 [a]		04 Jan 69 [a]	15 Jun 89 [a]		15 Jun 89 [a]		15 May 93 [a]			
Liechtenstein	10 Mar 99 [a]	10 Mar 99 [a]	10 Mar 99 [a]	10 Mar 99 [a]	31 Mar 00 [a]	21 Jan 96 [a]	24 Jan 02	02 Dec 90 [a]		21 Jan 96	*s:08 Sep 00*	*s:08 Sep 00*	
Lithuania	20 Feb 92 [a]	20 Feb 92 [a]	20 Feb 92 [a]	27 Jun 02	09 Jan 99	17 Feb 94 [a]	*s:08 Sep 00*	02 Mar 96		01 Mar 92 [a]	20 Mar 03		
Luxembourg	18 Nov 83	18 Nov 83	18 Nov 83 [a]	12 May 92	31 May 78 [a]	04 Mar 89	*s:10 Dec 99*	29 Oct 87 [a]		06 Apr 94	*s:08 Sep 00*	*s:08 Sep 00*	
Madagascar	03 Jan 76	23 Mar 76	23 Mar 76		09 Mar 69	16 Apr 89	*s:07 Sep 00*	*s:01 Oct 01*		18 Apr 91	*s:07 Sep 00*	*s:07 Sep 00*	
Malawi	22 Mar 94 [a]	22 Mar 94 [a]	11 Sep 96		11 Jul 96 [a]	11 Apr 87 [a]	*s:07 Sep 00*	11 Jul 97 [a]		01 Feb 91 [a]	*s:07 Sep 00*	*s:07 Sep 00*	
Malaysia						04 Aug 95				19 Mar 95 [a]			
Maldives					24 May 84 [a]	31 Jul 93 [a]				13 Mar 91	*s:10 May 02*	10 Jun 02	
Mali	03 Jan 76 [a]	23 Mar 76 [a]	24 Jan 02 [a]		15 Aug 74 [a]	10 Oct 85	22 Dec 00 [a]	28 Mar 99 [a]		20 Oct 90	16 Jun 02	16 Jun 02 [a]	
Malta	13 Dec 90	13 Dec 90 [a]	13 Dec 90 [a]	29 Mar 95 [a]	26 Jun 71 [a]	07 Apr 91 [a]		13 Oct 90 [a]		30 Oct 90	09 Jun 02	*s:07 Sep 00*	
Marshall Islands										03 Nov 93			
Mauritania					12 Jan 89	09 Jun 01 [a]				15 Jun 91			
Mauritius	03 Jan 76 [a]	23 Mar 76 [a]	23 Mar 76 [a]		29 Jun 72 [a]	08 Aug 84 [a]	*s:11 Nov 01*	08 Jan 93 [a]		02 Sep 90 [a]	*s:11 Nov 01*	*s:11 Nov 01*	
Mexico	23 Jun 81 [a]	23 Jun 81 [a]	15 Jun 02		22 Mar 75	03 Sep 81	15 Jun 02	26 Jun 87 [a]		21 Oct 90	15 Apr 02	15 Apr 02	01 Jul 03
Micronesia (Federated States of)										04 Jun 93 [a]			
Monaco	28 Nov 97	28 Nov 97		28 Jun 00 [a]	27 Oct 95 [a]			05 Jan 92 [a]		21 Jul 93 [a]	12 Feb 02	*s:26 Jun 00*	
Mongolia	03 Jan 76	23 Mar 76	16 Jul 91 [a]		05 Sep 69	03 Sep 81	28 Jun 02	23 Feb 02 [a]		02 Sep 90	*s:12 Nov 01*	*s:12 Nov 01*	
Morocco	03 Aug 79	03 Aug 79			17 Jan 71	21 Jul 93 [a]		21 Jul 93		21 Jul 93	22 Jun 02	18 Jan 02	01 Jul 03
Mozambique		21 Oct 93 [a]		21 Oct 93 [a]	18 May 83 [a]	16 May 97 [a]		14 Oct 99 [a]		26 May 94		06 Apr 03 [a]	
Myanmar						21 Aug 97 [a]				14 Aug 91 [a]			

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Namibia	28 Feb 95 [a]	28 Feb 95 [a]	28 Feb 95 [a]	28 Feb 95 [a]	11 Dec 82 [a]	23 Dec 92 [a]	22 Dec 00	28 Dec 94 [a]		30 Oct 90	16 May 02	16 May 02	
Nauru		*s:12 Nov 0*	*s:12 Nov 01*		*s:12 Nov 01*			*s:12 Nov 01*		26 Aug 94 [a]	*s:08 Sep 0C*	*s:08 Sep 0C*	
Nepal	14 Aug 91 [a]	14 Aug 91 [a]	14 Aug 91 [a]	04 Jun 98 [a]	01 Mar 71 [a]	22 May 91	*s:18 Dec 01*	13 Jun 91 [a]		14 Oct 90	*s:08 Sep 0C*	*s:08 Sep 0C*	
Netherlands	11 Mar 79	11 Mar 79	11 Mar 79	11 Jul 91	09 Jan 72 [•]	22 Aug 91	22 Aug 02	20 Jan 89 [•]		07 Mar 95	*s:07 Sep 0C*	*s:07 Sep 0C*	
New Zealand	28 Mar 79	28 Mar 79	26 Aug 89 [a]	11 Jul 91	22 Dec 72	09 Feb 85	22 Dec 00	09 Jan 90 [•]		06 May 93	12 Feb 02	*s:07 Sep 0C*	
Nicaragua	12 Jun 80 [a]	12 Jun 80 [a]	12 Jun 80 [a]		17 Mar 78 [a]	26 Nov 81		*s:15 Apr 85*		04 Nov 90			
Niger	07 Jun 86 [a]	07 Jun 86 [a]	07 Jun 86 [a]		04 Jan 69	07 Nov 99 [a]		04 Nov 98 [a]		30 Oct 90			
Nigeria	29 Oct 93 [a]	29 Oct 93 [a]			04 Jan 69 [a]	13 Jul 85	*s:08 Sep 0C*	28 Jul 01		19 Apr 91	*s:08 Sep 0C*	*s:08 Sep 0C*	
Niue										19 Jan 96 [a]			
Norway	03 Jan 76	23 Mar 76	23 Mar 76	05 Dec 91	05 Sep 70 [•]	03 Sep 81	05 Jun 02	26 Jun 87 [•]		07 Feb 91	*s:13 Jun 0C*	18 Jan 02	
Oman					02 Feb 03 [a]					08 Jan 97 [a]			
Pakistan					04 Jan 69	11 Apr 96 [a]				12 Dec 90	*s:26 Sep 01*	*s:26 Sep 01*	
Palau										03 Sep 95 [a]			
Panama	08 Jun 77 [a]	08 Jun 77	08 Jun 77	21 Apr 93 [a]	04 Jan 69	28 Nov 81	09 Aug 01	23 Sep 87		11 Jan 91	12 Feb 02	18 Jan 02	
Papua New Guinea					26 Feb 82 [a]	11 Feb 95 [a]				31 Mar 93			
Paraguay	10 Sep 92 [a]	10 Sep 92	10 Apr 95 [a]		*s:13 Sep 0C*	06 May 87 [a]	14 Aug 01	11 Apr 90 [•]		25 Oct 90	27 Oct 02	*s:13 Sep 0C*	*s:13 Sep 0C*
Peru	28 Jul 78	28 Jul 78	03 Jan 81 [a]		29 Oct 71 [•]	13 Oct 82	09 Jul 01	06 Aug 88 [•]		04 Oct 90	08 Jun 02	08 Jun 02	
Philippines	03 Jan 76	23 Jan 87	22 Nov 89 [a]		04 Jan 69	04 Sep 81	*s:21 Mar 0C*	26 Jun 87 [a]		20 Sep 90	*s:08 Sep 0C*	*s:08 Sep 0C*	01 Jul 03
Poland	18 Jun 77	18 Jun 77	07 Feb 92 [a]		04 Jan 69 [•]	03 Sep 81		25 Aug 89 [•]		07 Jul 91	*s:13 Feb 02*	*s:13 Feb 02*	
Portugal	31 Oct 78	15 Sep 78	03 Aug 83	11 Jul 91	23 Sep 82 [a]	03 Sep 81	26 Jul 02	11 Mar 89 [•]		21 Oct 90	s:06 Sep 0C	*s:06 Sep 0C*	

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Qatar					21 Aug 76[a]			10 Feb 00[a]		03 May 95	25 Aug 02[a]	18 Jan 02[a]	
Republic of Korea	10 Jul 90[a]	10 Jul 90[a]	10 Jul 90[a]		04 Jan 79[r]	26 Jan 85		08 Feb 95[a]		20 Dec 91	*s:06 Sep 06*	*s:06 Sep 06*	
Republic of Moldova	26 Apr 93[a]	26 Apr 93[a]			25 Feb 93[a]	31 Jul 94[a]		28 Dec 95		25 Feb 93[a]	*s:08 Feb 02*	*s:08 Feb 02*	
Romania	03 Jan 76	23 Mar 76	20 Oct 93[a]	11 Jul 91	15 Oct 70[a]	06 Feb 82	*s:06 Sep 06*	17 Jan 91[a]		28 Oct 90	12 Feb 02	18 Jan 02	
Russian Federation	03 Jan 76	23 Mar 76	01 Jan 92[a]		06 Mar 69[r]	03 Sep 81	*s:08 May 01*	26 Jun 87[r]		15 Sep 90	*s:15 Feb 01*		
Rwanda	03 Jan 76[a]	23 Mar 76[a]			16 May 75[a]	03 Sep 81				23 Feb 91	23 May 02[a]	14 Apr 02[a]	
Saint Kitts and Nevis						25 May 85[a]				02 Sep 90			
Saint Lucia					14 Feb 90[d]	07 Nov 82[a]				16 Jul 93			
Saint Vincent and the Grenadines	09 Feb 82[a]	09 Feb 82[a]	09 Feb 82[a]		09 Dec 81[a]	03 Sep 81[a]		31 Aug 01[a]		25 Nov 93			
Samoa						25 Oct 92[a]				29 Dec 94			
San Marino	18 Jan 86[a]	18 Jan 86[a]	18 Jan 86[a]		11 Apr 02			*s:18 Sep 02*		25 Dec 91[a]	*s:05 Jun 06*	*s:05 Jun 06*	
Sao Tome and Principe	*:31 Oct 95*	*s:31 Oct 9*	*s:06 Sep 06*		*s:06 Sep 06*	*s:31 Oct 95*	*s:06 Sep 06*	*s:06 Sep 06*		13 Jun 91[a]			*s:06 Sep 06*
Saudi Arabia					23 Oct 97[a]	07 Oct 00		23 Oct 97[a]		25 Feb 96[a]			
Senegal	13 May 78	13 May 78	13 May 78		19 May 72[r]	07 Mar 85	22 Dec 00	26 Jun 87[r]		02 Sep 90	*s:08 Sep 06*	*s:08 Sep 06*	01 Jul 03[a]
Serbia and Montenegro	27 Apr 92[d]	27 Apr 92[d]	06 Dec 01	03 Sep 01[a]	27 Apr 92[d]	28 Mar 82		27 Apr 92[d]		02 Feb 91[d]	28 Feb 03	10 Nov 02	
Seychelles	05 Aug 92[a]	05 Aug 92[a]	05 Aug 92[a]	15 Mar 95[a]	06 Apr 78[a]	04 Jun 92[a]		04 Jun 92[a]		07 Oct 90[a]	*s:23 Jan 01*	*s:23 Jan 01*	01 Jul 03[a]
Sierra Leone	23 Nov 96[a]	23 Nov 96[a]	23 Aug 96[a]		04 Jan 69	11 Dec 88	*s:08 Sep 06*	25 May 01		02 Sep 90	15 Jun 02	18 Jan 02	*s:15 Sep 06*
Singapore						04 Nov 95[a]				04 Nov 95[a]	*s:07 Sep 06*		
Slovakia	28 May 93[d]	01 Jan 93[d]	01 Jan 93	22 Sep 99	28 May 93[d]	27 Jun 93[d]	22 Dec 00	28 May 93[d]		01 Jan 93[d]		*s:30 Nov 01*	
Slovenia	06 Jul 92[d]	25 Jun 91[d]	16 Oct 93[a]	10 Jun 94	06 Jul 92[d]	05 Aug 92[d]	*s:10 Dec 99*	15 Aug 93[a]		25 Jun 91[d]	*s:08 Sep 06*	*s:08 Sep 06*	

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Solomon Islands	17 Mar 82[d]				17 Mar 82[d]	05 Jun 02[a]	06 Aug 02			09 May 95[a]			
Somalia	24 Apr 90[a]	24 Apr 90[a]	24 Apr 90[a]		25 Sep 75			23 Feb 90[a]		s:09 May 0			
South Africa	:03 Oct 94	10 Mar 99	28 Nov 02[a]	28 Nov 02[a]	09 Jan 99[•]	14 Jan 96		09 Jan 99[•]		16 Jul 95	*s:08 Feb 02*		
Spain	27 Jul 77	27 Jul 77	25 Apr 85[a]	11 Jul 91	04 Jan 69[a]	04 Feb 84	06 Oct 01	20 Nov 87[•]		05 Jan 91	08 Apr 02	18 Jan 02	
Sri Lanka	11 Sep 80[a]	11 Sep 80[a]	03 Jan 98[a]		20 Mar 82[a]	04 Nov 81	15 Jan 03[a]	02 Feb 94[a]		11 Aug 91	12 Feb 02		01 Jul 03[a]
Sudan	18 Jun 86[a]	18 Jun 86[a]			20 Apr 77[a]			*s:04 Jun 86*		02 Sep 90			
Suriname	28 Mar 77[a]	28 Mar 77[a]	28 Mar 77[a]		15 Mar 84[d]	31 Mar 93[a]				31 Mar 93	*s:10 May 02*	*s:10 May 02*	
Swaziland					07 May 69[a]					06 Oct 95			
Sweden	03 Jan 76	23 Mar 76	23 Mar 76	11 Jul 91	05 Jan 72[•]	03 Sep 81	24 Jul 03	26 Jun 87[•]		02 Sep 90	20 Mar 03	*s:08 Jun 0C*	
Switzerland	18 Sep 92[a]	18 Sep 92[a]		16 Sep 94[a]	29 Dec 94[a]	26 Apr 97		26 Jun 87[•]		26 Mar 97	26 Jul 02	*s:07 Sep 0C*	
Syrian Arab Republic	03 Jan 76[a]	23 Mar 76[a]			21 May 69[a]	27 Apr 03[a]				14 Aug 93			
Tajikistan	04 Apr 99[a]	04 Apr 99[a]	04 Apr 99[a]		10 Feb 95[a]	25 Nov 93[a]	*s:07 Sep 0C*	10 Feb 95[a]		25 Nov 93[a]	05 Sep 02[a]	05 Sep 02[a]	01 Jul 03
Thailand	05 Dec 99[a]	29 Jan 97[a]			27 Feb 03[a]	08 Sep 85[a]	22 Dec 00			26 Apr 92[a]			
The Former Yugoslav Republic of Macedonia	18 Jan 94[d]	17 Sep 91[d]	12 Mar 95[a]	26 Apr 95	17 Sep 91[d]	17 Feb 94[d]	*s:03 Apr 0C*	12 Dec 94[d]		17 Sep 91[d]	*s:17 Jul 01*	*s:17 Jul 01*	
Timor-Leste	16 Jul 03[a]				16 May 03[a]	16 May 03[a]	16 Jul 03[a]	16 May 03[a]		16 May 03[a]		16 May 03[a]	
Togo	24 Aug 84[a]	24 Aug 84[a]	30 Jun 88[a]		01 Oct 72[a]	26 Oct 83[a]		18 Dec 87[•]		02 Sep 90		*s:15 Nov 01*	*s:15 Nov 01*
Tonga					17 Mar 72[a]					06 Dec 95[a]			
Trinidad and Tobago	08 Mar 79[a]	21 Mar 79[a]			03 Nov 73	11 Feb 90				04 Jan 92			
Tunisia	03 Jan 76	23 Mar 76			04 Jan 69	20 Oct 85		23 Oct 88[•]		29 Feb 92	02 Feb 03	13 Oct 02	
Turkey	:15 Aug 0C	s:15 Aug 0			16 Oct 02	19 Jan 86[a]	29 Jan 03	01 Sep 88[•]		04 May 95	*s:08 Sep 0C*	19 Sep 02	*s:13 Jan 99*

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
Turkmenistan	01 Aug 97[a]	01 Aug 97[a]	01 Aug 97[a]	11 Jan 00[a]	29 Oct 94[a]	31 May 97[a]		25 Jul 99[a]		19 Oct 93[a]			
Tuvalu						05 Nov 99[a]				22 Oct 95[a]			
Uganda	21 Apr 87[a]	21 Sep 95[a]	14 Feb 96		21 Dec 80[a]	21 Aug 85		26 Jun 87[a]		16 Sep 90	06 Jun 02[a]	18 Jan 02[a]	01 Jul 03[a]
Ukraine	03 Jan 76	23 Mar 76	25 Oct 91[a]		06 Apr 69[•]	03 Sep 81	*s:07 Sep 00*	26 Jun 87		27 Sep 91	*s:07 Sep 00*	*s:07 Sep 00*	
United Arab Emirates					20 Jul 74[a]					02 Feb 97[a]			
United Kingdom of Great Britain and Northern Ireland	20 Aug 76	20 Aug 76		10 Dec 99	06 Apr 69	07 May 86		07 Jan 89[•]		15 Jan 92	*s:07 Sep 00*	*s:07 Sep 00*	
United Republic of Tanzania	11 Sep 76[a]	11 Sep 76[a]			26 Nov 72[a]	19 Sep 85				10 Jul 91		24 May 03[a]	
United States of America	*:05 Oct 77*	08 Sep 92			20 Nov 94	*s:17 Jul 80*		20 Nov 94[•]		s:16 Feb 9	23 Jan 03	23 Jan 03	
Uruguay	03 Jan 76	23 Mar 76	23 Mar 76	21 Apr 93	04 Jan 69[•]	08 Nov 81	26 Oct 01	26 Jun 87[•]		20 Dec 90	*s:07 Sep 00*	*s:07 Sep 00*	01 Jul 03[a]
Uzbekistan	28 Dec 95[a]	28 Dec 95[a]	28 Dec 95[a]		28 Oct 95[a]	18 Aug 95[a]		28 Oct 95[a]		29 Jul 94[a]			
Vanuatu						08 Oct 95				06 Aug 93			
Venezuela	10 Aug 78	10 Aug 78	10 Aug 78	22 May 93	04 Jan 69	01 Jun 83	13 Aug 02	28 Aug 91[•]		13 Oct 90	*s:07 Sep 00*	08 Jun 02	
Viet Nam	24 Dec 82[a]	24 Dec 82[a]			09 Jul 82[a]	19 Mar 82				02 Sep 90	12 Feb 02	18 Jan 02	
Yemen	09 May 87[a]	09 May 87[a]			17 Nov 72[a]	29 Jun 84[a]		05 Dec 91[a]		31 May 91			
Zambia	10 Jul 84[a]	10 Jul 84[a]	10 Jul 84[a]		05 Mar 72	21 Jul 85		06 Nov 98[a]		05 Jan 92			
Zimbabwe	13 Aug 91[a]	13 Aug 91[a]			12 Jun 91[a]	12 Jun 91[a]				11 Oct 90			

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CAT-OP	CRC	CRCOPAC	CRCOPSC	MWC
	CESCR	CCPR	CCPR-OP1	CCPR-OP2-DP	CERD	CEDAW	CEDAW-OP	CAT	CRC	CRC-OP-AC	CRC-OP-SC	MWC	Others
REMAINING SIGNATORIES (&)	7	8	5	7	8	2	33	12	2	63	68	10	3
TOTAL STATE PARTIES	147	149	104	49	168	173	51	133	192	52	51	21	0

Notes:
The dates listed refer to the date of ratification, unless followed by:
an "a" which signifies accession,
"d", which signifies succession, or
"s", which signifies signature only.
(&) Among non-State parties.
* indicates that the state party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under article 14 of the CERD (total 40 state parties) or of the Committee against Torture under article 22 of CAT(total 52 state parties).