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The minority protection system in Greece and Turkey based on the Treaty of Lausanne (1923): A legal overview

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A. Introductory remarks

Minorities represent a complex, dynamic and evolving phenomenon, which relies on a series of political factors and can be regulated by legal norms. Minorities exist as a matter of fact, not because they are a legal issue, as the Permanent Court of International Justice upheld 70 years ago: *The existence of communities [namely: minorities] is a question of fact; it is not a question of law*¹. In that context states have the discretion to reckon minority phenomenon to any extent or ignore it. Relevant legal norms would regulate minority linguistic, religious or/and ethnic/national aspects, along with universal human rights standards. Greece and Turkey, for historical reasons are bound by similar norms stemming from the same multilateral international treaty, signed in Lausanne in July 1923. Articles 37 to 45 set the legal framework of minority protection for both states regarding “non-Muslims” in Turkey and “Muslims” in Greece, applicable to the exempted minorities from the “Greek-Turkish population

¹ PCIJ, Greco-Bulgarian Communities, B, No 22.

exchange” of 1923. A series of rights are granted to the citizens of the relevant states based on their religion. A similar protection system for the Muslim minorities was established in Greece in 1881 (by the Treaty of Constantinople) and again in 1913 (by the Treaty of Athens). The selected criterion of religion, for attributing specific minority rights has to be seen in the historical context of the Ottoman legacy of “millet”² which led to the consolidation of modern Balkan nation-states. Both in Greece and Turkey, albeit through different political processes, religion played a key role for the self-national construction where law treated minorities as *millet*. On the contrary minorities of the same – as the majority- religion became invisible and a target for national assimilation. In that context, as perceived in 1923, the Treaty of Lausanne regulates the status of the “millet-like” minorities based on religion. This perception was consolidated with the legal and political culture of each nation-state in which both minorities were for long years considered by law or the jurisprudence as alien elements, notwithstanding that they are citizens of the state: non-Muslims in Turkey were deemed as “indigenous foreigners” [*yerli yabancilar*]³ and Muslims in Greece as of alien descent [*allogeneis*]⁴. This clarification would facilitate the reading of the present report.

The report has to be read not as a denouncement nor as contribution to a competitive comparison of the two states. Rather it aims at contributing to a comprehensive presentation of deadlocks and shortfalls of different legal fields of application of the Treaty of Lausanne which would offer a fertile ground for dialogue and new legal solutions.

What are the regulatory fields of protection according to the Treaty? The Treaty attributes rights (thus obligations for the states) for the protection of the language, the religion and the foundations of the minorities. The rights are attributable through

² In the Ottoman Empire Greek-Orthodox, Armenians and Jews were the main ethno-religious communities (*millets*) put under a specific legal status enjoying extended internal educational and religious autonomy.

³ Expressed in the Regulation on the Act against sabotage, Council of Ministers, 1988.

⁴ Expressed in a series of decisions of the Council of State and in Article 19 of the Code of Greek Citizenship (now abolished).

religion, a criterion quite problematic as it ignores linguistic/ethnic/national identities, which would have evolved during modern times. In Greece, the penal prosecutions of politicians referring to the national character of the minority of Thrace in the 1990's or the processes against the minority associations bearing the term "Turkish" in their title⁵ are the marking cases of this narrow interpretation of the Treaty of Lausanne. In Turkey, the appellation "Rum Ortodox" did not give the ground for major legal ambiguities, as it would cover the Greek ethnic/national character of the minority under its religious *millet*-like identity. Restrictive interpretations often led to overt or covert contravention of the Treaty. They were linked to political evaluations and considerations (inter-state relations and Cyprus issue) with ups (1930, 1951) and downs (1964, 1974), which fall out the scope of this report. Hereinafter we are going to discuss the main fields of application of the Treaty and their main patterns of reception by the two states. First, however, we are going to discuss the clause of non-discrimination.

B. Discrimination

Minorities as a target of *de jure* or/and *de facto* discrimination has a long fluctuating history related to political context. In order to detect discrimination applied on a specific group or person one has to compare the 'discriminatory instance' with the treatment that another non-minority person would have in the same circumstances. The clause of non-discrimination and equality before the law is provided for by the Treaty of Lausanne, the Constitutions of both Greece and Turkey and the ECHR (art. 14 with special reference to members of a national minority). Law and practices of excessive expropriation of private or community real property⁶, restrictions on minority schools, and deprivation of citizenship made minorities flee abroad. More dramatically the Greek-Orthodox minority of Turkey shrunk from 120,000 in 1930 to about 4,000 in 2007, and less than 300 as permanent residents of both Gokceada/Imvros and Bozcaada/Tenedos. In Thrace the number of the Muslim

⁵ See ECtHR, *Sadik v. Greece, Turkish Union of Xanthi v. Greece* and *Emin and others v. Greece*.

⁶ ECtHR, *Apostolidi v. Turkey*.

minority from 100,000 in 1926 was less than 90,000 in 2008 with a number of about 15,000 dwellers in Athens. A number of 4,000 Muslims are permanent residents of Rhodes and Kos/Istankoy.

Even if a detailed reference to discriminatory law and practices historically existent or applied in present would need more space than this report, it is worth mentioning the rare cases of direct positive discrimination: In Greece a special quota in favour of Muslim students to enter University Schools was adopted in 1996 a special quota 0.5% on the available seats for higher education. This quota has been set by Acts 2341/1995 and 2525/1997, offered, up to date, to more than 1,500 Muslim students the possibility to accomplish their studies in Greece. A special quota of 0.5% for hiring civil servants in the public sector in favour of Muslim candidates was adopted in 2008 (by the act on the vakf⁷, not yet implemented).

C. Legal personality

The minorities in both states according to the Lausanne Treaty are recipients of special rights as a subject of law. However, states are reluctant to acknowledge a collective legal personality except occasionally.

By the end of the 1950's gradually the Greek authorities seized recognising the legal effects of the Councils of the Communities of Thrace. The Councils were then merged to the then elected Management Committees of the vakf. After the prohibition of the elections by the military junta and the non-restoration of the elections by the democratic government after 1974, the political elite of the minority established a legally non-recognised body, the *Higher Consultative Committee of the Turkish Minority*. On the other hand the Moufti Offices (as long as they operate as judiciary authorities) are perceived as legal bodies of public law.

In Turkey, the minority communities are recognised as having the legal autonomy to manage their respective vakf. The legal effects of their existence as a collectivity is enjoyed solely within the framework of the elections for the management of the vakf.

⁷ Vakf = vakoufi (gr) = vakıf (tr), pious foundation, *infra*.

They do not dispose of a legal personality registered by courts or other supervising state bodies. Thus, occasionally, the legal personality of a minority as such is visible by law when the minority electorate operates as a whole, as in the case of the elections of the vakf boards. The Greek Orthodox minority is divided into 56 Communities. All religious leading institutions of the minorities, suffer from a lack of legal recognition, which leads to serious difficulties in administering their internal affairs, especially as regards the management of real property (*infra*).

D. Education

Minority education in both states consists of bilingual schools (minority language/official language) although the Treaty of Lausanne provides for education “in the language of the minority” and for “the teaching of the official language of the state”. No special regard is given to minority education in “lesser used languages” within the minorities, such as the Pomak/Bulgarian in Greece and the Arabic in Turkey. Today minority schools operate for the Greek-Orthodox minority in Istanbul and for Muslims in Western Thrace (in Greek/Turkish). Minority schools operate also for the Armenians and the Jewish minorities in Turkey. A series of acts and decrees implements articles 41 and 42 of the Treaty through a narrow interpretation of educational autonomy. In both states minority education constitutes a hybrid semi-private and semi-public legal character (Acts 694/1977, 695/1977 etc. in Greece and Acts 625/1965, 6581/1987 etc. in Turkey), where the uncertainty of private/public sphere of competence leads to conflicts in its management. In that context, minority schools of “pure” private character do not exist.

In **Greece**, today, 208 elementary, two high schools and two *medrese* (religious high schools) operate in W. Thrace (for about 7,500 students). Schools for the Muslims of Rodos and Kos were closed down in 1971. In **Turkey**, today 9 elementary schools, 3 high schools and 2 kindergartens operate in Istanbul for the Greek-Orthodox minority (for about 240 students). Minority schools for the Greek-Orthodox of Imvros/Gökçeada and Tenedos/Bozcaada were closed down in 1964.

The quality of the provided education and language proficiency of the students is visibly lower when compared to the mainstream schools of Greece and Turkey. Training of minority teachers, textbooks, school premises, administration and supervision of schools often suffer from narrow minded policies and practices which puts limitations to the content of the right to minority education in his/her language. Greek-Turkish cooperation on minority education was pivoted by the long-lived negative reciprocity in the frame of which minority teachers and school boards were put under excessive state control. Today bilateral cooperation is limited to the annual exchange of 16 schoolteachers in accordance with the educational Greek-Turkish protocol of 1968. By 2001, after a long period of neglect, the exchange of textbooks was regularly carried out. However, so far, no thorough attention has been paid to the content of textbooks and the adequacy of the curriculum, with the exception of the upgrading of the Greek part of the curriculum of the minority schools of Thrace (Achieved through the “program of Muslims students”, 1997-2007, University of Athens). In Greece a high number of minority students attend the mainstream Greek elementary and high schools, which provide higher quality education. After 1997, a special entry quota, facilitate Muslims to enrol to Greek universities. The Special Pedagogical Academy of Thessaloniki (EPATH) educates Muslim teachers for the implementation of the Turkish part of the curriculum of the minority schools of Thrace. However, the Academy suffers from deficiencies namely a low quality of training and non-equivalence to mainstream Greek Pedagogical University Departments.

In the case of the Greek Orthodox schools of Turkey, the falling number of students puts the discussion around education of the minority at a critical standpoint, the essence and content of which cannot be tackled by this report alone.

In both minority educational systems, the scope of the educational procedure should be reconsidered under the light of modern scientific pedagogical research and through dialogue. Thus, social inclusion and success for the graduates of minority schools would be safeguarded along with preserving minority culture, language and

identity through a new clear and functional legal framework.

E. Religious freedom, religious leaders

Religious freedom in both states is placed under the general legal frame as set by constitutional law and the relevant international law (for instance article 9 of the ECHR). Greece and Turkey have a different starting point on their relation to religion: Greece disposes an official “prevailing religion” while Turkey is a secular state. In that context, Islam in Greece is recognised officially and the operational bodies of the Muslim minority (e.g. the Moufti offices) enjoy the status of public legal bodies, while the position of minority religions in Turkey, although it would be indifferent for the secular state, stems from the Lausanne Treaty under a *sui generis* frame.

Article 42 of the Treaty can be considered as the legal basis for the application of Islamic law in family matters in Greek Thrace in a rather loose manner, as it merely provides for the “regulation of family or personal status in accordance to the minority’s customs”. According to article 42 para. 2, the government and the minority have the right to put any relevant dispute under international arbitration. However, this possibility was never used, nor a substantial discussion was ever opened and the already established institutions continued to operate. In Turkey, the minorities, albeit non-voluntarily, signed a declaration of the non-use of article 42 in 1926. Since then, the Turkish Civil Code is applicable to all Turkish citizens with no distinction of religion abolishing parallel religious jurisdictions.

The main organisational bodies related to the legal recognition of Islam **in Greece** are the three Moufti offices based in Thrace. The Moufti Office of Rhodes is not legally recognised. The Mouftis of Thrace are the religious leaders and the head of the Komotini, Xanthi and Didymotiho Offices (in the latter a deputy Moufti holds the office). Their legal status stems from the 1881/1913 regulations where one Moufti per Muslim community was granted jurisdiction over family and inheritance disputes

(personal status). Act 1920/1990 acknowledges three Sharia Courts in Thrace, whose jurisdiction should be in theory concurrent to mainstream civil courts and their decisions not contravening the Constitution. In practice, the possibility to apply in a Greek civil court has been very limited. Moreover 99% of the Moufti decisions are ratified by the Greek Courts even if they are infringing women's and children's rights as perceived by the Constitution or the ECHR. A second issue regards the legal position of the Moufti as far as the manner of selection in office is concerned. Act 1920/1990 provides for the Moufti to be appointed by the government and not elected by the Muslims of his constituency (as it was provided for by the previous Act 2345/1920, but not implemented). Strong reactions by the minority led to the election by a number of Muslims of two Mouftis in Komotini and Xanthi, who act in parallel to the appointed Mouftis. In the 1990's the two elected Mouftis were persecuted and condemned by Greek penal courts for "pretence of religious authority". The ECtHR upheld that the persecutions were violating religious freedom according article 9 of the Convention⁸.

According to the recently adopted Act 3536/2007, 240 imams would be hired at state expenses for serving in the mosques of Thrace. The Moufti of Komotini reacted and denounced the act (which remains to be not implemented) as the imams would be selected by a state committee with the least participation of the Muslim religious authorities. The opening of a School of Islamic Studies as provided for by Act 1920/1990 was never implemented. Last, the establishment of a mosque in Athens and a Muslim cemetery for the Muslims from Thrace who live there (along with the outnumbering alien Muslims) is still pending.

In Turkey, the legal position of the Ecumenical Patriarchate of Istanbul perpetuates a twofold problem: The first issue is the denial by the Turkish state to accommodate its legal personality as a minority body. Turkey recognises the Patriarch, at a personal basis, as head of the Greek Orthodox Church (also the Armenian Patriarch and the

⁸ *Serif v. Greece, Aga v. Greece* (No 2, 3 and 4).

Jewish Chief Rabbi for the Armenian and Jewish minorities respectively). Having this as the sole recognition undermines the operational needs of the Patriarchate as an overall institution with a central position in minority affairs.

The Turkish authorities are rather negative to recognise the title “Ecumenical” for the Greek-Orthodox Patriarchate. However the title “Ecumenical” refers to the historical ranking among the Greek-Orthodox Patriarchates all over the world with an internal ecclesiastical connotation and importance and falls within the religious freedom of expression and autonomy of minority protection. Since recently the Turkish government seems to have politically played down this issue.

The operation of the theological school of Halki (Heybeliada) brings up one of the most important issues regarding religious freedom of the Greek-Orthodox minority in Turkey. The school was closed down in 1971 by a governmental decision and since then operates sporadically only for summer courses. The reopening of the theological school becomes of vital importance for the Greek-Orthodox Church, as it is the only school, which could provide the already shrunk Church community with clergy.

As a pace towards good practices worth mentioning the occasional permits granted by the Turkish government upon request to the Ecumenical Patriarchate to celebrate mass in Orthodox Churches which used to belong to the exchanged Orthodox communities and now belong to state or local authorities (in Cappadocia or in the Aegean coast).

F. Foundations (vakoufia, vakıflar)

The minority foundations, the vakf, were inherited by both Greece and Turkey from Ottoman law. These are pious institutions the income of which is attributable to the community. Their real property comes from donations, which can be accumulated. They constitute *sui generis* legal entities, as an exception to the legal framework governing foundations under the Greek and Turkish civil law.

The vakf are encountered as legal entities **in Greece** since 1881 and 1913 for the

Muslim communities of Thessalia and the New Territories, respectively. After the population exchange of 1923 the legal status of the vakf of Thrace was regulated by a series of decrees and the Act 1091/1980 which remained not implemented until 2008, as the main issues regarding the organizational autonomy of the vakf was pending: the registration of the vakf property was never achieved and elections for the members of the management committees was never held after 1964 (up to date). In February 2008, Act 3647/2008 was adopted reiterating basic provisions of the previous act. It provides for elections for the members of the management committees, under a tight supervision of the representative of the government to the region and the local Moufti. It acknowledges the *de facto* division of the vakf property in three groups, in the cities of Komotini, Xanthi and Didimotihio, where they are centrally managed. The scattered vakf property of the villages is locally managed. For the first time reference to the clause of reciprocity was removed and the vakf are expressly deemed as legal entities of private law. Furthermore, the vakf of communities that ceased to exist are put under the management of the most proximate management Committee so that they do not risk vanishing.

However, the act does not clarify the position of Islamic law, to which it makes a direct reference but not for vakif that would be established in the future, stating that the latter would be put under the common civil law on foundations (*idrymata*). Moreover, the Ottoman law continues to be a source of the relevant law, to an uncertain extent and applicability. The act keeps the Vakf Committees under the supervision of the local Moufti and imams, whose role is not clearly defined. The position of the Secretary General of the Region [representative of the government] keeps an important decisive control: His authority to establish a group of vakf apart “exceptionally” under a special committee and his authority to determine the election process would hardly comply with article 40 of the Treaty of Lausanne as it restricts the autonomy of the Vakf Committees. Moreover, the school vakf are separated from the main group of vakf. Last, the Act allows the disposal of the vakf income for exclusive and restrictively enumerated scopes.

As far as the taxation of the vakf property is concerned, the issue has been normalised by article 7 of Act 3554/2007, according to which the vakf of Thrace were exempted from any taxation or debt, or any other legal burden (mortgage etc.).

For once more the vakf of Rodos and Kos were ignored by the law keeping in force an obsolete Italian decree (12/1925) and allowing the management of the vakf by appointed Committees (Organisations of Muslim Properties).

In Turkey the vakf deal with a more complex issue of the overall vakf of the Ottoman Empire comprising of both Muslim and non-Muslim vakf. Act 2762 of 1936 constituted the main legal source of law on the vakf, which nationalised the Muslim vakf and governed the “community vakf” under a minority protection perspective. So, the 87 Greek Orthodox vakf and their real property, which is attributed to the 56 communities, the Ecumenical Patriarchate and 5 ‘Major Foundations’ [*Meizona Idrymata*] was registered and governed by this law under the tight supervision of the General Directorate of the Vakfs (Vakıflar Genel Müdürlüğü- hereinafter VGM). Through the decades, amendments and case law (especially after 1974) put minority vakf property and their management bodies in a difficult position: excessive expropriation, loss of property, loss of direct management in favour of VGM (like the “occupied vakf”, or *mazbut*) led to limitations in the capacity of self-management and considerable reduction of property value. Elections for the management committees of the vakf were held after the early 1960s only once in 1991. Legal shortfalls and restrictions in the enjoyment of community property were highlighted by the regular reports of the European Commission in the frame of the Turkey’s EU candidacy. In the process of alignment with EU political criteria, Turkey adopted 2002-2004 a series of acts and bylaws (Act 4771/2002, Act 4778/2003, Regulations 10.10.2002 and 24.1.2003 etc.), which enhance liberal policies but not to a sufficient or satisfactory level. What was secured in this wave of reform and the ensuing registration process was a number of real properties, which were safeguarded in favour of the minority vakf and elections of the committees: For the Greek-Orthodox communities elections

were held in 2007 and beyond. In that context a new law on the vakf was needed. After having suffered legal and political ramifications and a presidential veto, the draft was adopted as Act 5737/2008. Still its implementation is pending as a relevant appeal was brought before the constitutional court. The new Act takes a few liberal steps ahead providing for the representation of the minorities in the VGM's General Assembly, the safeguard of the newly acquired properties by the vakf, the purchasing and selling of property without restrictions, but ignores the issue of the lost properties after 1974 in favour of the state or the VGM and those sold to or registered in the name of a third person, the category of *mazbut* ("occupied" by the VGM), which contradicts the Lausanne principle of autonomy and does not provide for due indemnity. Last, it is not clear whether the clause of reciprocity would be applicable only to foreign vakf or also to community vakf, the latter case being in contradiction to the legal framework of minority protection. Bylaws are expected for implementing Act 5737 regarding the technicalities on the election of the vakf boards and the registration of the vakf real property.

The recent case law of the ECtHR shed light to the content of the right to property regarding the vakf in Turkey opening the road to new legal considerations⁹. However, article 101 of the Civil Code regarding the establishment of common foundations would impede an attempt for the normalisation of the minority foundations, as it forbids a foundation to "support a group of certain descent or community".

G. What is the role of Greece and Turkey as kin-states of the minorities? To which extent reciprocity is applicable in minority protection?

The interdependence of the *droit de regard* on their mutual minorities by Greece and Turkey ensued a series of situations which often would not comply with the content of 'minority protection' as prescribed by the Treaty of Lausanne and other relevant

⁹ *Yedikule Surp Pirgiç Ermeni Hastanesi vakfı v. Turkey, S.Ö.A.K v. Turkey, Institut des prêtres français et autres contre la Turquie*, and mainly the case: *Fener Rum Erkek Lisesi Vakfı v. Turkey*. The pending case and the expected judgement of the ECtHR regarding the Greek orphanage of Büyük ada would bring new arguments into the relevant discussion.

human rights instruments. To understand the role of the kin-state one should define the ties through which such a kinship is established. The usual “material” of such a kinship is the national ideology of the kin-state reflected upon the kin-minority and the consolidation of such an ideology within the latter. Thus, one should analyze what the Turkish and Greek nations “consist of”, in order to determine the legal premises enabling the kin-state to exercise the relevant policies through national kinship on their “soydaş” and “homogeneis” [people of national descent in Turkey and Greece, respectively]. In that context, both Greece and Turkey act as kin states in favor of their kin minority applying financial and logistical support: offering salaries, pensions, scholarships to the kin minority are the most common means encountered in both cases, based on legal regulations or through administrative practices. On the reverse point of view, each state of citizenship often considers these measures applied by the kin-state as excessive policies intervening within the domestic state affairs.

A second level of interference between the two states while applying the Treaty of Lausanne lies on the notorious clause of reciprocity. As article 45 of the Treaty conveys the same obligations to Greece that in the previous articles (37-44) refer directly to Turkey gave the ground for long discussions and arguments that in case that a state violates or neglects its conventional commitments, then the counter party (Greece/Turkey) would legally have the discretion to apply relevant measures and policies to her own minority.

The tale of taking negative measures against the one or the other minority begun as soon as the legal protection was set up. The issue whether legal reciprocity could be applied at normative level on the obligations regarding the reciprocal minorities by Greece vis-à-vis Turkey and vice versa has been clearly answered by modern human rights international law according to which human/minority rights cannot depend on other states’ behaviour. Moreover, reciprocity in international law is perceived as a principle applicable on aliens and not on citizens of the state. However, political practice and legal texts in both Greece and Turkey evoking the very same Treaty of Lausanne as a source for the application of reciprocity, rendered all legal and moral

arguments null and void, where the least mistreatment of the one minority resulted in equal if not multiplied reprisals (especially from 1964 to mid 1990s) to the other minority. Consequently, applied reciprocity had in most cases only negative aspects putting both minorities at the position of hostages. Citizenship offered a ground for applied counter measures as more than 12,000 Greek nationals who were members of the minority of Istanbul were expelled in 1964, triggering the flight of an additional 50,000 or more until late 1980's and in Greece, more than 50,000 Muslims lost their Greek citizenship according to article of 19 of the Code of Citizenship (which was abolished in 1998). As for the stateless persons, recently (2007-08), less than 80 Muslims who were stateless residents of Greece, in Thrace, were granted back the Greek citizenship or gained before the courts.

E. What would be the perspectives for modernising the content of the minority protection?

Applying and interpreting according to political assumptions, the already old-fashioned Treaty of Lausanne suffers from chronic misunderstandings, which undermine its legal credibility and applicability. New legal models based on social, ethnic, linguistic, religious and economic realities would offer adequate solutions. Furthermore, a multilateral supervision would safeguard the content of minority protection reducing political instrumentalisation. The Framework Convention on National Minorities and the Charter on Minority or Regional Languages of the Council of Europe would offer Greece (who signed the Framework Convention in 1997, but not yet ratified) and Turkey (nor signed neither ratified it) the ground for an adequate legal minority protection. As minorities become a “sensitive issue” they are often not subject to fundamental principles of rule of law, accountability, and clarity of administration etc. from both the state of citizenship and the kin-state (often the minorities themselves, in the management of their internal affairs, contravene these principles). A “state of exception” puts minority issues out of the normality of rule of law as it should be perceived in a modern multifaceted democracy. As a conclusion, it

could be said that both states:

1. Retain the obsolete millet-like system of granting minority rights through religion.
2. Obscure the threshold between private/minority and public/state sphere facilitating the trend of excessive controlling patterns to the detriment of the minority autonomy to self-administer internal affairs.
3. Often turn fields of bilateral state cooperation into domains of antagonism and applied counter measures.

As a general comment, despite the quantitative asymmetries and procedural dissimilarities that one may observe in the historical route of deficient minority protection in both states, law could have taken more liberal steps taking into account the scope of the Treaty of Lausanne in light of human rights law (especially the ECHR and the case law of the Court of Strasbourg). Even under the Treaty of Lausanne a more clear division of the private/minority and public/state sphere could be safeguarded: in the first the minority exerts decisive and managerial authority and in the latter the state supervises as a guarantor of the principles of clarity, fair administration and accountability in favor of the minority. As long as minority issues are at the centre of unspoken and tacit political goals, by any state, even the most adequate legal solution would be too weak to heal the problems.

Annex A

TREATY OF PEACE WITH TURKEY SIGNED AT LAUSANNE, JULY 24, 1923

THE BRITISH EMPIRE, FRANCE, ITALY, JAPAN, GREECE, ROUMANIA and the SERB-CROAT-SLOVENE STATE, of the one part, and TURKEY, of the other part;

SECTION III. PROTECTION OF MINORITIES.

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 employments, 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.