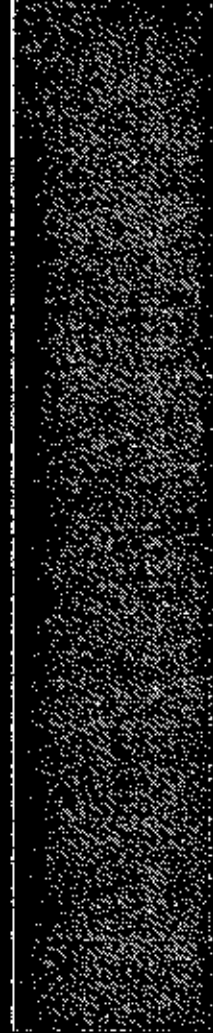


# Human Rights in Turkey



# *Human Rights in Turkey*

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and finance sectors. Consequently, the bankruptcies of many banks and subsequent contraction of the banking sector during the financial crises of November 2000 and February 2001 had profound effects on the media companies. Especially the 2001 economic crisis forced downsizing and restructuring, which resulted in massive layoffs, including those of a large number of journalists.

Since the 1990s, the ownership of some media companies has kept changing due to the financial instabilities or transactions among different groups, reinforcing the concentration of ownership. Recent studies on the Turkish media, conducted by Turkish or international researchers or organizations, identify the concentration of ownership as a major impediment to the freedom of press and broadcasting, and one of the primary causes of the degeneration of journalistic integrity and ethics in Turkey (*Journalism and the Human Rights Challenge 2002*).

### Conclusion

The freedom of press and media are crucial to the development of democratic life and politics. However, the governments and other state officials in Turkey have tended to view the press and media as culprits of instability and have tried therefore, in different ways and with various degrees of success, to manipulate and control their operations. Thus, the state control of the press and broadcasting has been the major obstacle to the freedom of press in Turkey, but the recent changes in the legal framework promise some significant improvements. Since the 1980s, the emergence of large media conglomerates raised new concerns, and economic and commercial considerations gained ascendancy. The phenomenal transformation in the 1990s of television broadcasting into a multichannel competitive system was another important change that deeply influenced Turkish journalism. The increased sensitivity to the market pressures started to define what is worth covering and broadcasting, especially during the prime time. As the concentration of ownership and the media connection to the corporate world continues, there is a real danger that "the tyranny of the market may replace or supplement governmental pressures" (Randall 1993). These recent developments in Turkey demonstrate that freedom of press and broadcasting cannot be seen as threatened only by the political pressures but must be defended against powerful economic interest groups as well.

### Chapter 3

## The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues

BASKIN ORAN

The definition of the concepts of minority and minority rights in Turkey has been based on a peace treaty that was signed in Lausanne on 24 July 1923, between the British Empire, France, Italy, Japan, Greece, Romania, and the Kingdom of Serbs, Croats, and Slovenes on oneside, and Turkey on the other. Following the Turkish nationalists' victory in the War of Independence against Greece, backed by England (which had occupied the country after the First World War), this treaty replaced the Treaty of Sèvres of 10 August 1920, which had been imposed upon the Ottoman Empire after the war, and it recognized the Ankara government as the representative of Turkey.

When the League of Nations was formed after the First World War, a tripartite criterion was employed to define minorities in racial, linguistic and religious terms. Minorities fitting into any of these three categories were granted not only equal rights with the majority but also internationally guaranteed rights that did not apply to the majority (e.g., building their own schools and using their own languages).

However, the Turkish delegation in Lausanne did not accept the full criterion as applicable to Turkey; it recognized only "non-Muslims" as constituting a minority, a position that was accepted at the conference. Since then, Turkey has insisted on using this definition, always invoking the Lausanne Treaty in its international treaty agreements by appending an "interpretative statement" (a term employed by the Turkish Ministry of Foreign Affairs) that reads: "The Republic of Turkey reserves the right to implement Article [number of article] of this agreement in accordance with the relevant articles of the Turkish Constitution and in accordance with the relevant articles and procedures of the 24 July 1923 Lausanne Peace Treaty and its annexes."

This chapter analyzes the content of the Lausanne Peace Treaty, examines its interpretation and application by Turkey, and discusses the validity and consequences of such interpretations. It makes the following arguments. (1) Turkey has employed a very narrow definition of "minority" and used it to limit the applicability of the rights articulated in the Lausanne Treaty as well as the subsequent human rights treaties. (2) Even the rights of non-Muslim minorities that were recognized by the state have been continuously violated. (3) The official position on minority definition and rights, framed by the political conditions of the 1920s and 1930s, is outdated and out of sync with the rest of the world. (4) The official position and state policies have been counterproductive, but with the recent legal reform packages, an irreversible course in favor of human rights has been set in Turkey. (5) These reforms carry a special weight for being enacted at a time when the country's political climate was charged by the "Sèvres syndrome," which summoned an aura of McCarthyism against the advocates of minority and human rights.

### The Official Position on the Definition of Minority

The official position of Turkey on minority rights can be viewed by dividing it into two aspects: (1) in the Lausanne Treaty, the term "non-Muslims" is used to replace the minority criteria prevalent at the time; and (2) the international rights recognized by international organizations are granted only to non-Muslims.

### LIMITING THE DEFINITION TO NON-MUSLIMS

A distinctive characteristic of all the minority protection agreements signed immediately after the First World War was the recognition of race, language, and religion in defining minorities. This became the standard practice and was imposed by the victors, the Principal Allied and Associated Powers (PAAP, i.e., United States, Great Britain, France, Italy, Japan) on some of vanquished states (Austria, Bulgaria, Hungary, and the Ottoman Empire), on some victorious countries that expanded their territories (Greece and Romania), and on countries established after the war (Poland, Serbian-Croatian-Slovenian State, and Czechoslovakia). In fact, the Polish Minorities Treaty, which was the first of such instruments, served as a template for the subsequent treaties.<sup>1</sup> However, the "racial, linguistic and religious minorities" reference is replaced in the text of the Lausanne Treaty with the term "non-Muslims." This may be explained by the relatively higher negotiation power of the Turkish delegate, which emerged victorious from the Turkish War of Independence (1919–22).

Moreover, the definition of minorities in the Lausanne Treaty was not based on an inclusive parameter of "religion." Even the "religion" criterion was reduced to a "non-Muslim" reference. Had the parameter of religion been accepted, as noted by Dr. Rıza Nur (1967, 1044), the deputy head of the Ankara delegation at the Lausanne negotiations, the Alavis, whose religious practices are very different from Sunni Muslims, would have been also recognized as a minority and therefore covered by international guarantees.

### INTERNATIONAL RIGHTS

The second fundamental differentiating characteristic of all the minority protection agreements following World War I is that the rights granted to racial, linguistic, and religious minorities are "provisions of an international character." This provision, spelled out in Article 12/1 of the Polish Agreement, and carried into the Lausanne Treaty as Article 44/1, reads: "Turkey agrees that, in so far as the preceding Articles of this Section affect non-Muslim minorities 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."

Although the system of the League of Nations does not exist today, the treaty and the issue of rights is a matter of international political responsibility for Turkey, and a part of its national law (Law No. 340). Moreover, according to Article 90/5 of the 1982 Constitution, "International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made regarding these agreements, on the ground that they are unconstitutional." Therefore, the Lausanne Treaty has at least the same force as the Constitution.

Thus, according to the provisions of the Lausanne Treaty, *it is legally correct for Turkey to consider only non-Muslims as minorities*. This legal inference also corresponds to the general conviction in Turkey that only non-Muslims should be considered as minorities—a conviction that is determined by historical, political and ideological factors. Historically, the millet system, maintained by the Ottoman Empire since 1454, treated only non-Muslims as minorities because within this system, all Muslims, whatever their ethnicity or sect, were considered as one "Islam Nation" (*Ümmet*) and first-class members of the majority (*millet-i hakime*). Only non-Muslims formed separate millets of second-class citizens, and each millet was defined with respect to its religion and confession (e.g., Greek Orthodox, Armenian, Protestant, Catholic, Jewish). Politically, the protective attitude of the European countries over the Christian minorities in Turkey gained speed and strength in direct proportion to the weakening

of the empire, and it was used as a pretext for interfering in the internal affairs of the empire. Consequently, the Muslim majority has always considered these minorities as "the other." Ideologically, the founders of the Republic were determined to avoid further disintegration of the country, and thus they did not grant international minority rights to the Muslim flank of the population, which formed the bulk of the mosaic inherited from the Ottoman Empire. This impulse became stronger especially after the Kurdish insurgence of 1925, which erupted only sixteen months after the proclamation of the Republic.

#### Denial or Violation of Rights Recognized by the Lausanne Treaty

Although Turkey may be following the proper definition of minority, as stated by the Lausanne Treaty, it has been failing to implement the Treaty's provisions fully. Turkey has not only been violating the rights granted to its non-Muslim population, but it has been also denying some rights granted by the Lausanne Treaty to various non-Muslims groups, under Section 3.

#### THE RIGHTS GRANTED TO NON-MUSLIM CITIZENS HAVE NOT BEEN FULLY IMPLEMENTED

The violation of the non-Muslim population's rights takes two forms: (1) Not all of the non-Muslims are allowed to enjoy the rights granted to minority groups. These applied only to the three largest minority groups: Greeks (Rum), Armenians, and Jews. Although the treaty consistently employs the term "non-Muslim," nowhere in its 143 articles are these three groups singled out. Yet, smaller Christian groups, such as Syriacs, Caldeans, Assyrians, and Nestorians, have been left out of the treaty's protection, deprived of the right to "establish, manage and control . . . any . . . schools with the right to use their own language . . . freely therein" (Article 40), and of the right to establish foundations, and so forth. The reason for excluding these groups from the protected minority is not clear. One possible explanation may be the lack of a kin-state that would serve as an advocate of these groups. (2) Some rights spelled out in the treaty are denied even to the three major non-Muslim minority groups. The financial assistance enumerated in Article 41/2 was not actualized not until after the 1950s; the special commissions established in Article 42/2 were not implemented. The rights related to religious foundations that are clearly expressed in Article 42/3 were not put into use from the 1970s through 2002.

The notorious "1936 declaration," related to non-Muslim foundations (referred to as "Community Foundations" in Turkish law), is a striking

example of discrimination against non-Muslims. In 1936, the Law on Foundations (*vakıf*) ordered all the foundations to submit a property declaration listing immovables and other properties possessed by the foundation. The underlying reason for this law was to dry out the financial resources of the "Islamic" foundations, which were seen as threats to the new secular regime. After Mustafa Kemal Atatürk's death in 1938, those property lists were forgotten, but the escalation of the Cyprus conflict to a military confrontation between Turkey and Greece in the 1970s changed the situation. The General Directorate of Foundations required non-Muslim foundations to resubmit their regulations, called "Vakıfname." However, none of them had a Vakıfname because these foundations had been established under the Ottoman rule by individual decrees of the sultan of the day. The General Directorate of Foundations responded to this problem by ruling that the declarations of 1936 would be considered their Vakıfname. In case these declarations did not carry a special provision entitling the foundation to acquire immovable property, the General Directorate would expropriate all of the immovable property acquired after 1936.

The non-Muslim foundations challenged the ruling, arguing that the declarations submitted in 1936 were merely a list of immovable properties possessed by each foundation at that date, but they argued to no avail. No matter how these properties were acquired (purchases, donation, lottery, inheritance, etc.) expropriations went ahead, despite the fact that they were in violation of the Lausanne Treaty. The expropriated properties were returned to their previous owners or to their beneficiaries at no cost, and if there were no inheritors, they were acquired by the treasury at no cost.

When the case was brought to the Supreme Court of Appeals (Yargıtay), the Second Legislative Branch of the court upheld the policy in its unanimous ruling of 6 July 1971, which included the following statement in its justification: "It is evident that the acquisition of immovable property by non-Turkish legal persons is forbidden" However, the legal person that the court referred to and banned from acquiring property, the Balıklı Greek Orthodox Hospital Endowment (Balıklı Rum Hastanesi Vakfı), was not a "foreign" endowment. When the issue was brought before the General Board of Legislation of the court on 8 May 1974, the same ruling and justification were maintained. The following year, the court's First Legal Department reached a similar verdict:

Except under the conditions specified by either Law No. 1328 or in Article 44 of the Law No. 2762, foreign nationals are forbidden from acquiring real estate in Turkey. Because these decrees concern the public order, there is nothing against the law for the plaintiff institution to challenge the unlawful behavior of the defendant institution, or in taking legal action for the annulment of the unlawful

disposal. Therefore, based on the reasons explained above and on the other reasoning indicated in the court verdict, it is unanimously decided that the improper appeals be rejected and the court decision be approved.<sup>2</sup>

The attorneys of the Balıklı Greek Orthodox Hospital Endowment appealed for the reevaluation of the verdict. This time the same branch supposedly admitted the mistake in considering some Turkish citizens as foreigners because they were non-Muslim, but insisted on its discriminatory position in the new ruling of 11 December 1975: "... the reference to 'the laws that forbid foreigners to own real estate' in the decision of approval is due to an error. . . . [The court decides] to delete that phrase by amendment [and] otherwise . . . denies the request for correction of judgment."<sup>3</sup>

#### THE RIGHTS GRANTED TO GROUPS OTHER THAN NON-MUSLIMS ARE NOT HONORED

It is true that according to the Lausanne Treaty, the definition of minority covers only non-Muslims, but Section III of the text also provides rights to some other people. They can be categorized into four groups (Oran 2001):

*A. Non-Muslim citizens of the Republic of Turkey.* Members of this group should enjoy full freedom of movement and of migration (Article 38/3), as well as the same civil and political rights enjoyed by Muslims (Article 39/1). They have equal rights to establish, manage, and control, at their own expense, any charitable, religious, and social institutions, and any schools and other establishments of training instruction and education, with the right to use their own language and to practice their own religion freely (Article 40). In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Muslim minorities these minorities are assured an equitable share in the enjoyment and application of the sums that may be provided out of public funds under the national, municipal, or other governmental budgets for education in their mother tongue (Article 41/1 and 2). The state should respect non-Muslim minorities' traditions and customs in regard to their family or personal status (Article 42/1). These minorities cannot be compelled to perform any act that would constitute a violation of their faith or religious observances, and they cannot be forced to perform official business on their weekly day of rest (Article 43). It goes without saying that the rights extended to other three groups would also apply to this group.

*B. Citizens who speak languages other than Turkish.* Members of this group would be given adequate facilities for the oral use of their own language before the courts (Article 39/5). The rights of this group would also include the rights recognized for groups in categories C and D.

*C. All citizens.* Article 39/3 of the Lausanne Treaty clearly stipulates that "differences of religion, creed or confession shall not cause any discrimination, and Article 39/4 articulates the right to use any language in matters relating to citizens' private or commercial relations. The rights of this group also include the rights of Group D.

*D. All inhabitants.* All inhabitants would enjoy "full and complete protection of life and liberty without distinction of birth, nationality, language, race and religion" (Article 38/1), and would be entitled to free exercise of religion or belief (Article 38/2), and without distinction of religion, they would be equal before the law (Article 39/2).

To each of these four groups of people, the Lausanne Treaty grants different rights that cannot be annihilated (Article 37). However, the non-Muslims are privileged in two ways. First, they have more numerous rights compared to the other groups. Second, as indicated in Article 44/1, their rights and privileges are placed under international guarantee. Nevertheless, by articulating the rights for "all Turkish citizens," and even for "everyone living in Turkey," Section III makes the Lausanne Treaty a document of human rights (twenty-one years before this term made its formal entrance to international law), not simply one of minority rights.

However, the comprehensive nature of the document has been neglected and even actively rejected by many. Those who treat the Lausanne Treaty as limited to addressing the rights of non-Muslim minorities tend to advance two arguments: (1) since the heading of Section III is "Protection of Minorities," there can only be minority rights under it; (2) rights were granted only to non-Muslim minorities.

1. *There can only be minority rights under Section III.* However, a careful study of the historical context of the document would reveal the otherwise. First, although the PAAP primarily started out to solve the minority problems in Central and Eastern Europe—problems that were one of the two catalysts for World War I—they also granted rights to everybody living in those countries. They were compelled to do so to protect their own citizens who were engaged in trade in these countries. In fact during the Lausanne Conference, Sir Horace Rumbold, a British man who was head of the Subcommission of Minorities, eventually consented to the Turkish delegation's demand on limiting minority rights to non-Muslims, on the condition of using a broader reference for some other categories. Minute number 9 of the session held on 23 December 1923 reads: "Sir Horace Rumbold stated that if the Turkish Delegation agrees that the term 'all inhabitants of Turkey' is used instead of the term 'minorities' in the paragraph 1 of the new Article 2 [the article was later finalized as Article 38/1 and 2], he would agree with the usage of the term 'non-Muslim minorities'" (*Lozan Barış Konferansı* 1970, 206).



Second, and more important, even though the term "human rights" was introduced as early as 1789, its use was limited to the national context only. This term first appeared in the international field after World War II, with Article 1/3 of the United Nations Treaty. Since the term "human rights" was not in circulation before then, regardless of the drafters' intentions, it could not be possibly used in the heading of Section III of the treaty in question.

Third, the term "minority" is not a specific term but a generic one. According to the 1969 Vienna Convention on the Law of Treaties, non-generic terms used in a treaty should be taken with their regular meanings at the time of the signing of the treaty. But the meaning of generic terms has to be determined in line with the subsequent developments in international law over the years. As a matter of fact, while interpreting the statement "disputes regarding the territorial status of Greece," the International Court of Justice, in its decision of 1978 on the case Greece versus Turkey concerning the Aegean Continental Shelf, stated that this term should be interpreted according to its meaning in 1978 rather than (as the Greek part argued) its meaning in 1928 or 1931 (par. 77-80).<sup>4</sup>

2. *Rights were granted only to non-Muslim minorities.* This position can have some support in the report presented by Jules Cesar Montagna, chairman of the Minorities Subcommittee, to Lord Curzon, chairman of the First Commission, on 7 January 1923, and by Lord Curzon's response, as recorded in minute number 19 of the session on 9 January 1923: "The Sub-Commission considered that, based on an article of general context (see Article 2 of Draft Bill), the application of these provisions could be limited to non-Muslim minorities. The Sub-Commission considered it impossible to insist that the Muslim minorities be included in the said protection" (*Lozan Barış Konferansı* 1970, 309-10). This "Draft Bill, Article 2," was later to be finalized as Article 38 of the Lausanne Treaty.

However, when these references are placed in a larger context, the view that the rights were granted to non-Muslims only cannot hold for two reasons. First, according to the general principles of law and also to Article 32 of the Vienna Convention on the Law of Treaties, preparatory studies and minutes are taken into consideration only if the text of a treaty is not clear. Articles 37 and 39 of the Lausanne Treaty, on the other hand, are unambiguously clear. Second, what Montagna and Curzon meant was minority rights "under international guarantee," because that was the only meaning attributed to the term "minority rights." The issue here is not whose rights are mentioned but whose rights are guaranteed by the League of Nations. The international guarantee, granted in Article 44/1 of Section III, covers only non-Muslims; such a guarantee is not applicable to the rights granted to people belonging to the other three groups noted above.

#### THE SCOPE AND INTERPRETATION OF ARTICLE 39

The language provisions of Article 39 are particularly relevant today to the rights of Kurdish citizens of Turkey, and deserve a special attention. The full text of Paragraph 5 of the article reads: "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." "Turkish nationals of non-Turkish speech" does not mean those who cannot speak, nor can it mean those who know languages other than Turkish. What is meant is "those whose best language (mother tongue) is other than Turkish." This provision allows an exception to the rule of exclusive use of Turkish as the official language at state offices, and it is undoubtedly based on a concern over the proper defense of one's rights in court.

The full text of Article 39/4 is as follows: "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." We can highlight three points in interpreting this clause. First, it grants all Turkish citizens the right to use any language of their choice in all private and public spaces, except in conducting official business and in state offices. Second, since in the early 1920s radio broadcasting was available only in the United States and television did not exist, the expression "in the press, or in publications of any kind" should now be read to include radio and television broadcasting as well. Finally, although this clause concerns all Turkish citizens, it mainly benefits Turkish citizens whose mother tongue is not Turkish.

However, it is frequently argued that the purpose of the signatories was not granting the language rights to Kurds or other Muslims who speak a different mother tongue. They should be reminded that Muslims had been using different languages, both in public and private affairs, prior to the establishment of the Republic (e.g., it was a regular practice to submit a written petition in Arabic in Baghdad). Inheriting a linguistically diverse population and needing to accommodate them, the Turkish delegation at the Lausanne Conference did not object to these clauses of language rights, even though the official language of the new state would be Turkish. In fact, these provisions did not stir any debates during the drafting stage. The text of Articles 39/4 and 39/5 were directly copied from the Poland Minorities Treaty (Articles 7/3 and 7/4) by the Turkish delegate, which incorporated them as Articles 3/4 and 3/5 into its draft proposal presented on 18 December 1922.<sup>5</sup> In other words, Article 39 was in fact proposed by the Turkish delegation as well.

Yet, it should be noted that apart from these two clauses of Article 39, the Kurds (and other Muslim Turkish citizens whose mother tongue is not

Turkish) do not have any positive rights, and the rights recognized by the treaty do not fall under international guarantee. However, as mentioned before, all these rights are protected under the Turkish national jurisdiction.

We can summarize the human rights implications of the Lausanne Treaty for today as follows:

- 1) The definition of a minority and the rights brought by the Lausanne Treaty should not be contracted. It defines as minority the non-Muslims only but it articulates certain rights for some other groups as well, albeit without providing international guarantee. Therefore,
- 2) The argument that Article 39 recognizes certain rights of Muslim groups, such as the Kurds, is correct. Protected by Article 37, this article clearly rules out the notion that no language other than Turkish can be used for radio and TV broadcasting in Turkey.
- 3) The above-mentioned interpretation would not contradict the official position on minorities issue, because the rights and liberties articulated in Article 39/4 concern not the minorities but "all Turkish citizens." In fact, the rights recognized in Article 39/5 have been implemented since the beginning of the Republic, albeit with some interruptions in exceptional periods such as the aftermath of the military coup that took place on 12 September 1980.

Whether the Kurds constitute a minority is a complex issue, because in addition to the official rhetoric and practice that refuse to recognize Kurds as a minority, the Kurds themselves, especially the nationalist ones, object to being treated as such. The official line is well known: "The Lausanne Treaty only recognizes the non-Muslims as minorities." The nationalist Kurds' objection to the minority reference stem from different concerns: (1) Minority classification would be a degradation, because in Turkey the concept of minority has been conditioned by the Ottoman millet system, which considered the Muslims as the "sovereign nation" and the minorities (non-Muslims) as second-class citizens. (2) Kurds are one of the two founding peoples of the Republic of Turkey; the War of Independence was fought together with Turks, but later the Kurdish input was dismissed. And most importantly, (3) Kurdish nationalists consider themselves to be a "people," rather than a minority—this approach, in international legal theory, would place them in a category much closer to external "self-determination" (independence).

#### The Minority Issue in Legislation and the Courts

The Turkish state officials' defensive position and reluctance to recognize the diversity of the populations in Turkey find their expression in their

understanding of two constitutional principles: Article 3/1 states, "The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish." And Article 4 adds that this paragraph "shall not be amended, nor shall its amendment be proposed."

#### THE PRINCIPLE OF THE "INDIVISIBLE UNITY OF THE NATION"

"Territorial integrity" of a state is a principle advocated by all and protected in international law. Thus, all international instruments on minority rights take two standard measures to prevent division: (1) they use the term "the rights of individuals belonging to minority groups" to emphasize that the rights are not given to groups (collectivity) but to individuals; and (2) they include a clause such as: "These rights shall only be exercised with the condition that the territorial integrity of the country is respected" (Çavuşoğlu 2002, 127–28)

However, the Turkish Constitution also refers to the "integrity of the nation," which is contrary to the very essence of democracy. As aptly put by Oktay Uygun, "the concept of the indivisibility of the nation is unfamiliar to the Europeans" (quoted in Kaboğlu 2002b, 380), because claiming that a nation cannot be divided would assume that it is monolithic in nature, suggesting policies of assimilation, which would be inevitably shaped by the values of the dominant ethnic and religious groups and take oppressive forms. In Turkey, a monolithic concept of nation was employed in the early days of the Republic, and that authoritarian and oppressive attitude was rectified by subsequent military interventions, especially by the military coup of 12 September 1980. The approach not only denies the existence of minorities or minority rights, other than *what were deemed to be articulated in the Lausanne Treaty*, but also punishes those who make contrary claims and suggestions. This punitive approach has had numerous expressions in Turkish legislation and court decisions:

The Antiterrorism Law of 1991 (Law No. 3173) describes terrorism as "any kind of act carried out by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic . . . , damaging the indivisible unity of the State with its territory and nation" (Article 1). Before it was abolished in June 2003, Article 8/1 of the same law was amended on 6 February 2002, to read: "Written, oral or visual propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the Turkish Republic with its territory and nation will be punished. . . . If this act is committed in a form that encourages the use of terrorist methods, the sentence will be increased by a third and in case of repeated commitment of this act, the penalty of imprisonment will not be converted to monetary penalty."

"The indivisible unity of the state with its territory and nation" is mentioned also in other laws:<sup>6</sup> Article 8 and Annexed Article 7 of the 1934 Law on the Duties and Authority of the Police (no. 2559); Article 5/A of the Law on Turkish Radio and Television (no. 2954); Article 4 of the Law on the Establishment and Broadcasting of Radio Stations and Television Channels (no. 3984); Articles 44 and 55 of the Law on Associations (no. 2908); and Articles 78 and 101 of the Law on Political Parties (no. 2820).

These restrictive legislative expressions are based on the assumption that all claims about the existence of minority groups based on ethnic and linguistic differences would threaten national unity and territorial integrity. Consequently, those who make such claims can be punished for "separatism" or "destructiveness." Until its amendment on 2 January 2003, Article 5 of the Law on Associations imposed the following restrictions: "It is forbidden to found an association with the aim of claiming that there are minority groups in the Republic of Turkey based on racial, religious, sectarian, cultural or linguistic differences or of creating a minority group by protecting, developing or spreading any language and culture other than Turkish." The 2003 amendment mitigated the language: "No association can be founded with the aim of creating differences of race, religion, sect or region or creating minorities based on these differences and with the aim of changing the unitary state structure of the Republic of Turkey . . . in violation of . . . the national security and the public order."

Article 81 of the Law on Political Parties included more restrictive clauses: "Political parties shall not a) claim that there are minority groups in the Republic of Turkey based on the differences of . . . ; b) aim at and work for damaging the unity of the nation by creating minority groups in the Republic of Turkey by protecting, developing and spreading languages and cultures other than Turkish."

The restrictions in the Law on Political Parties were derived from Articles 68 and 69 of the Constitution. Article 68 states that "the statutes and programs, as well as the activities of political parties shall not be in conflict with the independence of the State, its indivisible integrity with its territory and nation." And Article 69 affirms that a political party will be dissolved "if the Constitutional Court determines that the party in question has become a center for the execution of such activities." Consequently, the Constitutional Court has frequently banned political parties for violating the principle of "the indivisible unity of the State with its territory and nation" and for violating the prohibition against "creating minority groups."

#### THE PRINCIPLE THAT "THE LANGUAGE OF TURKEY IS TURKISH"

All states declare one or more official languages and conduct their business and provide education in those languages. In Turkey, the 1982

Constitution and other laws not only define an "official language" by defining Turkish as "the language of the State," but they also restrict the use of other languages within the private domain. Law No. 2932, enacted in 1983 by the military rule (repealed in 1991), prohibits "the declaration, circulation and publication of ideas in a language which is not the first official language of a State recognized by Turkey" (Article 2). This article targets Kurdish (which was the second official language of Iraq at the time), practically banning its use in all public spaces, without using the word "Kurdish." Article 3 of the law asserts that the "Mother tongue of the Turkish citizens is Turkish language." This law and others that restrict the use of languages and non-Turkish cultural expressions (e.g., the Law on Census (no. 1587) prohibits parents to give their children names "that are not appropriate to our national culture") have been found all in violation of the Lausanne Treaty. Several constitutional and legal amendments, undertaken since 1991, relaxed these restrictions but are still short of allowing full freedom (see Mary Lou O'Neil in this volume, Chapter 5).

#### THE CONSTITUTIONAL COURT'S INTERPRETATIONS

The Constitutional Court has the authority to close down political parties, and indeed has banned numerous political parties, frequently by invoking the principle of the "indivisible unity of the nation." This has happened especially in their dealings with left-wing parties, including the following instances:<sup>7</sup>

- The Court closed down the Turkish Workers' Party (Türkiye İşçi Partisi, TİP) in July 1971, by referring to Article 57 of the 1961 Constitution, which protected "The indivisible unity of the State with its territory and nation," as well as Article 81 of the Law on Political Parties.
- The verdict that closed down the Labor Party of Turkey (Türkiye Emekçi Partisi, TEP) in May 1980 finds the Party guilty of "attempting to create a sense of minority in the minds of a certain group of citizens [that] is contrary to the concept of the unity of the State with its territory and nation." Referring to Article 83 of the Constitution, it notes: "In addition to official correspondence, education and national culture should be based on Turkish. In other words, the only national culture in the country is Turkish culture." It also specifies that the Constitution does not allow behavior that would lead to the disintegration of the nation based on elements such as [differences of] religion, language or race in a manner contrary to the principles of Turkish nationalism. On July 1991, the Court closed down

the Turkish United Communist Party (Türkiye Birleşik Komünist Partisi, TBKP) with a similar verdict.

- The Socialist Party (Sosyalist Parti, SP) was closed down in July 1992 by invoking the constitutional clauses and the Law on Political Parties (no. 2820), by noting, "People of every origin live in every part of the country. From a scientific point of view, there are no sufficient [ethnic] characteristics or elements to be considered as minorities."
- The Freedom and Democracy Party (Özgürlük ve Demokrasi Partisi, ÖZDEP) was banned in November 1993, on the grounds that it "intends to divide the unity of the Turkish nation . . . into two as Turks and Kurds. . . . [The] clauses in the program aim at destroying the unity of the country and the nation."
- The Socialist Turkey Party (Sosyalist Türkiye Partisi, STP) was banned on November 1993 on the grounds that various sections of its program violated Articles 78/a and 78/b of the Law on Political Parties, which articulated restrictions on divisive activities aimed at the indivisible unity of the State with its territory and nation.
- When the Democracy Party (Demokrasi Partisi, DEP) was closed down in June 1994, the court verdict specified that "granting minority status based on racial and linguistic differences is not compatible with the integrity of the territory and nation." It also noted that "there is one State, one whole territory, a single nation," and the Lausanne Treaty recognizes only non-Muslims as minorities.
- In February 1997, when the Labor Party (Emek Partisi, EP) was banned, the court verdict noted that "by claiming the existence on Turkish territory of minorities of national or religious culture or of confession, race, or language, the goal of violating the national unity is being pursued by creating minorities through means of protecting, developing, and spreading languages and cultures other than Turkish language and culture."

In most of these cases, the following lines are repeated verbatim to describe the offense: "To create, among citizens who are in such an unprivileged position, the feeling and thought of belonging to a minority, and to demand that they be subjected to a policy of restricted rights, and to expect them to become a minority when they are the very nation itself, can only be interpreted as a violation of the unity of the nation" (Çetin 2002, 80).

The court's verdicts on two cases are particularly illuminating. First, in the TEP case the ruling does make a distinction between "acknowledging differences" and "creating minorities":

to mention in an objective way that the language or religion of a certain group of citizens within a nation is different from that of other groups does not entail,

and of itself, the claim that "there exists a minority." In addition to this, it must be claimed that the community in question must be granted a special legal security for it to maintain its existence and characteristics that distinguish it from other groups, that is to say there must be an open or covert claim that these people have a right to take advantage of the "minority legislation." This . . . is the situation defined and forbidden as "claiming the existence of minorities." (Çavuşoğlu 2002, 135-36)

Thus, the court appears to accept the existence of different identities as harmless, as long as the claims do not go too far to suggest that these identities have a right to benefit from the minority law. However, the court verdict takes a different turn in the subsequent paragraphs: "[But] in view of the fact that the term 'creating minorities' is closely related to the claim that minorities exist,' the former must be interpreted in the same direction as the latter. The conclusion to be reached with such interpretation is that the term 'creating a minority' can only mean 'the creation of the idea, within the community of citizens, that it is necessary for them to benefit from the law of minorities'" (Çavuşoğlu 2002, 136).

The verdict on case of the DEP is more explicit on a monolithic idea of nation and fear of disintegration. It notes that Article 66 of the Constitution, which specifies that "anyone who is attached to the Turkish State by way of citizenship is Turkish," would not mean "the denial of the ethnic roots of the citizens." Thus, "the purpose of legal regulations" on this matter is not "the prohibition of diversity and of their languages and cultures," or "what is banned is not the expression of cultural differences and cultural wealth; it is the employment of these with the aim of destroying the unity of the nation and in connection with this, the construction of a new state order based on divisions by means of creating minorities on the land of the Turkish Republic." It concludes that "the demands for the recognition of cultural identities—which initially seem acceptable demands [but] which aim at separatism—will in time incline toward a break from the whole" (Çavuşoğlu 2002, 127, 141, nn. 23-25).

Fearing that the recognition of diverse identities will lead to the disintegration of the state, the Turkish Constitutional Court considers minority rights not as universal human rights but as a subject of national legislation and within a limited understanding of the Lausanne Treaty. In other words, it finds the universal human rights incompatible with "the indivisible unity of the country and the unitary state."

### Changes in International Notions of Minority and Turkey's Resistance

Since the 1920s, especially after the establishment of the UN in 1945, both the concept of "minority" and international protection of rights evolved.

Space here does not allow a review of these changes, but it is important to note that especially in the 1990s, the concern over minorities moved from "prevention of discrimination" to "protection of minorities." This change expands the obligations of the state. In addition to avoiding discriminatory conduct, which may be defined as a passive/negative duty, the state is assigned an active duty and required to take positive action toward protecting minority rights and creating the conditions for such protection. In various documents, both the Organization of Security and Cooperation of Europe (e.g., 1990 Paris Charter) and the UN (e.g., the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities) make it clear that the question of whether any minorities exist in a particular country is not left to the judgment of that country. International human rights organizations and other NGOs reinforce this new understanding and pressure the states to undertake proper protective measures. As evident in the practice of the Council of Europe's European Commission against Racism and Intolerance (ECRI), the violation of minority rights is increasingly considered to be on a par with racism.

In terms of treaty ratification, Turkey has been active in several human rights systems. In practice, however, it has been reluctant to change. The resistance stems from two interrelated factors that affect the collective political psyche of the country, the intertwined relationship between the supra-identity and sub-identity, and the "Sèvres syndrome."

#### THE RELATIONSHIP BETWEEN SUPRA-IDENTITY AND SUB-IDENTITY IN THE REPUBLIC OF TURKEY

The Ottoman Empire included many sub-identities: Turkish, Kurdish, Georgian, Abkhazian, Armenian, Albanian, Greek, Jewish, and so on. All were recognized by the state, but none of them coincided with the "Ottoman" supra-identity. The same sub-identities continued to exist in the Republic of Turkey, but the supra-identity was changed to being "Turkish." Since this identity coincided with the "Turkish" sub-identity, it created an imbalance in favor of Turks.

The term "Turk" can mean different things. In forging a national identity, the republican regime originally subscribed to a definition of "Turk" based on culture, not race. Even in the 1930s, when the nationalist ideology of the state was pursued in its most rigid form, the main criterion for incoming refugees was "to be attached to the Turkish culture," not being an ethnic Turk. Mustafa Kemal underscored his preference for the "subjective" identity (the one chosen by the individual) against the "objective" identity (the one assigned at the birth) in a dictum pronounced in his famous "Tenth Year Speech" by saying, "How happy is the one who

calls himself a Turk" (instead of "How happy is the one who is born/who is a Turk"). Earlier, during the War of Independence, he preferred employing the territorial reference, "Türkiye," to the ethnic reference, "Türk." For example, he favored using "Türkiye Halkı" (People of Turkey), instead of "Türk Halkı (Turkish People)."<sup>8</sup> In fact, Mustafa Kemal was arguably the first person to ever use the term "Türkiyeli" (one from Turkey). Moreover, he had the term incorporated into four separate articles of the bill proposed to amend the first (1921) Constitution of Turkey (*Türkiye Cumhuriyeti İlk Anayasa Taslağı* 1998).

However, influenced both by the European racist theories that swept the world in the 1920s and 1930s, and threatened by the Kurdish uprisings of the very same period, the regime employed a racial definition of "Turk," from time to time. The desire to eliminate the sense of inferiority created by the term "Sick Man of Europe" also stimulated efforts to forge a strong Turkish identity. These culminated in some extreme policies in the 1930s. Skull measurements were taken to prove that the Turks belonged to the highest echelon of humankind. The 1934 Law on Settlements (no. 2510) used the term "Turkish race." Until the 1950s, an admission requirement for the military schools was "belonging to the genuine Turkish race" (*öz Türk ırkından olmak*), which was later replaced with "being a Turkish citizen."

Moreover, the "Turkish" supra-identity involves religion as much as ethnicity. As a residue of the Ottoman's millet system, only those who are Muslims, better yet Sunni Muslims, are considered to be "Turk." Non-Muslims are referred to by their ethno-religious identity as Greek, Armenian, or Jewish, and so on. This attitude has been codified into the state's policies. Until the 1940s, non-Muslim citizens were registered in the "Eca-nip Defterleri" (Foreigner Registry). A government decree called Protection from Sabotages, published on 28 December 1988, listed non-Muslims as "domestic foreigners (Turkish citizens) and those from other races in the country" as the most likely population that would yield saboteurs. At time of this writing, Article 24/1 of the Law on Private Institutions of Education (no. 625), which stipulates that a Turkish assistant director "of Turkish origin and a Turkish citizen" is to be assigned to "schools opened by foreigners," is applied also to the minority schools (Çetin 2002, 70, 75, 78). In February 2003, a lawsuit to annul the land registry of a non-Muslim minority school building was filed on behalf of the treasury against the Surp Haç Armenian Lycée Foundation: "By a decision taken by the Subcommittee for Minorities of the Interior Ministry that monitors the activities of minorities in regard to national security, the foundation under the name Surp Haç is not legitimate, . . . for this reason the annulment of the title deed of the foundation's immovable property and its registry on behalf of the Treasury is thereby requested."<sup>9</sup>

These examples show that the Republic of Turkey continues to view its non-Muslim citizens as foreign nationals and to suspect their loyalty. Moreover, the supra-identity of "Türklük" (Turkishness), used instead of "Türkiyelilik" (being from Turkey), alienates both the non-Muslims and Kurds, the second largest group after the Turks.

While some citizens and advocates of human rights try to reform the culture and politics of Turkey, there is a significant number of people and institutions that resist any transformation of this supra-identity due to a fear of disintegration. Referred to as "chosen trauma" by professor of psychiatry Vamık Volkan (Volkan and Itzkowitz 1994, 7), this collective psychology in Turkey might be called "Sèvres syndrome."

#### HISTORICAL AND POLITICAL FOUNDATIONS: THE SÈVRES SYNDROME

The Ottoman Empire had to sign the Peace Treaty of Sèvres after its defeat in the First World War. The Sèvres Treaty partitioned the Ottoman land to create several new states, including a Kurdistan and a greater Armenia (see Mary Lou O'Neil's chapter in this volume). Although the Lausanne Treaty replaced the Sèvres Treaty with more favorable conditions for Turkey, the fear that the country would be subject to partitioning again as a result of the collaboration between its minorities and their foreign allies has prevailed. This fear has been intensified by the terrorist attacks and activities of the ASALA (the underground Armenian Army for the Liberation of Armenia) and the PKK (Partia Karkaren Kürdistan, or Kurdistan Workers' Party), which were intense from the 1970s through the 1990s and gave the impression that the Armenians and Kurds would complete a dismemberment left unfinished by the unapplied Sèvres Treaty. The burgeoning Iraqi Kurdish organizations in the "safe haven" created in northern Iraq after the 1991 Gulf War added to the threat. Most important, the fact that the ASALA and PKK were received with sympathy in Western countries led to the perception that Turkey's allies were participating in this dismemberment. The syndrome turned into paranoia.

The ASALA terror ended in the mid-1980s. The ensuing Armenian Genocide resolutions have receded in the last few years. The PKK terror stopped after the capture of the PKK leader Abdullah Öcalan in 1999. But the Sèvres paranoia has been inflamed at every minor incident, leading to numerous urban legends, some of which were hyped up by the sensationalist press (e.g., the Fener Greek Orthodox Patriarchate is buying up property in İstanbul "in order to create a second Vatican"). For some people, the fragile situation faced by the founding fathers in the early days of the Republic still prevails, and the country should take measures to maintain its territorial and national integrity. Others, however, are

eager to make Turkey a "European country," fulfilling the Kemalist quest of reaching the "contemporary civilization" (*muasır medeniyet*) by joining the European Union.

#### The EU and Reform Packages

With the advent of accession to the EU, however, reforming human and minority rights practices became a focus of the legislative agenda. Since the end of 2001, the parliament adopted eleven "EU Harmonization Packages," which included new laws or amendments. We can highlight the progress toward the recognition and protection of minority rights within these legislative reforms.

*The Second Harmonization Package (26 March 2002).* Ban on publishing in a language prohibited by law was repealed from the Press Law.

*The Third Harmonization Package (3 August 2002).* The Law on Learning and Teaching of Foreign Languages was changed to lift restrictions on the right to learn "languages and dialects traditionally used by Turkish citizens." The Law on the Establishment and Broadcasts of Radio and Television Channels (LEBRTC) was amended to allow broadcasting in different languages and dialects traditionally used by Turkish citizens. Article 159 of the Turkish Penal Code (TPC) was modified to make freedom of expression in line with the norms of the European Convention on Human Rights. The Law on Foundations was amended to enable non-Muslim foundations to acquire immovable property with the authorization of the Council of Ministers. The Code of Criminal Procedure (CCP) was amended to allow for retrials both in civil and penal law cases after the decision of the European Court of Human Rights (ECHR).

*The Fourth Harmonization Package ("Copenhagen Package," 2 January 2003).* The Law on Foundations was amended again to replace the Council of Ministers' authorization with that of the General Directorate of Foundations, but the unequal treatment of the Muslim and non-Muslim foundations was not totally eliminated; the law (no. 4771/4) requires the General Directorate of Foundations to "solicit the recommendations of the related Ministries and Public Agencies" prior to approving non-Muslim foundations' request to buy or dispose real estate—a procedure not required for the applications of other foundations. Since the state agencies alluded to here are the Ministry of Foreign Affairs and the security and intelligence agencies, it can be deduced that the reformed law still treats the non-Muslim citizens as "foreign" and suspect. The discriminatory impact of this law has been already observed. According to a news report by the daily *Radikal*, dated 5 May 2003, out of 1,813 applications made by non-Muslim foundations for registration of real estate, 574 were refused, 579 were found "incomplete," and 226 applications were returned as "invalid."



*The Fifth Harmonization Package (23 January 2003).* The CCP and the Code of Legal Procedure have been amended to allow for retrials for cases finalized at the time the package entered into force, as well as for the applications submitted afterward.

*The Sixth Harmonization Package (19 June 2003).* With an amendment to the Antiterrorism Law, the use of force or violence is incorporated into the definition of the crime of terror. Moreover, Article 8 of the same law was repealed to expand freedom of thought and expression. According to the amendments to the LEBRTC, both private and public radio and TV stations can broadcast in languages and dialects used traditionally by Turkish citizens in their daily lives. The application submission period allowed for non-Muslim foundations to acquire real estate is prolonged. Several articles of the Law on Construction are rephrased to address the need for places of worship for people of different religions and faiths. The amendment made to the Law on Census removed the restrictions imposed on parents in choosing names for their children. Finally, new provisions that make retrials for the administrative law cases were adopted in the light of the ECHR rulings.

*The Seventh Harmonization Package (30 June 2003).* With an amendment to Article 159 of the TPC, the minimum penalty for those who "openly insult and deride Turkishness, etc." is reduced and the freedom of expression is supported by decriminalizing thoughts that involve criticisms with no intention of insult. The scope of Article 169 of TPC, concerning the crime of assisting and abetting a terrorist organization, is limited further. A new article, added to the CCP, requires that the cases related to torture and maltreatment be handled without delay. The language restrictions are relaxed further (see O'Neill in this volume).

*The Second Constitutional Amendment Package (May 2004).* The most important change for minority rights was the paragraph added to Article 90/5 of the Constitution: "Should the international treaties on the fundamental rights and freedoms that are duly put into effect and national laws contain contradictory stipulations on the same subject, the provisions of international law would prevail."

In October 2004, a new Penal Code was adopted. People had expected the new law to shift the focus and replace the concerns over "state security" with an emphasis on the protection of individual rights and freedoms. The expectations were very high, but so has been the disillusionment. Soon after it entered into force in June 2005, lawsuits challenging the freedom of expression of intellectuals, journalists, writers started to pour in. They have tended to invoke Articles 216 and 301, which respectively correspond to Articles 312 and 159 in the old Penal Code, as well as a new article that allows one to charge anyone who comments on a court

case with the offense of "trying to influence the judiciary" (Article 288). Moreover, some "nationalists" started to take upon themselves to alert the prosecutor about speeches and newspapers that "denigrated Turkishness," and called for the prosecution of the perpetrators. Prosecutors have been acting on these "call for prosecution" (*suç duyurusu*), as if they were obliged to do so. When the same nationalists approach the courts, claiming that "Turkishness is denigrated. We are Turks. Therefore, we want to be accepted as *partie civile*,"<sup>10</sup> judges comply, again as if they were obliged to do so.

The rise of ethnic Turkish nationalism has been buttressed by two factors: (1) the backlash to the process of integration and globalization, which is perceived by the ordinary citizen as a top-down modernization imposed by foreigners (e.g., the EU harmonization packages); and (2) the militant Kurdish nationalism and PKK terrorism. These can be summed up under the heading "Sèvres paranoia."

## Conclusion

In the 1920s, the Kemalist "revolution from above" had transformed a feudalistic Ottoman Empire into a monistic nation-state. It was a unique development, resulting from the westernized national elites introducing Western culture without involving any direct imperialistic Western intervention. Turkey is now experiencing another "revolution from above" that tries to modify the assimilationist "nation-state" into a pluralistic structure. I think this, too, is a unique transformation, closely linked to the previous experience.

The first modernization project was introduced by the Kemalists, and it created a religious reaction of resistance from below. The second one is now being led by the governing Justice and Development Party (AKP), which embodies the spiritual grandchildren of the 1920s reactionaries. Now, the reaction from below comes from the promoters of the Sèvres paranoia, who happen to be the grandchildren of the Kemalists of the 1920s. This ironic turn of events makes Turkey valuable as a social laboratory, not only for showing how external dynamics can create successful internal dynamics but also for pointing out that even progressive ideologies can impede change and development if not reinterpreted in the light of changing conditions.

As already stated, the legislative reforms required a great deal of effort that was largely fueled by the EU. Their implementation is likely to be stagnated, if not impeded, by the Sèvres paranoia. Moreover, the differences in the ways the terms of minority and minority rights are used by the EU and how they are understood by the majority of people in Turkey

complicate the process. However, in this dynamic country, where the ECHR is slowly becoming a sort of supreme court above the Turkish Court of Appeals, and where the national court decisions violating the European Convention on Human Rights are subject to retrial, the reversal of the progress and a diversion from the reform path seem most unlikely.

#### Chapter 4

### The Human Rights Condition of the Rum Orthodox

PRODROMOS YANNAS

In the Ottoman Empire the Greeks comprised the Rum millet. As a community, they were quite prosperous, residing in the major cities of İstanbul (Constantinople) and İzmir (Smyrna). With the succession of the Ottoman Empire by the Modern Turkish state the condition of the once thriving Rum Orthodox minority deteriorated drastically, and its numbers began to dwindle.<sup>1</sup> From close to 111,000 residents in 1923, the minority has been reduced to barely 2,000–3,000 members at present. The fact that the rights of the minority have been spelled out and safeguarded by an international treaty, the Treaty of Lausanne, makes the steady deterioration of the Rum Orthodox condition in Turkey harder to explain.

This chapter traces the condition of the Rum Orthodox population from 1923 to the present and discusses the international and domestic factors that have shaped the policies of the Turkish Republic toward this minority and to the center of Eastern Christianity, the Fener Patriarchate (the Ecumenical Patriarchate) in İstanbul. I argue that during the 1923–45 period the nation-building policies of the state undermined minority rights and discriminated against all non-Muslim minorities, including the Rum Orthodox.<sup>2</sup> In the post-World War II period, international factors became more important. In the case of the Rum Orthodox minority the pivotal role was played by the Cyprus conflict, especially at critical junctures of 1955, 1964, and 1974, in worsening the human rights conditions. I maintain that whenever diplomatic developments on the Cyprus front were perceived as not favorable to Turkish interests or as threatening to the Turkish Cypriot community, the Rum Orthodox community became a target for reprisals.

#### The Road to the Lausanne Treaty of 1923

The Turkish War of Independence (1919–22) ended with the defeat of the Greek forces by the Turkish army, led by Mustafa Kemal (Atatürk). On