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# Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni

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# Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni

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ve genellikle de hiç bir devirde mutlak ve sınırsız anlamıyla bir devletler hukuku ilkesi olarak kabul edilmemiş olan bir anlayıştan hareketle yabancı devletlere özel hukuk ilişkilerinde de yargı muafiyeti tanınmıştır. Bugünün millerarası uygulamaları ile de bağdaşmayan böyle bir anlayışın Türk mahkeme tatbikatından da uzaklaşması gerekirdi.

II. 2675 sayılı Milletlerarası Özel Hukuk ve Usul Hukuku hakkındaki Kanun Türk mahkeme uygulamasının bu ısrarlı tutumunu karşısında pek olağan olmamakla beraber yabancı devletlerin yargı muafiyetine ilişkin bir hüküm getirmek mecburiyetinde kalmıştır. Getirilen hüküm devletlerin yargı muafiyeti hakkında bugün millerarası uygulamada kabul edilen anlayışı ifade eder: "Yabancı devlete, özel hukuk ilişkilerinden doğan hukukî uyuş-

mazlıklarda yargı muafiyeti tanınmaz" (m. 33 I). Kanun, diplomatik temsilcilerin yargı muafiyetinden istifade ile yabancı devletlerin özel hukuk ilişkilerinden dolayı dava edilebilmelerine engel olan yanlış uygulamayı da önlemek üzere şu hükmü ilave etmiştir: Bu gibi özel hukuk ilişkilerinden doğan hukukî uyuşmazlıklarda, devleti temsilen "devletin diplomatik temsilcilerine tebliğat yapılabilir" (m. 33 II).

Bu duruma göre, bundan böyle yabancı devletler özel hukuk ilişkilerinden doğan ihtilaflarda Türk mahkemelerinde dava edilebileceklerdir. Gerekli tebliğatlar yabancı devleti temsil eden diplomatik temsilcilere yapılabilecek, diplomatik temsilciler bu nevi tebliğatları kendi diplomatik yargı muafiyetlerini ileri sürerek kabul etmemezlik yapamayacaklardır.

## ON MINORITY TERROR AND STATE TEROR — THE CASE OF WESTERN THRACE —

Dr. Baskın ORAN\*

The question of providing international protection for national minorities was a "burning" topic of the period between the two wars. Being, in any case, one of the two developments that led to the outbreak of the First Great War (the other was the "treading on each other's toes" by European imperialist powers in Asia and Africa) the Peace Conference of Paris in 1919 had to tackle the question of minorities in Europe with great care. In countries where minorities were conceded to, such minority people were placed under international guarantees, either by international agreements solely made for the purpose (for instance, the Greeks, Sèvres), or by special statements (the Albanian statement), or by special sections inserted in peace treaties (Lausanne Treaty).

To enable such minorities to preserve their cultural characteristics certain group rights, such as those relating to their exis-

tence and religions, equality before law, publication and teaching in their own languages, and the establishment and administration of their institutions, were placed under the guarantee of the League of Nations, the universal organization of the time.

Notwithstanding this, however, the Second World War could not be avoided. The disappearance of the League of Nations from the scene was the aftermath of the War. It was succeeded by the United Nations, which was expected to introduce a new international system for the protection of minorities as a substitute for the previous system, but no reference was made to the subject at all, and the whole attention of the San Francisco Conference became con-

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centrated on a new concept of international protection. Somehow, the "Human Rights" became afterwards the "à la mode" expression of the international community. And it is not exactly known whether the preference for it was because it covered the minority rights, too, or it was an outcome of the anti-League atmosphere that dominated the first years of the organization, or whether indeed it resulted from an attainment of a position that enabled national states now to guard their sovereignty with greater jealousy.

In this way the concept of "Minority Rights" began its vegetation life in the minutes and reports of the Sub-Committee on the Prevention of Discrimination and the Protection of Minorities set up by the Commission on Human Rights, which was in turn at offspring of an organ, known as the Economic and Social Council, of the new universal Organization.

At a time just when it might be said that minority problems and acute international interest in them had died down, a ghost, this time not in the form of international legal texts but in the form of terrorist action, all of a sudden began strolling around in the national state community of our times. And what was really interesting about it was that along with the underdeveloped countries (for instance, Biafrans in Nigeria, Eritreans in Ethiopia) that are weak from national unity point of view, minority terrorism had begun in developed countries also; countries which had had no such drawbacks and which, during the period between the two wars, had brought the responsibility of protecting the minorities on to other countries.

In bilingual countries such as Canada and Belgium, strifes were perhaps natural, but in France, which could be regarded as the oldest national state, the Bretons blew up radio stations, the Corsicans bombed government offices, and even in Alsace, protests against environmental pollution in 1974 were taken so far as to make hints at an Alsatian "Cultural Revolution". In the United States, problems relating to the negro population were already far too numerous.

Spain, one of the oldest states, menti-

oned generally in connection with the Basque minority's terrorist activities, was in reality turned into a powder-keg by a wave of bomb attacks in Catalonia, Andalusia, Valencia, Castilia regions, Balearic Islands and even the Canaries. In Italy, one of the two countries which have introduced the National Unity factor to the definition of nationalism, the Sardinian militants did not confine themselves to raiding Carabinieri and police stations alone. As the kidnapping and murdering of Mr. Aldo Moro proved, they had established serious links with the Red Brigades<sup>1</sup>.

In this connection, amid the whirlpool of minority terror of this last quarter of the Twentieth Century, it would be rather difficult not to refer to a country, whose national tongue has now become a universal means of communication and whose national unity is reputed to be the "soundest" of all. Great Britain ought, perhaps, to have been placed at the top, rather than at the bottom of this long list, considering the violence though not yet directed at human life but at the destruction of property in Wales, the uncovering in 1975 of an organization called the "Scottish National Army", and the IRA terror in Northern Ireland which has become so widely known as to make further elaboration quite unnecessary. Today, even in London it's very common for one entering a theatre to have the police open and control the small-sized night handbag one may happen to carry. The periods of detention in custody are being extended everywhere. The series of measures being taken by a national state against minority terrorism directed at her very existence have gone far beyond than the opening and control of a spengled night hand-bag in a democratic country; they have reached the limit of oppression with police harassment, German shepherds and the like. In other words, gradually it would not be an exaggeration to talk

1) See Ekkehart Krippendorff's *Minorities, Violence and Peace Research*, The Johns Hopkins University Bologna Center, Occasional Paper no. 20, 1978, p. 9 and *passim*.



about a state terror wave in relation for a minority terror wave.

"Violence breeds violence", and this burgeoning state terror can perhaps be considered normal in such circumstances.

In a European country, however, there exists in our days quite a different kind of minority and quite a different kind of terror. Greece, now a full member of the EEC, has steadily been stepping up its political, social and economic state terror against the Muslim-Turkish minority in Western Thrace. This region has experienced a lot of turbulence since 1878. Was occupied by Bulgarians, and has lived through the German occupation and a full scale civil war since it was annexed by Greece in 1920. But all these events and the fact that the region is contiguous to the Turkish border, the kin-state of its habitants, this minority has never caused even the most trivial problem to its legitimate government in Athens. But since the early days of Greek sovereignty, the desire to Hellenize the region has been a major policy of the Governments. This article is concerned with the human and minority rights violations faced by the Western Thrace minority during these Hellenization endeavours.

By a Convention and Protocol Concerning the (compulsory) Exchange of Greek and Turkish Populations signed the same year as the Lausanne Peace Treaty, the question of national minorities between the two countries was radically solved. Exceptions to the compulsory exchange were the Greek Orthodox minority in Istanbul and the Moslem-Turkish minority in Western Thrace. According to the official figures submitted by the Turkish Delegation to the Peace Conference, the overall population of Western Thrace in 1922-23 was 191,699, of which 129,120 were Turks, 33,910 were Greeks, 26,266 were Bulgarians, 1480 were of Jewish faith and 923 were Armenians. Then, Turks outnumbered Greeks 4 to 1. According to the same official source, Turks who were predominantly farmers owned 84 % of the land in the region, Bulgarians owned

10 %, while the Greeks, who were traditional traders, owned 5%<sup>2</sup>.

Along with the status of Istanbul's Greek Orthodox minority, Western Thrace Moslem-Turkish minority's status was regulated by the Lausanne Treaty of 24 July 1923, Arts. 37-45. Actually, there were four other treaties or protocols made previously and guaranteeing the rights of Moslems in Greece especially as regards the religious freedom and property rights but only one of them, namely the Sèvres Treaty of 1920 was applicable in the case of Western Thrace<sup>3</sup>. In

- 2) *Official Minutes of the Lausanne Conference, First Series, vol. 1, pp. 42-49. The Greek official figures were not much different: 114,810 Turks against, 44,888 Greeks.*
  - 3) *The first treaty protecting Moslem minority in Greece is the Protocol of London signed 3 February 1830 before the independence of Greece (For the text see: Recueil des Traités de la France, tome troisième, Paris, 1880, pp. 557-560). The second document is the Convention of Constantinople of 24 May 1861, signed after the Treaty of Berlin of 1878, upon the annexation of Macedonia, Epirus, Thessaly and the Aegean Islands by Greece (For the text see: ibid., tome troisième, Paris, 1883, pp. 32-37). The third, Treaty of Athens of 1-14 November 1913, was made at the end of the Balkan War (For the text see: Martens, Recueil Général de Traités, 3 b s., VIII, pp. 93-101). As all these international instruments concerning the protection of minorities in Greece make it clear that the protection they guarantee is for the habitants of "territories ceded by the Ottoman Empire", they cannot be regarded as valid for Western Thrace which was annexed by Greece only in 1920. However, the Protocol no. 3 attached to the Athens Treaty of 1913, having stated that it would be valid for "all territories of Greece", should clearly be regarded as valid for Western Thrace as well, by virtue of succession of states. Furthermore, a document of the Finance Ministry of Greece concerning a wakf property in Comotini, Western Thrace dated 10 July 1976 (no. of protocol: D. 4021/167) makes a reference to Art. 12 of the 1913 Treaty of Athens and therefore accepts the validity as domestic law of the said Treaty.*
- The fourth international instrument,

addition to these two treaties the Turkish minority in Western Thrace was eventually to benefit from subsequent developments in the international protection of Human Rights as reflected by such documents as the Universal Declaration of Human Rights (1948), European Convention of Human Rights (1953), International Convention on the Elimination of All Forms of Racial Discrimination (1969), International Covenant on Civil and Political Rights (1976), and International Covenant on Economic, Social, and Cultural Rights (1976).

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All these human and minority rights have remained on paper, because the Greek official policy aimed at uprooting this Turkish element and Hellenizing the region began as soon as the Lausanne Treaty was ratified<sup>4</sup>. As a result, the Moslem-Turkish population amounts now to no more than a mere 120.000 among an overall Western Thrace population of 346.000<sup>5</sup>, while its share in land distribution came down to 40%. As the rate of growth of population increase among this minority is rather high (2.8%), and as land is so vital for them that they consider it almost sacred, this double decrease in statistical figures can only be explained in terms of the following harassment and intimidation measures which are open violations of minority protection and human rights as stipulated in treaties and international instruments already mentioned.

#### Education

Greece has a binding obligation under Art. 40 of the Lausanne treaty which stipulates that "(minorities) shall have an equal right to establish, manage and control at their own expenses any schools and other establishments for instruction and education, with the right to use their own language". Similar minority rights in this field are stipulated in Sèvres Treaty (1920) Arts. 8 and 9. However, a Law on Minority Schools (no. 694/1977) has been passed, whereby the education of the minority has arbitrarily been

subjected to the Greek authorities' will.

*signed between the British Empire, France, Italy, Japan, and Greece at Sèvres, 10 August 1920, Concerning the Protection of Minorities in Greece, is a treaty made after the annexation of Western Thrace by Greece, and therefore is applicable to the habitants of this region, along with the Lausanne Treaty mentioned above. Although Greece declares that she is bound by the latter treaty only, stating that her minority protection treaty Sèvres was replaced by a later treaty (Lausanne), a Protocol (Sub no. XVI) signed on 24 July 1923 at Lausanne by the signatories of 1920 Sèvres Treaty stipulated that the latter mentioned treaty should be implemented, as a result of which Greece ratified the Sèvres Treaty by parliamentary acts of 29 September and 30 October 1923. Furthermore, it should be mentioned that, the Sèvres Treaty of 1920 is still being regarded by Greece as valid as domestic law, because it was ratified by her Parliament. In this respect, see the summary of the Greek Council of State decision no. 555/1953, United Nations Yearbook on Human Rights, 1953, p. 117. For the text of the Sèvres Treaty see: British Foreign and State Papers, vol. 113, p. 471, and for the Lausanne Treaty, League of Nations Treaty Series, vol. XXVIII, p. 31.*

- 4) Mr. Anastas Bakalbashi who was at the time Minister of Agriculture (in his own words) "had the courage to revoke this order (governmental order decreed by the previous Rafandaris Cabinet as an implementation of the Lausanne Treaty, instructing the removal of 60.000 Greek refugees from Thrace) and thus the 60.000 refugees of this description remained in Thrace". Quoted from Bakalbashi's Political Activities of Thirty Years in Ü. Haluk Bayülken, "Turkish Minorities in Greece", Turkish Yearbook of International Relations for 1963, Ankara, 1965, pp. 160-161.
- 5) The exact figure is 340.705 (1961 census). The figure concerning the Moslem population is a realistic estimate, because after the general census of 1951, the population of Greece was not asked to specify its religion (Ath. Angelopoulos, "Population Distribution of Greece Today According to Language, National Consciousness and Religion", Balkan Studies, vol. 2 (1979), p. 128.

Already, the educational level of the minority is very low. Because text books are Censured and curricula arranged in such a manner as to prevent children from following educational and cultural, developments, there is not a single student of Turkish origin in Greek universities. The students of the two high schools serving this community of 120.000 are not admitted to Greek universities at par with the graduates of normal Greek high schools, nor are the Turkish university graduates admitted to civil service. More than half of the teachers do not have professional training, while about seventy teachers who have degrees in education are not permitted to work because they are of Turkish origin. The only Moslem-Turkish teachers the Greek authorities are willing to employ in minority schools are those who are educated at the Special Pedagogical Academy of Thessaloniki (1966). This Academy, founded in 1966 accepts the graduates of *medresses* (Moslem religious schools) and prepares them for teaching in Western Thrace schools. Recently, a "Top Secret" document of the Second Political Section of the Greek Foreign Ministry was disclosed in the Turkish press. This authentic document dated Athens, 31 March 1979, no. 2DF. 1105.3/2-25 arrives to the conclusion that the results obtained by the Academy in its efforts to "eradicate the Moslem minority in the next 8 or 10 years' period" are evaluated as "very satisfactory" by the KIP, the Greek Secret Service. It has also been documented that KIP appropriated 1.026.000 Drachmas to be spent for the "extraordinary expenditures of the Academy students in the academic year 1978-79" (Doc. no. 311527 dated 5 April 1979)<sup>6</sup>.

### Nationality

Although Art. 4 of the Greek Constitution of 1975 assures that "All Greeks are equal before the law... Withdrawal of Greek citizenship shall be permitted only in case of voluntary acquisition of another citizenship or of undertaking service contrary to national interests in a foreign country...". Art. 19 of the Greek Nationality Code (no. 3370/1955) declares that "A person of non-

Greek ethnic origin leaving Greece without the intention of returning, may be declared as having lost Greek nationality... The Minister of the Interior decides in these matters with the concurring opinion of the Nationality Council". During the last few years Greek authorities have been awaiting themselves to the utmost of this racist provision to systematically expel Western Thrace minority. Since 1975, some 10.000 persons have lost Greek citizenship just because they were not of the same "ethnic" origin. This racist practice is also in open contradiction with the International Convention on the Elimination of All Forms of Racial Discrimination which stipulates that adherents (like Greece) have undertaken "to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all authorities and public institutions, national and local shall act in conformity with this obligation" (Art. 2/1-a) and that each state must "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists" (Art. 2/1-c).

The person so deprived of this nationality also loses his right to sell his real estate. The Greek government is then empowered to liquidate such property in time, by selling it to an Orthodox Greek, of course. Thus, by opting to openly violate their Constitution and internationally guaranteed basic human rights, the Greek authorities are in turn compensated by an indirect but effective way to disintegrate a peasant community by taking away its land, all the while expelling its members by direct action.

### Property Rights

Real estate and especially land ownership is no doubt vital to peasant community. The Greek measures to Hellenize have thus concentrated mainly on this particular objec-

<sup>6</sup> See Turkish daily *Güneş*, 4 March 1982.



tive. Although the property rights of the Western Thracian minority were guaranteed by the Ankara Convention of 10 June 1930<sup>7</sup>, these are violated in many ways.

To start with, the Western Thracian Turks are not allowed to acquire new real estate or even repair old houses, by virtue of a Greek law no. 1366/1938. On the Restriction of Real Estate Acquisition Rights on the Shores and Frontier Areas, Western Thracian Moslems can only get permission to sell their property to Orthodox Greeks and when the latter attempt to buy a piece of immovable property belonging to a Moslem, three banks, including the Central Bank of Greece are instructed to issue credits and other facilities. Greek authorities also find other ways to circumvent the treaty obligations, such as denying to Moslems the granting of motor vehicle and, in particular, tractor licences; as these documents are very important to farmers in Western Thrace.

These more or less subtle measures of oppression are complemented by a more radical misuse of State authority and violation of international treaties. Arable lands of the Moslem community are confiscated for industrial and other public purposes while non-arable lands of Orthodox Greeks are spared, as was the case in Komotini in May 1978 and January 1980. When the government finds it legally impossible to expropriate the lands (for instance, in case their sizes are below the expropriation limit), it simply "seizes" them, claiming that the title deeds were not valid (see below).

#### The Pious Foundations (Wakfs)

A second and definitely more important aspect of treaty violations in the field of property rights on community administration concerns the wakfs, religious endowments that are the backbone of the Moslem-Turkish community. As is well demonstrated by history, religion becomes the primary factor in the growth of nationalism in cases where the religion of the minority is different from that of the majority (Anyway, the Greek nationalism leading to independence is a very typical case in this respect). The importance of the wakfs was

given due attention in various international treaties. Their property documents emanating from Ottoman Law were recognized, full recognition and all facilities were assured for them, as well as their administration by the Moslem community. Art. 14 of the 1920 Sèvres Treaty openly illustrated this recognition of the autonomy of the wakfs. But the Greek authorities, fully grasping the religious and economic significance of these institutions for the cohesiveness of Western Thracian community, began to attempt at lifting the autonomy of the wakfs as early as 1930 (law no. 2345/1930), when Turco-Greek relations were at their best, and, possibly fearing the prospective international influence of the Islamic Revival in the 80s, went

- 7) *Convention sur la Liquidation définitive des questions découlant de l'application du Traité de Lausanne et de l'Accord d'Athènes au sujet de l'Echange des Populations*, Art. 15: "Toutes les mesures qui ont entravé l'exercice des droits garantis aux établis par les Conventions et Accords conclus, notamment celles concernant le droit de contracter mariage, le droit d'acquiescer et de vendre des propriétés, le droit de libre circulation ainsi que toutes autres restrictions ordonnées par les autorités helléniques à l'égard des personnes visées dans l'article précédent, seront levées dès la mise en vigueur de la présente Convention, sans attendre la distribution des certificats d'établis prévue dans le dernier alinéa de l'article précédent". Art. 17: "Sous réserve des dispositions contenues dans les alinéas 3 et 4 de l'article 16, le droit de propriété des établis Musulmans présents dans la zone de la Thrace Occidentale exceptée de l'échange, ainsi que des personnes bénéficiant du droit de retour, aux termes de l'article 14 de la présente Convention, sur leurs biens meubles et immeubles sis dans la zone de la Thrace Occidentale exceptée de l'échange, n'est, en aucun sens, affecté par les dispositions de la présente Convention."

"Tous saisies ou séquestres opérés sur les biens mentionnés dans l'alinéa précédent de cet article seront levés sans aucun retard, la réintégration du propriétaire ou de son représentant légal dans la libre et pleine possession et jouissance de ces biens ne pouvant être différée à aucun titre."



further in their endeavors and adopted a law (no. 1091/1980) turning the wakfs into ordinary associations.

A brief glance at the new law will enable one to get an idea about the way things are changing for the Western Thrace minority. The law restricts the administration of wakfs to five persons to be elected by the Greek governor who are revocable by the Greek authorities. It prevents the candidacy of those who have been deprived of their civil rights for political reasons, as well as the candidacy of the community elites such as religious leaders (mufti) and the MPs. The implementation of the law will be made by governmental decrees and will therefore be open to political fluctuations. The wakf budget will have to be approved by the governor. The income of those who hitherto had been allocated to minority schools will now go to the Ministry of Education. But the *coup de gr ce* is given by Art. 20 which superseeds all others in this respect and by virtue of which the wakfs must apply to the Finance Ministry and present, among many other documents, those pertaining to their title deeds. Those whose who fail to do so will lose their status. The number of those wakfs still holding all necessary certificates and documents dating from the Ottoman Empire cannot possibly be many, because

these age-old institutions have suffered numerous foreign occupations and one civil war since 1878.

Furthermore, the Greek authorities do not seem ready to recognize lawful documents, anyway. Such was the case in Inhanlı Land Dispute, where the Greek authorities, having failed to expropriate Turks' lands that all were below the expropriation limit (500 doenums), finally chose to no more recognize the validity of the very same documents they have been honoring since 1872. A "secret report" was declared to be the basis of this rather radical change in jurisprudence. The peasants asked to see it; but it was "classified". On being thrown out of their registered lands which they have been cultivating: since 1872, Western Thrace Moslems made vain efforts to appeal both to administrative and legal authorities, and finally decided to react against this State Terror.

For days, they staged a "sit-in" protest in the Clock Square of their native town with their wives and children<sup>8</sup>.

8) For a detailed account of this case, see my 'Human and Minority Rights in Greece: The Inhanlı Land Dispute File', *Turkish Yearbook of International Relations*, for 1978, Ankara, 1982.

## M LLETLERARASI  ZEL HUKUK VE USUL HUKUKU HAKKINDAKİ KANUN VE ATIF,  NSORUN, N TELEME SORUNLARI A ISINDAN HAKKIN KORUNMASI AMACI

Prof. Dr. Vedat Ra it SEVİG\*

23  ubat 1915 (rum  1330) tarihli Me-maliki Osmaniyede mukim teba'yı ecnebi-yenin hukuk ve vezaifi hakkında kanununu muvakkat 22 Kasım 1982 de y r rl kten kalkacaktır. Onun yerine M lleterarası  zel Hukuk ve Usul Hukuku hakkındaki 2675 sa-yılı kanun y r rl  e girecektir. Bu Kanun 20 Mayıs 1982 de kabul edilmi  olup 22 ma-

yıs g n  17701 sayılı Resm  Gazete'de inti- ar etmi tir. Bu kanunun  ntasarısı İstanbul  niversitesi Hukuk Fak ltesi M lleterarası Hukuk ve M lleterarası M nasebetler Enstit -s  tarafından hazırlanmı , metin Adalet Ba-

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