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Human Rights and Diversity: New Challenges for Plural Societies



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Religious Differences and Human Rights: Historical and Current Experiences from Southeast Europe

Baskin Oran

1. Introduction: Theory and Concepts

In Western European experience, Religion¹ is the cohesion ideology fought, superseded, and finally replaced by Nationalism² during the historical process. This process can be illustrated in the table below³:

Table 1
Cohesion Ideology and its Focus of Supreme Loyalty

REPRESENTED BY	The Church (Clergy/ Aristocracy)	Parliament (Bourgeoisie)	Communist Party (Nomenklatura)	?
FOCUS OF SUPREME LOYALTY	God	Nation	Labour	?
COHESION IDEOLOGY	Religion	Nationalism	Proletarian Internationalism	?
MARKETPLACE ("MOTHERLAND")	Manor	Independent National State	Proletarian State	The Globe
MODE OF PRODUCTION	Feudalism	(National) Capitalism	Communism	International Capitalism (Globalisation)

Phase 1 → 2 → 2a → 3

¹ Religion is both a sentiment (belief in God, prophet, angels, and so forth) and an ideology. Here, the reference is of course to the latter, as expressed by the term "cohesion ideology".

² Here again, Nationalism means the "ideology" of nationalism (see chart), and not the "sentiment of nationalism" (deep attachment to one's "nation"). For sentiment and ideology of nationalism see H. Kohn (1956), *The Idea of Nationalism, a study in its origins and background*, MacMillan, New York.

³ See B. ORAN (2001), "Kemalism, Islamism, and Globalization: A Study on the Focus of Supreme Loyalty in Globalizing Turkey," *Journal of Southeastern European and Black Sea Studies*, Vol. 1, no. 3, Frank Cass, London, pp.20-50.

The terms used in the above table can be defined as follows:

- a) Mode of production (MP): The fundamental socio-economic order, or the "infrastructure". It is mainly concerned with the question "who owns the main means of production (land, capital, and so forth) and how the surplus value is distributed among social classes/strata". MP is the starting point of the process represented in the above table.
- b) Every MP is realized within the boundaries of a "Marketplace". This territory, which can also be defined as the frontiers of trade, broadens every time a new (and more developed) MP replaces the old one. As a matter of fact, history can be conceived as the process of broadening this Marketplace. This is what people instinctively call "Motherland" simply because the whole process of social and economic activity, in short, the very life itself, takes place within its boundaries.
- c) Every new MP formulates its own cohesion ideology (CI). CI is the main ideology formulated by the dominant group/the ruling class⁴ to keep the society firmly together under the set of values and interests of this group/class⁵.
- d) Every CI, in turn, points up to a new Focus of Supreme Loyalty (FSL) to reshape the society. FSL represents the highest concept around which the individuals in a given society agree to gather to build a cohesive entity.

The process can thus be formulated as follows: New MP → New CI → New FSL. Here, it is important to keep in mind that every FSL is embodied in an institution, which itself is represented by the elite of the said group/class.

To concretize this process, European history from the Middle Ages to our day can be summarised as follows.

2. Western Europe: "History and Language" Formula

The feudal order sprang from the ashes of the Dark Ages, during which the only institution which escaped the destruction of the Vandal attacks, thanks mainly to its fortress-like monasteries, was The Church. The latter was the only sanctuary for the desperate masses and accumulated immense wealth mainly through their donations and bequests. Its Clergy, on the other hand, was the only possessor of the unique "hi-tech" knowledge of the period, reading and writing in Latin. The Church therefore became the strongest of the feudal lords and it was only normal that its CI became the CI of the period: Religion⁶.

During Feudalism, Religion pointed up to God as the FSL. God was of course represented by The Church, in other words, The Clergy (Phase 1 of the Table). As

⁴ "Dominant group" for classless societies or societies in which classes are not fully structured yet, and "ruling class" for "modern" class societies.

⁵ But it must be pointed out that, to be accepted by the society at large, this CI must also provide acceptable solutions to the needs and expectations of the masses.

⁶ It should also be kept in mind that Religion (Christianity) was the only common denominator of a feudal society composed of a multitude of immensely varied agricultural entities.

the MP evolved from Feudalism to Mercantilism⁷, the Marketplace became much larger because trade, transcending the lands of the Manor, came to encompass the whole territory of the Absolute Monarchy and even further (actually, that was the reason why the bourgeoisie helped the King to set up this monarchy).

This radical change in the concept of territory, as always happens in history, had very deep effects on the minds of the people. Expansion of trade to the outer corners of the kingdom unavoidably took along the "national" language first, then common feelings, and so on. Instead of the Manor only, people slowly started to call the whole kingdom the "motherland", and started to speak a common language. In this nation-building process, where the rational atmosphere of the Enlightenment prevailed, the FSL seemed for a moment located in The Prince, Leviathan, the benevolent monarch of Hobbes, no longer received its mandate from God.

Then, as the process continued from Mercantilism to Capitalism proper, a chain of philosophers, with Rousseau as the final and crucial link, came to propose the concept of Nation as the FSL. With the revolutionary fever of 1789 helping, Nationalism as the CI was finally born⁸. When the King was decapitated, the Nation as FSL was represented by the national Parliament, or more realistically, by the national Bourgeoisie, to whom the monopoly of trade within the realm of the National State now belonged (Phase 2 of the Table).

After 1917, this order of things was challenged by a newer MP (Communism) that pointed to Labour as the FSL (Phase 2a of the Table). This column of the Table is printed in white Italics to point out that only some countries have experienced it. Nowadays, we witness the advent of still a newer MP, International Capitalism, rarely expressed as such and generally called Globalisation⁹ (Phase 3 of the Table).

⁷ For the sake of simplicity, this transitory phase is omitted in the Table.

⁸ "Robespierre has been to Rousseau, what Lenin has been to Marx". For the best account of this story, see Royal Institute of International Affairs (RIIA) (1963), *Nationalism, A Report*, 2nd printing, Frank Cass, London, p.30.

⁹ Globalisation is a much-discussed concept and therefore it needs further evaluation. Globalisation can best be defined as the expansion of the Western system, carrying with it both its infrastructure (capitalism) and superstructure (anything from rationalism, secularism, human and minority rights, democracy, and so forth, to child pornography). Globalisation today (from the 1990s) is actually the third expansion of the West. There have been two previous waves, both corresponding to the needs of capitalism then:

1) The expansion of 1490s: Geographical discoveries necessitated by the trade policies of the Mercantilist period that ended up what we call "Colonialism"; and,

2) The expansion of 1890s: Western expansion required by the needs of the Industrial Revolution's monopoly stage (cheap flow of raw materials, new markets, new territories to increase the marginal productivity of the capital, new lands for the excess population, and so forth); in short, what we call "Imperialism". The first globalisation was naturally weak; the second was much stronger and paved the way for the third, which is actually its continuation after a break of some 50 years, a break mainly due to Soviet Union and its ideology.

The third expansion today is created by three successive and complementary developments that took place during the last thirty years: a) The advent of Multinational Companies in the 1970s, b) Revolutionary developments in Communications in the 1980s, and c) The fall of the Soviet system in the 1990s.

This phase 3 is the antithesis of both phases 2 and 2a. Communism, at least for today, exists no more as a world system. National Capitalism is also over (or, will soon be over) along with all its attributes: import substitution in the economy, monopoly over jurisdiction in the national territory, nationalism in cultural life, and most important of all, the concept of Nation as the FSL. All this happens because the concept of territory is changing (that is, being enlarged) again: the same "national" boundaries that once created the bourgeoisie are now strangling it.

In this phase, all we are sure of is the new MP (international capitalism) and its new marketplace (the globe). The new CI is not there yet, and cannot be expected to appear so soon in this "new world disorder". The FSL seems to be turning towards the Individual, but the question as to who will represent the Individual remains unanswerable yet.

From all this, the important message we can draw for our subject matter is as follows. Religion represents many important and paradoxical things at the same time. It is: i) an identity-forming concept, and therefore, ii) a difference-creating concept between the majority and the minorities, and therefore iii) a conflict-generating concept, and finally, iv) a generator of human rights violations. In other terms, Religion is the cohesion ideology for the majority, and by extension, a cause of human rights violations for the minority. In this sense, the four remarks expressed above concerning Religion are also *mot-à-mot* valid for Nationalism, a cohesion ideology which stands out with the language of the dominant group, the "national language"¹⁰.

3. "History and Religion" in South East Europe

This "History and Language" formula of Nationalism in western Europe is significantly different from that in South East Europe, however. This is illustrated in many countries by numerous examples.

When the Greek invasion of Anatolia in 1922 (the "Mikrasiatiki catastrophe") ended in a debacle, and Greece and Turkey decided to make a compulsory exchange of populations, those who were asked to compulsorily emigrate were not Greeks and Turks. As formulated by article 1 of the Convention, "the *Rum*¹¹ Orthodox" of Turkey were to leave for to Greece and "the Muslims" of Greece were to

The first development enlarged the marketplace to embrace the whole globe now (hence, "globalization"). The second development made it possible to conquer the minds of people instead of their country (and that made it very difficult to challenge the conquest this time). The third practically gave the West monopolistic control over international developments, political as well as economic.

¹⁰ It goes without saying that Religion, the most durable of all human feelings, did not disappear in Europe; but it no longer formulated the FSL and was essentially limited to a sentiment between the individual and his/her God.

¹¹ *Rum*, from *Romios/Romioli* meaning Roman, is how the Greeks of Istanbul called themselves even before Ottoman Empire/Turkey. The name Byzantium was invented after the Holy Roman Empire declared itself the successor of Rome.

leave for Turkey¹². In other words, at the end of the war between the two Nationalisms, the exchange was made on the basis of Religion. Thus, some Orthodox of Turkey (like the *Karamanlis*) who spoke only Turkish and some Muslims of Greece who spoke only Greek were compulsorily exchanged. As a result, the former came to be called "*Turko Sporos*" (Turkish Sperm) in Greece, and the latter "*Yari Gavour*" (Half Infidel) in Turkey.

Even under communism, Bulgaria forced the Muslim-Turkish minority to abandon their Muslim names and adopt Bulgarian/Orthodox names. Among fundamental Muslim practices officially prohibited after 1984 were circumcision, sacrifice, Ramadan fasting, celebration of religious holidays, the religious marriage ceremony, ablution before burial, burial in a Muslim cemetery, and worship in mosques¹³. Pomaks of Bulgaria, a Slavic people who had become Muslim, and the Muslim Roma were pressured as much as the Turks.

When in the 1990s Yugoslavia, the "paradise of minorities", disintegrated into a hell of minorities, it did so along the Catholic/Orthodox divide. Serbs, Croats, Slovenes, and Bosnians, who are from the same Slav ethnicity, jumped at each others' throat (or, rather, the majorities did it to the minorities) because they were Orthodox, Catholic, or Muslim, in that same order. Bosniaks, the worst victims of this catastrophe, spoke the same language as their worst oppressors, the Serbs.

I would like further to illustrate the situation by putting emphasis on the religious minorities in Greece and Turkey. These two nation-states have had a rather difficult common history. The former built its national identity using the Turk as the "other" in 1820s, and the latter did it using the Greek in exactly the same way, exactly a century later. In both cases, the religious element is a *sine-qua-non* of the national identity. Therefore, they perfectly fit within the "History and Religion" formula.

3.1. *To Be a Muslim Minority in the Greek State*

Greece, an EU member since 1981, only considers Muslim-Turks of Western Thrace, Jews, and Catholics¹⁴ as "official" minorities. For instance, Vlachs, a Romanian minority of Orthodox denomination, or the Macedonian minority, equally Orthodox, have no status. On the other hand, human and minority rights of Muslim-Turks, who enjoy minority status according to a number of bilateral and international instruments (1913 Athens Treaty Protocol no.3, 1920 Sevres Treaty be-

¹² For an account of the Exchange and its results see B. ORAN (2003), "The Story of Those Who Stayed, Lessons from Articles 1 and 2 of the 1923 Convention", *Crossing the Aegean: An Appraisal of the 1923 Compulsory Exchange of Populations between Greece and Turkey*, in R. HASCHON (ed.), Berghahn Books, Oxford, New York, pp. 97-115.

¹³ For a detailed account on the Turkish-Muslim minority in Bulgaria see A. DAYIOGLU (2005), *Toplama Kampından Meclis'e, Bulgaristan'da Türk ve Müslüman Azınlığı* (From the Concentration Camp to the Parliament, Turkish and Muslim Minority in Bulgaria), Istanbul, İletisim Publishers, p. 512.

¹⁴ Catholics only enjoy religious minority rights while Jews and Muslims have linguistic rights as well.

tween Greece and the Great Powers, and the 1923 Lausanne Peace Treaty Art. 45) have been strongly discriminated against in multiple fields¹⁵.

Immediately after the signing of the Exchange Convention, the *Rums* fleeing Turkey, or coming through the exchange, occupied the lands and the houses of approximately 50.000 Turks. Greek authorities did not prevent this¹⁶. The Evros province adjacent to the Turkish border was completely emptied of the Turkish minority by administrative measures, except for some Roma. Although the minority was extremely keen on calling itself "Turkish", the Greek State always denied this identity, and referred to it as "Muslim"¹⁷. Associations bearing the adjective "Turkish" were closed in 1984 on court orders (Xhanty Turkish Union, founded 1927; Komotini Turkish Youth Union, founded 1928; Western Thrace Turkish Teachers Union, founded 1936)¹⁸.

Law 376/1936, on the Forbidden Zone, insulated the Minority of Pomak origin living in the Rodopi Mountains, and separated them from the Turks¹⁹. Freedom of movement was violated, as "No-return passports" were issued to analphabetic members of the minority travelling to Turkey²⁰. Pomak children educated by the State in the Thessaloniki Special Pedagogy Academy were appointed on preference to minority schools as Turkish teachers²¹. The school books that ought to arrive from Turkey according to the 1968 Culture Protocol were not permitted. Likewise, newspapers and books from Turkey were also banned and radio and TV broadcasts from Turkey were prohibited in public places such as coffee houses²².

Although Law 2345/1920 required, by virtue of the 1913 Athens Agreement, Protocol 3, that the Muftis be elected, these religious heads were always appointed by Greek authorities. A Head Mufti, also mentioned by the same international instrument, never existed. On January 1991, the law of 1920 was repealed and the Mufti was thereafter named by the President of the Republic on the proposal of the Minister²³. Community Administrative Councils and the trustees of the pious foundations were also appointed by the State after the military coup of 1967²⁴.

¹⁵ For a detailed account of the Turkish-Muslim Minority in Western Thrace see B. ORAN (1991), *Türk-Yunan İlişkilerinde Batı Trakya Sorunu* (The Western Thrace Problem in Turco-Greek Relations), second updated edition, Bilgi Publishers, Ankara. For those who cannot read Turkish the following summary: "The Sleeping Volcano in Turkish-Greek Relations: The Western Thrace Minority", K. KARİAT (ed.) (1966), *Turkish Foreign Policy, Recent Developments*, Madison, Wisconsin, pp. 119-138.

¹⁶ A. ALEXANDRIS (1992), *The Greek Minority of Istanbul and Greek-Turkish Relations, 1918-1974*, second printing, Athens, Centre for Asia Minor Studies, p. 120-121; B. ORAN, *Türk-Yunan İlişkilerinde...*, pp. 81, 236 and 277-279.

¹⁷ The minority is composed of three ethnic groups: Turks (65%), Pomaks (30%) and Roma (5%), but its common identity is Turkish. What's more, Pomaks consider themselves more Turkish than the Turks and Roma consider themselves more Turkish than the Pomaks for reasons easy to understand: the Turks are the heirs of the Ottoman Empire, they are economically stronger, Turkey is the kin-state that cares for all, while the other two have no kin-states, and so forth.

¹⁸ B. ORAN, *Türk-Yunan İlişkilerinde...*, p. 172-176.

¹⁹ *Ibid.*, p. 116-117, 219 and 290-291.

²⁰ *Ibid.*, p. 217-218.

²¹ *Ibid.*, p. 124, 127-134 and 220-221.

²² *Ibid.*, p. 149-151 and 211-212.

²³ *Ibid.*, p. 170-172.

²⁴ *Ibid.*, p. 157-159.

Mini pogroms took place against the minority in Komotini (29 January 1990) and in Xanthi (23-24 August 1991)²⁵. Some 60,000 minority members were deprived of Greek citizenship as a result of Art. 19 of the Greek Citizenship Law 3370/1955, which stated that "*Greek citizens of non-ethnic Greek origin*" may lose their citizenship during their stay abroad²⁶.

Candidates from the minority have been unable to enter the Parliament as independent MPs because they too, like political parties, have been subjected in November 1990 to a nationwide election threshold of three per cent²⁷. Various licences were denied to the Turkish-Muslim minority: licences to build and repair houses and mosques, tractor driving licences (of the utmost importance to this mainly rural minority), hunting-rifle licences, business opening licences²⁸. Turkish university diplomas were not recognized by the State organization called Dikatsa²⁹. The Minority was dispossessed of its lands through several processes like unification of divided lands (*anadazmos*, Law 821/1948), discriminative expropriations, refusals to recognize the title-deeds or possession, claims of illegal occupation, and so forth. In the meantime, soft-loans were extended to those Orthodox Greeks intending to buy Muslims' lands by the Central Bank and the Agricultural Bank, while a discriminative application of Law 1366/1938, requiring special permission to buy or sell land on border and seashore areas, prevented the minority from buying new land³⁰.

Since the end of 1990s, these open violations significantly diminished in some fields. The most recent amelioration is Law 3497, enacted in 2006, Article 27 of which repealed Law 1363/1938 giving the local Orthodox clergy the authority to obstruct construction and repair of mosques, and also to decide over the height of the mosque minarets, which should be lower than that of the church tower.

The diminution of discrimination in the 2000s did not mean, however, the end of human rights violations. Although the then-foreign minister Yorgo Papandreu admitted in March 2001 that the identity of the minority was indeed Turkish, the State still refers to them as Muslim only, thereby trying to insulate the minority from Turkey. The adjective "Turk" is still forbidden in the names of associations, and these remain closed. The government still insists on the preferential appointment of the Thessaloniki Special Pedagogy Academy graduates as Turkish teachers, thereby injecting an element of discord between Pomak and Turkish ethnicities. Community Administrative Councils and the pious foundations' trustees are still being appointed by the State. To oblige minority candidates to run on Greek parties' ticket only, the three per cent election threshold on a national level is still applied to independent candidates as well.

But the most blatant violation of human rights that continues as of today is the appointment of the Mufti. In a country where autonomous Orthodox clergy

²⁵ *Ibid.*, p. 191-194.

²⁶ *Ibid.*, p. 213-216.

²⁷ *Ibid.*, p. 209-210.

²⁸ *Ibid.*, p. 221-228.

²⁹ *Ibid.*, p. 151-152 and 228-229.

³⁰ *Ibid.*, p. 236-263.

is considered the *sine-qua-non* of public order and its appointment by the State is unthinkable, the Muslim-Turkish minority is not permitted to elect its religious head. On the other hand, this awkward situation paves the way for other violations of minority rights, because the Mufti is the head of many important Muslim institutions in Greece (pious foundations, imams in urban areas, the madrasahs (religious schools), and so forth). These Muslim institutions are therefore controlled by an appointee on the payroll of the Orthodox Greek government.

3.2. To Be a Non-Muslim Minority in the Turkish State

In Turkey, probably the most "laicist" of all existent laic States³¹, the case of the religion is no different. To start with, the Alevis³², unlike the Sunnis, are denied public funds for their places of worship. The fact that compulsory religion courses in schools teach Sunni Islam only is the source of intense protest from the Alevi community, which took the matter to the European Court on Human Rights. There has always been a ban on associations bearing the name "Alevi"; it was partly lifted in mid-2000s only. Mass lynching parties against them have occurred throughout Anatolia from 1978 through 1993, not to mention countless mass killings in the Ottoman Empire. Many Alevis have to hide their identity to find work, and so forth³³.

The case of the non-Muslims is distinct. Turkey, the successor of the Ottoman saviours of the Iberian Peninsula Jews in 1493, tried to get rid of its non-Muslim minorities by various methods. As already mentioned, the *Rum* minority faced a compulsory exchange in 1923 and the great bulk of the non-exchangeable *Rums* had finally to emigrate to Greece; after that, in 1964 the State expelled some 12,000 of them bearing Greek passports and blocked their assets at the Central Bank³⁴. In 1925, the non-Muslims of Istanbul were required to have a special permit to travel outside the confines of the municipal area³⁵. In the 1920s and

³¹ "Secular" is an attribute of the society; "laic" is that of the State. "Laicist" means a State policy exerting strong pressure on religion and clergy to secularize the society "from above". Turkey, France, and Tunisia can be counted among these States. See my "Kemalism, Islamism..." and also my paper at the Birzeit University, Palestine symposium on 3 June 2006: "Religion-State Relations and Political Transformation in Turkey," in *Religion, the State and International Society*, Birzeit University Press, Birzeit, Palestine 2006, pp. 25-34.

³² To define the Alevis is not easy because there are at least five different interpretations even among themselves as to who they are from the point of view of religion: some consider they are "the best Muslims"; some other think they are shamans. In fact the Alevis, forming roughly twenty per cent of Turkey's population, are quite different from the Sunni Muslims, the majority.

³³ B. ORAN (2005), *Türkiye'de Azinliklar, Kavramlar – Teori – Lozan – İç mevzuat – İçtihat – Uygulama* (Minorities in Turkey, Concepts – Theory – Lausanne – Legislation – Case law), third edition, Istanbul, İletişim Publishers, p. 111. For those who cannot read Turkish, a summary of some parts of this book is available at: B. ORAN, "Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues," in Z.F. KABASAKAL ARAT (ed.) (2007), *Human Rights in Turkey*, Philadelphia: University of Pennsylvania Press, pp. 35-52. Some of my articles concerning minorities are also available in English or French at: www.turquieeuropeenne.eu.

³⁴ A. ALEXANDRIS, *The Greek Minority...*, p. 280-285.

³⁵ A. ALEXANDRIS, *The Greek Minority...*, p. 140; D. GÜVEN (2006), *Cumhuriyet Dönemi Azinlik Politikaları ve Stratejileri Bağlamında 6-7 Eylül Olayları* (The Incidents of 6-7 September in the Context of Republican Turkey's Minority Policy and Strategy), Istanbul, İletişim Publishers, p. 111.

1930s, campaigns of "Citizen, speak Turkish!", repeated in the 1960s, harassed the non-Muslims as well as the Kurds³⁶. At the end of 1925, on the promulgation of the new Civil Code, non-Muslims were pressured to renounce their rights under Lausanne Treaty, Art. 42(1)³⁷.

In 1927, the Rum minority living on the two islands at the entrance of Dardanelles (Bozcaada/Tenedos and Gökçeada/Imroz) encountered many pressures, including expropriation of their lands and the violation of their rights under article 14 of Lausanne Peace Treaty (education in Greek, and special administration). In 1934, under attacks from local civilians and unable to obtain official aid and comfort, the Jews of Thrace were forced to leave Thrace for Istanbul³⁸. In 1941, non-Muslims between the ages 25-45 were drafted and assigned to the infamous unarmed Labour Battalions³⁹. In 1942, the notorious Wealth Tax, which had no judicial recourse, fully discriminated between Muslims and non-Muslims belonging to the same income group (the latter had to pay 8 to 10 times more than the former⁴⁰). Those non-Muslim businessmen unable to pay the exorbitant sums were sent to work camps in eastern Turkey.

Non-Muslims were registered in a "Foreigners' Book" until the 1940s⁴¹. On 6-7 September 1955, non-Muslim property was devastated during a pogrom that lasted two days in Istanbul and one day in Izmir⁴². In 1961 (under Law Number 222), minority schools were considered under the "private schools" category and were treated as foreign schools. According to Art. 24/2 of the Law on Private Institutions of Education (no. 625), enacted in 1965 and only abolished in February 2007, the head assistant-director in these schools was required to be "a Turkish citizen of Turkish origin"⁴³. On 29 July 1964, the Ministry of National Education issued decision no. 2690 and closed Rum schools in Gökçeada and Bozcaada (that had been closed in 1927 and reopened in 1950). Their real estate was transferred

³⁶ B. ORAN, *Türkiye'de Azınlıklar...*, p. 108-109; D. GÜVEN, *Cumhuriyet Dönemi...*, p. 113-115; R.N. BALI, *Cumhuriyet Yıllarında Türkiye Yahudileri: Bir Türkleştirme Serüveni (1923-1945)* (Jews of Turkey in the Republican Years: An Adventure in Turkification), 6. B., İstanbul, İletişim Publishers, 2003, p. 131-148; A. ALEXANDRIS, *The Greek Minority...* p. 183 and 271; H. POULTON (1997), *Top Hat, Grey Wolf and Crescent: Turkish Nationalism and the Turkish Republic*, London, Hurst and Company, p. 116 and 121.

³⁷ A. ALEXANDRIS, *The Greek Minority...*, p. 135-139; A. AKTAR (2001), *Varlık Vergisi ve Türkleştirme Politikaları* (The Wealth Tax and Turkification Policies), 5th printing, İstanbul, İletişim Publishers, p. 112-113; R.N. BALI, *Cumhuriyet Yıllarında...*, p. 54-102.

³⁸ R.N. BALI, *Cumhuriyet Yıllarında...*, p. 243-265; A. AKTAR, *Varlık Vergisi...*, p. 71-99; H. POULTON, *Top Hat...*, p. 116; D. GÜVEN, *Cumhuriyet Dönemi...*, p. 123-128.

³⁹ A. ALEXANDRIS, *The Greek Minority...*, p. 213-214; H. POULTON, *Top Hat...*, p. 116-117; R.N. BALI, *Cumhuriyet Yıllarında...*, p. 411-423; D. GÜVEN, *Cumhuriyet Dönemi...*, p. 133-135.

⁴⁰ H. POULTON, *Top Hat...*, p. 117; D. GÜVEN, *Cumhuriyet Dönemi...*, p. 139.

⁴¹ F. ÇETİN (2002), "Yerli Yabancılar" ("Domestic Foreigners"), *Ulusal, Uluslararası ve Uluslararası Hukukta Azınlık Hakları* (Minority Rights in National, Supra-National and International Law), (prepared for publication by İbrahim Kaboğlu), İstanbul, İstanbul Bar Association Human Rights Center, pp. 285-294.

⁴² D. GÜVEN, *Cumhuriyet Dönemi...*, p. 25-42; Alexandris, *The Greek Minority...*, p. 256-266; 6-7 Eylül Olayları, *Fotoğraflar-Belgeler* (6-7 September Incidents), Fahi Çöker Arşivi, İstanbul, Tarih Vakfı Yurt Publications, 2005, passim; M.H. DOĞRUGÜ (1993), *6/7 Eylül Olayları* (6-7 September Incidents), İstanbul, Bağlam Publishers, passim.

⁴³ A. ALEXANDRIS, *The Greek Minority...*, p. 287.

to local administrations on 25 September 1964 by decision no. 701-16/0-41156⁴⁴. On 10 April 1964, the *Rum* Orthodox Patriarchate of Phanar's printing plant was closed on grounds of the rule that "only private individuals and legal persons can own printing plants". The Phanar Patriarchate was not a legal person⁴⁵.

In 1971, the Halki Seminar of the *Rum* minority was closed because on 12 January 1971 the Constitutional Court ruled that all private institutions of higher learning should be nationalized. Although these have now been reopened, Article 3 of Law 5580 (which replaced the former Law 625 on 14 February, 2007) still bans the opening of private higher institutions of military, police, and religious education⁴⁶. Church repair licences were refused in the 1980s. Between 1985 and 1987, non-Muslim students were forced to participate in religious lessons teaching Islam⁴⁷. Article 5.j of the by-law against sabotage, enacted in 1988 and repealed in 1991, called the non-Muslims: "*Domestic foreigners*". As a matter of fact, the said article counted the following among potentially dangerous categories: "*Domestic foreigners in the country (Turkish citizens) and those from foreign race*"⁴⁸.

Fearing that Phanar would become a sort of Vatican, investigations were started in October 1993 against *Rum* citizens buying houses in the neighbourhood of the Patriarchate⁴⁹. On 17 April 1996, Administrative Court No. 2 of Istanbul called a *Rum* citizen of Istanbul "[a] foreign subject Turkish citizen"⁵⁰. In February 2006, a report of the State Supervisory Council attached to the President of the Republic classified non-Muslim pious foundations under the category "*Foreign Legal Persons*"⁵¹. Between 1971 and 2003, decisions of the Court of Cassation (*Yargıtay*) permitted the seizure of non-Muslim foundation property acquired after 1936. The issue came to be notoriously known as the "1936 Declaration", which merits special attention.

3.3. The "1936 Declaration"⁵²

The "1936 Declaration" relating to non-Muslim foundations (referred to as "Community Foundations" in Turkish law) is a striking example of discrimination against non-Muslims, and its story deserves to be summed up as follows. In 1936, the new Law on Foundations ordered all foundations to submit a property declaration, which was later called the "1936 Declaration", listing immovables and other properties possessed by each foundation. The underlying reason for this law was to

⁴⁴ B. ORAN, *Türkiye'de Azinliklar...*, p. 109, footnote 93.

⁴⁵ A. ALEXANDRIS, *The Greek Minority...*, p. 299.

⁴⁶ *Ibid.*, p. 293 and 305.

⁴⁷ See daily newspapers *Milliyet*, August 10th, 1985; *Cumhuriyet*, November 19th, 1986 and *Cumhuriyet*, January 15th, 1987.

⁴⁸ F. ÇETİN, "Yerli Yabancılar"..., p. 70.

⁴⁹ B. ORAN, *Devlet Devlete Karşı* (State vs. State), Ankara, Bilgi Publishers, 1994, p. 27-38.

⁵⁰ B. ORAN, *Türkiye'de Azinliklar...*, p. 90-91.

⁵¹ *Daily Vatan*, August 12th 2006. For the text of the Report see presidential website http://www.cankaya.gov.tr/tr_flash/DDK/yte.htm

⁵² B. ORAN, *Türkiye'de Azinliklar...*, pp. 90, 100, 101, 103, 104, 111, 129, 155, 158, 179; Y. REZNA and Y. ŞEN (1994), *Cemaat Vakıfları ve Sorunları* (Non-Muslim Foundations and their Problems), İstanbul, Gözlem Publishers, passim.

dry out the financial resources of the "Islamist" foundations, which were seen as threats to the new laicist regime. After Atatürk's death in 1938, those property lists were forgotten, however.

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, this time non-Muslim foundations only, to resubmit their regulations/constitutions, called "*Vakıfname*." However, none of them had one, 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 the immovable property acquired after 1936.

The non-Muslim foundations challenged the ruling by arguing that the declarations submitted in 1936 were merely a list of immovable properties possessed by each foundation at that date, but that could not persuade the General Directorate to change its decision. No matter how these properties were acquired (purchases, donation, lottery, inheritance, and so forth) expropriations went ahead, despite the fact that they were in violation of the Lausanne Treaty, Articles 40 and 42(3). The expropriated properties were returned to their previous owners or to their beneficiaries at no cost; and when there were no inheritors (which was most often the case), they would be acquired by the Treasury at no cost.

When the case was brought to the Court of Cassation, 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 *Balikli Rum Hastanesi Vakfi* [Balikli Greek Orthodox Hospital Foundation], was not a "foreign" pious foundation. 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 the 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."*⁵³

⁵³ Supreme Court of Appeals, First Legislative Branch ruling, dated June 24, 1975, no. 3648-6594; see Y. REYNA and Y. ŞEN, *Cemaat Vakıfları...*, p. 91-92.

The attorneys of the Balikli Greek Orthodox Hospital Foundation appealed for the re-evaluation of the verdict. This time the same branch supposedly admitted the mistake in considering some Turkish citizens as foreigners because they are 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."⁵⁴

This problem, which resulted in the seizure of many valuable immovables of the non-Muslim foundations, was taken up during the reform process that took place between 2001 and 2004, called the EU Harmonization Packages. But it was to take more than one package to tackle such a deep-rooted problem. The third package of 03 August 2002 amended the Law on Foundations to enable non-Muslim foundations to acquire immovable property with the authorization of the Council of Ministers and also to register any un-registered property (see below) in their use. The fourth package of 02 January 2003 amended the law again to replace the Council of Ministers' authorization with that of the General Directorate of Foundations (GDF). This time, too, the inequality between Muslim and non-Muslim foundations prevailed, because the new Law (no. 4771/4) required that the GDF "solicit the recommendations of the related Ministries and Public Agencies" prior to approving non-Muslim Foundations' requests to buy or dispose of real estate (a procedure not required for the applications of Muslim foundations). Since the State agencies alluded to here were the Ministry of Foreign Affairs and the security and intelligence agencies, it can be deduced that the reformed law still treated the non-Muslim citizens as "foreign" and therefore suspect. The implementation, on the other hand, showed that out of 1,813 applications made by non-Muslim foundations for registration of their real estate, 574 were refused, 579 were found "incomplete," and 226 applications were returned as "invalid"⁵⁵. The sixth package (19 June 2003) prolonged the submission period for applications for registration of properties. In other words, it took three successive laws in one year to tackle problems concerning immovable property of the non-Muslim foundations⁵⁶.

The result of an over four years-long continuous and painstaking reform effort was a new Law on Foundations of November 2006. Nevertheless, the law failed to bring meaningful amelioration to all the three main problems underlying the issue. These can be summarized and analyzed as follows:

- 1) Property illegally seized since early 1970s and transferred to the Treasury or put under the jurisdiction of the GDF; The law foresees the restitution of the said property. It fails, however, to describe how this will be implemented. The land registry authorities in Turkey will never undertake such a property transfer without a court order.

⁵⁴ Decision dated 11 December 1975, no. E:975/11168, K:975/12352; see REYNA and ŞEN, p. 98.

⁵⁵ Daily Radikal, May 5th, 2003.

⁵⁶ B. ORAN, *Türkiye'de Azinliklar...*, pp. 117-118.

- 2) Property illegally seized and sold to third parties: The law provides no solution whatsoever to this problem.
- 3) Properties actually possessed and used by the non-Muslim foundations, but not registered in their names. These were in fact registered to fictitious names, mostly to the names of Armenian saints, and also to the names of trustworthy clerics of the time. This was because until 1913 foundations were not considered legal persons and therefore were not entitled to possess immovables. The result concerning this category is as follows: Because GDF resists the reform, only 27.6 per cent of these have been registered to the foundations as of August 2005; that is, exactly three years after the EU Harmonization Law of 03 August 2002, mentioned above⁵⁷.

This picture was further accentuated when the President of the Republic vetoed, in December 2006, this new Law on Foundations because it might bestow upon non-Muslim foundations too much "political and economic power", and this might undermine Turkish national interests and divide the country. The latest news was a decision of the European Court of Human Rights on January 2007, the very first one on this deep-rooted problem. It determined that Turkey should pay 910,000 Euros in damages to the Phanar *Rum* High School Foundation for violation of property rights, protected in Protocol I, Art. 1. It has been reported that a similar decision concerning a court case filed by Surp Pırgic Armenian Hospital Foundation for damages amounting to 2.2 million Euros is due in only a matter of months⁵⁸.

4. A Re-Evaluation of the Theory

Now, let us go back to where we started. Historically, Nationalism is the cohesion ideology that dethroned Religion as far as cohesion ideology is concerned. In light of the information given above, this observation should be further studied and qualified so as to explain the particular role of Religion in South-East Europe. As a matter of fact, in the reciprocal case of Greece and Turkey, we witness many instances where Religion is a very important component of national identity, and by extension, contributes to strengthening Nationalism and therefore to the violations of human rights of minorities. Reasons for this regrettable symbiosis can be summarised as follows.

To start with, we can point out to at least four general principles explaining the prominent role of Religion in societies dominated by Nationalism:

- 1) The superstructure (ideas, ideology, law, and so forth) of a particular infrastructure continues to be effective, albeit decreasingly, when this infrastructure gives way to a new one.

⁵⁷ *Milliyet*, daily, 02 August 2005.

⁵⁸ B. ORAN (2007), "AIHM Üzerine İbretlik Yorumlar" (Exemplary Comments on ECHR Decision concerning Non-Muslim Foundations), weekly *Agos*, January 19th, (www.baskinoran.com, no. 344).

- 2) The new superstructure gladly adopts certain aspects of the old one in case it finds them either difficult to oppose or profitable to appropriate⁵⁹.
- 3) When the Religion of the invader/majority is different than that of the invaded/minority, Religion strongly supports national identity/Nationalism.
- 4) Religion is the CI of lesser industrialized societies.

Further still, the following explanations peculiar to our area of study come to our mind:

- 1) The Table on CI and FSL is a general scheme mainly pertaining to the experience of western Europe, where a strong bourgeoisie, developing very early, succeeded in secularizing the society. Due to the relatively late development of the bourgeoisie/capitalism in both Turkey and Greece, the modern constituent elements of the "nation" are weak, resulting in a low degree of secularization and a high dose of Religion.
- 2) In both countries, Religion and Nationalism had an important common enemy in the very recent past: Communism. Therefore, they cooperated closely.
- 3) In both countries, the factor "we" is built by using each other as "they" at an interval of 100 years. In this particular process of nation-building, we cannot help but notice that, using the terminology of Professor Samim Akgönül, the "otherness of proximity" (the Millet System) concept is transformed into "constitutive enmity" (national enemy). On the other hand, this "constitutive enmity" is itself embodied in another version of "otherness of proximity", which is "minority"⁶⁰.
- 4) In both countries, Religion had an important historical role to play. In Orthodox Greece, the Greek Church was a "national church" because it had been very instrumental during the War of Independence. For the Ottomans, the concept of "Ghaza" in Islam had served as the ideological justification for military expansion.
- 5) In both countries, the Nation-state dominates the ideological framework. The Nation-state can best be defined as "the type of State which views its nation as a homogenous entity and uses assimilation to realize this dream". Religious homogeneity thus becomes very important in our respective cases.
- 6) In addition to these reasons highlighting the role of Religion in mutual Nationalisms/human rights violations, we can detect a purely regional factor that accentuates (an even re-creates) the historical role of Religion in human rights violations: the residue of the "Millet System".

⁵⁹ For example the *Dies Natalis Solis Invicti* (the birthday of the unconquered sun) festival of the Romans held on December 25 became Christmas, pagan tree worship became the Christmas tree, pagan spring festival became Mardi Gras/Fasching, Pharaoh the son of the Sun became Jesus Christ, and so on.

⁶⁰ S. AKGÖNÜL (2006), "From the 'constitutive enmity' to the 'otherness of proximity': Turkish and Greek minorities in the nation making process in Greece and Turkey", paper delivered at the conference *The Making of Modern Greece: Nationalism, Romanticism, and the Uses of the Past (1797-1896)*, September 6-10, 2006, King's College, London.

4.1. The Millet System

The *Millet System*, started in 1454, was the backbone of the Ottoman society, which it divided between the Dominant Nation⁶¹ (*Millet-i Hakime*) and the Dominated Nations (*Millet-i Mahkume*). The former melted in one single pot all Muslim communities, regardless of ethnic differences, and the latter was made up of different non-Muslim "*millets*": Armenian, Rum, Jewish, Catholic, Protestant, and so forth.

In this System, the Muslims were legally and practically superior to the non-Muslims, who were second-class subjects, but were nevertheless autonomous to the degree of collecting taxes and exercising legal jurisdiction over the adherents. The *Millet System*, of course, could not survive the arrival of Nationalism to the Empire. It therefore resulted in the formal secession of Greece in 1829, and was legally abolished in the Empire by the Tanzimat Firman of 1839 because this document declared all subjects equal before the law.

The *Millet System* thus formally disappeared from the laws but never from the minds of the people. It had cloned itself in each of the Nation-states born out of the ashes of the Ottoman Empire. What is more, for Greece and Turkey, it cloned itself even in the text of the Lausanne Peace Treaty of 1923, Section Three, Protection of Minorities (articles 37 to 45). Articles 38 to 43 defined as non-Muslims the minorities to be internationally protected in Turkey, and Art. 45 represented the other side of the coin: "*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*". The examples we have seen above bear profuse witness, in the field of human rights, to the lamentable results of the state of mind created by this in both countries.

5. Conclusions

In this area of the globe, Religion (and Denomination), instead of Language, emerges as the main component of national identity. By the same token, this "History and Religion" formula becomes, in many instances, the main source of violation of human rights of the dominated/minority groups by nationalist majorities. Among the many reasons already cited, the impact of the *Millet System*, representing the very History and Religion itself, appears to be the most important one.

In Greece today, the "Dominant Nation" is represented by Orthodox Greeks and the "Dominated Nation" by Muslim Turks, Orthodoxy being the *sine-qua-non* of the Greek. The exact opposite is, of course, true in Turkey, where Islam is the *sine-qua-non* of the Turk. The official ideology of the Nation-state claims that "Turk" is the identity of each citizen and therefore the supra-identity⁶² of the na-

⁶¹ "*Millet*", now meaning Nation, was used to describe a religious community well until the beginning of the 20th century.

⁶² Infra-identity is the identity of the group in which the individual is born. Supra-identity is the identity imposed by the State upon its citizen.

tion. But "Turk", necessarily a Muslim, is in fact the infra-identity of ethnic Turks (the "objective identity"⁶³), or only represents those Muslims who define themselves as Turks, like the Bosnians in Turkey (the "subjective identity"). The term "Turk" leaves out the non-Muslims and those Muslims who do not define themselves as Turk, like in the case of many Kurds. Worse still, the *Millet* System was not content with cloning itself in the Nation-states of South-East Europe, and from the point of view of human rights it became much worse in the steamroller framework of the Nation-state. Because they were "different", the Dominated Nations/Minorities lost their autonomy and gained another attribute: that of potential traitor.

To portray the might of the Dominant Nation mentality, it is particularly important to take note of the fact that the Alevis and the Kurds in Turkey, two groups which strongly demand group (and therefore, minority) rights and which are defined as "minority" by European sources and official documents, strongly react to being called "minority", saying: "We are not minority; we are essential and constituent elements of this country". This categorical refusal and declaration, along with the examples cited above concerning certain legal terms and court decisions in Turkey, should be considered the symptom *par excellence* of the historical *Millet* System's Dominant Nation mentality, entrenched even amongst dominated groups.

All this discussion could perhaps lead us to the conclusion that Religion is the most important and durable feature of South-Eastern European countries. And perhaps this could well be extended to a great many western countries, given the role that Religion begins to re-assume today in the resurgence of xenophobic Nationalism under the rubric of Islamophobia.

Last but not the least, the *Millet* System now embraces not only South-East Europe but the whole continent where the Muslims became the New Jews and where the Dominant Nation and the Dominated Nations switched places between Muslims and Non-Muslims.

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⁶³ Objective identity is the innate historical-anthropological identity of the individual and is therefore involuntary. Subjective identity is the identity voluntarily chosen by the individual and can thus be different from the objective identity.

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