Greek and Turkish reciprocal minorities:
A silenced dispute at the border zone of democracy

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1. Introduction[1]

Muslims in Greece and non-Muslims in Turkey have historically found themselves in an ambivalent, mirrored status of legal protection, one which has often been undermined for political and ideological reasons. Their religious, educational, and other institutions have been subject to distinct legal norms based on a communal perception resembling the autonomy that the Ottoman Empire had reserved for the non-Muslim *millets*[2]. The pre-modern Ottoman *millet* divisions partly found their final expression in the formation of the nation-states of the Balkans during the late 19th and early 20th centuries. The Christian states that seceded from the Ottoman Empire (Greece, Bulgaria, Romania, and Serbia) borrowed from the *millet* system to lay out the institutional and legal framework of Muslim communities that remained within their borders. This model prevailed in Turkey also, and was used to govern the same non-Muslim minorities that the empire had recognized as *millet*s - namely, Greek-Orthodox (*Rum Ortodoks*/*Romioi)*, Armenians, and Jews.In Greece and Turkey the notion of citizenship was strongly influenced by a post-Ottoman perception of ethnicity and turned into a theory of racial continuity of both nations based on the 'Greek *genos*' and the 'Turkish *ırk'*.

Some aspects of these legal arrangements have become obsolete with time, such as political representation quotas, local community councils and exemptions from military service. Others remain in force under the form of minority rights, as it is the case with the bilingual minority schools, the jurisdiction of the muftis (only in Greece) and the self-administration of the *vakıf*s (pious foundations).

This special minority protection framework has to be seen in the context of the Greek-Turkish relations and their mutual minority status. The interdependence of the *droit de regard* on their minorities by Greece and Turkey engendered a series of problematic situations which did not comply with the substance of the 'minority protection' regime prescribed by the Treaty of Lausanne and other relevant legal instruments. Measures targeting the minorities in Greece and Turkey were undertaken, explicitly or tacitly, by the pertinent political and administrative

[1]This article is taking into account research results presented in: Tsitselikis2012; Tsitselikis 2017; Fisher Onar and Özgüneş2010;Özgüneş2012.

[2]A certain institutional autonomy was granted to the religious communities (*millet*s) by the central Ottoman authorities, especially after the reforms of the 19th century (Barkey 2008).

bodies. Such measures can be understood as disaggregating the notion of (negative) reciprocity. Reciprocity, a highly controversial point, determined the minority provisions between Greece and Turkey set forth in the Treaty of Lausanne. Very often both states invoke the other state's violations to cover their own poor implementation of the Treaty. Thus, the shrinking of the Greek-Orthodox minority in Turkey from 120,000 in 1924 to some 3,000 nowadays led to Greek counter-measures which, in turn, fuelled discriminative policies in Turkey. In both countries, concern shown towards their kin minorities abroad is realised through unilateral legislative measures and practices in favour of their kin (known respectively as *omogeneis* and *soydaş)*.

The present paper will attempt to discuss the position of these reciprocal minorities in Greece and Turkey which are placed at the border zone of democratic development. Democracy and human rights are marked by the way minorities are treated, given that pluralism as a basis for democracy has as a key indicator the treatment of those in one way or another are excluded from the majority.[3]Also minorities are marked by the level of democracy and the quality of human rights prevailing in the domestic legal order of the state. The article also aims to review forces of democratisation in a critical manner, namely the European rights framework, to the degree that they were able to influence minority policies in both countries.

2. Minorities in Greece and Turkey: The legacy of Lausanne

Since their foundation, state-building in Greece and Turkey went hand in hand with nation-building (Özkırımlı and Sofos 2008). Already, by early 1920s, due to the persecutions of Armenian, Greek-Orthodox, and other non-Muslim minorities by the Ottoman governments and the 1923 mandatory population exchange between Greece and Turkey, the numbers of Muslim minorities in Greece and non-Muslim minorities in Turkey had drastically decreased. In 1923, the exchange of population between Greece and Turkey put an end to the presence of Muslims in Greece and Greek-Orthodox in Turkey (Hirschon 2003; Tsitselikis 2006), with the exception of those who remained as minorities under protection: the Muslims of Western Thrace and the Orthodox Greeks of Istanbul and the islands of Gökçeada/Imvros and Bozcaada/Tenedos.Those who stayed were seen as the unwanted 'others', as an exception or a burden, a counter-weight to be used for political purposes. This is why they should receive a 'special', 'exceptional treatment'.

[3] Here one can note that the European Council in Copenhagen in 1993, included protection of minorities as a key indicator of achievement of the political criteria; a pre-requisite for accession.

Articles 37-45 the Treaty of Lausanne constitutes the cornerstone of the legal status of the reciprocal minorities in Greece and Turkey. One should take into consideration that in Greece, the legal protection for Muslim communities was first set up in 1881 (by the Treaty of Constantinople, Art. 4) and was further strengthened in 1913 (by the Convention of Athens, Art. 12 and Additional Protocol No. 3) when Greece almost doubled its territory and more than 500,000 Muslims became Greek citizens. Therefore the conception of managing difference as formulated in the Lausanne treaty was not something new for Greece. Neither was it for Turkey as it can be seen as an undisturbed continuation of the preexisting Ottoman *millet* system.

In Greece and Turkey, minority protection coexists with individual rights stemming from citizenships. Among the domains of protection, the community foundations became of major importance, as their immovable properties were (and still are) able to sustain religious, charitable, social, medical, and educational institutions that are vital for the survival and continuity of minority identities. The survival of elements of the Ottoman communitarian system turned religious divisions into political and legal categories. This legal status of the minority often creates conflicts of legal norms, as it is the case with the enjoyment of linguistic rights on the basis of religion or the application of family and inheritance *Sharia*norms (in Greece only): Which principle is to prevail?: minority rights or fundamental human rights, community affiliation or egalitarian citizenship?

What the Lausanne minority protection also did was that in both Greece[4] and Turkeythe non-Lausanne minorities became invisible and non-existent. Therefore one of the most important corollaries that the Treaty of Lausanne entailed was that Muslims in Turkey and Greek Orthodox in Greece were, in most cases, excluded from minority protection, as regards language and ethnicity. The Lausanne Treaty fostered a political culture of denial of 'other minorities' that still is predominant: both countries have not ratified minority protection legal instruments[5] that are binding for the majority of European states.

The potential of ethnic kinship in both states played a crucial role for the consolidation of national affinities in the region through assimilating Greek-Orthodox and Muslims into the new

[4] To name three exceptions: minority schools for the Vlachs (1913-1947) and the special community rights granted to the Jewish and Armenian communities.

[5] Namely the Framework Convention for the Protection of National Minorities (signed by Greece, not ratified) and the European Charter for Minority or Regional Languages, both of the Council of Europe.

national ideologies (Poulton 1997, 197; Kitromelides, 1990). In effect, both nation states played a similar role for most of the Greek Orthodox and Muslim minorities, acting as kin-states under the Lausanne Treaty for these minorities, and the latter becoming their kin-minorities.

Both states define themselves as custodians of the mutual minorities, regarding the issues of *vakf* (pious endowments or foundations, community properties) schools and their religious leadership, keeping until late 1980s the issue on a strictly bilateral level. Both, Greece and Turkey,on a similar ground, justify and base policies of an active *droit de regard* targeting their kin-minorities on ties of 'common origin'. These ties substitute citizenship, establishing special rights in favour of the member of the respective minorities under the unilateral control of the granting state. In both cases the concern shown towards the minorities is realized through the adoption of unilateral legislative measures and practices in favour of their *omogeneis*/*soydaş*, such as special quota for student fellowships, salaries for journalists, teachers and religious servants or financial aid granted to members of the minority according to services they provide. Thus two legal orders are overlapping each other: one stemming from kin-state and the other from the home state[6].

In both cases minority institutions were used to enforce state control on minorities defined in religious and not national terms. This attitude is due to the tensions in Greek-Turkish relations, especially after the beginning of the Cyprus crisis in 1955, in 1963/64, then in 1974 and again in 1983. These tensions reflected on measures targeting both minorities (Rozakis 1996 ; Oran 2003). At the same time, Turkish national ideology used the *millet*-likeinstitutions of the minority to enhance community bonds among its members, including those located at the limits of the dominant Turkish national identity, such as the Bulgarian-speaking Pomaks or the Roma (Gypsies) in Thrace. Turkey's patronage over the minority's internal affairs intensified in the 1980s attempting to Turkify Islam (Hüseyinoğlu 2010, 11). After the consolidation of Islam in Turkey, the minority of Thrace was exposed to religious policies imported from Turkey. After 2013, the persecution of FetullahGulen and his sympathisers also became a field of uneasiness in Thrace too.[7]

[6] See also Brubaker's "Triadic Nexus" (1996), as a relevant framework explaining kin state-home state minority relations.

[7] Although no specific study has been conducted on the issue, this statement refers to interviews conducted with members of the minority between August 2016-July 2018.

As regards the Greek-Orthodox minority, strong national ties with Greece enhance Greek national feelings among the members of the minority. After the 1980's when Arab speaking Greek Orthodox moved from the South-East of Turkey to Istanbul for political and economical reasons, and joined the Greek-Orthodox community and therefore integrated in the minority institutions of Greek character (Greek language in religious ceremonies, minority bilingual schools etc.).

3.Persistence of the 'old regime'

In both countries minority protection was closely intertwined with national interests. Directly or indirectly both minorities were seen as the enemy within or as en 'alien element' that would never become real Greek or Turk. In other words minorities were potentially the least equal of citizens. Reciprocity and the state of exception due to national interests were and still are forming the 'old regime' that does not correspond to the broader evolution of domestic politics, democracy and rule of law. Both Greece and Turkey as 'kin-state' and 'hosting-state' exercise interfering policies through national kinship on their respective *soydaş* and *omogeneis*. On the flip side, they exert control policies to their hosted minorities.

3.1. Reciprocity

Reciprocity establishes parallel obligations between two states. In case of human and minority rights it does not entail a right for one party to downgrade the level of protection if the other party violates the minority or human rights. In practice, reciprocity constitutes a mechanism of behaviour linked to a psychological reflex, i.e. to do what the enemy has done to yourself, or a form of revenge and getting even. The history of discriminatory and oppressive measures implemented against the two minority groups relates the principle of reciprocity to an array of situations, which are not subject to clear-cut political or legal explanations.

The measures and counter measures targeting mutual minorities in Greece and Turkey do seem to follow a chaotic pattern of legal and political behaviour. Certain measures were explicitly taken as a response to the acts of the counterpart. Other measures, not strictly reflecting a mirroring balance in quality and quantity, would satisfy political aims considered at local or national level: preventive measures that the other party would adopt; measures not connected to minority policies that nevertheless affected or triggered a series of reciprocal measures; measures that were withdrawn in order to push the other side to do so; measures that were announced but never applied reciprocally; measures that were legally adopted and applied in context of applied reciprocity, etc. The most important fields of application of measures of

reciprocity were education, *vakf*/foundations and the most important, the right of one to remain viably in his/her place of origin, as a citizen of the state (Akgonul 2007; Tsitselikis 2012).

Measures taken against the minorities were not strictly based on the bilateral 'minority question' but to the wider Greco-Turkish conflict of interests. The claim for union to Greece (*enosis*) raised by the Greek-Cypriots (in the early 1950s) and the related pogrom against Greeks of Istanbul (1955), the unilateral denouncement by President Makarios of the 1960constituent treaty of Cyprus (based on the Lausanne and London agreements of 1959) and the military involvement of Turkey, the killings committed against Turkish-Cypriots by Greeksand Greek Cypriots in Cyprus (especially in 1964and 1967), the expulsion of minority Greeks from Turkey in 1964 (perhaps the landmark event for that chain of reciprocity), the Turkish invasion in Cyprus (1974), the self proclaimed Turkish Republic of Northern Cyprus (1983) constitute the milestones which determined the Greek and Turkish policies towards their minorities: the 'collateral' victims of the Cyprus crisis. The closing down of the minority schools in Gökçeada/Imvros and Bozcaada/Tenedos (1964), the Greek-Orthodox Seminary of Halki/Heybeliada (1971), the closing down of schools for the Muslims of Rodos and Kos/Istanköy (1971) can be seen as parts of a chain reaction to mutually repressive measures (Akgonul2007, Gavroglou and Tsitselikis2009; Oran 2003). However the Cyprus question does not constitute the only explanatory ground for the oppressive measures the minorities suffered from.

The issue of whether legal reciprocity could be applied at normative level on the obligations regarding the reciprocal minorities by Greece vis-à-vis Turkey has to be considered under modern international law which is clear on the prevalence of human (and therefore minority) rights over any clauses of reciprocity. Human rights embed objective values stemming from democracy and rule of law, which cannot be subject to bilateral restrictions. The European Court of Human Rights in a case regarding property rights of a Greek in Turkey ruled that reciprocity as a negative practice cannot be tolerated under the European Convention of Human Rights[8].

In the history of reciprocity even minor mistreatment of the one minority resulted in equal if not multiplied reprisals. Thus, 'negative reciprocity' reflects the weakness of Greece and

[8] Case *Apostolidi et autres c. Turquie*, 45628/99, judgment of 27.3.2007, par. 71.

Turkey to accommodate through political and legal means their own ideological and political competition, which in both countries is based on a monolithic perception of the relation between nation and state. Thus, oftentimes the members of the two minorities are not considered as citizens but as hostages, '[u]nfortunately this is true for both Turkey and Greece reciprocally' (Oran 2002).

Not surprisingly many members of both minorities fled abroad. The urban Greek-Orthodox minority in Turkey from 120,000 in 1924 shrunk to some 3,000 today and the mostly rural Muslim-Turkish minority in Greece dwindled from 120,000 to approximately 90,000.The high price the communities had to pay for their governments' 'foreign policy interests' and nationalist policies had also as a consequence the drastic shrinking of the urban Greek-Orthodox community in Turkey and the decrease of the Muslim-Turkish community in Greece. The post-1999 rapprochement between the two countries and the initiation of the EU accession process in Turkey have resulted in relative improvement but as we shall see later with a good degree of oscillation. Gradually as of the late 1990s, Greek governments have abandoned the reciprocity argument, whereas Turkey still evokes it, even at the highest level when it is 'needed'. On numerous occasions, the issue of reciprocity has been brought up in political debates and media coverage concerning minority issues and still holds considerable salience in the media in both countries (Kurban and Tsitselikis2010, 22).

Table: Comparative data on the *Lausanne minorities* in Greece and Turkey

Field of minority protection	Greek-Orthodox in TR	Muslims in GR
Population	3,000 in Istanbul [Greek speaking and Arabic speaking] 150 in Bozcaada and Gökçeada	100,000 in Thrace [mostly Turkish speaking, also Pomak-peaking and Romanes-speaking] 15,000 in Athens; 5,000 in Thessaloniki 3,500 in Rodos and Kos [Turkish and Greek speaking]
Community properties (vakoufia/vakif)	Election of the committees [non elections since 2013]	Non-election of the management committees [since 1964]
	Confiscated/expropriated properties, partially returned	
Private properties	Confiscated/expropriated properties, partially returned	Expropriated properties in Thrace/Rodos/Kos (1970s, 1980s)
Religious authorities	Non-jurisdiction	Controversial jurisdiction of the muftis
	Alien members of the Holy Synod are granted Turkish citizenship	Imams appointed by the government for religious teaching at schools
	Free selection of the staff [patriarch, metropolits, and priests]	Selection and appointment by the government [muftis and imams]
Minority schools	Bilingual curriculum, teachers from Turkey and Greece	Bilingual curriculum, Christian and Muslim teachers (also: teachers from Turkey)
	A new minority school in Bozcaada	No minority schools in Rodos/Kos (operational until 1971)

	No religious schools (The seminary of Halki was operational until 1971)	Two religious high schools in Thrace
Role of the kin-state	Material support through allowances	Strong interventionism

3.2. The state of exception: National interests first and foremost

Dependencies and interdependencies, interferences and manipulations overshadowed the slight occasions of cooperation among the two kin-states. Language, religion and national affiliation became the material with which state exerted their policies in the post-Lausanne years. However, behind the conventional legal justification of *droit de regard* in both Greece and Turkey, invocation of ties of 'common blood', or 'common ethnic descent', or 'religion' underpins ideological and political agendas. These ties substitute citizenship with special 'invisible' qualities and rights extended to member of the respective minorities under the unilateral control of the granting state. Here one can observe a double exception to egalitarianism. Both Greece and Turkey (Tsitselikis 2012; Poulton 1997, 194) attempt to favour their kin minority and both tend to undermine equality through citizenship to their "hosted" minorities. This practice of exception is justified in the name of national security and national interests.

The Lausanne protection system constitutes an exception to the strictly uniform Greek and Turkish legal order introducing legitimised positive measures of minority protection. However, both minorities were locked within old communitarian patterns as an islet of institutionalised religious conservatism in a sea of modernity. This situation creates a hybrid legal status with limited perspectives of evolution, as it is suitable for manipulation by both states. Moreover, the national ideology from both sides makes this exceptional phenomenon seem 'natural' and 'normal'.

In Turkey the following examples are illustrative. The Wealth Tax of 1941[9], the non-Muslim minorities being registered at the 'Foreigners Department' until the 1940s; a law passed in 1988 and in force until 1991 (the Law on Protection Against Sabotage) included measures against 'those who are from a foreign race and indigenous foreigners (with Turkish Citizenship)'. In Greece, the deprivation of citizenship of 'those ethnically alien [*allogenes*] of who depart from the country with no intention to return' (1955), the special movement

[9]A measure that targeted wealthy members of minorities. They had to pay special high taxes, or to work in remote areas in very harsh conditions.

restrictions imposed to the minority of Thrace in a zone by the borders, the massive land expropriations of the 1980s. We are going to discuss some of these examples hereinafter.

Even in what could be considered as 'good moments' in Greek-Turkish relations (the Greek-Turkish rapprochement of the 1930s, and early 1950s and then again from 1999until 2010or 2011) the 'principle of loyalty' of the minorities vis-à-vis their home-state was rarely affected. In case that new minority rights were to be granted, the existing treaties had to be observed and the state of citizenship had to apply its own laws, in order to avoid that minorities turn into "a state within a state".

This helps to understand both the symbolic antagonism between nationalisms (how one should name the minority?) and the practice of deprivation of citizenship (how one can eradicate the unwanted?). All these are signs of a state of exception that continuously tantalizes minority affairs. Minorities in both countries have to face, according to the political context, an overtly suspicious state. There are indeed citizens of the state, but not always full citizens.

One of the most striking examples of the state of exception is the power to expel or to displace minorities. Greece dislodged minority people from strategic areas, Turkish-Muslims from the Evros/Meric river border area), just after the conclusion of the Treaty of Lausanne and Greek Orthodox from the islands of Gökçeada/Imvros and Bozcaada/Tenedos when minority education was abolished at first in 1927, and again in 1964 along with expropriations (Oran 2003, 102). Following the massive expulsion of thousands of Greek-Orthodox (*Romioi*) of Greek citizenship in 1964 Greece responded by applying direct counter measures to the detriment of Turkish citizens of Rodos and Kos and considered other measures against the minority of Thrace. In 1966 both governments agreed to stop expulsions. However the expulsion of the *Romioi* in 1964 offered the ground for Greece to establish a long-lived policy of harassment and control over land transactions (Iliadis 2004, 34) against the minority of Thrace and citizenship deprivation.

To serve national interest beyond any accountability, Greece and Turkey have established secret bodies that could monitor and concert state policies towards the minorities. In Greece the Coordination Council of Thrace was established in 1959 and abolished in 1969 as the government of junta took direct control over minority affairs. The Greek secret committee has been largely discussed, due to the fact that its archives had been made public (Iliadis2004,

Tsitselikis 2012). In Turkey the relevant secret committee was made known in the framework of the democratisation process that the EU adhesion triggered in the 2000s. The Turkish government had set up a secret commission in December 1962 in charge of controlling minorities in the name of 'national security' under the auspices of the Ministry of Interior which was abolished in 2004 by a secret circular (Oran 2004, 90-91; Özgüneş 2012, 442). Even today, in Greece, the Ministry for Foreign Affairs has a leading role in any legislative changes in minority law. The MFA office ('Service of Political Affairs')[10] is based in Xanthi (Thrace) in order to counterbalance Turkish influence.

Both counties also exerted patronage over their reciprocal kin minorities, in the name of 'national interests'. Turkey's patronage over the minority's internal affairs intensified in the 1980s attempting to Turkify Islamand recently (after 2010s) to re-Islamize Turks.Greece also interferes in minority internal affairs through economic support of the Patriarchate. Both consulates play the role of protector for their respective minorities fostering steady, hegemonic clientelistic relations with members of the minority secular and religious elites. 'Black lists' and the criteria for granting allowances, pensions, financing of the minority media and NGOs, scholarships, visas (for the case of the Turkish consulate), special quota for entering the university education of the "mother country" for *soydaş/omogeneis* students (Akgönül1999, 203-215; Hersant 2007, 274-291) are the tools keeping both minorities dependent to the kin-state. Recent political rearrangements after the failed coup of July 2016 in Turkey have important repercussions as for the restructuring of old sympathies towards the Gülen movement as it was incorporated to the mainstream minority policies until 2017 into new political affiliations.

Both states attempted awkwardly to avoid facing the simple truth: that the nation - more than religion - constitutes its core identity (national identity). Especially in Greece, the 'nationalisation' of the minority created a strong concern by the Greek authorities in regard to the raising influence of Turkey on Greek territory, especially after the 1950s. Regardless of the validity of this concern, the appellation of the minority became of major symbolic importance for both states and for the minority itself.

[10] On the Office and its preceding institutions, see Aarbakke (2000, 179).

The frequent switching between 'Turkish' and 'Muslim' in the official appellation of the Muslim-Turkish minority of Thrace, in the 1920s, 1950s, 1970s and today, reveals the capacity for amnesia of a national rhetoric, which claims to serve 'national interests' in a 'state of necessity'. In 1955 (just before the pogrom against the Greek-Orthodox of Ostanbul), in the context of a rapprochement between Greece and Turkey, Greek authorities themselves called the minority 'Turkish'. During the Greek military rule (1967–1974) and still today, however, the very same term has been demonised. Since the mid-1980s, following a series of decisions adopted by the Greek courts, minority associations had to abandon in their titles the adjective 'Turk'. Four cases have been brought before the European Court of Human Rights, which found a violation of the right to association. As the Court said there was no excuse for the Greek courts to ban the associations just because they were referring to the Turkish affiliation of their members.[11] Up to date, none of these associations are registered before the Greek Courts of Thrace which demonstrate a rigid reaction to legal normality. Exceptionally, decisions related to associations are the only cases that Greece does not execute the European Court for Human Rights's judgments.

Another example of exceptional measures taken against the minorities regard the deprivation of citizenship from members of the minority of Thrace and loss of community and private properties of the Greek-Orthodox minority in Turkey. Both are the most severe measures that contradicted human rights and equality of citizens, in the name of national interests. Both stopped to be applicable by the end of 1990sin Greece and mid 2000s in Turkey.

4. Towards democracy?

The aspirations of both Greece and Turkey for full integration with the European Union, albeit with different characteristics and mixed results, placed both countries on a track of negotiation with norms related to fundamental rights and minority rights. This section will outline the normative framework of the EU related to minority rights and the weaknesses embedded in the very framework as well as key differences in the dynamics of transformation. It will also discuss the interrelationship of democracy between the state and the minorities.

4.1 International organisations and Europeanisation in Greece and Turkey

[11]The Court observed that even if the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to a democratic society. ECtHR, *TourkikiEnosiXanthis and Others v. Greece*, no. 26698/05, judgment, paras 55–56.

While both Greece and Turkey declared interest to join the then European Economic Community (EEC) the consequent developments differed quite sharply and was characterised by an institutional asymmetry. The symmetry of relations with Europe from Lausanne and the post-World War II era up through the late 1970s was reflected in the countries' parallel pursuit of membership to the EEC. Greece's initial application was quickly followed by a Turkish bid in 1959 (Rumelili 2004). Greece signed an association agreement in 1961 prompting the Ankara Agreement between the EEC and Turkey in 1964. The pursuit of integration with Europe continued until the Turkish invasion of Cyprus in 1974 which caused the fall of the *junta* in Athens. The EEC quickly stepped in to prevent democratic backsliding and the new Greek government applied for full membership in 1975.

Greece's accession to the EEC in 1981 placed her in a norm transfer framework which was largely based on peer pressure and slow internalisation of norms while Turkey's long-standing aspiration to join the family of European states which culminated in becoming an official candidate in 1999 placed it within a carrot and stick process of norm transfer. As we shall see however, despite an abundance of norm generating institutions, the very weakness of the European minority rights regime (especially in terms of *acquis)*, undermined its potential for deep influence.

Although modalities for minority protection have been in existence since the Congress of Vienna (Jackson-Preece 1997, 78), the minority rights regime as we know it today is founded on more recent developments. The main framework of European approaches to a human and minority rights regime were based upon the principles of the United Nations' Universal Declaration. Through the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE), and, later, the rights component of the EU accession criteria, the European rights regime developed a plexus of norms which would be consolidated into a set of criteria vis-à-vis which candidate countries to the EU would be held accountable through a set of conditionalities.

The position that human rights are of international concern, not internal matters of sovereign states, is seconded by the CoE and OSCE. The most effective legal instrument in Europe, the European Convention on Human Rights (ECHR empowered with the European Court of Human Rights, ECtHR) endorses rights which can be evoked by minorities such as freedom of expression, thought, conscience, worship, religion, and association. The only

especially dedicated to minority rights instruments are the 1993 Framework Convention for the Protection of National Minorities[12] and the European Charter for Minority or Regional Languages, both elaborated by the CoE). The 1993 Maastricht Treaty provided further impetus to the European rights regime as human rights and democratisation. During the same period, the 'Copenhagen Criteria' were developed to ensure that accession countries of Central and Eastern Europe achieve rule of law, human rights and protection of minorities.

Despite these legal instruments, the injunction to 'protect minorities' has remained substantively vague (Hughes and Sasse 2003, 10).Neither do the Copenhagen criteria nor the massive bulk of the *acquis communautaire* prescribe how minority protection is to be upheld. While Copenhagen Criteria make a reference to protection of minorities, the constitutive Amsterdam Treaty of 1997 for EU member states provides an exact list of foundational principles but falls short of including reference to minority protection. The EU has refrained from codifying a law for minority rights for member states. This means that protection of minorities *within* the EU is subject to individual states' discretion, so long as policies are broadly in keeping with liberal norms. This can raise important challenges 'in countries where minority status has traditionally been conceived along, say, religious, rather than ethnic lines, as is the case in Greece and Turkey' (Fisher, Onar and Ozgunes 2010, 121).Despite the fact that freedom of religion and belief has been one of the areas of fundamental rights which the EU continuously reported on in the case of Turkey for non-Muslim minorities, in EU and CoE member states only the jurisprudence of the ECtHR have been key in establishing enforceable 'standards'.

Norm vagueness and lack of enforcement mechanisms for EU members have made reform in Greece subject to a peer pressure game and imposing pressure for change through 'shaming' as a means of compliance.In this context, the reports and resolutions by the European Parliament as well as CoE institutions coupled with pressure coming from human rights organisations help to create a critical environment which pushes for change. A CoEreport in 2003 noted some improvements in the establishment of quotas for members of the Muslim minority to attend institutions of higher education. However'persons wishing to express their Macedonian, Turkish or other identity incur the hostility of the population. They are targets of prejudices and stereotypes' (ECRI, 2003).Such hostility is evident when the name of the minority of Thrace ('Turkish' or 'Muslim') comes to the fore.

[12]Greece signed the Convention in 1997 but has not ratified it. Turkey, France, Monaco, and Andorra have not yet signed.

The impact of this weak European based incentive structure has been two-fold. On one hand, reform in Greece has been slow, *ad hoc*, allowing the persistence of the ideological imaginary of a homogenised society and frequent flare-ups of 'negative' reciprocity. On the other hand, it can lead to slow but meaningful internalization of the norm of minority protection over time. The accession of Greece to the EEC meant that, in contrast to future accession countries where there was also a clearer set of conditionalities, the influence of European institutions in engendering positive change when fundamental rights standards were violated were practically weakened. The rights of the Turkish/Muslim minority in Greece were not restored in contrast to the democratic development that took place after 1974 and onwards. In the meantime there was rising criticism, shaming of Greece, by international organs and observers such as the Parliamentary Assembly of the Council of Europe as well as international NGOs such as Amnesty International which frustrated Greece's international standing. However, the internal push for reform and democratisation took a new turn when Greek Prime Minister Konstantinos Mitsotakis endorsed the policy of 'legal equality – equal citizenship'. By mid to late 1990s, a qualitative change and new impetus for reform could be observed. The Simitis government enacted a range of reforms including the abolition of the military zone in Thrace, abolition of deprivation of citizenship and adopted positive discrimination measures. While international shaming through PACE and other actors was a factor in the Europeanisation of minority policies in Greece, it is difficult to pinpoint a direct consequential link between international pressure and internal change. One can more safely say that political elites in Greece, who were increasingly concerned of Greece being the odd one out in implementing fundamental freedoms, capitalising on the international pressure for reform could take measures for Europeanisation of minority policies despite resistance. The one institution within the European rights regime, the ECtHR plays a strong role in favour of further liberalisation of minority rights (Tsitselikis 2012). Hence Europeanisation in the area of minority rights has been subject to a continuous negotiation between Greek political elites wishing to ensure compliance with soft law around minority rights and deeply embedded discourses that translate into practices perceiving the minority phenomenon as a threat to national integrity (Fisher Onar and Ozgunes2010*,* 128). Greece has yet to ratify the Framework Convention on the Protection of National Minorities and the European Charter for Regional and Minority Languages. Greek policy towards minorities remains in good measure a captive of ideological denial of ethnic diversity and the 'negative' reciprocity of Lausanne.

In the case of Turkey, the substantive ambivalence of the norm, and candidate rather than membership status, has made for a carrot and stick process which characterises the norm transfer dynamic. Turkey is faced not only with the shaming mechanisms such as regular reporting mechanisms on fundamental eights, applied to Greece, but also Regular Reports (RRs) of the European Commission, the Accession Partnerships, and the National Plan for the Adoption of the *acquis*. Generous but conditional financial incentives constitute further tools.

Pro-EU dynamics pushed for substantive changes to Turkish legislation in nine rights-related reform packages from 1999 to 2004 and again in 2006. While thereby outstripping Greece in scope and speed of reform, the carrots and sticks approach can engender stiffer resistance than peer pressure because it forces a country to confront a number of previously taboo issues in rapid succession. This causes problems with implementation. Such resistance from segments of the bureaucracy, political elite, and public is fuelled by awareness of the greater laxity on minority questions encountered by Greece.

What relates to 'protection of minorities' within accession criteria is more of a political requirement than one with normative content. Turkey itself has often been careful in ratifying international instruments, on human rights. Turkey has made a reservation as regards article 27 of the UN Covenant on Civil and Political Rights (minority rights) and the UN Covenant on Economic, Social and Cultural Rights (right to education), by emphasising her obligations under the Lausanne agreement and the recognition of non-Muslim minorities therein only. The sustained pressure on Turkey to respect minority rights and within that definition include also ethnic and linguistic groups other than non-Muslim minorities has led to a discursive negotiation which has resulted in the salience of 'cultural rights' as a trade off between the perceived legal obligations and ideological consequences (the threat to the oneness of the nation) the acceptance of the usage of the term minority rights would bring.

The EU was perceived as the most powerful force for modernisation in Turkey especially until 2005. It is true that, as in many areas of the *acquis*, Turkey made considerable strides in a short period of time with regard to human rights. The reform efforts geared towards the will of membership brought about seven reform packages and constitutional amendments between 2001 and 2003, bringing significant freedoms in the areas of freedom of expression and association, religious freedom and cultural rights among others.

In the period following the reform packages, the impetus for EU engendered reform waned slowly. While commitment to political reform was reiterated by political circles and officially on many occasions, in practice violation of a range of rights called this commitment into question. In this political atmosphere, the leverage of Copenhagen criteria on Turkish politics, especially with regards to political criteria, has rapidly diminished if not vanished.

The interventions of the organs of the Council of Europe together with the relevant judgments of the European Court of Human Rights also played a key role. Worth noting that the first international organ that has ever considered minorities in Greece and Turkey on a reciprocal basis was the Parliamentary Assembly of the Council of Europe. The two Gross reports on the question of the Greek-Orthodox minority of the Gokçeada/Imvros and Bozcaada/Tenedos[13] islands of 2008 and the "Muslims of Turkish descent" of the islands of Rodos and Kos[14], as well as the Hunauld report on the minorities in Greece and Turkey[15] resulted in three Resolutions addressing a series of recommendations to both countries based on the Treaty of Lausanne legal framework as seen in the light of contemporary human rights. These non-binding texts call upon both states to look for solutions that would allow for the harmonious co-existence between Christians and Muslims, minorities and majorities, the implementation of special minority rights along with fundamental principles and norms.

4.2. Minorities within democracy; democracy within minorities

The way states treat their minorities puts at stake the degree of democracy on which equality is based on, as ethnic religious otherness constitutes the political paradigmof pluralism, a fundamental element of democeacy. On theother hand, internal democracy and pluralism of theminoritiesreflectthegeneral patterns of democratisation of the society, and thereadiness of the minority to face internal aspects of pluralism, ethnic or political. If there is a claim for human rights and more democracy to a state, equaly one should expect a minority to seek also internal democracy and openess as regards ethnic pluralism.

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[13] Resolution 1625 (2008), *Gökçeada (Imbros) and Bozcaada (Tenedos): preserving the bicultural character of the two Turkish islands as a model for co-operation between Turkey and Greece in the interest of the people concerned*, and report Doc. 11629, Rapporteur: Mr GrosPACE, CoE, 2008.

[14]Resolution 1867 (2012), *The situation of the Greek citizens of Turkish descent in Rhodes and Kos*, and Report, Doc. 12526, Rapporteur Mr A. Gross, PACE, CoE, 2011.

[15] Resolution 1704 (2010), *Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Greece)* and Report, Doc. 11860, Rapporteur Mr M. Hunault, PACE, CoE, 2010.

Despite strong similarities as regards the treatment of the reciprocal minorities in Greece and Turkey, there is an interesting asymmetry than is visible during the last years (2010-2018). Rule of law and human rights face certain deficiencies in Greece, but yet democratic standards are fulfilled and follow the European average. However, the overall minority rights as regards the case of the Turkish/Muslim minority of Thrace fall in the sphere of "exception"are placed far below the average standards. Still members of the minority are seen as deserving to be 'less than equal'. Legal and political taboos are marking minority affairs in Greece. Naming the minority as 'Turkish' (see the association cases before the European Court of Human Rights) is a taboo. Elect the members of the committees for the community (*vakouf)* properties is a taboo. Electingthe *mufti*[16] is also a taboo. Make the *mufti*'s jurisdiction optional used to be a taboo until recently. Making minority schools competitive is also a taboo until today.

In Turkey events progressed differently. The general state of exception was smoothly abolished through the post-1999 period. The major leap of reform in Turkey, was largely influenced, geared towards and guided by the European Union. But in the areas of fundamental rights, and especially those that concern minorities and diversity, a contradictory path was followed where the major reform packages were continuously undermined or not implemented by the bureaucracy, political elite as well as the judiciary. It did, for example, take the Parliament until 2003 to abolish the State of Emergency in force in the south east of Turkey. For different reasons the state of emergency was imposed in July 2016 for two years allover the country.

The distance from the influence of political criteria of the EU was felt in domestic politics as AKP's consolidation of power coincided with and was fettered by the weakening of opposition and the AKP establishing itself among the "guardians of the state" (Öktem 2011). The thirdtermofthe AKP governmentandonwardsthereformprocess in theareaof fundamental rightsstalledandeven a clearbackslidingcouldbeobservedasruleoflaw, separationofpowers, fundemantalfreedomshavegraduallyeroded. The increasinglyauthoritariancharacterof AKP ruleunder R.T. Erdogantook a sharper turn after theGeziprotestsof 2013 and after the June 2015 elections. The July 2016 coupattempt, its aftermathand the ensuing state of emergency rule (reinstated several times), with increasingly deteriorating conditionsofruleoflawandseparationofpowers, hasmade prospect for any kind of genuine reform

[16]Religious leaders, having jurisdiction over family and inheritance disputes.

a highly distant prospectfor Turkey.Under the state of emergency, the Parliament's key function as legislative power was curtailed, as the government resorted to emergency decrees with 'the force of law' to also regulate issues which should have been processed under the ordinary legislative procedure. In April 2017, the Parliamentary Assembly of the Council of Europe decided to reopen its full monitoring procedure in respect of Turkey, closed since 2005, until its serious concerns about the respect for human rights, democracy and the rule of law have been addressed. Under the state of emergency and until early March 2018, the Council of Ministers issued a total of 31 decrees, which have 'the force of law' according to the Constitution. They affect key rights under the European Convention on Human Rights, such as the right to a fair trial, the right to an effective remedy and the right to protection of property. They introduce amendments to key pieces of legislation which will continue to have an effect after the state of emergency, notably in relation to property rights among others. No doubt, the deterioration of rule of law and fundamental rights has wide range implications for the enjoyment of rights for all segments of society but also in particular, implications for those groupswhohavehadparticularvulnerabilityvis a vistheirenjoymentof rights. In this sense, the 'insecurity of rights', in particular in the field of religious freedom and enjoyment of propertyrights – keyelementsfortheGreekminority.

Whatisstriking in the case of the Lausanne minorities in Turkey is that as long human rights and rule of law face serious constraints especially after the 2016 'state of emergency' proclaimed by the Turkish government, minority rights do not follow an equally limiting pattern. FortheIslamic-centricgovernmentsrunby R. T. Erdogan, the Lausanne minoritiesaretreatedin a legal shape corresponding to the Ottoman interpratation of communities: a Christian *millet*within a Muslim state. The Greek Orthodox Patriarchate has been granted the right to name members at the Holy Synod from overseas how have been granted therighttoacquireTurkishcitizenship, private andcommunitypropertiesarehanded back, electionstothevakifwereallowedforseveral years. After a numberofSyriacpropertieshadmomentarilybeenatriskofexpropriation in Mardin, amendmentstothe Law on Foundations were introduced in March 2018 as a first steptowardstheregistrationtotheSyriaccommunityfoundationsof a listof 56 properties in Mardin, out ofover 110 disputedimmovables. A Greek minority school opened after 60 years in Gökçeada/ImvrosandtheBulgarian Church in Istanbul also reopened in 2018 (USIFR 2018). If the level of the quality of minority rightsis not on the decline, a number ofmeasures key to communities are still pending, such as, thereopeningoftheHalki (Heybeliada) Seminary, theright

of the Orthodox Patriarch to use the title 'ecumenical',[17] the right to hold again elections in the community foundationsandthereturnofthe*mazbutvakif* (*occupied by the state community properties*). Yet it seems that the fall ofdemocracy in Turkey has not fundamentally undermined minorityrights as perscribed by Lausanne an das interpreted by sequential governments.

For Greece, as an example of 'retarded democracy'regards the resistance ofthe Greek government and the minority of Thrace to bring democracy –as far as the selection of the muftis[18]and the members of the community properties is concerned– and rule of law in its domestic juridical affairs, namely as for the special jurisdiction ofthe mufti on personal status affairsaccording to Act 1920/1991. In Turkey, on the contrary, the minorities were forced in 1926 to renounce to their rights regarding specific religious courts and to align with the new Turkish legal order, which recognized the civil code as the sole source of family law. Greece, on the other hand was veryreluctanttochangethingsuntilrecently. The mufti'smandatoryjurisdictionfell after 85 yearsofambiguousrecord of compliance with human rights law.This jurisdiction raises a series of questions as regards the alignment with gender equality. To date, Greek courts opt to safeguard the muftis' jurisdiction as mandatory for Muslim litigants in breach of the Constitution and the ECHR. A case pending before the Court of Strasbourg[19]seems to haveoverturned this situation. Under international pressure, the Greek government amended the law (Act 4511/2018) according to which the mufti's jurisdiction is becoming optional. However, the question whether *sharia* law (certain legal norms on family and inheritance disputes), even optionally applicable, can be legally tolerated, remains unanswered.

On the other hand, the elite of minority communities as well as a significant number of members of these communities display a reluctance to claim *internal*accountability and democracy vis-à-vis their own institutions. The community foundations administration is the most flagrantexample. The multiple questions raised by minority foundations reveal the multi-dimensional deficits in participatory democracy, social citizenship and equality in Greece and

[17] Commission Staff Working Document, Turkey 2018 Report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, 17/04/2018.

[18]As regards the elected muftis who faced penal prosecution and conviction by the Greek courts, see ECtHR, *Serif v. Greece*, Application No 38178/97, 14 December 1999 (among others).

[19] ECtHR, *MollaSali v Greece*, 20452/14, Grand Chamber. The judgment is expected in the end of 2018.

Turkey (Kurban andTsitselikis 2010).Associationsandnewspaperssponsoredbythetwoconsulates in Komotiniand Istanbul ensuretheviabilityofminoritymediaand NGOs but curtailtheirinternalfreedomto express multiple voices. In the name of human rightsinternaldemocracyisbroken. At the international level, Turkey and Greece undertook the task of advocating for minority rights in international organizations through minority NGOs exerting direct control over these guided voices.

5. Conclusions: State of exception or rule of law?

As this chapter has attempted to demonstrate, the Lausanne reciprocal minorities in Greece and Turkey have been politically and legally perceived as an exception to therule of law. The 'nation' and the 'state' played thus a key role in maintaining restrictive policies towards the minorities within or outside the country (Kadıoğlu 2009, 115) for decades. The surviving of the community based minority protection is not due to a contemporary trend towards legal pluralism but to a convenient inertia resulting from the antagonism between Greece and Turkey, and from international commitments instrumentalised by both states.

Civil and political rights exercised by members of the reciprocal minorities in Greece and Turkey have sometimes been subject to special policies, practices, and legal norms. In most cases, the enjoyment of these rights also entails closely interactions with mainstream institutions in the broad society, namely the right to political representation, association, and advocacy within the context of civil society, the right to establish churches and mosques or cemeteries, freedom of expression, and individual property rights. A historical consideration of these rights helps explain their content and shape in contemporary times. One can observe common patterns, such as the 'state of exception' through 'reciprocity' or the privileging of 'national interest' to which law and the courts often ascribe. At the same time, the subjects of these rights often consider themselves to be exceptional, belonging to a special legal order in which the enjoyment of 'common rights' is a function of community interests. If in Greece minority rights (as regards the Turkish/Muslim minority of Thrace) suffer from introvertcommunitarianism and are placeda step behind the standards of democracy, human rights and rule of law, in Turkey there was a shift from the early stages of a strict and controlled democracy minority rights of the Greek-Orthodoxwere seen as a target to control and suppression; Though the era of Islamisation of the republic and the serious constraints exerted over any expression of demands for rule of law for all, the very same minority enjoy more than the average. The *modus vivendi*in the current state of affairs seems to harking back to a period where the Greek-Orthodox community had a more

millet-type status of autonomy which depends directly on the political will (and the 'benevolance' in the provision of enjoyments of rights)[20] of the central power.

The failure of the observance of the Treaty of Lausanne in a bilateral way was, and isstill, based on the principle of political reciprocal pressure. The European integration process for Greece, through the ratification of international legal instruments on minority rights could disconnect the 'minority issue' from its bilateral dimension and put it under multilateral supervision (Alexandris 2003, 113; Tsitselikis 2004, 430-431). The internalisation of norms and the slow but steady democratisation process has placed Greece comparatively on a different footing, albeit within a national security framework. On the other side of the Aegean sea, things turned to be more complicated: what seems to be a relatively safe pathway for the Lausanne minorities, if compared to the breakdown of the general human rights and rule of law standards, is rather due to an Ottoman style conception than to prevalence of human rights and democratic values. And this could be relied upon non accountable political decisions, not governed by any effective juridical control.

National security and human rights or social cohesion are two contrasting stances and tendencies related to state policies in Greece and Turkey towards their reciprocal minorities. While there is an urge to keep fundamental principles of human rights high on the political agenda, on the other hand, all too often they have been sacrificed to considerations regarding the inter-state balance and domestic national security concerns and most of all perceived national interestswhich became inherent to state ideology. Greek and Turkish governments seem reluctant, for different reasons, to put reciprocal minority issues under normalityand not subject to exceptional political control.

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[20]A characteristic recent case (among a number of others) can be considered with the Syriac properties. The legal ownership of at least 110 of church properties without the knowledge of the community had been revoked and turned over to government entities since 2014. 55 deeds were turned over in 2018 after a bill in the Turkish Parliament. The newly amended measures signed into law by Turkish President RecepTayyipErdoğanauthorised the return of these historic Syriac properties.

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