

**DISCUSSIONS AND RECOMMENDATIONS
ON THE FUTURE OF THE
HALKI SEMINARY**

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HALKI SEMINARY**

**ELÇİN MACAR
MEHMET ALİ GÖKAÇTİ**

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Preface by TESEV

The study you are about to read is the third book of the Foreign Policy Analysis Series initiated by TESEV's Foreign Policy Program this year. This book is to be followed by new studies dealing with other problems related to Turkey - EU relations, and also developing recommendations for overcoming and solving these problems.

Next, we will explore the Cyprus issue which has been gaining new dimensions every day, and we will publish research conducted on the normalization of relations between Turkey and Armenia, an inextricable part of Turkish history. Moreover, we are continuing our work on the projects we have initiated concerning a more democratic Middle Eastern region and the future of Iraq.

Within the framework of TESEV's Foreign Policy Program, we aim to contribute to discussions on issues related to Turkey's foreign policy. We also hope to improve Turkey's relations with its neighbors in order to help build a more stable region. In this respect we believe this research will become an important reference. Through holding conferences and producing solution-focused publications, we aim to contribute to more constructive and productive discussion on controversial matters.

We believe that we will be able to contribute to the discussion of the Heybeliada Seminary, which has remained an unresolved part of the Turkish agenda for years. Furthermore, we gather that by solving the problem of the Halki Seminary, expectations of other "minorities" to educate/train clergymen can be met.

Needless to say once again, views expressed in this book belong to the authors and cannot be ascribed to TESEV and the corporate identity of TESEV under any circumstances. TESEV's aim is only to close the information gap and contribute to discussions in line with its own principles.

What is important for us is that the studies we conduct will contribute to the stability of our region, an improvement in bilateral and multilateral relations, the solution of Turkey's problems related to its foreign and domestic policies, the establishment of democracy, respect for human rights, and the realization of EU membership. And we believe that this study, dealing with the problems related to the Halki Seminary, will also serve such purposes.

We would like to take this opportunity to thank, once again, our Board of Directors who have always supported us, the Open Society Institute and the Friedrich Ebert Foundation which contributed to ensuring the success of this study.

As we always say, TESEV is fortunate to be able to work with talented researchers and to share their findings and views with the public. The same is true for this study. Mehmet Ali Gökaçtı and Elçin Macar summarized a comprehensive discussion in a short book and developed recommendations for the solution of the problems outlined. I hope that this study will also broaden your horizons, demonstrating the various aspects of the problems related to the Halki Seminary which has frequently appeared on the Turkish agenda, not least recently.

Associate Professor Mensur Akgün
TESEV Foreign Policy Program Director

Preface

Turkey has long discussed the “issue” of the Greek Patriarchate and the Halki Seminary.

Such issues arise more frequently with globalization and Turkey’s EU candidacy. Recommendations on how to solve these issues have very often taken place in the media.

Our approach is that in principle, this matter ought not to be recognized as a problem in democratic countries. We emphasize that non-Muslims have the right to educate/train clergymen in accordance with the Treaty of Lausanne, which established the constituent agreement for Turkey, and also multilateral agreements/treaties signed thereafter which set out concepts such as minority rights, human rights, freedoms and democracies. We aim to provide recommendations based on some of the arguments in favor of a solution.

We thank the Turkish Economic and Social Studies Foundation which has approached Turkey’s problems within the framework of the aforesaid concepts, and supported and published this study, and also the Greek Patriarch Bartholomeos, and Mesrob II, Patriarch of Turkey’s Armenians who shared views with us for the preparation of this study.

Elçin Macar - Mehmet Ali Gökaçtı

Discussions and recommendations on the future of the Halki Seminary

I- INTRODUCTION

The expansion of religious values throughout societies, the growing importance of religion, its role in world politics upon the collapse of the Eastern Block, and globalization have placed the Greek Patriarchate and the Halki (Heybeliada) Seminary (HS), closed in 1971, on Turkey's agenda.

Beginning in the early 1990's, Turkey increased its efforts to join the EU and, upon the collapse of the Soviet Union, Russia became very interested in the Orthodox world and Church. As a result, the Greek Patriarchate and the HS gained some strategic significance for the U.S.A., and the Patriarchate and other institutions affiliated therewith attracted more attention than in the past. On the other hand, the EU putting pressure on Turkey to reopen the HS by making repetitive demands, and including the issue in progress reports whenever possible, even though it is not a direct condition for EU membership, showed that there is an undeniable issue there.¹

The demand for the reopening of the seminary has become widely discussed due to globalization, the development of democracy in Turkey, the improvement of human rights, and an agenda geared towards ensuring EU membership. The discussion is closely related to Turkey's chronic problems including human rights, minority rights, and the role of secularism as well as its EU membership process. Similarly, there is a great deal of disagreement regarding the Greek Patriarchate and the HS.

I.1-DEFINING THE PROBLEM

The HS, which was closed upon the order of the Ministry of National Education (MNE) in 1971, was the only school where Greek minorities educated clergymen; the Greek Community has been unable to educate clergymen in Turkey since the seminary was closed. The problem the HS controversy highlights - the inability to educate clergymen - is a problem shared by non-Moslems in Turkey. For instance, the Armenian theology school, TREVANK, established education facilities in 1953 but was closed down in 1968. Likewise, Syrians have never had an official school. Catholics and Protestants solved this problem by sending persons to be trained as

¹ Please see, for instance, Progress Report 2004 at the following address:
http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004.en.pdf, p. 44.

clergymen to universities abroad. The Jewish community does not have any known demands for training in Turkey.

I.2-THE PURPOSE OF THE STUDY

The purpose of the study is to highlight the illogical legal grounds that led to the closure of HS and that it violates the Lausanne Treaty, the constituent treaty of Turkey. The study also aims to demonstrate that the contemporary level of civil society and global democratic principles established by the state, are in further contradiction with the goal to become an EU member. In this study, we will examine various views concerning the future of the seminary and will provide the means to argue that obstacles for re-opening the seminary should be removed. Additional recommendations will follow.

I.3-THE HISTORY OF THE HALKI SEMINARY (HS)

The first church in İstanbul was founded in 37 A.D. by St. Andreas. The Byzantium Church was committed to the Metropolitan of Ereğli (ancient Heraclea Pontica) until the period of Constantine the Great. When the name of the ancient city was changed to "New Rome" in the year 330 A.D., the religious community became an independent archbishop. The Holy Synod, the most important governing body of this organization, named first as a patriarchate and then as ecumenical by the Christian Councils, was founded first in the 4th century and became the only decision making body at the beginning of the 5th century.

The Patriarchate, whose influence and jurisdiction increased in the following centuries particularly over the Eastern world, started to have conflicts with the Papacy as early as the 9th century. In the beginning, these conflicts grew out of disagreements over who would have the power to control the regions where Christianity spread, and resulted in the two churches excommunicating each other. The disagreement escalated into a major controversy during negotiations to establish an agreement with the Papacy during the Norman conquests in 1054. The two churches were entirely separated during the fourth Crusade.

Conflicts were not limited to disagreements over authority. They also arose in relation to doctrine.

Western and Eastern Churches attempted to discuss re-unification during the western expansion of the Ottoman Empire, but these yielded no results. The controlling power of the Patriarchate was passed to the Ottomans after they conquered İstanbul on May 29th 1453. Georgios Kurteris, an enthusiast for the unification of the Western and Eastern Churches, was elected as the Patriarch, and was named Gennadios II.

During the same period, it was also accepted that the Patriarch endowed with the title “ethnarch” was the religious leader of all Orthodox people within the Ottoman citizenry. Thus, the Orthodox Patriarch had more power than other religious leaders. According to his position, the Patriarch was both a religious and a political leader.

The Patriarchate moved to the district of Phanar (Fener) at the turn of the 17th century and remains there today. This has been an issue of serious debate since the independent Greek State was founded in 1830.²

During the period of the Turkish Independence War, the Patriarchate was observed to have been intensely involved in political activities against the Ottoman Government particularly from 1919 to 1922. The Patriarchate was consistently criticised for its opposition to Turkey. Such criticism continued because of its stance during subsequent peace talks.

The Patriarchate, whose position was defined by the Lausanne Treaty, had close relations with the state both during the Byzantine and Ottoman Empire periods. It did not assume a role independent from the state, as the Western Church had done. Thus the Patriarchate has strengthened along with the state, as well as weakened in parallel to the state, particularly during the Ottoman period. For example, it was seriously affected after the Balkan nations, particularly the Greek, declared their independence.

During the 19th century, as a result of growing nationalism, many new states were founded in the Balkans. Almost every new state with a majority Orthodox population founded its own national church. As a result, the power of the Greek Patriarchate declined.

In response, the Greek Patriarchate founded a school, a supranational base, to educate clergymen, providing homogeneity in theological terms, in order to maintain religious unity amongst the Orthodox communities that had already formed independent nation-states. In this way, it aimed to allow emerging nation states to found their own independent and national churches, while preventing them from upsetting the spiritual authority of the Patriarchate.

The Patriarch Germanos IV made the first step towards this goal by opening the Halki Seminary on the Hill of Hope (*Umut Tepesi*) in the Monastery of the Holy Trinity, dating back to the Byzantine times, on October 1st 1844. After the proclamation of the Republic and upon the order of the Mayor’s Office of Istanbul, it was decided in 1918, to expropriate the two schools in Halki: HS and the Greek Commercial School. Although the HS was registered as property of the Treasury in the Land Register in

² For the history of the Patriarchate during the Ottoman Empire period, please refer to Yorgo Benlisoy - Elçin Macar, *Fener Patrikhanesi*, (Ankara:Ayraç Publications, 1996), pp. 31-46.

1936, upon transition to the multi-party system, policies implemented in previous years were partially relaxed. As a result of the negotiations with the Patriarchate, the Greek Commercial School in Halki was expropriated, but the seminary was left to the Patriarchate in 1946. The HS had four different educational periods when it was open:

- 1844 - 1919 – secondary education for four years and theology for three years,
- 1919 - 1923 – theology for five years without secondary education,
- 1923 - 1951 – secondary education for four years and theology for three years (as in the first period)
- 1951 - 1971 – high-school education for four years and theology for three years.

The Patriarchate decided to make the HS a college in June 1947 and applied to the Ministry of National Education by demanding changes to the curriculum and asking permission for foreign teachers and students. An interministerial commission rejected the proposal.³

When Menderes became Prime Minister in 1950, a new era began for minorities. The period after 1950, characterized by a multi-party system and a relatively free environment, led to a new agenda. As a result, in the second year of the Democrat Party's accession to power, the HS was named a "Theological School" as accorded by the Ministry of National Education. The Education Committee of the Ministry of National Education notified the HS of the approval of the "Regulations for the Education of the School for Greek Priests of Halki" by its letter from the Department for Private Schools through the Directorate of National Education of the Province of Istanbul, as numbered 3/105853 and dated October 3rd 1951. Thus, the seminary had a new statute with three classes at a high school level and four theological grades. This continued until the seminary was closed in 1971.⁴

As for the statute of foreign students, an "Addendum to the Regulations for the Education of the School for Greek Priests of Halki" was issued as per the decision of the Education Committee numbered 190 and dated August 29th 1952 and the same addendum was notified to the seminary for further performance thereof upon the letter, numbered 3/105830 and dated September 10th 1952, of the Department for the Private Schools through the Directorate of National Education of the Province of Istanbul.⁵ Accordingly "students who came from foreign countries and had no knowledge of Turkish were admitted to the classes of the school in accordance with the equivalent status of education in their countries."⁶ Most foreign students came

³ Emre Özyılmaz, *Heybeliada Ruhban Okulu*, (Ankara: Tamga Publications, 2000) p. 86.

⁴ Elçin Macar, *Cumhuriyet Döneminde İstanbul Rum Patrikhanesi*, (İstanbul: İletişim Publications, 2003), pp. 292-293.

⁵ "Regulations for the Education of the School for Greek Priests of Halki", (İstanbul – Vasil Vasiliadis Printing House, 1953).

⁶ *Ibid*, "Addendum to the Regulations for the Education of the school for Greek Priests of Halki" p. 24.

from regions which fell within the province of the Patriarchate and those who came from various churches such as the Ethiopian Church, Anglican Church etc. had the opportunity to receive education at the school.

The document signed by the Governor of Istanbul and superintendent of schools and sent to the seminary reads as follows:

“..it is established upon the inspection conducted that the Turkish citizen, Lefter Yakovos Stefanidis who wants to open the Private School for the Greek Priests of Halki meets all necessary requirements and permits for education are granted ... on behalf of the founder, Lefter Yakovos and the seminary director, Stiyanos M Repanellis as from July 1st 1954.”⁷

The seminary director was appointed from amongst the metropolitans during the period when the HS continued its facilities and he was also the head of the Monastery of the Holy Trinity. As applied in the minority schools, the appointment of a founder was also implemented here and the metropolitan who was also the school director was appointed as the founder. However no further appointment was made upon the death of the founder of that time in 1960.⁸

From 1932 until 1937 the seminary had 65 students and 15 teachers among whom 3 were Turkish. In 1949 the seminary had 16 students all of whom were Turkish citizens, in 1962 it had 81 students among whom 11 were Turkish citizens, and in 1963 it had 76 students among whom 12 were Turkish citizens. Only four people graduated in the summer of 1968. Nine hundred and thirty students have graduated from the school in 127 years. Some of its graduates joined the ranks of the clergymen and rendered religious services and 343 thereof attained the level of archbishop and the remaining 12 rose to the level of patriarch. Graduates who did not choose to be clergymen normally became religious instructors.

The HS was also influenced by the tension which arose between Turkey and Greece between 1964-1965. Granting student visas to candidates who applied to the HS, a policy of the Menderes era, was abolished in 1963. It was first emphasized in official communications during this period that the HS was a trump against Greece.⁹

I.4-THE CLOSURE OF THE HS

Upon the Constitutional Court's cancellation of some articles of Law no. 625, dated June 8th 1965 concerning Private Institutions of Higher Education, the high school division was dissolved by service of a “confidential” letter written by the Regional Director of the Ministry of National Education to be valid as of July 9th 1971 (Ref: Özel

7 Macar, *ibid*, annex XIII.

8 Macar, *ibid*, p. 292.

9 Özyılmaz, *ibid*, p. 91.

Öğretim Kurumları 101787, dated August 12th 1971).¹⁰ Actually, it was already known that the seminary would be closed down, so Patriarch Athinagoras sent a letter, numbered 447 and dated July 1st 1971, to the Prime Minister, Nihat Erim, stating that the seminary had been opened long before the law numbered 625 came into force and it could not be anything more than a “vocational school” and therefore, it would not be regarded as a private college. He asked for some care and support for it; however, no progress was made. The Patriarchate’s request, submitted by petition, was to file an action against the state council. This was rejected because it was “not a legal entity nor had any capacity to seek legal recourse or open schools.”¹¹

I.5-FROM 1971 UNTIL TODAY

The high school division of the seminary, holding the statute of a minority school, continued its education facilities. However the number of students also decreased as the community declined. Dimitrios, the patriarch at the time, stated in a letter on August 4th 1984 addressed to then Minister of National Education, Vehbi Dinçerler that candidates recommended for founding the school were all rejected and official communications and Social Security transactions were therefore blocked. He said that he could not even employ a solicitor to defend him and the seminary in legal cases. He continued to state that such cases were finalized in his absence, the seminary was convicted to pay damages, and property belonging to the seminary was thus seized. Furthermore, he added that a director had not been appointed for years, and education as well as discipline was negatively affected and since no teachers had been appointed educational activities had ceased. That the student body was reduced to four, illustrates the extent of these problems. As a result, he requested that the seminary be closed. But such a request would not be accepted due to the principle of “reciprocity”.

The Greek Community, whose population largely diminished as a result of anti-minority policies during the period of the Republic, faced rapid emigration owing to the atmosphere created by the invasion of Cyprus in 1974. The Patriarchate, whose community members became fewer, began having a hard time finding persons willing to be clergymen and, when there was someone who came forth with this aim, he was sent to the Theology Faculty of Thessaloniki.

When the need for clergymen became one of the Patriarchate’s most obvious problems during the period of Patriarch Bartholomeos, the Patriarch wrote a letter to Prime Minister Mesut Yılmaz on April 4th 1996, stating that the Patriarchate needed clergymen and that candidates had been sent abroad for their education

¹⁰ Petition, numbered 801 and dated August 28 2003, of the Greek Patriarch, Prime Minister Erdogan, p. 6.

¹¹ Zekai Baloğlu, *Grek Devleti, Patrikhane ve Rahipler Okulu*, (İstanbul: Harp Akademileri Komutanlığı Publications, second edition, 2000), p. 22.

following the closure of the seminary. However, this did not yield expected results and new issues emerged, thus he requested the seminary be re-opened.¹²

The media declared that on account of international pressure, the request was taken to the National Security Council upon the recommendation of the Ministry of Foreign Affairs. It was noted that reopening of the seminary would be beneficial to Turkey's foreign affairs and therefore a solution was sought.¹³ It is said that the then President Demirel "unofficially" supported the reopening of the seminary.¹⁴ In addition, a leading daily claimed that the U.S. also sought for the HS to be bound within the framework of the general regulations set for other higher education institutions in Turkey but with significant flexibility in its daily operations as a seminary.¹⁵

Upon the request of the Directorate of Security Affairs of the Prime Minister, dated September 3rd 1999, the Higher Education Council decided in its meeting on September 14th 1999 to establish the Department of World Religions and Cultures within the body of the Theology Faculty of Istanbul University. Professor Zekeriya Beyaz, given the duty to establish the department, wanted spiritual leaders of non-Moslem communities to offer their recommendations and moral support to him according to his letter sent on December 14th 1999. However communities and spiritual institutions showed little interest in such a formulation and the said matter was left in an abeyance.¹⁶

II- NON-MOSLEMS AND THE MILLET SYSTEM UNDER OTTOMAN RULE

Within this context, we also need to touch on the Ottoman *millet* system as well as the status of non-Moslems residing within the framework of this system. This will be beneficial as it will clarify the results of the transformation experienced by non-Moslems during the emergence of the modern nation state from the existing Ottoman *millet* system; in short, non-Moslems had become "minorities".

Islam supports other religious communities residing in countries under Islamic Law having the right to live and practice their own faith. In this context, the Qu'ran has two different ontological approaches on the juncture of Moslems and non-Moslems. Accordingly, such a preference for religion refers to a certain style of life and also a choice of a socio-political identity.¹⁷

According to Islamic Law, those who choose Islam become a member of a socio-political Islamic community and those who cannot share such a faith accept the

¹² Macar, *ibid*, p. 297.

¹³ *Hürriyet*, November 28 1997.

¹⁴ *New York Times*, August 7 2000.

¹⁵ *Milliyet*, October 21 1999.

¹⁶ *Hürriyet*, December 20 1999 and *Agos*, December 24 1999.

¹⁷ Ahmet Özel, "Gayrimüslim", *TDV İslam Ansiklopedisi*, volume: 13, İstanbul, 1996, p. 420.

political sovereignty of the Islamic State and have the opportunity to be able to lead their preferred life within a pluralist legal structure. In return, they are obliged to pay taxes to the government. The legal statutes of non-Moslems in the Islamic State have been construed in different ways, mostly by Western researchers. But the comments made by the same researchers also demonstrated that they could not benefit from any and all rights like Moslems did due to the differences in faith compared to the Moslems who retained sovereignty of the state.

According to generally accepted legal provisions in the Islamic world, non-Moslems are not allowed to establish places of worship in cities founded by Moslems. Places of worship in cities captured in wars were not touched; however, it was accepted that new ones would not be allowed to be established. The protection and maintenance of places of worship in cities seized by peaceful means, including the construction of new ones, was determined according to the provisions of the agreement reached between Moslems and non-Moslems. The *millet* system is, according to the understanding introduced by Islamic Law, a legal case which occurs when those holding the statute of *dhimmis*, i.e. Jews or Christians under Islam are governed under the Islamic State owing to a pact providing laws and protection.¹⁸

Non-Moslems were allowed to perform memorial services, ring bells and mark celebrations in their places of worship on holy days. In some cases, public rituals were forbidden for the purpose of maintaining public order. When we look over practices in the Ottoman State, it is known that limitations concerning religious freedom of non-Moslems were less restrained and practices were implemented within a broader and more flexible framework than in other Islamic states.

On the basis of such an understanding, non-Moslems under the control of an Islamic state are also under the protection of the state. All of their rights, including religious and cultural rights, are also under the protection within the body of such an understanding. And in exchange for such rights, non-Moslems were charged certain taxes called tributes and head taxes (*cizye*).¹⁹

The *millet* system was not founded according to ethnic relations, but according to religion and religious sect. Serbians, Bulgarians, Orthodox Albanians and Orthodox Arabs, together with Hellenic society as a whole, were therefore subject to the Orthodox Greek Patriarchate which was the head of the Greek Nation.

A similar form of the *millet* system applied during the classical period of the Ottoman State was developed for the Orthodox community and implemented under the leadership of Hellenic society. This implementation began to weaken once the Ottoman State started becoming more centralised following the administrative

¹⁸ İlber Ortaylı, "Millet", *TDV İslam Ansiklopedisi*, volume: 30, İstanbul, 2005, pp. 66-70.

¹⁹ Boris Christoff Nekdoff, "Cizye in the Ottoman Empire", *Belleoten*, volume VIII, number: 32, 1944.

reforms of the *Tanzimat* period, and Orthodox factions, particularly Greek, gained their independence by separating from the Ottoman State.

Even though these groups had different languages and cultures, and lived in different geographical territories, they were still under the financial, administrative and legal prowess of the Greek Patriarchate. It is significant to note that the Patriarch opposed events, starting in the Balkans in the 19th century that led not only to new independent nations but also independent churches within these new states.²⁰

The Halki Seminary, which was opened to educate Orthodox clergymen, illustrates that the essential objective of the re-structuring efforts was not to struggle against the Ottomans, believed to be weakening, but to ensure that the Orthodox Church was unified. In this way, the spiritual authority of the Patriarchate was protected. Because the process beginning with the independence of Greece also led to the emergence of the independent national churches, this naturally harmed the spiritual authority of the Patriarchate and led to the protection of the spiritual authority through a number of initiatives, including the HS. In time, the Patriarchate and other affiliated institutions became a problem, which was also highlighted during the collapse of the Ottoman Empire and the establishment of the Republic of Turkey, taking its place as one of the late nation-states.

III- PROBLEMS OF MINORITIES DURING THE PERIOD OF THE REPUBLIC

III.1.GENERAL ISSUES

Here we should draw attention to the distinction between the nation-state of the Republic of Turkey and the Ottoman State, which was built on a multi-religious and multi-ethnic structure. The expansion of new nation-states all around the world resulted in international policies differing from previous periods. Internal affairs changed as well. For example, during the rule of the Ottoman Empire, non-Moslem groups and societies were protected by the state. Except in extraordinary periods, their internal affairs were free from external interference allowing them to establish and run their own religious institutions. Their positions changed as the nation state developed.

In this context, nation-states that emerged with a homogeneous population and a central powerful state mechanism developed different policies towards their minorities with distinct ethnic roots, languages and religions. One inevitable consequence was that non-Moslem groups and societies, which had a specific position inside the system in the Ottoman Empire, were re-defined under minority status. At first glance, though minorities were equal citizens under the Constitution, in practice they were discriminated against.

■ 20 Macar, *ibid*, pp. 56-62.

Minorities with different religions, languages and cultural features faced various restrictions and obstructions especially in regards to educational rights, illegal practices for foundations, and various economic policies implemented during extraordinary periods (such as wealth taxes). Minorities were not able to become top-level officials and were often forced to leave the country.

Minorities and any institutional structures affiliated with minorities were scrutinized and their activities were closely followed. In other words, minorities were the “Trojan Horse” of another state and seen as a competitor or somehow dangerous and treated accordingly. As a result, minorities were subject to many restrictions and were forced to renounce their rights.

Intellectuals have recently begun to decipher the variety of ways minorities faced discrimination. Today two problems are most urgent for minorities: the inability to educate clergymen and the state’s seizure of properties owned by community foundations.

Seizure of property belonging to foundations constitutes the most important aspect of the “violation of the equality” which non-Moslems sustain in respect to various matters. On this matter, in the last three years, two legal arrangements have been made. However, these have been unable to solve the problem and a third is under way.

The essence of the problem is that declarations made in 1936, for the purpose of assessing the properties of community foundations (most of which were founded through the Sultan’s mandates and did not have acts of foundation), were accepted as acts of foundation in decisions made by the Supreme Court and State Council in the 1970s. As there was no phrase stating “one may acquire properties” on acts of foundations, some legal arrangements attempted to compensate grievances and losses suffered due to the seizure of property acquired after 1936. During this period of uncertainty, foundation executives (such as Surp Pırgıç Armenian Hospital’s Foundation and Fener Greek Boys’ School Foundation) who began to think that they could not solve such problems internally, started resorting to the European Court of Human Rights (ECHR).²¹ Additionally, foundations cannot elect their executives.

III.2. ISSUES RAISED BY THE GREEK PATRIARCHATE

When the Ottoman Empire, a multi-religious and multi-national state, fell and was replaced by the Republic of Turkey the Patriarchate and its affiliated institutions began to be perceived as a problem. The most important factor triggering this was the struggle against Greece in conquering Anatolian territory during the foundation of the Republic of Turkey.

²¹ Zaman, September 10, 2005.

Following the end of the war and the treaty signed in Lausanne, most Greeks were sent to Greece as part of a population exchange. This was the most important step in attaining a homogeneous population, thought to be the fundamental feature of a nation-state. While discussing the population exchange, institutions such as the Patriarchate were also criticized with no regard for its function during the Ottoman period and some initiatives were taken to exile them. However, it was agreed during the negotiations of the Lausanne Treaty to leave the Greek Patriarchate in İstanbul.

The Turkish bureaucracy sought to get rid of the Patriarchate during the period of occupation at the end of the World War I. In an effort to rid the Republic of this “foreign institution” the Patriarchate would be forced to pay “reciprocity”, for retaliation against the Western Thrace Turks in Greece.

There were three main periods during the Republic in which the Patriarchate was openly criticized as “an opposing party” by the Turkish public: the first period was during 1955 when the Cyprus issue emerged, laying the ground for September 6-7th, and the second was between 1964 and 1965, which corresponded to another stage in the Cyprus Issue, and the final one was the period starting with the fall of the Eastern Block and increasing globalization.

The Ministry of Foreign Affairs’ statement about the Patriarchate on April 16th 1965 was a turning point.²² According to the spokesman, “relations between Turkey and Greece relied on the balance established in Lausanne. The Cyprus issue, Turks residing on Dodecanese and Greeks residing in İstanbul and the Patriarchate are being observed in such a balance”. This was the first time officials acknowledged that the Patriarchate was part of the “reciprocity” in Turkish-Greek relations.

The principle of “reciprocity” was put into action immediately. In addition to restrictions placed on schools in Western Thrace and İstanbul, the curriculum was terminated at Greek schools in İmbros (Gökçeada) and Tenedos (Bozcaada). Likewise, the Turkish education program at the Sulaimaniya Madrasah, the last school with a Turkish education program on the Dodecanese, was also brought to an end just after the closure of the HS in 1971.

The Patriarchate was regarded as a dangerous institution at home and thus became the subject of an international dispute while “minority rights” arose around the world.

Policies were put in place to control the Patriarchate during the period of the Republic. In addition to state policies set against minorities, obligations contained in the Regulations of the Greek Patriarchate, dated 1862, stipulated that candidates for Patriarch should be Ottoman citizens. As reflected in the official communication

22 Milliyet, April 17, 1965.

from the Governor's Office of Istanbul, dated 1923, candidates for Patriarch should be Turkish citizens. The number of potential candidates diminished as a result. It is highly probable that the Patriarchate will not be able to find Patriarch candidates within 30-40 years and thus, will naturally fade away.

The Archbishopric of İstanbul, including the metropolitans of Kadıköy, Adalar, Terkos, İmbros and Tenedos falling within the geographical limits of Turkey, metropolitans and archbishops residing in Crete and on the Dodecanese in Greece, including the metropolitans of Eastern Aegean Islands and also of regions called "new regions" annexed to Greece in 1912, and various monasteries and religious centers particularly including Mount Athos were affiliated to the Orthodox Greek Patriarchate in İstanbul. Moreover, several spiritual regions such as the American Archbishopric, the Australian Archbishopric, metropolitans in Europe, and the New Zealand Archbishopric are under the jurisdiction of the Patriarchate.

III.2.A-THE ECUMENICAL TITLE

The issue of the Patriarchate's ecumenical title is often raised during discussions about the Patriarchate, where facts are often misconstrued and historically inaccurate. Thus, to clarify the issue, the "ecumenical title" issue must be dealt with separately.

The Patriarchate's ecumenical title is a historical and honorary title used to coordinate Orthodox churches. It is central in ensuring a sustainable relationship with other churches. At the same time, the Patriarchate has spiritual powers in regions outside the provinces of independent Orthodox churches.

As suggested by these definitions, the title has significance in Christianity. Possessing such a controversial title should not affect how the state treats the Patriarchate. The relationship between the state and religion could be generally assessed under two historically derived categories. In the first the state is a theocracy, defined by a certain religion or sect. On the other hand, in a laical system, religion is completely separated from the state, thus the state does not interfere with religious affairs and religion does not interfere in or have any effect on state affairs. Additionally the secular state abstains from discussing the relationship between state and religion. Thus, according to secularist principles, there is no difference between accepting and rejecting ecumenicalism.

III.2.B-RAPID INCREASE OF ITS COMMUNITY

After the exchange of populations in Turkey, Greek communities remained in three places: İstanbul, İmbros and Tenedos. However after the Lausanne Treaty, the number of Greeks in Turkey declined dramatically. Of approximately 100,000 Greeks

in Istanbul and 8,200 from Imbros and Tenedos, only 4,000 remained in total.²³ The number of Greeks on both islands is now approximately 250. The subject was also included in the EU's Progress Reports in recent years; problems concerning schools and properties in Imbros, where no Greek education has been available since 1964, are now being discussed.²⁴

This led the Patriarchate to seek ways to prevent a similar course of events in Turkey, and thus, it supported Turkey's European Union membership, despite the likelihood of a conflict with Greece, as Greece was abhorrently opposed to Turkish membership until 1999. If Turkey becomes an EU member, the Patriarchate hopes it may prevent it from disappearing.

III.2.C-ITS CAPACITY AS A NON-LEGAL ENTITY

The Greek Patriarchate, with repeated references to the Lausanne Treaty, has taken small steps to enable discussion of its statute in public. Within this complexity the Patriarchate is not recognized *de jure* by the Republic of Turkey and is not a legal entity. Such repudiation is undoubtedly a political choice and the Patriarchate is expected to be dissolved by administrators of the Republic who may not want to grant the Patriarchate any legal assurances.

Though not recognized as a legal entity, the Patriarchate is a "religious institution", as mentioned in article 42 of the Lausanne Treaty. For this purpose, the court would probably accept that the Patriarchate has a legal personality if it resorts to the ECHR. Furthermore the case of the Canea Catholic Church v. Greece and the case of the metropolitan church of Bessarabia and others v. Moldova may also set an important precedent.²⁵

III.2.D-THE ELECTION OF PATRIARCHS

Regulations drawn up for non-Moslem communities during the late Ottoman period constitute the basis for the system in application today, which can be described as semi-official. For instance, Patriarchs are elected through procedures outlined in these regulations.

Two different criteria were set for Patriarchate elections during the Republican period, one in 1923, and the other in 1970. The second stipulated that "the Mayor

²³ This number, which was cited as 2000 in the first version of this study published in Turkish (Heybeliada Ruhban Okulu'nun Geleceği Üzerine Tartışmalar ve Öneriler, TESEV Yayınları, 2005). The updated statistics was declared in July 2006. Please see: <http://www.radikal.com.tr/haber.php?haberno=191702>.

²⁴ http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf, p. 49.

²⁵ For the Canea case, please see: Akif Emre Öktem; *Uluslararası Hukukta İnanç Özgürlüğü*, (Ankara: Liberte Publications., 2002), pp. 373-374; For the Bessarabia case please see: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bessarabia&-sessionid=5057675&skin=hudoc-en>

shall be entitled to appoint the patriarch if it is believed that there is problems in the election of patriarchs.²⁶ This was never implemented.

The Patriarch takes issue with the requirement for its candidate to be a Turkish citizen, as its community in Turkey is decreasing dramatically. In the near future, no candidates will be available. Contrary to popular belief, this rule was not imposed by the Lausanne Treaty, but by an official communication dated December 6th 1923. This is a serious problem that the Patriarchate must confront.

III.2.E-THE STATUS OF FOREIGN CLERICS

Currently, the Patriarchate in Turkey is sustained by foreign clerics from regions across the Patriarchates' large geographical area. Today, there are 10 to 15 clergymen. As they do not have official status or legal personality, they stay as "tourists" and go abroad and return every 90 days. They can obtain neither residence nor work permits.

IV- POLITICAL ASPECT OF THE HS DISCUSSIONS

Even though the subject seems to be a legal case at first glance, discussions conducted within the framework of the HS inescapably have a political dimension. Changes in foreign policy, particularly with regard to EU–Turkey relations, have led to some problems and misperceptions of the state mechanism. Foreign policy issues are sometimes still perceived with 'Cold War' mentality causing Turkey to perceive external demands as threatening and dangerous to the integrity of the country.

For instance, with the HS, even the simple demand of opening a school is perceived as a dangerous initiative that could lead to the division of Turkey, thus jeopardizing the future of the nation. It is therefore evaluated almost entirely on political grounds, preventing it from being evaluated in its real context.

IV.1-DIFFERENT PERSPECTIVES ON THE HS

There are two main viewpoints concerning the future of the seminary. The first view is the more conservative one and was probably instrumental in creating the policy currently pursued towards the Greek Patriarch in Turkey. It states that the HS is the Military College of the Patriarchate, and even of the *Megali Idea*; Turkey cannot therefore be expected to allow Greece to educate clergymen who will support such imperialist ideology. Within the second position, a framework of "reciprocity" is advocated. That is to say, the issue can be used as a bargaining chip to bring Greece to a compromising position in order to help solve the problems of the Western Thrace

²⁶ Letter numbered 783 and dated August 12th 2003, from the Greek Patriarch Bartholomeos, sent to the Minister of Internal Affairs, Abdulkadir Aksu, p. 5.

Turks. This group includes Kemalists, secularists sensitive to this issue, nationalists, and a smaller segment of the “Islamic Group” who emphasize nationalism.

Secularists fear that if the HS is permitted to open a school, Islamic groups would also demand to open religious schools. This could be a slippery slope and could permanently damage the secular system.²⁷ This view can be critiqued in several ways. First, these groups either do not know or choose to ignore that the *Megali Idea* (*Great Idea*) was abandoned by Greece after the defeat in 1922; it is no longer the main aim of Greek foreign policy. They are not uncomfortable if clergyman candidates from this “Turkish institution” have had education outside Turkey and they may learn “dangerous” ideologies there. Furthermore, they cannot produce any evidence suggesting that clergymen of *Megali Idea* are educated at the said seminary. The Patriarchate failed to meet these requirements after the seminary was closed down and became dependent of the Greek Church in the education of clergymen. This sits in opposition with what the aforesaid people wanted.

The second criticism concerns a contradiction in argument: it is argued that problems of the HS are an internal matter - the Patriarchate is a “Turkish institution” - yet it could be used as a bargaining tool, particularly in relations with Greece. Moreover, the principle of “reciprocity” does not exist in Lausanne. Such a situation recalls Article 45 of the Treaty, which suggests that minority rights in Turkey are also valid and binding for Moslems in Greece.

Lausanne is a multilateral treaty, not a bilateral treaty between Greece and Turkey. In other words, parties thereto are liable to all signatories. Discrimination against or violation of the rights made to its citizens by Greece or Turkey cannot therefore be an excuse for the other to implement the same sanctions on its own citizens. Turkey has been pursuing a policy regarding its non-Moslem citizens within the logic of “reciprocity”, which it has called within the “Lausanne order” and defended criticisms on the same grounds. Such a mentality, which caused the Greek Community to decrease in number, and the Community in Western Thrace to all but disappear, should be abandoned.

The second viewpoint supports the elimination of all obstacles in front of the Patriarch, resulting in the opening of the seminary. This can be divided into three groups. First, some support a pragmatic approach that includes the opening of the seminary and supporting the Patriarchate at home and abroad. This could be approached as national interest as it would be advantageous to Turkey in various ways, including aspects of foreign policy and the EU membership process.²⁸

²⁷ Özyılmaz, *ibid*, p. 139.

²⁸ See for example, articles written by İlter Türkmen in *Hürriyet* on October 25 and November, 1 2005.

A second group emphasizes minority rights, human rights, freedoms and democracy, and argues that non-Moslems already have had rights to educate clergymen as per the Lausanne Treaty and multilateral agreements signed thereafter. This study is in line with this view.²⁹

The third group is the “Islamic Group.” As this group may react negatively, it must be dealt with more carefully if the HS is opened.

The allegation that this group will oppose the opening of the seminary is not necessarily true. It is evident in press statements and its representatives’ statements that most of this group is not opposed to the opening of the HS. Rather it is only a few small parties and publications with relatively more nationalist tendencies.

There are two reasons this group is not opposed to the opening of the HS. The first one is that this group starts with notions of Islamic history and practices, and argues that Islam confers members of other religions with the right to live as required by their own standards. The effect of the Ottoman’s *millet* system over such an understanding is quite large. Additionally, there is an expectation that the opening of the HS would set a precedent and would therefore be helpful in removing “restrictions” believed to exist on Islamic groups.

These understandings of the issue are seen clearly in the government’s evaluations of the matter. Through their statements such as “I would think the same way even if the EU did not exist. This is what my religion orders and my culture requires me to do”³⁰, they have displayed that the seminary should be opened. However the government’s uneasiness derives from the fear that there will be a strong negative reaction on the grounds that if it opens the seminary at the request of Westerners, it unfairly confers religious rights on non-Moslems and denies the same rights to Moslems. But a very essential difference is overlooked in that there is a class of clergymen in Christianity, and for Christians it would not be possible to worship without them. From this point of view, to draw parallels between Islamic vocational religious schools and the HS would not be accurate.

It may be observed that most conservative groups in Turkey are not opposed to opening the HS even if they have some hesitations. And it is also striking that some groups considered to be Islamic have religious and nationalistic sensitivities and use the same arguments as certain secular groups opposed to opening the HS.

Besides tolerance for other faiths, another reason why Islamic groups support opening the HS is because of the understanding that it would set a precedent for Moslems, potentially leading to solutions to issues they face. The view that problems faced by

²⁹ For the conceptual framework in line with such a viewpoint, please see: Baskın Oran, *Türkiye'de Azınlıklar. Kavramlar, Lozan, İş, Mevzuat, İqtihat, Uygulama*, (İstanbul: TESEV Publications, 2004).

³⁰ Milliyet, October 6, 2005.

imams and preachers (*İmam Hatip* schools) as well as restrictions on Qu'ran courses could be solved through such an example or could be instrumental in alleviating parts of the problem is common among these circles.

For the said group, the opening of the HS has great significance; despite there being little similarity between imams, preachers and Qu'ran courses with the HS, they are all institutions providing religious education and have suffered from certain misinterpretations of secularism in Turkey. Again another issue we should emphasize is that conservative groups know and recognize that the HS only trains priests.

Turkey's approach towards religious institutions and the understanding of secularism during the Republican era are also reflected in decisions related to religious education institutions, and policies towards imams and preachers. The HS has demonstrated some similarities.

IV.2- POLICIES TOWARDS RELIGIOUS SCHOOLS

Such parallels date back to the 1940s. At the end of World War II, a more liberal environment was growing around the world and led to some developments in Turkey. The period starting with elections in 1946 corresponds to a period whereby prohibitions in many fields relaxed. This was mainly in the area of external factors, however, internal demands changed as well.

Parliamentary democracy, in which governments were chosen by ballot, and new phenomena, such as a more open political, cultural and religious environment, were prerequisites to join the Western world, which Turkey desired to be a part of in parallel to developments occurring after World War II.

It was observed that significant changes occurred as a result of the change of government in 1950, even though populist political approaches underlaid them. Religious rights improved as a result of the demands coming from the supporters of the Democrat Party and in line with the principles of the Western world. Thus, 1951 was a milestone, as a result of attempts initiated against the increasing Soviet threat, such as Marshall Aid, accession to NATO etc., in order to institute a "spiritual strength" and integrate Turkey in the Western world, which Turkey had been distant from until then.

Moreover Soviet "imperialism" and "the communist threat" also affected Turkey and forced it to impart some changes. The end of the inter-war isolationist environment and the formation of deep alliances created a new foreign policy. This new foreign policy required Turkey to alter its domestic policies with regard to religion and minorities. In this context, until then the expropriation of the lands belonging to the HS have been settled in favor of the Greek Patriarchate.³¹ For the first time,

■ 31 Macar, *ibid*, p. 291.

during the same period, Islamic vocational religious schools were opened to educate imams and preachers. Limitations on the permission on pilgrimages and the removal of prohibitions of visits to tombs were also abolished.

Islamic Vocational Religious Schools were opened as vocational schools under a new statute in 1951. In addition, schools began offering religion classes and the HS was granted a new statute that would remain until the year it was closed. The military coup against the Democrat Party in 1960 was a response to the fear that the country was departing from the principle of secularism. However the coup never covered the issue of Islamic vocational religious schools or the new statute of the HS.

The internal and external features of the period surrounding the seminary's closure in 1971 should also be studied. The main aim of those who unseated the existing government upon the memorandum submitted in 1971 was neither to "bring freedom" to the country, as those who had done in the military coup of 1960, or to "stop anarchy", as was the aim of the 1980 coup. The main aim of those in 1971 was to re-establish the Republic. The government formed by Nihat Erim on the basis of such an understanding was called "a reform government".

One of the first acts of the reform government was to close secondary divisions of Islamic vocational religious schools. The activities of the HS were also ceased upon the ruling of the Constitutional Court.³² The principle of "reciprocity", implemented between Turkey and Greece, impacted on the decision on legal grounds, including developments in Cyprus and Western Thrace. There was little reaction to the seminary's closing, probably because Greece was administered by a junta and lacked sympathy with international public opinion.

But secondary divisions of Islamic vocational religious schools were reopened before the military regime ended in 1971 and the number of schools was increased as much as possible by successive governments. Highlighting the need for "moral strength" against the Cold War and "the communist threat", the number and size of such schools continued to increase.³³ Despite this, it is important to note the HS was not opened, and methods to open it were not developed, due to the increased tension between Greece and Turkey, beginning in 1974. Since the HS remained unopened, Islamic interest in the school declined.

V- LEGAL ASPECTS OF THE DISCUSSIONS ON THE HS

The Board of Trustees appointed to the HS upon its closure in 1971 designated Professor Ömer İlhan Akipek, member of Ankara University's Faculty of Law as their

³² Decision of the Constitutional Court, numbered E.69/31, K.71/3 and dated January 12 1971. *Official Gazette*, 26.03.1971/13790.

³³ Mehmet Ali Gökaçlı, *Türkiye'de Din Eğitimi ve İmam Hatipler*, (İstanbul: İletişim Publications, 2005), pp. 211, 221, 233 et seq.

lawyer. He requested the cancellation of this administrative ruling and submitted a petition to the State Council for the action on the following summarized grounds on November 17th 1971:

- 1- This school is among those which fall within the scope of Article 40 of the Lausanne Treaty.
- 2- There is no difference between the Republic of Turkey's High School Diploma and those from Theology Schools apart from the phrase "they are regarded as educated in the level of schools rendering vocational education for at least one year after high school".
- 3- Graduates of Theology Schools complete their military service just like any other high school graduate.
- 4- Those who want to continue their education at university take an entrance exam just like any other high school graduate.
- 5- Graduates of this division are only recognized as priests.
- 6- The seminary was not founded as per the Law concerning Private Institutions of Higher Education, numbered 625 and in effect since 1844. As a matter of fact, a private school of higher education could not be opened as per legislation operative during the time when the regulations of the seminary were approved.
- 7- That no procedures were implemented for the HS, even though it was affiliated with existing universities and academies as per law 1472, allowing students of all closed private institutions of higher education to continue their studies, was a clear indication that the legislator did not consider this school as a college.

Attempts to amend these shortcomings, which Mr. Akipek consequently referred to, were made under decision 72875118, dated December 21st 1971, passed by the Senate of Ankara University. This decision would resurface in the following years along with the proposal to open an Orthodox division in one of the theology faculties.

The Board of Trustees of the seminary ordered Professor Hicri Fişek, member of Ankara University's Faculty of Law, to prepare a statement of his views. In his statement dated February 10th 1974, Prof. Fişek echoed the views expressed by Mr. Akipek as summarized below:

- 1- When the seminary was closed, it was functioning as a minority school as set forth in Article 25 of Law no. 625. This Article referred to Articles 40 and 41 of the Lausanne Treaty. However closing the HS and not closing similar regular middle schools for Turkish citizens contradicts the principle of equality as noted in the Lausanne Treaty.
- 2- Now that minorities are free to practice their own religious services as per the Lausanne Treaty, the education of clergymen becomes a necessity. As Article 40

stipulates, “minorities can found and establish any and all schools and education and training institutions”. Opening schools to educate clergymen would therefore undermine the principle of secularism less than the opening of theology schools by the secular state.

- 3- Like other high schools, diplomas are signed by directors and directors of National Education. But private schools of higher education diplomas granted during the same period were signed by the school director and Ministry of National Education.
- 4- It was openly stated in the seminary’s regulations, approved by the Ministry of National Education, that such a diploma would not confer rights provided by a university or college diploma. In spite of such views, the submission of a file for action was stopped on the above grounds.

However, provisions in the Lausanne Treaty are clear on this issue. Article no. 40 of the Treaty directly stipulates the following in relation to the matter:

“Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security [guarantee] in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein”.

(Underlined EM-MAG)

The third paragraph of Article 42 of the Treaty is as follows:

“The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorization will be granted to foundations, and to the religious and charitable institutions of the said minorities currently existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.”

As may be seen, in addition to other rights, such arrangements involve the existence of minority religious institutions and the right to found them. When taking the Lausanne Treaty as a whole, it can be argued that minorities are not only protected on an individual level but on a corporate level as well. Some alleged that institutions are however unnecessary because the communities shrank to such a size that schools could be deemed unnecessary. Such arguments cannot be accepted on legal terms, because such logic would raise the question as to why Greek minorities in Istanbul decreased in the first place, leading to conclusions that Turkey would have difficulty justifying.

At this point, we should highlight some features of the subject captioned “Protection of Minorities” under the Lausanne Treaty. As per Article 37, Turkey undertakes that

the stipulations contained herein shall be recognized as fundamental laws, and that no law, no regulation (by-laws), nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them. In accordance with Article 44, Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. Under the same article, any difference of opinion as to questions of law or of fact for the provisions of the minorities constitutes obligations of international concern. And the last paragraph of Article 90 of the Constitution of the Republic of Turkey is as follows:

“International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Additional sentence: article nr. 7.5.2004-5170/7) In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

The Law of Unification of Education, used by some groups as a ground that the seminary cannot be opened, cannot constitute the grounds to keep the HS closed. Because if this law contradicted the Lausanne Treaty, it would not have been legislated anyway; thus, those who enacted this law did not see any relation/contradiction between the HS and this law, enabling the HS to continue its activities from 1924, when this law was enacted, until 1971. Indeed, the reason why it was closed had nothing to do with this law.

Article 24 of the Constitution, which is presented as a reason for failing to open the HS by some groups, governs that “Education and instruction in religion and ethics shall be conducted under state supervision and control”. But when the HS was open, it was under the control of the Ministry of National Education and, importantly, no other demand has been made. The President of the Institution of Higher Education submitted a report to the Government in which the HS should be opened under the jurisdiction of the Ministry of National Education, not under the Institution of Higher Education as before.

Article 25 of Law concerning Private Education Institutions governs that “issues required to be qualified for concerning schools related with the Articles 40 and 41 of the Treaty associated with Law numbered 340, dated August 23rd 1923, which existed during the enactment of this Law are determined by regulations”. The treaty mentioned herein is the Lausanne Treaty and the HS was already open when it was put in effect.

The closure of the HS on grounds of the law concerning private colleges, contradicts the Lausanne Treaty in legal terms, because the seminary was open when the

Lausanne Treaty was signed and it was closed upon cancellation of some provisions in the said law. It appears as if the seminary is regarded within the scope of a law enacted in 1965, and the abolition of certain articles led to the closing of the school. This is completely opposed to the principle of the “superiority of international agreements over domestic laws”. Moreover the HS has never been a “college” or “university”; it is only a minority school or a religious institution as defined under the Lausanne Treaty.

The basic aim of the arrangements related to minorities in the Lausanne Treaty was to maintain their existence. The fundamental emphasis is on the principle of pluralism, a *sine qua non* for any democratic society. The subject of this study clearly demonstrates that there is serious violation when considered from the point of view of the Lausanne Treaty.

The HS was closed down upon a disputable legal decision and it is now claimed that reopening the seminary is against the Law of Higher Education enacted years after the Lausanne Treaty. But if the seminary had not been closed down, it would not have been claimed that it was against the law. The principle that “any one party to the Treaty could not legitimately abstain from fulfilling its provisions on the basis of domestic law” as a key element of international law, should not be disregarded in this respect. The allegation that the HS could not be opened as it conflicts with the principle of secularism, which presides over the Turkish education system, is therefore in contradiction with international law. Moreover the aforesaid principle of equality and the principle of discrimination should also be recalled.

Article 40 of the Lausanne Treaty views the Greek Patriarchate as an institution under the assurance of international law. Whilst the issue continues to exist, the Greek Patriarchate could seek all legal remedies, including using the ECHR’s appeals mechanism. The tendency of the ECHR in decisions made on such matters is in favour of religious communities in an autonomous structure instead of state interference. If the Patriarchate or any affiliated institutions were to make an appeal under the right to association, a similar result might be likely.

If reopening the HS contradicts secularism, then it should be accepted that it is a “new” interpretation. No such discussion regarding the HS and the principle of secularism was introduced until 1971 when the seminary was closed down.

Interestingly enough, many parts of society choose to remember the Lausanne Treaty during Turkey’s EU negotiations, yet do not recall provisions of the Treaty that relate to minorities. Indeed, Turkey should not simply consider Lausanne when discussing minorities. The fact that it was bound by provisions of the international texts under which it was signed is somehow ignored by certain people. Many instruments, such as the International Covenant on Civil and Political Rights dated 1966 and recently

approved by Turkey and, in particular, the European Convention on Human Rights incur obligations on Turkey with regard to its minorities.

VI- RECOMMENDATIONS

VI.1-THE GREEK PATRIARCHATE'S FORMULA

The Patriarchate, which spiritually governs many regions all around the world, wants to educate its own clergymen in line with its own curriculum by reopening the HS. It therefore stipulates that potential students should originate from such regions.

The main request of the Greek Patriarchate is to open the HS closed in 1971 exactly under its previous statute. What is meant here is that the statute is of a “private school” affiliated with the Ministry of National Education. Thus the Greek Patriarchate administered the seminary, while the Ministry of National Education oversaw it. The Greek Patriarchate responded to criticisms about students’ appearance because there had been problems with other schools affiliated with the Ministry of National Education. It was agreed that during Church services, clergymen would be able to wear robes, however, students and others would not wear such robes as required by the rules of the church.

VI.2-THE ARMENIAN PATRIARCHATE'S FORMULA

This formula is a formula upon which almost all Christian communities other than the Greek Patriarchate agree. A state university proposes opening various subjects called, for instance, “Armenian language and culture”, “Syriac language and culture” etc., for each religion and religious sect under a name such as “comparative religion studies” within its body. These divisions, in which religious leaders would also like to be an arbiter in preparation of the curriculum, will provide a secular education program, but those who want to be clergymen among students will get theoretical knowledge in the division and they will become accustomed with their particular practice in their own communities. Graduates of these divisions will not only be clergymen but also function as teachers in the language and culture classes at non-Moslems’ schools.

VII. CONCLUSION

Whether they concern Moslem groups or non-Moslem groups, discussions on religion cannot be limited to aspects related to religion and faith. Discussions inevitably slip into the political realm, particularly when religion itself is associated with subjects like education, religious symbols etc. Whether or not religion can be part of the public realm in Turkey has been discussed more frequently in recent years - the debate over the HS is closely tied to this. In this respect, the justification that

Christians need clergymen for worship fits into such an approach. To bring the issue to public discussion, we must recognize there are Christian citizens in this country, and they should not be prevented from worshipping properly.

Conflict between groups with intense secular sensitivity and little or no Islamic roots, and a government hesitating to be accused of giving *quid pro quo* to foreigners lessens the likelihood of a solution to the problem of the HS. If this mistrust is alleviated, the HS issue will be more easily resolved.

However, anti-EU groups attempting to revitalize their struggle against the EU have raised the issue of non-Moslems and the Patriarchate as Turkey's EU membership process has gained speed, particularly in the last five years. As long as the EU asks Turkey to improve its legislation with regard to the Copenhagen criteria, such a situation is reflected in national public opinion as "immunity is demanded," and leads to increasing nationalism. These groups defend the unequal practices of the state, internal demands are ignored, and the public is provoked with claims that the EU is interfering with Turkey's internal affairs. But the solution requires the immediate removal of discrimination made against non-Moslems. The government must stop discriminating against its citizens based on their religion.

During the Republican era, attempts were made to define the Patriarchate as the religious institution of the Greeks only within the geographical limits of Turkey. However, as a result of the developments of the last 15-20 years, certain world powers have encouraged the Church to stress its ecumenical role "in a way that exceeds its real power". If anyone feels uncomfortable with great powers intruding in this matter, the solution is to end the inequalities non-Moslems and the Greek Patriarchate complain about and, thus, to ensure that such matters are neither a problem between Turkey and the EU nor Turkey and the U.S.

The HS discussions specifically, and more broadly non-Moslems who cannot educate their clergymen, are directly associated with the internal affairs of these communities which are not defined in legal terms by the state. Since patriarchates are legally undefined, the state assumed no legal obligation. Thus in the situation of patriarchal elections, patriarchates, which were particular communities' religious institutions, were subjected to different "election principles" at different times. And, the education of clergymen was deemed a political matter and sacrificed for internal and/or external conjuncture.

Vocational religious high schools, which already exist in Turkey, are actively rendering theological education at high school level. Therefore, if it is accepted that they are against the Law of Unification of Education, it has to be explained why a vocational school cannot render vocational education for one to two years after high school that teaches Christian theology.

Additionally, a secular state cannot or should not train clergymen. Each non-Moslem community should educate and train its own clergymen subject to the supervision and control of the state by collecting the necessary funds from its own community and, of course, determining its own curriculum. This is the standard secular practice throughout the world.

As a consequence;

- 1- The closure of the HS constitutes a violation of the Lausanne Treaty.
- 2- Law no. 625 - some articles of which were cancelled by the Constitutional Court – is unrelated to the HS.
- 3- The Armenian Patriarchate's formula does not aim at directly educating clergymen under the roof of universities. Those among graduates who want to become clergymen go to their own religious institutions. The said formula therefore demonstrates a practical approach, which can be implemented with the discretion of the Institution of Higher Education
- 4- The Greek Patriarchate would accept the reopening of the HS under its previous statute. This formula can be implemented if the seminary is considered as a "Patriarchate Seminar" and is supervised by the Ministry of National Education as a "private school", as done in the past. That it already ran its facilities under such a statute during the period of the republic (until 1971) proves there are no obstacles to its reopening. In such a case, whether its diploma is recognized as the equivalent to those of general education institutions should be further discussed.

Both proposals aiming to educate and train clergymen are legitimate. These demands can be easily met by Turkey's political elite.

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