Ankara Law Review Vol. 5 No. 1 (Summer 2008), pp. 53-100

MINORITY SCHOOLS, FOREIGN AND INTERNATIONAL SCHOOLS IN THE NEW LAW ON PRIVATE EDUCATIONAL INSTITUTIONS

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ABSTRACT

The new Law on Private Educational Institutions (New LPEI) 5580, as one of the basic instruments regulating the right to education of foreigners and minorities under Turkish Law, superseded the old LPEI 625 which remained in force in excess of fifty years. The objective of this article is to compare and assess the provisions of the old and the new LPEIs in relation to the freedoms of minorities and foreigners to open educational institutions.At the end of our analysis we conclude that the New LPEI has not deeply (or radically) modified the regime brought by the Old LPEI and the amendment in question is paralysed by some defaults and deficiencies with regards to the definition of "minority schools," "foreign schools" and "international schools" as well as the subject matter of the regulation.

ÖZ

Türk hukukunda azınlıkların ve yabancıların öğrenim ve öğretim özgürlüğüne ilişkin temel düzenlemelerden birisi olan ve elli seneyi aşan bir süre içinde yürürlükte kalan 625 sayılı (eski) Özel Öğretim Kurumları Kanunu (EÖÖKK), 5580 sayılı (Yeni) Özel Öğretim Kurumları Kanunu (YÖÖKK) ile yürürlükten kaldırılmıştır. Bu makalenin temel amacı, Tasarı halindeyken çok tartışılan ve kamuoyunda büyük yankı uyandıran YÖKK'nun, azınlıkların ve yabancıların öğretim kurumu açma özgürlüğü açısından yürürlükten kaldırdığı EÖÖKK ile karşılaştırılması ve değerlendirilmesidir. Yaptığımız inceleme sonunda 5580 SK'nun, 625 SK'nu köklü bir şekilde değiştirmediği;

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fakat konumuzla ilgili yapılan değişikliklerin azınlık okulları, yabancı okullar ve milletlerarası okullara ilişkin yaptığı tanımlar ve getirdiği düzenlemeler bakımından birtakım eksiklikler ve yanlışlıklarının bulunduğu sonucuna varılmıştır.

Keywords: *Law on Private Educational Institutions, Minority schools, foreign schools, international schools, right to education of minorities and foreigners,*

Anahtar Kelimeler: *Özel Öğretim Kurumları Kanunu, azınlık okulları, yabancı okullar, milletlerarası okullar, azınlıkların ve yabancıların öğrenim özgürlüğü*

INTRODUCTION

Draft legislation was prepared to amend the Law on Private Educational Institutions (hereinafter LPEI),[1] which has regulated the legal status of private schools as well as the right to education for foreigners and minorities. The draft legislation was adopted by the Turkish Grand National Assembly (hereinafter TGNA)[2] on 26 September 2006 as Law 5545, and was submitted to the President of the Republic for approval. The President of the Republic sent the Law back to the TGNA for reconsideration of the provision that made it possible for the Ministry of Education to purchase services in private educational institutions. The TGNA took this provision out of the text in conformity with the President of the Republic's rationale for the return of the draft legislation, and thereafter resubmitted the Law to the President of the Republic. The legislation was then published in the Official Gazette[3] as Law No. 5580, the Law on Private Educational Institutions," and took effect. The new law superseded the older one (Article 14(1)).

The objective of this article is to compare and assess the provisions of the old and the new LPEIs in relation to the freedom of minorities and foreigners to open educational institutions.

Among the issues that have been subject to public debate concerning the new LPEI was the regulation of minority schools and foreign schools. Before examining the details of this debate, it may be useful to touch on the provisions of the draft LPEI, as returned to the TGNA by the President of the Republic, which envisioned an increase in the role of the private sector in private educational institutions, since those provisions have been subject to prolonged discussions in the public domain. Thus, some information on the new LPEI will

[1] Law 625, promulgated in Official Gazette 12026, 18 June 1965.

[2] Draft Law 5545, 26 September 2006.

[3] Law 5580, promulgated in Official Gazette 26434, 14 February 2007.

be presented below, followed by an analysis of the President of the Republic's reasons of his return of the legislation to the TGNA.

I. GENERAL INFORMATION ON THE NEW LPEI

1. Rationale of New LPEI

The Bill Concerning Amendment of the New LPEI, which seems to have been prepared to determine the legal status of private schools, which are very important in our educational system, and to modify them to respond to recent needs, was prepared by the Ministry of National Education and presented to the Prime Ministry on 17 October 2005 and submitted to the National Assembly on 14 March 2006.[4]

In brief, the new LPEI regulates the principles and procedures concerning permission to open private education institutions by real persons of Turkish nationality, private law legal persons or legal persons administered in accordance with private law provisions, transport and transfer of the institutions, personnel to be employed at these institutions, and financial support to be provided to these institutions plus the training, education, management, control and supervision of these institutions, as well as the training, education, management, control, supervision of institutions opened by foreigners and personnel employment at these institutions.

The importance of the private sector with regard to financing of educational services was mentioned in the general rationale of the new LPEI Bill. This point is expressed as

services to be conducted by the private sector, other than education planning, training programs development, supervision and coordination function, will be effective in overcoming financing problems as well as reducing the education load of the State and thus preparing an environment for positive developments in providing a higher quality education.

[4] Özel Öğretim Kurumları Kanunu Tasarısı ve Samsun Milletvekili Cemal Yılmaz Demir'in; Özel Öğretim Kurumları Kanununda Değişiklik Yapılması Hakkında Kanun Teklifi ile Millî Eğitim, Kültür, Gençlik ve Spor Komisyonu Raporu (1/1183, 2/743): Dönem: 22, Yasama Yılı: 4, (S. Sayısı: 1151), [Private Education Institutions Bill and Samsun MP Cemal Yılmaz Demir's Bill Concerning Amendment of Private Education Institutions Law and National Education, Culture, Youth and Sports Commission Report (1/1183, 2/743): Period: 22, Legislative Year: 4, (Order No: 1151)], at http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1151m.htm, last visited 20 July 2007.

For this purpose, the objective of supporting investments made in the educational field by the private sector is stated as by saying follows: "various economic supports and resources to be provided to the students enrolled in private education institutions and incentive measures will contribute development of private education."

The new LPEI Bill did not make radical changes in the basic structure of the Old LPEI regulating private education institutions, except for the provisions regulating increasing state support to private schools. The main purpose of the regulation was presented as "extending the aid to be provided to successful students lacking the financial capacity of all students and forming a basis to conduct educational services with the support of private sector." This provision, which has been discussed a great deal also in public forums as well,[5] stated that "[t]he Ministry may procure services from institutions under the provisions of Public Procurement Law No 4734" (Article 12/2). The President of the Republic sent the law back to the TGNA on 12 October 2006, asking for reconsideration of Article 12. The TGNA took that article out of the text and submitted it to the President of the Republic who then approved it. Before starting to examine the provisions of the new LPEI on minority schools, international and foreign schools, it is necessary to examine this provision that was sent back by the President of the Republic to TGNA for reconsideration.

2. The Rationale Why the President of the Republic Sent the New LPEI Bill back to the TGNA in order to be Reconsidered

The abovementioned provision of the New LPEI Bill providing that "[t]he Ministry may procure services from the institutions under the provisions of Public Procurement Law No 4734" (Article 12/2) was sent back to theTGNA by the President of the Republic in order to be reconsidered.[6] The rationale why this provision was sent back starts with the explanation of the provision of Article 42 of the Constitution regulating the right to education.

According to the President of Republic,

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[5] For discussion, *see e.g.* "AKP Paralı Eğitimin Peşinde," at http: //www.bianet.org/ 2006/03/16/76030.htm. Private Education Institutions expressed opinions in favor of this regulation. *See, e.g.* ; "Özel Öğretim Kurumları Kanunu Tasarısı Hakkında" <<http://www.ted.org.Tr/index.Php?name=News&file article&sid=529>>, 27.3. 2006.

[6] Rationale of the President of the Republic for returning Law 5545 *at* http://www.cankaya.gov.tr/tr_html/ACIKLAMALAR/12.10.2006-3584.html.

[t]he Ministry of National Education is given the authority to educate students by procurement of services from private education institutions and therefore provided the authorization to transfer resources to private education institutions from the State budget, and at this point it means transferring the basic duty of the State to private education institutes for the procurement of services. However, there is no provision in Article 42 of the Constitution enabling the State to conduct education**,** which is listed as among the important fundamental duties, by procurement from private education institutions**.**

The President of Republic mentioned in the rationale of his veto that the rule regarding successful students who lack financial capacity and may be educated at private education institutions, provided that the costs are borne by the Ministry of National Education, included in Article 1 of Law No. 4967 Amending the Basic Law on National Education, was not deemed to be consistent with the Constitution and the public interest, and it was sent back to Turkish Grand National Assembly in order to be reconsidered; with this new LPEI provision, the opportunity envisioned for successful students lacking financial capacity to be educated at private schools with State resources has been reimposed to a much wider extent so as to include all students.

The rationale continues with the explaination that the contradiction between the provision that was desired to be set forth by the new LPEI Bill and Article 42 of the Constitution regulating the right to education, and the basic principles regarding the role of the State in carrying out educational activities. It stated that the provision "[t]he State will make the necessary contributions through scholarships and other means for successful students lacking financial capacity to continue their education" in the last paragraph of Article 42 of the Constitution, did not allow for proper procurement actions from private education institution nor did it stipulate the transfer of resources from the State budget to private education institutions; on the contrary, the result of transfer of resources from the State budget to private schools contradicts with one of the founding objectives of private education institutions – that they are to relieve the State budget of bearing the education expenses of those benefiting from educational services. Finally the most important reason is the consideration that the objective in Article 42 is "preventing negative effects of non-State institutions of various legal structures professionally granting scholarships." According to the President, this provision in the new LPEI would create inequality.

The concern regaridng the provision in Article 12/2 of the New LPEI to be used for filling quotas by "some private schools" was expressed as follows:

"It is a known fact that the affection to some private schools in our country with proven educational quality and modernity is big and that they fill their quotas in a very short period of time after the entrance exams. Since it is not possible to educate students with the procurement of services method at these schools, it is inevitable for students to be sent to private schools founded by some communities for different purposes which cannot fill their quotas. This situation means that on one hand, these private schools to be supported by State resources; on the other hand, bringing up persons with mentalities contrary to secular, democratic characteristics of Turkish Republic."

The State objective of prioritizing state schools rather than transferring resources to private schools was also mentioned in the veto rationale and the regulation desired to be set forth by this provision in the New LPEI Bill was found to be against public interest. According to the President of Republic:

The main duty of the State in the field of education fis to raise the level of State schools so as to set an example for private schools and to carry these schools to the state of operating at full capacity. While the discussions on not having enough appropriation for improving physical conditions and educational quality of State schools are still current and while there is large scale capacity deficit at these schools, limited financial resources of the State to be transferred to some private schools in order to support these schools is also not pursuant to public interest.

After the Bill was returned to the TGNA by the President of the Republic, the National Education, Culture, Youth and Sports Commission of the TGNA, operating as the Principal Commission, decided to discuss Article 12. This article was examined in the education subcommission, which decided that the paragraph "The Ministry may procure services from the institutions under the provisions of Public Procurement Law No 4734" in Article 12 of Private Education Law No 5545, was to be removed from the text. In the Subcommission Report it was stated that this regulation "was set forth in order to promote private education institutions whereas it was predicted that expected benefit would not be provided." The text formed by the Subcommission was also approved by the National Education, Culture, Youth and Sports Commission.[7] Thus this provision was taken out of the Bill text that was resubmitted to the President. The Act was sent to the TGNA on the date of 20

[7] Certificate of Return In Order To Be Reconsidered In Accordance With Private Education Institutions Law No 5545 Dated 9.26.2006 and Articles 89 and 104 of the Constitution and National Education, Culture, Youth and Sports Commission Report (1/1251), Period: 22, Legislative Year: 5, Order No: 1253.

October 2006, was enacted on the date of 02 August 2007 after being rediscussed.[8]

II. THE REGULATION OF MINORITY SCHOOLS IN THE NEW LPEI

1. Definition of Minority Schools

The new LPEI draft legislation has been subject to public debate due to the provisions that were included concerning foreign schools and minority schools. As analyzed below, it is possible to observe that the debate is actually on the definition of minority schools.[9]

In the second article of the draft legislation entitled "definitions," minority schools were defined as follows:

Minority schools: Private pre-primary, primary education and secondary education schools established by Greek, Armenian and Jewish minorities, secured by the Lausanne Convention and attended by students of Turkish nationality who belong to the respective minorities (Article 2/e).

Minority schools are schools that students who belong to non-Muslim minority can attend. During the discussions on Article 2 of the new LPEI legislation draft, there were two proposals submitted by members of the Parliament and a proposal submitted by the Government in order to enable foreign students to enroll at these schools.[10] The proposal subject to public debate was submitted by the Minister of Industry and Trade[11] and according to this proposal;

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[8] Approval of the President of the President of the Republic of Law 5580, *available at* http://www.cankaya.gov.tr/tr_html/ACIKLAMALAR/13.02.2007-3681.html.

[9] *See, e.g. AKP Ne İstiyor: Vakıf ve Okul İçin Yabancılara İzin (What the AKP Party Wants: Permission to Foreigners for Foundations and Schools),* RADIKAL, 9 September 2006.

[10] The proposal submitted by Representative Fatih Arıkan was concerned solely with grammar rules; it was not related to the definition of minority schools.

[11] Principle Commission Chairman Tayyar Altıkulaç mentioned that this proposal was prepared on the advice of the Ministry of Foreign Affairs and it has been criticized by Government and Opposing Parties: 26.9.2006 tarihli TBMM Genel Kurul Tutanağı, Dönem:22, Yasama Yılı:4, 129.Birleşim, [TGNA General Commission Minutes dated 9/26/2006 Wednesday, Period 22, Legislative Year:4, Session 129] 11.

e) Minority schools: [refer to] the private pre-primary, primary education and secondary education schools established by non-Muslim minorities, secured by the Lausanne Convention and attended by students of Turkish nationality who belong to their respective minority and children of foreign nationality who belong to that minority ethnically or with religious origin" is the way it has to be written.

The rationale disclosed for this provision was presented as:

It is considered that it is not appropriate for the minority schools definition in the legislation draft to be based on ethnicity (Greek, Armenian) and religion (Jewish). As is known, no minority understanding based on ethnicity exists in Article 37 and following articles in the section entitled "Protection of Minorities" of the Lausanne Peace Treaty and in the institutional structure and the practice of our country, the presence of non-Muslim minorities is accepted.

Within this framework, for adaptation in terminology with the Lausanne Treaty, the expression "Turkish citizens who belong to non-Muslim minorities" instead of "Greek, Armenian and Jewish minorities" in the minority schools definition included in paragraph (e) of article 2 of the legislation draft.

It is also considered that there are no provisions in relevant articles of Lausanne Peace Treaty that may prevent enrolling students other than Turkish citizens who belong to non-Muslim minorities in minority schools. Therefore, instead of the said provision in the subparagraph mentioned, it is more appropriate to adopt that "attended by students of Turkish nationality who belong to their respective minority and children of foreign nationality who belong to that minority ethnically or with religious origin.

This proposal was submitted for voting and accepted. This provision stipulating foreign students could be accepted at minority schools and more important than that, the expansion of the minority definition specified in Lausanne Treaty had never been discussed. The only question regarding the proposal was on whether or not the expression "Greek" was to be removed from minority schools by this provision of LPEI legislation draft in response to removing the expression "Turkish" from Turkish minority schools in Western Thrace. In other words, it is a question not on the minority definition but on the reciprocity. While other articles of the legislation draft were discussed, criticisms concerning the proposal were that the scope of minority schools are expanded, the Lausanne Treaty was violated and the reciprocity principle was ignored, therefore entire Draft had to be withdrawn.

The Draft LPEI discussion was quickly started in the TGNA. Provisions of the draft have not been discussed in detail; provisions were read in a mechanical manner, then the proposals were submitted and voting was carried out. During voting of a proposal submitted concerning Article 5 of the draft regarding foreign schools, an argument started since the proposals were not distributed to the representatives. Focus of this discussion that continued during voting of the proposals has been the claims stating that the actual objective of the Draft LPEI was to lay the groundwork for opening Heybeliada Clergy School (The Greek Orthodox Halki Seminary) by including provisions concerning minority and foreign schools.[12]

Due to TGNA working hours, discussions on the Draft LPEI was interrupted for a period of time. Acceptance of the proposal submitted in accordance with second article of the Draft within that period had great repercussions in the public.[13]

After voting on other provisions of the Draft was completed, an amendment proposal was submitted by the representatives from the Governing Party. Based on Article 89 of the TGNA Internal Regulations, with the rationale of "ensuring harmonization between the articles." Article 2 of the Draft LPEI was proposed by the Government to be reconsidered (reconsideration), and this proposal was accepted. During these discussions, representatives of the opposition party argued in their speeches that the objective of this provision was to enable opening of the Heybeliada Clergy School[14] and alleged that the

[12] TBMM Dönem:22, Yasama Yılı:4, Cilt:128, 20 Eylül 2006 Çarşamba, [TGNA Period 22, Legislative Year: 4, Volume: 128. September 20, 2006, Wednesday] available athttp://www.tbmm.gov.tr/develop/owa/tutanak_b_sd.birlesim_baslangic PAGE1=1&PAGE2=1 &p4=17306&p5=B.

[13] *Azınlık Okulu Tanımı Değişti (Minority Schools Definition Changed),* MILLIYET, 21 September 2006, *availavle at* http://www.milliyet.com/2006/09/21/guncel/ gun02.html.

[14] Governing Party Group Vice Chairman's statements below have been criticized at TGNA General Commission: TBMM Dönem:22, Yasama Yılı:4, Cilt:128, 26 Eylül 2006 Çarşamba günkü oturum [TGNA Period 22, Legislative Year: 4, Volume: 128. Session on September 26, 2006, Wednesday]: "We have submitted the proposal for the benefit of the Armenian children who could not obtain Turkish citizenship yet. Because, opening the school in Turkey requires opening also in Armenia due to reciprocity. Armenia's attitude is obvious. We have submitted the proposal because Mutafyan said 'Let's give a chance for these children'. The proposal has been submitted on request of Turkish Armenians Orthodox Patriarch Archbishop II. Mesrob Mutafyan. Patriarch mentioned that many children came to Turkey from Armenia in the recent years, these children cannot get education since they do not have the chance to pass to Turkish citizenship. In case the children are enabled to benefit from minority schools they will be able to prevent these children to shift to undesired ways… [Proposal] was a step taken in good will in accordance with

proposal has been prepared in accordance with the suggestions of Patriarch Mutafyan. The Principal Commission Chairman stated that minorities also enroll in international schools and that this proposal was submitted to provide additional opportunities and facilities to the minorities, but that this was not related to Clergy School; this proposal was withdrawn after the reaction from the opposition[15]. After the question and answer section of the discussions was over, a proposal was submitted by seven representatives.[16] According to this proposal, minority schools are defined as "private preschool, primary education and secondary education schools established by Greek, Armenian and Jewish minorities, secured by Lausanne Convention and attended by Turkish Republic national students from relevant minority" (Article 2/e).

In the rationale of the proposal, it is stated that "it is decided that the amendment made by the proposal before is not necessary." The proposal was submitted for voting and accepted. Thus, this provision of the Draft was changed back to the form in which it was first proposed.

Minority schools are not specially defined in the Old LPEI, stating only that "Matters that exist on the publication date of this Law and to be considered special for schools referred in articles 40 and 41 of the Treaty related to Law No 340, dated August 23, 1923, shall be determined by regulations" (Article 25); only a reference was made to the Lausanne Treaty concerning minority schools.

It is appropriate to define minority schools in the New LPEI, because, as it can be seen from the discussions in public forums and within the framework of this Draft, minority schools[17], foreign schools[18] and international schools[19] are easy to be confused with each other in our education system. As to be analyzed

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the suggestion of Patriarch Mutafyan. And we have withdrawn it not to cause misunderstanding": Muharrem Sarıkaya, Patriarch Wanted the Proposal, RADIKAL, 21 September 2006.

[15] TBMM Dönem:22, Yasama Yılı:4, Cilt:128, 26 Eylül 2006 Çarşamba günkü oturum [TGNA Period 22, Legislative Year: 4, Volume: 128. Session on September 26, 2006, Wednesday]; Disclosures of Tayyar Altıkulaç.

[16] Proposal submitted by Faruk Çelik and colleagues: TBMM Dönem:22, Yasama Yılı:4, Cilt:128, 26 Eylül 2006 Çarşamba günkü oturum, s.52. [TGNA Period 22, Legislative Year: 4, Volume: 128. Session on September 26, 2006, Wednesday], p.52.

[17] For academic year 2005-2006, there were 71 minority schools (41 Armenian, 27 Greek, and 3 Jewish) in operation in Turkey. Turkish National Ministry of Education, 2006 BUDGET REPORT, 85 (Ankara 2007), *available at* http://sgb.meb.gov.tr/yayinlar /2006_butce_raporu.pdf.

[18] For academic year 2005-2006, there were 31 active foreign schools in Turkey. *Id.*

[19] For academic year 2005-2006; there are 27 active foreign schools in Turkey. *Id.*

below, the definition of minority schools in the New LPEI is incongruous with Lausanne Treaty.

2. Assessment of the Provision Regarding the Definition of Minority Schools in the New LPEI

Although the main debate regarding minority schools within the scope of the Draft LPEI looks as if it is related to the quality of the students that may enroll at minority schools, in principle it gets tangled in the interpretation of the concept of "minority." The objective of the proposal submitted to the Draft LPEI was to expand the concept of minority as defined in the Lausanne Treaty. As mentioned above, this proposal was not accepted. Minorities are defined in the New LPEI as "Greek, Armenian and Jewish;" however this definition is congruous with the Lausanne Treaty.

The basic regulation concerning the protection of minorities in Turkey[20] is included in Articles 38-44 of the Lausanne Treaty.[21] In Article 37 of the Treaty, it is stipulated that Turkey accepts these provisions as basic law. According to Article 37 , "Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them."

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[20] In international law, there is/are no general minority definition/s accepted except the minority definition/s provided by International Court of Justice for the purpose of interpreting specific treaties. Even if it is not possible to speak of a generalized and practically valid minority regime, one of the common points regarding minority regimes based on international treaties is to ensure those that belong to language, religion or ethnic origin benefit from the minority status. Hüseyin Pazarcı, ULUSLARARASI HUKUK [INTERNATIONAL LAW] 208 (Turhan Kitabevi, Ankara, 2004). For regulations imposed under relevant international documents related to defining the concepts of minority and national minority, *see* Naz Çavuşoğlu, ULUSLARARASI İNSAN HAKLARI HUKUKUNDA AZINLIK HAKLARI [MINORITY RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW] 35-52 (Su Yayınları, Istanbul, 2001). Protecting minorities was implemented previously by means of international treaties and later by means of regulations concerning protection of human rights. Rights that the persons defined as minority in the international treaties may benefit can be listed as "in order to ensure persons belong to minority to benefit the rights of the majority, equality and indiscrimination rights To enable them to conserve their characteristics different than the majority such as in language, religion and ethnic origin, to bestow the rights not to the group but to the members of the group. *Id.* at 85-94.. Minorities are expected to show loyalty to their state of nationality in exchange of these rights. Pazarcı, this note, at 209.

[21] For the text of the Lausanne Treaty**,** *see* THE TREATIES OF PEACE 1919-1923, VOL. II, (Carnegie Endowment for International Peace, New York, 1924) *available at* http://www.hri.org/docs/lausanne/.

Minorities are defined as "non-Muslim Turkish citizens."[22] While participating in conventions under the European Council and the UN, Turkey has always asserted that only non-Muslims are considered to be minorities according to the Lausanne Treaty. In the interpretation statements (reservations) made while participating in these conventions, Turkey has always maintained that "if the rights bestowed in the Conventions participated in by Turkey are among the rights bestowed by the Constitution or if they bestow rights to persons other than persons accepted as a minority in Lausanne Treaty, they cannot be accepted."[23]

Although non-Muslim Turkish citizens were included in the minority concept accepted in the Lausanne Treaty, these minorities were listed as Greeks, Armenians and Jewish; although small groups like Syriacs, Nasturians and Chaldeans are "Non-Muslim," they were not to benefit[24] from the rights specified in Article 40 of the Treaty. One of the reasons for that are the declarations of these minorities, stating that they waive the rights bestowed by the provision concerning their personal status in Article 42 of the Lausanne

[22] It has been argued that gradually the various rights are provided by Lausanne Treaty, not only to the non-Muslim minority in Turkey but also to some persons other than Non-Muslim Turkish citizens with the interpretation of the Treaty provisions. According to this interpretation: "Some rights have been granted for everyone residing in Turkey other than Non-Muslim Turkish citizens by Articles 38/1 (right to life and liberty without distinction by birth, nationality, language, race or religion), 38/2 (right to the free exercise of any creed, religion or belief) and 39/2 (right to be equal before the law without distinction by religion); for all citizens Article 39/4 (right to freely use any language in private and commercial relations) and for Turkish citizen whose mother tongue is a language other than Turkish, Article 39/5 (right to use their own language before the Courts) of the Treaty." Baskın Oran, TÜRKIYE'DE AZINLIKLAR: KAVRAM, İÇ MEVZUAT, İÇTIHAT, UYGULAMA [MINORITIES IN TURKEY: CONCEPT, INTERNAL REGULATIONS, INTERPRETATION, APPLICATION] 56 (TESEV Yayınları, İstanbul, 2004). This interpretation is deemed expansive. "Until recently the provisions stipulated by the Lausanne Treaty have been interpreted as to include only non-Muslims. Indeed, at the Minorities Sub-Commission activities, Turkey's request to benefit just from the protection provisions of non-Muslim minorities, provided that the provision stated in Article 38 includes everyone residing in Turkey. However a similar discussion was not made for Article 39. All provisions after Article 38 concerning minorities start with the expression 'non-Muslim minorities.'" Funda Keskin, *Azınlıklar Konusu [The Subject of Minorities],* YAŞAYAN LOZAN [LIVING LAUSANNE] 250 (Çağrı Erhan, ed. Ankara, 2003).

[23] Baskın Oran, KÜRESELLEŞME VE AZINLIKLAR [GLOBALIZATION AND MINORITIES] 151 (Imaj Yayıncılık, Ankara, 2001).

[24] The Syriac minority declared that they waived these rights following the proclamation of the Turkish Republic. Baskın Oran, *Lausanne Barış Antlaşması [Lausanne Peace Treaty*], TÜRK DIŞ POLITIKASI, KURTULUŞ SAVAŞINDAN BUGÜNE: OLGULAR, BELGELER, YORUMLAR [TURKISH FOREIGN POLICY, FROM THE WAR OF INDEPENDENCE UNTIL TODAY: FACTS, DOCUMENTS, EXPLANATIONS] 231 (Baskın Oran, ed., İletişim Yayınları, Istanbul, 2001); Oran, *supra* note 23, at155.

Treaty with the enactment of the Turkish Civil Code.[25] These declarations were later extended to all rights bestowed in the Treaty.[26] Minority rights are bestowed not to groups but to individuals.[27] Therefore the right of an individual may not be waived by the leader or representative of the group to which that individual belongs.[28] The fact that these small minority groups, other than the three main minority groups, do not benefit from the freedom to education is related to their decreased population.

Provisions regulating the freedom to open educational institutes bestowed on minorities by the Lausanne Treaty are included in its Articles 40 and 41.[29] These provisions are referred to in Article 25 of the Old LPEI and Article 5/c-1 of the New LPEI:

> "Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security 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

[25]With the adoption of the Turkish Civil Code, minorities waived their rights from the Lausanne Treaty to resolve their family and personal status according to their customs and traditions. Keskin, supra note 22. at.252. Regarding the theory that they were forced to waive these rights by means of various coercion methods, *see* Alexsis Alexanderis, THE GREEK MINORITY OF ISTANBUL AND GREEK-TURKISH RELATIONS, 1918-1974, 135-38 (Center for Asia Minos Studies, Athens, 1992).

[26]Oran, *supra* note 24, at 231; Oran, *supra* note 23, at 155, fn.80.

[27]Naz Çavuşoğlu, *Azınlıkların Korunmasına İlişkin Uluslararası Normlar [Norms of International Relations in the Protection of Minorities],* TÜRKIYE'DE ÇOĞUNLUK VE AZINLIK POLITIKALARI [MAJORITY AND MINORITY POLICIES IN TURKEY] 241 (Collected by Ayhan Kaya-Turgut Tarhanlı, TESEV Yayınları, İstanbul 2005) .

[28] See Oran, *supra* note 23 at 231; Oran, *supra* note 22 at 155, fn.80.

[29] Non-Muslim Turkish citizens will benefit from other rights in addition to the freedom to open educational institutions. According to the provisions of the Treaty, Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals (Art. 38/3); Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems (Art. 39/1), and The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities (Art. 42/2), Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest (Art. 43).

> instruction and education, with the right to use their own language and to exercise their own religion freely therein.[30]

According to Article 41 of the Treaty,

> Regarding public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.
>
> In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.
>
> The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

Minority schools to be defined as "institutions established by Greek, Armenian and Jewish minorities, secured by the Lausanne Convention and attended by students of Turkish nationality from the relevant minority" in the New LPEI is counter to the Lausanne Treaty. As was reasonably stated in the

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[30] It can be said that this provision of the Treaty is more advanced than the regulation regarding the freedom to open education institutions in the Framework Convention for the Protection of National Minorities which will be mentioned below. In this Convention opening up an educational institution is expressed as "Within the framework of their education systems, the Parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments. The exercise of this right shall not entail any financial obligation for the Parties" (Art. 13). The Convention organized a monitoring system based on the reports to be prepared by the Parties. In order to monitor the implementation of Convention provisions, in explanatory reports of the advisory committee established as an organ assisting to the Committee of Ministers of the Council of Europe, it is stated that "these institutions are subject to the rules, in particular the regulations on compulsory education; they will be monitored as other education and training institutions for education standards; in case they operate in compliance with the rules, the diplomas they granted will be officially recognized. Provided that, the national legal regulations on this matter are consistent with objective criteria and the principle of indiscrimination". Regarding this matter, *see* Naz Çavuşoğlu, *Framework Convention for the Protection of National Minorities: Right of Education in Minority Language / Right of Print in Minority Language*, 11 TOPLUM VE HUKUK DERGISI [JOURNAL OF SOCIETY AND LAW] 66 (2004).

proposed amendment submitted while this provision of the New LPEI was discussed, minorities were not defined based on ethnic origin in the Treaty. However in the New LPEI, by saying "Greek, Armenian …", persons that may enroll in minority schools are defined based on their ethnic origin. Moreover, by specifying minorities as "… and Jewish", non-Moslem minorities are limited only with those who are Jewish. This is further incorrect since it reduces non-Moslems only to Jewish people. Because non-Moslems are not limited to the Jewish people in the provisions of Lausanne Treaty, minorities should be redefined by the Turkish legislature to be the same as traditionally adopted in Turkey.

It is also not possible to accept the definition in the proposed amendment, submitted while this provision of the New LPEI was discussed, because that provision also conflicts with itself. The proposal, on one hand states that compliance with the Lausanne Treaty is the aim, while on the other hand it creates a new ethnic minority by defining minority schools as "schools attended by students of Turkish nationality who belong to their respective minority and children of foreign nationality who belong to that minority ethnically or with religious origin." Foreigners who also by ethnicity or religion belong to a non-Moslem minority will be accepted as a minority so the concepts of being a minority and foreigner are mixed up.

The argument that "in the relevant articles of the Lausanne Treaty there is no provision preventing the enrollment of students other than Turkish citizens who belong to non-Muslim minorities in minority schools" in the proposed amendment proposal is correct. However, the conclusion that foreigners may enroll at these schools cannot be derived from this opinion. First of all, not foreigners, but minorities, are regulated in the referenced articles of the Lausanne Treaty. Moreover, as discussed below, the Regulation on Private Education Institutions issued in accordance with the New LPEI and the Old LPEI stipulates that only Turkish citizens may enroll at minority schools.

3. Assessment of the Provisions Regarding Education – Training of Minority Schools in the New LPEI

According to the provision regarding the education-training, management and control of minority schools in the New LPEI:

Matters that are required to be considered special for schools referred in Articles 40 and 41 of the Treaty related to Law No 340, dated August 23, 1923 shall be determined by regulation. This regulation is to be prepared by considering reciprocal legislation and practices of relevant countries in these

matters. Official schools legislation applies for matters not specified in the regulation; only children of Turkish Republic citizens who belong to the respective minorities may attend these schools.[31]

This provision in the New LPEI is a repetition of the provision in the Old LPEI. The main provision (Article 25) regarding education – training at minority schools in the Old LPEI – is as follows:

Matters that exist on the publication date of this Law and to be considered special for schools concerned in Articles 40 and 41 of the Treaty related to Law No 340 dated August 23, 1923 shall be determined by regulation" (amended by Law No 3035).

The regulation was prepared by considering reciprocal legislation and practices of relevant countries in these matters. Official schools legislation applies for matters not specified in the regulation, (amended by Law No 3035)

Only children of Turkish citizens may attend these schools.

The regulation issued in accordance with this provision is the Regulation for Private Education Institutions Under Ministry of National Education.[32] Per Article 64 of the Regulation titled "Operation of Minority Schools Opened in Accordance with the Lausanne Treaty:"

At schools recognized by Lausanne Treaty, according to their respective levels, it is essential to implement the courses and training program and weekly course distribution schedules implemented at formal schools.

Courses that may be taught at these schools in a language other than Turkish are determined by the Ministry by considering reciprocal legislation and practices at relevant countries. Types and programs of these courses can also be changed in the same manner.

The times and numbers of the courses to be given in Turkish in exchange for the weekly class hours to be allocated for training of a language other than Turkish are determined by the Ministry.

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[31] Article 5/c-1 of the New LPEI.

[32] O.G. 18790, 23 June 1985. The Old LPEI has been abolished by the New LPEI. It was stated in the New LPEI that the regulation mentioned will be effective within one year, but until these regulations are introduced, provisions of the current regulations which are not incongruous to law will be continued to be executed (New LPEI, Temporary Art. 1).

Only Turkish citizen students who belong to their respective minority may enroll at these schools.

In the Private Education Institutions Regulation referred to by the Old LPEI, the expression "by considering reciprocal legislation and practices" concerning the operation of minority schools, recalls the reciprocity principle used in international law.

The provision frequently referred to, due to the discriminative policies regarding limiting the freedom of education of Turkish minorities residing in Greece is the provision of Article 45 of Lausanne Treaty. According to this provision, "The rights conferred by the provisions of the present section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.[33] It is a widely-shared opinion in Turkey[34] that *de facto* reciprocity is also required in addition to legal reciprocity and in case of its violation, this provision gives the authority to retaliate.

Reciprocity is applied when the rights of a foreign person in a country may not be more than the rights granted to foreigners by his/her own country.[35] Reciprocity, which is an accepted practice by customary international law, requires that the measure of the rights citizens of State A have in State B are determinative of the rights to be granted to the citizen of State B in State A..

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[33] Original text is as follows: "*Les droits reconnus par les stipulations de la présente Section aux minorités non-muselmanes de la Turquie sont "également reconnus par la Grèce à la minorité muselmane se trouvant sur son territoire*": Norm, Third Arraignment, Volume 5, August 11, 1339-19, 42.

[34] For discussion at TGNA, see; TGNA Period 22, Legislative Year: 4, Volume: 128. September 20, 2006, Wednesday. http://www.tbmm.gov.tr/tutanak/donem22/ yil4/ bas/ b126m.htm . It was accepted that also reciprocity in jurisdictions is stipulated in this provision. For example, in the ruling of the Constitutional Court concerning closing the Turkish Laborer Party "These provisions determined as a result of long discussions at the conference [provisions of Section III of Lausanne Peace Treaty] are *based on reciprocity* principle and Turkish Moslem minority residing in Greece also benefits the same rights and freedoms." E. 1980/1, K. 1979/1, 5.8.1980 T., as promulgated in O.G 16869, 14 January 1980.

[35] Gülören Tekinalp, TÜRK YABANCILAR HUKUKU (TURKISH LAW OF FOREIGNERS) 20 (Beta Yayınevi, İstanbul, 2003). Regarding the rights subject to reciprocity, not fulfilling this requirement results in foreigners should also be denied that right. In other words, it is possible not to grant the rights granted to citizens of other signing party in the treaty with a rationale that this procedure was not practiced in the rights granted requiring reciprocity. Aysel Çelikel and Günseli Öztekin Gelgel, YABANCILAR HUKUKU [LAW OF FOREIGNERS] 57 (Beta Yayınevi, İstanbul, 2000).

Under Turkish law, reciprocity is stipulated in various laws[36] in the exercise of certain rights by foreigners in Turkey.

Some traditionally-accepted measures and limitations in the field of international law may cause the rights that foreigners enjoy in Turkey to be restricted, and gradually certain rights may be completely removed. For example, a State suffering losses due to certain actions and applications of law by another state may legitimately apply some measures and means of coercion against the other State.[37] Retaliation is a State's response to an unfair act applied to its own citizens in another country in cases where its citizens faced at another country to the citizens of another State.[38]

Although retaliate and reciprocity sound similar, there is an important difference between them. In an authorization to retaliate, retaliation is not required to be of the same characteristic and weight. However in ensuring reciprocity, restriction is made to the same matter of action.[39]

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[36] Below are the examples of the rights where reciprocity stipulated among the rights of foreigners: The Foreigners to acquire real estate in Turkey (Title Deed Law Art. 35), Law on Intellectual and Artistic Works Art. 88 / last paragraph, Insurance Supervisory Law Art. 4/c, Ministers Law Art. 6/2, security, legal aid, recognition and enforcement of foreign court and arbiter decisions in international procedure law (IPL Art. 32/2, Art. 38/a and Code of Civil Procedure Art. 465/2), renewal of the residence permits of foreigners (Law on Residence Permits of Foreigners Art. 8), foreigners to obtain working licenses in Turkey (Law on Working Permits of the Foreigners Art. 11), foreigners residing in Turkey to have the right to apply in writing to competent authorities and TGNA for any requests and complaints regarding themselves or the public (Art. 74).

[37] In Turkish Law generally the term "mukabele bil-misil" is used to refer to the concpets of "reprisal" or "retaliation." Rona Aybay, YABANCILAR HUKUKU [LAW OF FOREIGNERS] 89 (Istanbul, 2007).

[38] For example in the Passport Law, Council of Ministers is authorized to stipulate suitable terms for or restrain entrance of citizens of States where entrance of Turkish citizens to their country is subject to certain terms or restrained (Pass. Law, Art. 9). Parallel to the counteract in the Passport Law (Pass. Law, Art. 9), in the Law on Residence Permits for Foreigners, Council of Ministers is authorized to apply residence and travel restraints and limitations as a "reprisal" against the citizens of certain states (LRPF, Art. 2/II). Law No 1602 also referred to as In Counter Act Law, regulated that Council of Ministers is authorized to "partial or complete limitation may be set, provided that it is in withernam" on movable and immovable assets in Turkey belonging to citizens of states removing or limiting ownership rights of Turkish citizens (Art. 1/1).

[39] In international law, even if equality and same characteristics are not required and a heavy application is possible, suitability to the situation is still required. Tekinalp, *supra* note 35 at 21; Çelikel and Gelgel, *supra* note 35 at 60.

Reciprocity, in principal, is considered at the stage of regulating rights; in case of violation of rights, if agreed so, not the reciprocity but retaliation is considered.

As mentioned above, application of the prinicple of reciprocity is accepted in international law to foreigners residing within the borders of a State whereas the rights granted by the Lausanne Treaty are secured for minorities. Minorities cannot be considered to be foreigners; they are persons bound to that state by citizenship. In case of a violation of the rights granted in the Lausanne Treaty for Greece[40] and Turkey, the violation is not applied to a citizen of another State but to a citizen living in their home State.[41]

Reciprocity is not required in the provisions of Article 45 of the Lausanne Treaty.[42] The way to prevent actions contradicting this article may not be based

[40] Lausanne violations of Greece in the matter of education and training freedoms against the Muslim minority appeared as impeding the teaching Turkish, not appointing Turkish teachers at these schools, not providing regular aid to Turkish Minority schools from the state budget. Baskın Oran, YUNANISTAN'IN LOZAN İHLALLERI [GREECE'S LAUSANNE VIOLATIONS] 66 (SAEMK Yayınları , Ankara, 1999). For detailed analysis regarding this matter, *see* Nazif Mandacı and Birsen Erdoğan, BALKANLARDA AZINLIK SORUNU YUNANISTAN, ARNAVUTLUK, MAKEDONYA VE BULGARISTAN'DAKI AZINLIKLARA BIR BAKIŞ [MINORITY PROBLEM IN THE BALKANS: A LOOK AT MINORITIES IN GREECE, ALBANIA, MACEDONIA AND BULGARIA] 15-18 (SAEMK Yayınları, Ankara, 2001). Greece also included the reciprocity principle in a similar manner in its legal regulation on the terms of education to be provided at minority schools. "Minority schools law issued in 1977 is based on two principles: Extraordinary sovereignty of the "administrative determination" concept and all authority, even the determination of the validity of diplomas obtained from minority schools to be given to the governor; second, international reciprocity principle to be observed when these regulations were prepared. (Oran, this note at 66). As a result of citizenship determination based on race in Greek Constitution, since Muslim minority residing in Greece cannot become Greek nationals although they are Greek citizens, limitations imposed to these persons in owning real estates in some regions, in other words, for unequal processing with Greek citizens. Turgay Cin, *Türkiye ile Yunanistan Arasındaki Azınlık Sorunlarında Mütekabiliyet İlkesi [Principles of Reciprocity in Minority Problems between Greece and Turkey*], 9 HUKUKI PERSPEKTIFLER DERGISI [JOURNAL OF LEGAL PERSPECTIVES] 107, 107-108 (2006). The writer argues that Turkey is also required to make regulations concerning minority foundations based on Article 45 of Lausanne Treaty in exchange for the applications of the Muslim minority residing in Greece regarding mufti selection.

[41] "A state to do this and to cause harm on her own minority citizens in order to respond to the opposite country with loss, directly means that these minorities are perceived as "hostages" instead of citizens and unfortunately this is the reciprocal situations of Turkey and Greece." Oran, *supra* note 40, at 5.

[42] Sevin Toluner, *Lozan Azınlıklarının Korunması Rejimi ve Batı Trakya Türkleri [Lausanne Minority's Protection Regime and West Trakya Turks],* CUMHURIYETIN 75.YIL ARMAĞANI [REMEBERANCE OF THE 75TH ANNIVERSARY OF THE REPUBLIC] 231 (Istanbul Üniversitesi, İstanbul, 1999); "This provision is a parallel liability provision." Turgut Tarhanlı, CEMAAT VAKIFLARI, BUGÜNKÜ SORUNLARI VE ÇÖZÜM ÖNERİLERİ [NON-MUSIM FOUNDATIONS, PRESENT DAY

on the principle of reciprocity, which was not stipulated in this provision, but to implement other mechanisms[43] because retaliatory authority in case of actions contrary to this provision is also not regulated.

Although it is thought that reciprocity is stipulated in the Lausanne Treaty, it must be considered together with the general view of including minority rights within human rights and the provisions of the Vienna Convention on the Law of Treaties concerning restricting implementation of a negative reciprocity regarding human rights (Article 60/5).[44] The application of the principle of reciprocity means that the violation of liability for the protection provided for these persons regarding minority rights as in the regulations concerning human rights.[45] In case of a legal comment or dispute, the law of treaties requires that

PROBLEMS AND SUGGESTIONS FOR RESOLUTION] 37 (Istanbul Barosu Yayınları, Istanbul, 2002); If it was a 'reciprocity' matter, the word '*réciproquement*' should be used in this article instead of the term '*également*'. Turgut Tarhanlı, *Lozan'da Mütekabiliyet Yok [There is No Reciprocity in Lausanne],* RADIKAL , 28 September 2006;

[43] It was agreed in the Treaty that the protection will be conducted by means of League of Nations in case of violation of the provisions concerning protection of minorities; however due to the dissolution of the League of Nations and the replacement of the Permanent Court of International Justice, it is controversial in the international law as to who will conduct this control. Although United Nations is not the continuity or successor of the League of Nations, starting from the provision "if the characteristic of a problem is stipulated to require to be taken to Permanent Court of International Justice in a Treaty in effect, the problems between the States Parties of this Statute will be taken to International Court of Justice" in Article 37 of the Court of Justice Statute, it is possible to say that the Court of Justice is an authorized judicial organ to be applied in case of violation of the provisions of Lausanne Treaty. Hüseyin Pazarcı, ULUSLARARASI HUKUK DERSLERI [LESSONS IN INTERNATIONAL LAW] 198 (Turhan Kitabevi, Ankara 1998, Kitap II); Sevin Toluner, *Lozan Barış Antlaşması ve Azınlıkların Korunması Sorunu [Lausanne Peace Treaty and Problems in the Protection of Minorities],* 15 MHB 91 (1995). This conclusion can be reached also by the case law of the Court of Justice. Starting from there, Turkey must claim the right to take Western Thrace Problem to the International Court of Justice based on Article 45 of Lausanne Treaty. This is valid for Greece too. *Id.*

[44] "Today legal rules regarding the protection of minorities are matters discussed within the context of protection of human rights. Those provisions of Lausanne Treaty concerning minorities are also in that nature. Regarding the retaliation required in case of violation of these basic rules stipulated by international law can be explained as follows: In case an international treaty provision concerning protection of humans is violated by a state bound by this treaty, other states bound by that treaty may not adopt a similar violation attitude in their country in order to show their reactions against that. They have to act in compliance with that rule and continue to protect the rights… This rule constitutes the basis of the liability concept resulting from all human rights treaties." Turgut Tarhanlı, "Alacakaranlıkta Azınlık Olmak" Radikal, 1 October 2002. Cin argues this opinion by stating that retaliation rather than reciprocity, humanitarian law rather than human rights, are mentioned in Article 60/5 of Vienna Convention on the Law of Treaties. Cin, *supra* note 40, at 103**.**

[45] Reciprocity cannot be required for regulations concerning human rights. For a detailed analysis, *see* René Provost, INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW 152-177 (Cambridge

the original text must be followed. The original French text of Article 45 of the Lausanne Treaty emphasized that the legal responsibility of Turkey and Greece in this matter was to be carried out under the concept of '*également,*' or in other words 'equal, equally.'[46] It is generally accepted in international human rights law that minority rights may be limited if they are "contrary to public order" and if the rights granted are "misused."[47] In other words, "reciprocity" does not always have to be the reason for any limitation.

If it is concluded that the application of the priniple of reciprocity is acceptable under this provision of the Lausanne Treaty, Turkey has to act different towards her citizens that have been accepted as minorities. However, reciprocity is not a principle that can be required as the basis for granting rights to a State's citizens.[48] For example it is not possible to apply such a principle

University Press, Cambridge, 2002); Turgut Tarhanlı, *Azınlıklar ve Vakıflar [Minorities and Foundations*], RADIKAL, 21 January 2002.

[46] Turgut Tarhanlı, *Lozan'da Mütekabiliyet Yok [There is no Reciprocity in Lausanne],* RADIKAL, 28 September 2006.

[47] For a detailed analysis of the limitations of minority rights, records used in this field, and ceasing minority rights, *see* Çavuşoğlu, *supra* note 20 at 112-128.

[48] For the opposite opinion, see Cin, *supra* note 40 at 104. Cin concludes that the foreigner factor has to be present for States to respond with loss or to apply retorsion ["foreign factor" is an international private law term, "apply to foreigners" is required to be used here]; however he objects to the opinion that a state cannot apply reciprocity principle to its own citizens. *Id.;* Özel argues that a negative right was granted to the minorities in Article 40 of Lausanne Treaty and a positive right was granted to the minorities in Article 41 of Lausanne Treaty, and that reciprocity principle can be applied for positive rights. According to the author:

> "In the provision of Article 45 of Lausanne Treaty, reciprocity is adopted as a guarantee for the rights granted to certain citizen groups in minority status residing in both countries. However reciprocity is not a principle that can be taken as the basis for granting rights to the citizens. Stating that the opportunities and equal treatment provided by the citizenship rights in Article 45 of Lausanne are based on reciprocity principle and treating citizens different than others is an unacceptable approach by the contemporary legal system. Therefore we cannot interpret article 45 of Lausanne as a reciprocity demand in terms of negative rights. The article can be applied today just for positive rights. It is not wrong to require reciprocity regarding the concessions granted different than other citizens as positive discrimination."

Sibel Özel, HEYBELİADA RUHBAN OKULU VE PATRİKHANE [HEYBELIADA CLERGY SCHOOL AND PATRIARCHATE] 37 (Istanbul Barosu Yayınları, İstanbul, 2007); According to this interpretation, reciprocity cannot be required for the right of minorities to open, establish, manage and control schools as regulated in Article 40 of Lausanne because they are citizens and this is a negative right. However reciprocity must be required for the ability of being educated in their own languages regulated in Article 41 of Lausanne because this is a positive right. Since reaching to such a conclusion by separating negative and positive rights after it is accepted that the reciprocity principle cannot be applied to citizens will create a situation conflicting within, it is difficult to agree with this opinion.

concerning the freedom of education for a Turkish citizen of Greek origin while at the same time not appling it to a Turkish citizen of Turkic origin. This is contrary to the principles of minority rights widely accepted in the international law where "treating minorities equally and without discriminating from the citizens of that state"[49] is required under the principle of equality that is included in the Turkish Constitution.

Two subjects must not be confused: it is natural that the limitation of the rights granted to foreigners by a State will be based on different principles than the limitation of the rights granted to minorities. For example, through an agreement to be made with Greece or by domestic regulation,[50] Turkey can set limitations regarding any rights granted to Greek citizens in Turkey and the grant of that right may require reciprocity. However, if the right of an individual accepted as a minority is guaranteed by an international treaty, the requirement of reciprocity cannot be imposed on the use of that right by that individual. Therefore, it is not contrary to law for a school to accept enrollment of an ethnic Greek citizen of Turkey and prevent a Greek citizen to be enrolled at a minority school because one is citizen and the other one is foreigner. In the same manner, while reciprocity is required in the acquisition of property by Greek citizens in Turkey, no such requirement can be set for the acquisition of property by an ethnic Greek citizen of Turkey.

As can be derived from these explanations, "reciprocal legislation and practices" expression in regulations regarding the minority schools, must not be interpreted as reciprocity.

The provision in the Old LPEI that states that "only children of Turkish citizens may enroll at these schools" that is to be kept in the New LPEI is therefore appropriate (Article 5/5, c-1). In the proposed amendment submitted concerning the definition of minority schools in the New LPEI, an attempt was

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[49] It can be seen in the regulations to prevent discrimination against minorities and the protection of minorities under the UN, the freedoms of minorities to learn their languages and to open education institutions are emphasized. "The state has to take precautions against discrimination and forced assimilation of the minorities. As a rule, such protective measures includes the rights of the ethnic groups to have certain special rights in education, to establish their cultural institutions and to use their mother tongues in private and official businesses." Füsün Arsava, *Azınlık Hakları ve Bu Çerçevede Ortaya Çıkan Düzenlemeler [Minority Rights and the Emerging Movement to the Center in this Envioronment],* SBFD GÜNDÜZ ÖKÇÜN'E ARMAĞAN [ANKARA UNIVERSITY SCHOOL OF POLITICAL SCIENCES JOURNAL, SPECIAL EDITION IN MEMEORY OF GÜNDÜZ ÖKCÜN], Vol. 47, 1992).

[50] As a matter of fact, in Article 35 of the Title Deed Law, property acquisition was stipulated to require reciprocity.

made to remove the ban by expanding the scope of the definition of minority schools, but this objective could not be achieved. This ban is compliant with the objectibe in founding minority schools.[51] In this case, for example an ethnic Greek citizen of Greece residing in Turkey will not be able to be educated at a Greek minority school in Turkey.

Educating Turkish citizens in minority schools is not aimed at limiting the education freedom of foreigners; the freedom of education and training for foreign students in Turkey is not limited. Foreigners can enroll both in foreign schools and international schools as well as Turkish private schools, although they are limited in quality and quantity.[52]

As stated below, the main center of the discussion of the proposed amendment submitted while the New LPEI was being discussed between the governing and main opposition party was the allegation of the members of the opposition party that the opening of the Heybeliada Clergy School, which is closed due to insufficient number of students, was the purpose of the measure to allow enrollment of foreign students in minority schools.[53] The Heybeliada Clergy School and the Fener Greek Patriarchate could constitute the subject of a separate article due to historical development and legal status of this issue.[54] Therefore, although this subject will not be specifically analyzed here, it is necessary to mention the Clergy School briefly.

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[51] Çelikel and Gelgel, *supra* note 35, at 190.

[52] For detailed analysis on the enrollment rights of foreigners in Turkish educational institutions, *see* Nimet Özbek, TÜRKIYE'DEKI YABANCILARIN ÖĞRENIM VE ÖĞRETIM ÖZGÜRLÜĞÜ [EDUCATION AND EDUCATIONAL FREEDOM OF FOREIGNERS IN TURKEY] 39-53 (Mülkiyeliler Birliği Vakfı Yayınları, Ankara, 2000).

[53] TBMM Dönem:22, Yasama Yılı:4, Cilt:128, 20 Eylül 2006 Çarşamba, [TGNA Period 22, Legislative Year: 4, Volume: 128. Session on 20.09.06, Wednesday], http://www.tbmm.gov.tr/tutanak/donem22/yil4/bas/b126m.htm; (Speech of CHP (Republican People's Party) Niğde Representative Orhan Eraslan).

[54] For detailed analysis regarding this matter, *see* Emre Özyılmaz, Heybeliada Ruhban Okulu [Heybeliada Clergy School] (Ankara, 2000); Özel, supra note 48;

Sadi Somuncuoğl, Patrikhane ve 551 Yıllık Hesap: İstanbul'da Yeni Roma İmparatorluğu, [The Patriarchate and the 551 Year Bill: The New Roman Empire in Istanbul] (Akçağ Yayınları, Ankara, 2004); Elçin Macar, CUMHURIYET DÖNEMINDE İSTANBUL RUM PATRIKHANESI [THE ROMAN PATRIARCHATE IN ISTANBUL DURING THE REPUBLICAN ERA], (İletişim Yayınları, İstanbul, 2004); Yorgo Benlisoy and Elçin Macar, Fener Patrikhanesi [The Fener Patriarchate (Ayraç Yayınevi, Ankara, 1996).

The Theology Department of the Heybeliada Clergy School was closed in 1971 following the annulment of some articles of the Old LPEI.[55] The Constitutional Court in this decision, concluded that the opening of private higher education institutions by real and private law legal persons was contrary to the provision of the Constitution regulating the establishment of universities by the Turkish State. The decision mentioned that the Heybeliada Clergy School is a higher school. As such, similar to all other private higher schools, the Theology Department[56] of Heybeliada Clergy Scholl could also to be closed.[57]

Following the closure of the school, there have been made various attempts to allow the school to operate under a state university, like other private higher schools. The solution of opening the closed theology department of the school as a department providing education on Orthodox religion in one of the Theology Faculties, proposed in 1971 by the Ankara University Senate, was not accepted by the Patriarchate. A similar solution was proposed in 1999 by YÖK (*Yüksek Öğretim Kurulu* - Higher Education Board) stating that the school could operate under the İstanbul University Theology Faculty World Religions Culture Department, but this solution was not accepted either.

It has been argued that the management of the Clergy School must be left to the Patriarchate and the school must be organized as an international theology school so that it can enroll foreign students.[58] In view of the provisions of Article 24 of the Turkish Consitution stating that "educatıon and instruction in religion and ethics shall be carried out under state supervision and control," as

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[55] Constutional Court decision E.1971/3, K. 1969/31, 1.12.1971 T., promulgated in O.G. 13790, 26 March 1971.

[56] The high school section of the school remained open; however due to an insufficient number of students, the Fener Greek Patriarchate made a decision and requested that it to be closed, but this request was rejected due to the reciprocity principle. *See* Somuncuoğlu, *supra* note 55 at 84; Macari, *supra* note 54, at 296.

[57] It has been argued that the closure of the clergy school is contrary to the provision of Article 40 of Lausanne Treaty regulating the freedom of minorities to open educational institutes. Elçin Macar, *Çözüm Gibi Çözüm Şart [Solution Terms Like a Solution] at* http://www.bianet.org/2004/07/13/38831.htm. However this provision was included for the purpose of ensuring the same treatment and equal rights for the minorities as Turkish citizens; it was not designed to make minorities more privileged than other citizens. If the Heybeliada Clergy School was closed while other Turkish citizens have a private higher school educating theology, this would be contrary to this provision, but since this school is also closed while all higher schools were closed, there is no inequality. Özel, *supra* note 48, at 36.

[58] Elçin Macar, *Laik Türkiye'de Ruhban Yetiştirme Sorunu [Clergy Education Problems in Secular Turkey] at* http://www.bianet. org/ 2005/04/01/57923.htm.

well as the provision from Article 130 stating that higher education institutes can be established by foundations, the closed theology department could be reopened under a state or foundation university. Such a move would also be consistent with Article 3, of the New LPEI,[59] Article 2/2 of the Higher Education Law,[60] and Article 2/e of the New LPEI defining minority schools as schools operating at "primary education level."[61] There is also no barrier to accepting foreign students to the Theology Department of the School, provided that the rules concerning acceptance to higher education institutions are observed.[62]

The biggest barrier to reopening the school is a lack of students, because while the high school section is legally open, it is *de facto* closed due to having no students. Therefore the objective is to enable foreign students to be accepted first to the high school section, then to the university theology department. Although foreigners are preventing from enrolling in minority schools in both the Old and New LPEIs, a regulation to enable foreign students to enroll in minority schools would have the capability to lay the groundwork to open the Clergy School. It is possible to say that the proposal submitted during discussions of the New LPEI at the TGNA regarding the definition of minority schools, which was discussed a lot and amended afterwards, could serve this purpose.

4. Other Matters Concerning Minority Schools

a) Language of Education

The langugae of education in minority schools is not regulated in either the Old LPEI or the New LPEI. This must not be considered to be a defect because there are regulations in other statutes concerning the language of education in

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[59] "Private education institutions same as or similar to military schools, schools of the security forces and religion education and training institutions may not be opened."

[60] "Matters concerning Higher Education Institutions under Turkish Armed Forces and Security Forces are regulated by separate laws."

[61] For detailed analysis, *see* Nimet Özbek, *The Theological School of Halki (The Greek Orthodox Halki Seminary) in the Context of Freedom of Education and Instruction of Minorities in Turkey*, 3 JOURNAL OF ISLAMIC STATES PRACTICE IN INTERNATIONAL LAW 29 (2007).

[62] The ratio of generally-qualified foreign students to be accepted to Turkish higher education institutions is determined by the Evaluation Committee established in accordance with the Law 2922 Concerning Foreign National Students Educating in Turkey, 14 October 1983, promulgated in O.G. 18196 , 19 October 1983. Concerning foreign student acceptance to some private higher education institutes, see Özbek, *supra* note 52, at 52.

minority schools. Some matters should be mentioned before continuing onto these regulations.

Because nationalist ideology could be spread[63] at schools opened by non-Muslims, some of which fall within the scope of current minority schools, because these schools were not subject to heavy control during the Ottoman period, has previously caused reactions against these schools. The main policy of the schools opened by Greeks and Armenians is education in their mother tongue.[64] In the 1876 Otooman Constitution (Article 13), the official language was accepted to be Turkish and education in Turkish became obligatory in these schools. Later in the Private Schools Directive issued in 1915,[65] minority schools were authorized to carry out education in their mother tongues,[66] Turkish and culture courses became obligatory (article 6).

The obligation to teach Turkish in minority schools, as regulated in Article 41 of Lausanne Treaty, has been the matter most discussed by the circulars issued during the Single Party Period[67] and was included in the legal regulations in the following years.

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[63] Hıfzı Timur, *Türkiye'de Bulunan Yabancıların Okuma ve Okutma Hürriyeti Bakımından Durumu [The Situation in Maintaining Education and Teaching Freedom for Foreigners in Turkey],* 11 IUHM 275 (1945).

[64] Aran Rodrigue, TÜRKIYE YAHUDILERININ BATILILAŞMASI [THE WESTERN-IZATION OF TURKISH JEWS] 137 (Ankara, 1997).

[65] The directive is considered to be a sign of naturalization activity of the non-Muslims as Turkish. Mustafa Çapar, *Tek Parti Dönemi: Milli Eğitim, Milli Dil ve Türkleştirme Politikaları [The Single Party Period: National Education, National Langauge and Turkizations Policy],* TÜRKIYE'DE AZINLIK HAKLARI SORUNU: VATANDAŞLIK VE DEMOKRASI EKSENLI BIR YAKLAŞIM, ULUSLARARASI KONFERANS TEBLIĞLERI 9-10 ARALIK 2005 [MINUTES OF THE DECEMBER 9-10 2005 INTERNATIONAL CONFERENCE ON QUESTIONS OF MINORITY RIGHTS IN TURKEY: THE PIVOTAL APPROACH OF CITIZENSHIP AND DEMOCRACY 84 (TESEV Yayınları, İstanbul, 2006). For criticism of the thesis of converting non-Muslims into Turkish by this regulation, *see* Zafer Toprak, *Bir Hayal Ürünü: İttihatçıların Türkleştirme Politikası [A Dream Product: The Policy of Turkization for Ittihadists], op. cit.,* at 77-82.

[66] A Jewish request concerning education in French since the Jewish people in Turkey do not know Hebrew – since they have no mother tongue - at these schools was not accepted. Rıfat N. Bali, BIR TÜRKLEŞTIRME SERÜVENI 1923 – 1946 [AN ADVENTURE IN TURKIZATION 1923-1946] 194 (İletişim Yayınevi, İstanbul 1999).

[67] "Citizens Speak Turkish" campaign during that period created pressure on the minorities. For detailed information regarding this matter, see Çağatay Mehmet Okutan, TEK PARTI DÖNEMINDE AZINLIK POLITIKALARI [MINORITY POLICIES IN THE SINGLE PARTY PERIOD] 177-195 (Istanbul Bilgi Üniversitesi Yayınları, İstanbul, 2004).

The last paragraph of Article 42 of the Turkish Constitution regulating the right to education and training,[68] states that no language other than Turkish may be taught as the mother tongue of Turkish citizens, subject to international treaty provisions regarding this matter. Of course, the Lausanne Treaty would be included in the treaties[69] referenced in this provision. According to the

[68] "No language other than Turkish can be lectured and taught to Turkish citizens at education and training institutions. Principles that the foreign languages to be taught at education and training institutions and the schools conducting education and training in foreign language will be subject to are regulated by law. International treaty provisions are reserved."

[69] The Convention of the Rights of the Child was signed by Turkey signed on 14 September 1990, which was ratified by Law No 4058, on 9 December 1994 and promulgated in O.G. 22168, 11 December 1994; Council of Ministers decision No 1994/6423, 23 December 1994, put a reservation to Article 30 of the Convention which includes the provision "in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language." Turkey "reserved the right to interpret in accordance with the provisions and spirit of the Turkish Constitution and the Lausanne Treaty dated July 24, 1923."

In the same manner, in Article 27 of the United Nations Covenant on Political and Civil Rights (ratified by law 4868, 4 June 2003, and promulgated in O.G. 25142, 18 June 2003) , the same reservation was put also on the provision "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Also in Article 13 of the United Nations Covenant on Economic, Social and Cultural Rights (ratified with Law 4867, 4 June 2003 and promulgated in O.G. 25142, 18 June 2003), the decision and reservation put in United Nations Covenant on Political and Civil Rights was repeated (Art. 13 and reservation declaration).

In the Framework Convention for the Protection of National Minorities which is the first legally binding international document prepared within European Council for the protection of minorities [*see* Çavuşoğlu, *supra* note 20 at 241], states in Article 14 that "[the] Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language," learning a minority language is held subject to certain requirements by stating "[I]n areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language." For the Advisory Committee reports regarding these requirements, see Çavuşoğlu, *supra* note 30 at 64-65. In this article, with the provision "shall be implemented without prejudice to the learning of the official language or the teaching in this language", right of teaching official language is reserved." Art. 14/3. Turkey is yet to approve this Convention signed by 37 Member States of the Council of Europe. Rights in the Convention bring liabilities to states parties rather than directly applicable quality rights to persons who are "minority members." It cannot be said that the Framework Convention has a more effective control mechanism when compared to the European Convention of Human Rights (ECHR), because the Framework

Article 40 of Lausanne Treaty, to be analyzed in the following section, it was accepted that students who belong to a minority will be educated in minority schools in their mother tongue.[70] Turkish and culture courses were required to be taught in Turkish in the Foreign Language Education and Training Law[71] (Article 2), issued in accordance with the provision governing foreign language education in Article 42 of the Turkish Constitution, while the Law on Turkish and Culture Course Instructors for Minority Schools[72] was also issued[73] for this purpose.

Moreover, in Article 10 of the Basic Law on National Education,[74] there is a provision stating that the Turkish language, which is one of the basic elements of national integrity, will be taught at every level of education, without deforming its characteristics and without committing excesses.

The provision regarding foreign language education from Article 42 of the Turkish Constitution is repeated in the Law on Foreign Language Education and Learning the Different Languages and Dialects of Turkish Citizens;[75] this statute states that special courses may be initiated to learn foreign languages as well as dialects of Turkish other than those traditionally spoken by Turkish citizens in their daily lives. Language lessons in these courses and in courses opened before may be formed[76] The principles and procedures concerning the

Convention has a control system based on the reports of states parties rather than on judicial control. Art. 24-26. For comparison of the Framework Convention with other international documents**,** *see* Bruno DeWitte, *Azınlıkların Dil ve Din Hakları: Avrupa Standartları ve Avrupa Ülkelerinin Uygulamaları*, *in op. cit, supra* note 65., at 142-144.

[70] In spite of this, it has been observed that some minorities have used Turkish as the language of education since the Ottoman period and some of them have applied to the Ministry of National Education to conduct the entire education in Turkish. For the certificate of permission certificate issued by the MoNE upon application of the Bakırköy Bezezyan Armenian School, with the request of conducting education in Turkish, *see* Hidayet Mehmet Vahapoğlu, OSMANLIDAN GÜNÜMÜZE AZINLIK VE YABANCI OKULLAR [MINORITY AND FOREIGNER SCHOOLS FROM THE OTTOMANS TO PRESENT DAY] 226 (Milli Eğitim Bakanlığı Yayınları, İstanbul, 1992).

[71] Law 2923, 14 October 1983, promulgated in O.G. 18196, 19 October 1983.

[72] Law 6581, 25 May 1955, Promulgated in O.G. 9013, 27 May 1955.

[73] In accordance with this law, these instructors may be appointed for maximum of five years (Temp. Art. 2).

[74] Law 1739, 14 June 1973, promulated in O.G. 14574, 24 June 1973.

[75] Law 2923, 14 October 1983, promulgated in O.G. 18196, 19 October 1983.

[76] As amended by Article 2/a of Law No 4963, dated 7.30.2003. This provision continues with stating that "no education may be carried out at these courses in contradictiona with the fundamental characteristics of the Republic as set out in the Constitution and the indivisible integrity of the state with its country and people.

opening and control of these courses and lessons are to be regulated by regulations issued by the Ministry of National Education. The Regulation on Learning of Languages and Dialects Other Than Turkish Traditionally Spoken by Turkish Citizens in Their Daily Lives[77] was issued for this purpose.

b) Principals and Assistant Directors of Minority Schools

Another subject regarding minority schools is related to the Turkish vice principal at these schools. As mentioned below when examining the provisions of the Old LPEI and the New LPEI on this subject,[78] there is a requirement for a "Turkish principal and vice principal at educational institutions educating in a language other than Turkish and opened by foreigners" (Old LPEI Article 24). The stipulation in the Old LPEI for the vice principal to be "Turkish national" was removed in the New LPEI (Article 8/10-12).

During meetings on the new LPEI bill, there have been discussions on whether this amendment was extended to minority schools or not. Concerning whether the rule in Article 24/1 of Old LPEI for the appointment of a Turkish vice principal to private schools opened by foreigners applies also for minority schools or not,[79] the Minister of National Education stated that there shall not be such a practice at minority schools.[80]

As required in the Regulation for Private Education Institutions issued under the authority of the Ministry of Education,[81] principals of minority schools shall be selected by the founders (Article 40/b-5). One of the teachers appointed to a minority school, pursuant to the Law Concerning Turkish and Culture Courses Teachers mentioned above, must be appointed as the vice principal upon the recommendation of the provincial governor and the approval of the Ministry of Education.

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[77] O.G. 25357, 25 January 2004.

[78] "Principals and Assistant Directors at Minority Schools."

[79] Oran, *supra* note 22, at 75.

[80] "There is no such position as the Turkish vice principal in minority schools. Schools organized under the principle of reciprocity within the scope of the Lausanne Treaty are minority schools. There was an expression like "there are schools established by foreigners in Turkey; there must be a Turkish national vice principal at these schools." Considering that the Republic of Turkey is not a state built on ethnic origin, such a regulation was made because the expression "Turkish" in the Constitution embraces all citizens of Turkish Republic. Such a regulation related to minority schools is not at issue, because there is none." Disclosure of Minister of National Education, September 26, 2006, Period 22, Legislative Year: 4, Session 129, p. 31.

[81] O.G. 18790, 23 June 1985.

c) Inspection and Closure of Minority Schools

There is no special provision regarding the inspection and closure of minority schools in either the Old LPEI or the New LPEI. Provisions relating to the inspections of private education institutions should apply to these schools too.

According to Article 43 of the Old LPEI, "private educational institutions of all grades and qualities are subject to inspection and supervision with respect to education, training and management in accordance with special regulation[82] by Ministry of National Education." Later in the provision, whether the conditions pertaining to the institution's opening permit is maintained or not is listed as one of the points for inspection (Article 43/2).

Article 11 in the New LPEI deals with inspection of private educational institutions: "Institutions and the personnel employed at these institutions are under inspection and supervision of the Ministry. In education, training and management inspections, special regulation of the institution is also taken into consideration."

The reasons listed for closure of private educational institutions in the Old LPEI were not starting education within 3 years after obtaining the opening permit (Article 14), non-compliance with legislation or statutory provisions (Article 15), or by request of the founder of the private school. (Article 16).

Reasons for closure of private education institutions listed in Article 7 of the New LPEI are not starting education within 2 years after obtaining an opening permit, the institution is being used outside of the objective stipulated,

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[82] Article 89 of the Private Education Institutions Regulation dealt with this subject as follows: "Inspections of private primary schools, private schools following the program at the primary education level, student study education centers and private courses shall be conducted by primary education inspectors; general inspections of private education institutions following secondary education or equivalent program shall be carried out by Ministry inspectors. Private education institutions are subject to general inspection within the year they start education. Also the inspections of administrators, teachers, experts and master instructors will be carried out during the general inspections of the institutions. A copy of the reports prepared at the end of the inspection shall be sent to the Ministry. O.G. 23811, 9 September 1999.

Consultative authorities can be employed in the inspections depending on the organization of the institutions. Selection, capabilities, requirements and work procedures of these consultative authorities are to be determined by the Ministry. O.G. 20984, 7 September 1991.

failure to conform to the conditions of the institution's approval and non-compliance with legislation, or by request of the founder of the private school.

III. REGULATION IN THE NEW LPEI CONCERNING FOREIGN SCHOOLS

1. Definition of Foreign Schools

Foreign schools were not defined in the Old LPEI. They are defined in in Article 2/d of the New LPEI as "private schools opened by foreigners." This definition is not clear. As will be examined below, international schools can also be opened by foreigners. In addition, foreign students are attending both types of schools. Although international schools are defined in the New LPEI as "schools where only foreigners may attend," it enables us to conclude that a school is a foreign private school if both Turkish citizens and foreigners are attending but it is an international school if only foreigners are attending. As we will see, this conclusion is misleading.

2. Opening of New Foreign Schools

There is no provision in either the Old LPEI or the New LPEI for foreign real and legal persons or Turkish citizens and Turkish legal persons to open a new foreign school. Therefore the news in the public arena that new foreign schools may be opened under the LPEI did not reflect the truth. Confusion in the matter results because minority schools and international schools have different legal statuses and foreigners enroll in foreign and international schools.

There is no provision regarding the opening of new foreign schools in either the Old LPEI or the New LPEI. However both statutes contain provisions concerning the freedom to open new international schools. This matter must be considered along with its historical basis.

From the Ottoman Empire until today, foreign schools[83] had not been regulated until the issuance of the General Education Regulation.[84] According to Article 129 of this regulation, private schools may also be opened by Muslims, non-Muslims and foreigners. With the Private Schools Regulation[85] issued

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[83] For a detailed analysis, *see* Özbek, *supra* note 52 at 115-166.

[84] Düstur, I. Tertip, C.II ,277-295.

[85] Tebliğler Dergisi (Communiqués Magazine), August 11-18, 1941, Volume III, 132 et al.

during the First World War, foreign legal persons were restricted in the opening of schools; opening schools by foreign real persons was subject to reciprocity and a sufficient foreign population in that official records that would justify opening of the school. When the Lausanne Treaty is considered in proper time sequence, it is seen that there is no provision concerning foreign schools in the Treaty text other than these two regulations. In the letters[86] sent by İnönü to the English, French and Italian States with reference to the Convention Concerning Residence and Adjudicative Jurisdiction, prepared as an addendum to Lausanne Treaty, it is agreed that "religious, educational, health and welfare institutions of these states, which were recognized until October 30, 1914, will continue to exist, that these institutions will be treated the same as Turkish schools, that they will be faithful to public order and laws and regulations and will be controlled in good will." In other words, the existing rights of these schools were preserved.

With the government notices issued in the first years (1924-1926) of the Republic, various limitations were set forth concerning the educational activities of foreign schools.[87] Later, in 1935, the Foreign Schools Mandate was issued. This regulation stipulated that foreigners may not open schools, may not increase the number of branches and classes of existing schools or the number of students in these schools (Articles 17-19). There was no other specific provision on the opening of new foreign schools in this Mandate and in the Old LPEI issued in 1965. It was not planned to open any new foreign schools from when the Old LPEI was issued in 1965 until 1984. In 1984, the amendment which is analyzed below was made to the Old LPEI. This amendment enabled the opening of international schools where only foreigners will be enrolled Therefore, the matter of opening new schools must be considered in this light..

The answer to the question "what is the difference between international schools and foreign schools" can be derived from this historical explanation. Foreign schools may be considered to be schools opened during the Ottoman period that continue to carry out their activities today based on previously-

[86] Lausanne, Communiqués – documents, Volume 7, p.257-259. These letters were sent to the English, French and Italian states. Continuation of the activities of foreign schools that were opened by states founded by the states other than these is explained by acquired rights. Regarding this matter, *see* Öxbek, *supra* note 52, at 135-137.

[87] In these notices issued as an extension of the modern, national, secular characteristics of education in the Republic period, various regulations were promulgated concerning the prevention of religious propaganda, removal of religious symbols and teaching Turkish courses at foreign schools; course content to be compliant with the security of the Turkish state. *See* Ayten Sezer, ATATÜRK DÖNEMINDE YABANCI OKULLAR [FOREIGNER SCHOOLS IN THE TIME OF ATATURK] 56-58 (Türk Tarih Kurumu Yayınları, Ankara, 1999).

established rights. International schools are schools established with the amendment made to the Old LPEI in 1984 in order to remove the limitations in the freedom of education for foreigners as well as schools subject to different provisions that will be mentioned later.

Article 16 of the Constitution stipulates that "the fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law."[88] Since the New LPEI does not restrict the opening of foreign private schools in spite of this principle which is fundamental for limitation of foreign rights in Turkish Foreigners Law, it is necessary to conclude that foreigners may open such schools.[89]

3. Vice Principals at International Schools

Article 24 of the Old LPEI[90] (amended by Law No 2843) concerning the vice principal in foreign schools is as follows:

Principals of the private schools educating in a language other than Turkish and opened by foreigners, recommend to the Ministry of National Education one of those who possesses the qualifications of a Turkish or Turkish culture course teacher and who knows the language of education in order to be issued a work permit as the Turkish vice principal.

In case no Turkish or Turkish culture course teacher is present there, teachers who are of Turkish origin and citizens of the Republic of Turkey and who had a special field of education in the language of education of the school may be appointed to this position.

Turkish vice principals of schools, which do not comply with that recommendation within one month, are selected and assigned by the Ministry of National Education from among the teachers meet the conditions above.

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88 For a detailed analysis of the scope of the expression "Limitation by Law," *see* Fügen Sargin, *Türkiye'de Öğrenim Gören Yabancı Öğrencilerin Türkiye'ye Giriş, Türkiye'de İkamet Etme ve Çalışma Hakları [Foreign Students Rights to Enter Turkey, Reside in Turkey, and Work in Turkey while Receiving Instruction in Turkey],* 1997-1998 MHB 336, 336-341 (In Commoration of Yılmaz Altuğ); Aybay, *supra* note 37, at 83-85.

89 Özbek, *supra* note 52 at 142-144.

90 This provision was repeated also in Article 40 of the Regulation on Private Education Institutions that was issued in accordance with this law.

As mentioned under the title "principal and vice principal at minority schools," the expression "of Turkish origin" in this provision was removed. Under Turkish law, citizenship is accepted as a legal tie between the individual and the State, and this principle is guaranteed in Article 66 of the Constitution. Therefore, it is appropriate to remove terms such as "national," "origin," and "race" that should never included in statutes in first place.

Other than that, in the New LPEI there has been a change in the authority to select the vice principal. The provincial governor was authorized to select the vice principal instead of the Ministry in this provision which is like a repetition of the Old LPEI. According to Article 8 of the New LPEI:

Founders and principals of the schools educating in a language other than Turkish and opened by foreigners, recommend to the Governor one of those who possess the qualities of a Turkish language or Turkish culture teacher and who knows the language of education language, in order to be issued a work permit as the Turkish vice principal.

In case no Turkish language or Turkish culture teacher knowing the language of education is present there, teachers who are citizens of the Republic of Turkey and who had a special field of education in the language of education of the school may be appointed to this position.

Turkish vice principals of schools, which do not comply with that recommendation within one month, are selected and assigned by the Governo*r* from among the teachers possessing the conditions above.

4. Capacity Increase for Foreign Schools

As was also mentioned above, the subject of foreigners opening a new private school, to be regulated by the legislature, makes the problem of an increase in capacity for foreign schools even more important.

Capacity increase for foreign schools is possible under certain conditions in the Old LPEI. According to Article 20, as amended by Law No 3035:

Building, student or equipment capacities of private education institutions opened before the effective date of this law, on their present lands, can be increased or improved, provided that it shall not exceed, as a maximum, double the previous capacity, on the condition that the land they were established on shall not be expanded, and with the permission of the Ministry. New land ownership and increasing their capacities to a maximum of five times the

previous capacity requires a Council of Ministers decision. Moreover, buildings may not be expanded or increased, branches may not be opened, new buildings may not be constructed to take the place of present buildings, and no property may be purchased or rented in any way. Repair and alteration on the present buildings is subject to the permission of the Ministry.

In the provisions of the New LPEI concerning this matter, the Council of Ministers authority in the acquisition pf new land and increases in capacity was preserved, and the provincial governor was authorized to allow alterations at foreign schools. This provision for changing the competent authority is appropriate because it is not meaningful for the repair and alteration of a school to be subject to a Council of Ministers decision. Article 5/b of the New LPEI , which is the provision parallel to Article 20 of the Old LPEI, is as follows:

Foreign schools may:

1) Own new land and increase their capacities to a maximum of five times the previous capacity with a Council of Ministers decision.

2) Increase or improve building, student, or equipment capacities on their present lands provided that it does not exceed a maximum of double the previous capacity, on condition that the land they were established on shall not be expandedi and with the permission of the Ministry.

3) Alter their present buildings with the permission of the provincial governor.

4) Other than as authorized in this paragraph, foreign schools buildings may not be expanded or increased, branches may not be opened, and new buildings may not be constructed to take the place of present buildings. No property may be purchased or rented for this purpose.

5. Transfer of Foreign Schools

Article 6 of the Old LPEI stated:

The real property of private educational institutions founded by foreigners can be transferred only to the Ministry of National Education at the suggestion of founders and authorities; those of the transferred institutions deemed to be beneficial to maintain by considering their management, education and training attributes, are determined by the Ministry; these institutions cannot be owned by third parties even if they were closed.

In the New LPEI, the practice of transferring foreign schools only to the Ministry of National Education was abandoned and a regulation was set forth enabling foreign schools to also be transferred to foundations. According to Article 5/b-5.which regulates this matter:

Real property of foreign schools can be transferred to the Ministry or to foundations established for education purposes in accordance with Turkish Civil Code No 4721, with the suggestion of its founders and authorities. Out of the transferred institutions, those deemed to be beneficial to maintain by considering their management, education and training characteristics, are determined by the Ministry.

It is appropriate to make such a change in the New LPEI. Foreigners do not want to open foreign schools in Turkey because they cannot transfer them to other persons and institutions because the Old LPEI allowed transfer only to the Ministry of National Education.[91] The provision in the New LPEI allowing transfer to a foundation may encourage foreigners to open schools.

It was stated during the discussions on this provision at the TGNA that an international school can easily be opened by foreign real persons and after that it could be transferred to a foundation established by foreigners; in other words this provision could allow minority foundations to own real property.[92] However, the provision of Article 5/b-5 of the New LPEI was developed, not for the international schools, but for foreign schools.

6. Ratio of Foreign Students That Can Be Educated in Turkish Schools

Article 28 of the Old LPEI regarding the ratio of foreign students to be educated at Turkish private schools is as follows: “The number of students of foreign nationality that can be enrolled in a private school is determined by the Ministry of National Education, provided that it does not exceed twenty percent of Turkish citizen students."

This quantitative limitation in the Old LPEI is narrowed in the New LPEI. According to Article 13/6 of the New LPEI, “The number of students of foreign nationality that can be enrolled in a school may not exceed thirty percent of the number of students with Turkish citizenship.”

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[91] Özbek, *supra* note 52, at 157.

[92] TGNA Period 22, Legislative Year: 4, Volume: 128. Session on September 26, 2006, Wednesday.

Narrowing the quantitative limitation is appropriate because there may not be any foreign private schools or international schools within the geographical area where the foreigner lives. In this case, if that foreigner cannot benefit from a Turkish education institution becasue of the quota, then he/she will not be able to benefit from the right to education.

7. Inspection and Closure of Foreign Schools

There is no special provision regarding inspection and closure of foreign schools in either the Old LPEI or the New LPEI; the provisions regarding inspections and closure of private education institutions apply for these schools too as explained in Section II(4)(c) *supra*.

IV. REGULATION IN THE NEW LPEI CONCERNING INTERNATIONAL PRIVATE EDUCATION INSTITUTIONS

International private education institutions are defined in Article 2 of the New LPEI as "private education institutions where only students of foreign nationality may attend."[93]

This definition did not make any basic amendment to the core of the definition for international private education institutions in the Old LPEI.

According to Article 5/1in the Old LPEI, "international educational institutions (except higher education) where only students of foreign nationality may attend can be opened by real and legal persons of foreign nationality, directly or through partnerships with Turkish citizens, within the scope of Law No 6224 on the Encouragement of Foreign Investment, with the permission of the Council of Ministers. Turkish citizens and legal personalities may also open international educational institutions on behalf of themselves for the same purpose."

According to Article 5/a-1 of the New LPEI:

international education institutions except higher education institutions where only students of foreign nationality may attend can be opened by real and legal persons of foreign nationality or through partnerships with Turkish citizens, within the scope of Law No 4875 on Direct Foreign Investments, with

[93] There is no authorization for foreigners to open primary education, higher education institutions and language courses where Turkish citizens may also attend. Regarding this matter, *see* Özbek, *supra* note 52, at 145-154.

the permission of the Council of Ministers. Turkish nationals who are real persons, private law legal persons or legal persons administered by private law provisions may also open international private education institutions on behalf of themselves for the same purpose.

Stating in the New LPEI that international private educational institutions shall be organized within the scope of Law No 4875 on Direct Foreign Investments instead of Law No 6224 on Encouragement of Foreign Investment is an appropriate change, because as a matter of fact, Law No 6224 on the Encouragement of Foreign Investment was abolished by Law No 4875 on Direct Foreign Investments.[94]

In the New LPEI, the scope of persons that may open international private education institutions is expanded. Use of the terms "private law legal persons or legal persons administered by private law provisions" in the New LPEI instead of only the term "legal persons" in the Old LPEI, enables also such legal persons to open international private educational institutions where only foreigners may attend. In other words, the term "legal person" is shown by example..

The legislature did not stipulate reciprocity for opening international schools. A rich foreigner, a businessman for example, can easily open international schools in Turkey. It cannot be said that such convenience is provided by foreign states regarding the freedom of Turkish persons to open educational institutions in foreign countries. The fact that the sensitivity shown in accepting reciprocity as an inevitable element in the field of freedom for minorities to open educational institution has not been shown by foreign states constitutes a contradiction.

The general limitation provision contained in Article 5/2 in the Old LPEI concerning education and training activities to be provided at international private educational institutions is "education and training in violation of the security and interests of the Turkish Republic and against the Turkish nation and its national values may not be carried out at these education institutions"

The limitation provision is expanded in Article 5/a-2 of the New LPEI as follows: "education and training in violation of indivisible integrity with its territory and nation, security and interests of the Turkish Republic, and against national, ethical, humane, moral and cultural values of Turkish Nation may not be carried out at these education institutions." Although it is our right to expect

[94] Law 6224, 18 January 1954, promulgated in O.G. 8615, 24 January 1954.

the content of programs at the educational institutions opened by foreigners in Turkey to be towards improving international peace and cooperation and to impose limitations for this purpose, the concepts to be used in limiting the rights are required to be explicit. The terms "national, ethical, humane, moral and cultural values" are abstruse and subjective expressions.

The provision concerning other matters in the education and training activities to be provided at international private educational institutions was stated in Article 5/3 of the Old LPEI as "curriculums of these education institutions are prepared by the institution administration, provided and on condition that they are not in violation of the national security and interests of Turkish Republic and submitted for the approval of the Ministry."

In the New LPEI, this matter is regulated in Article 5/3 as "curriculum programs, education and training activities at these institutions and actions related to other matters are conducted in accordance with the principles prepared by the institution administration and approved by the Ministry."

In Article 5/4, the Ministry of National Education is given the authority to inspect international educational institutions.

There is no special provision regarding the closure of international educational institutions in Old LPEI and New LPEI. Therefore the provisions concerning the closure of private education institutions will be applied here by analogy. Article 5/a-2 of the New LPEI mentioned above, can be deemed to be a special provision regarding the inspection and closure of international schools apart from the general provisions on the closure and inspection of private educational institutions.

V. EVALUATION OF THE REGULATION IN THE NEW LPEI CONCERNING FOREIGN SCHOOLS AND INTERNATIONAL PRIVATE EDUCATION INSTITUTIONS

Foreign schools and international schools are independently regulated in both the Old LPEI and the New LPEI. There is one provision concerning only the establishment of international schools in both regulations; there is no provision on inspection, closure or education activities of international schools . On the contrary, there is no provision in the either Old LPEI or the New LPEI concerning the opening of foreign schools except for the definition of foreign schools; there are provisions only on their transfers and capacity improvements.

We can categorize the regulation in the New LPEI concerning foreign schools and international schools as follows:

	Foreign schools	**International schools**
Definition	Special regulation	Special regulation
Opening schools	No provision	Special regulation
Capacity increase	Special regulation	No provision
Acquisition of Real estate	Special regulation	No provision
Transfer	Special regulation	No provision
Closure	No provision	No provision

When these regulations are considered together, the question whether it is possible to extend the provision concerning the opening of international schools to also include foreign schools and to interpret regulations related to foreign schools as provisions concerning the education and training activities of all these schools (foreign schools and international schools) requires an answer.

Although there is no restriction in the Lausanne Treaty on the opening of new foreign schools, it has not been possible for foreigners to open a new foreign school since the Lausanne Treaty came into force. Although it is not explicitly forbidden to open a new foreign private school, it can be said that the legislature has a commitment to maintain the present foreign private schools but not to open new foreign private schools. The requirement that increases in the capacity of foreign private schools is subject to strict conditions (permission of the Council of Ministers) also supports this point of view. Therefore, international schools are permitted to be opened for foreigners to have the freedom to open educational instiutions.

In our opinion, it must be concluded that both schools possess independent characteristics. Because if the legislature would have a commitment to opening new foreign schools, the term “international school” would not be used; the term “foreign school” would be used. As analyzed above, foreign schools and international schools are not defined separately in the Old LPEI but both schools are separately defined in the New LPEI.

If it is accepted that foreign and international schools are different categories, there will be the problem of deciding which provisions must apply to the operation of international schools. The regulation on international schools is limited to the definition and inspection of these schools. There is no special provision regarding increase in capacity, closure or transfer of these schools in the New LPEI. Will the regulation on foreign private schools in this matter also be applied to international schools by analogy? The answer to this question is not clear. In my opinion, it is not possible to apply limitation provisions

concerning increases in capacity by analogy, despite Article 16 of the Turkish Constitution on limiting the rights of foreigners. Therefore, this defect in the Old LPEI should be corrected in the New LPEI but no provision has been included regarding this matter.

CONCLUSION

Different than Law No 625, the Private Education Institutions Law No 5580 (New LPEI), which repealed the Private Education Institutions Law No 625 (Old LPEI) that had stayed in effect for over fifty years, was subject to debate while it was prepared with the prospect of increasing private sector activities in education and increasing funds to private educational institutions from the state budget. The provision of the law aimed to achieve this objective (Article 12/2) was sent back to the TGNA by the President of Republic in that period and the Turkish Grand National Assembly amended the proposed law pursuant to the justification for the veto made by the President of Republic; this provision was not included in Law No 5589.

The New LPEI draft legislation was subject to public debate due to the provision included to enable foreign students to enroll in minority schools. Amendment proposals submitted by the representatives from the government party during preparation of the New LPEI, on the provision concerning the definition of minority school has been subject to a major public debate.

The New LPEI draft legislation was subject to public debate due to the provision enabling foreign students to enroll in minority schools. In the New LPEI, a minority school was defined as "the private pre-primary, primary education and secondary education schools established by non-Muslim minorities of Turkish citizen, attended by students of Turkish nationality who belong to their respective minority and secured by the Lausanne Convention and children of foreign nationality who ethnically or with religious origin belong to that minority." In this definition, foreigners who also ethnically or religiously belong to a non-Moslem minority will be accepted as minority; as a result the concepts of minority and foreigner were mixed up. Upon reaction from the opposition and the public, the proposal was amended to withdraw this provision. Reactions were based on the claims that this amendment aimed to find students for the high school section of the Heybeliada Clergy School. It is incontrovertible that these criticisms have a point because the high school section of the Heybeliada Clergy School is legally open but actually closed since there are no students. Although foreigners are restricted from enrolling in minority schools in the Old and New LPEI, a regulation that will enable foreign students to enroll in minority schools would have the capability to lay the

groundwork for the opening of the Clergy School. In the final form of the New LPEI, minority schools were defined as "private pre-primary, primary education and secondary education schools established by Greek, Armenian and Jewish minorities, secured by Lausanne Convention and attended by students of Turkish nationality who belong to respective minorities."

The definition of minority schools in the existing amendment of the New LPEI as "schools where Greek, Armenian and Jewish may enroll" is incongruous with the Lausanne Treaty which regulates the freedom to education for the protected minorities. The New LPEI in its current form, which further limits the minority definition in the Lausanne Treaty and the Old LPEI, will cause the loss of rights by leaving some minorities out of the scope of the definition. Also the terms "Greek and Armenian" in the New LPEI, create a minority category based on ethnic origin. Therefore in one way, the scope of the term "minorities" is expanded with this definition but is incongruous with the existing minority policy of Turkey.

The New LPEI did not amend the regulations in the Old LPEI stipulating reciprocity for the freedom to education for minorities, contrary to the international law and also to the Lausanne Treaty. In the Private Education Institutions Regulation issued in accordance with the New LPEI and the Old LPEI, the statement "by considering reciprocal legislation and practices" concerning the operation of minority schools, requires the reciprocity principle to be applied also to the minorities and this results in mixing up the minorities and the foreigners. This provision, which is a repetition of the provision in the Old LPEI, is based on Article 45 of the Lausanne Treaty. According to this provision, "the rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory." Widely-held opinion can be summarized to say that *de facto* reciprocity is required in addition to legal reciprocity and in case of violation, the authority to retaliate rests in this provision. Application of the principle of reciprocity as accepted in international law is considered for foreigners residing in the country of a state. Whereas the rights granted by the Lausanne Treaty are secured for the minorities, these minorities cannot be considered to be foreigners, since they are persons bound to that state by citizenship. Reciprocity is not required in the provisions of Article 45 of Lausanne Treaty. The way to prevent actions contrary to this article may not be the reciprocity principle which was not stipulated in this provision but other mechanisms because retaliatory authority in case of contradiction with this provision is also not authorized. Although it is thought that reciprocity is stipulated by Article 45 in the Lausanne Treaty, it must be considered together with the general opinion of including minority rights within the field of human

rights and Article 60/5 of the Vienna Convention on the Law of Treaties concerning restricting the implementation of a negative reciprocity regarding human rights. Provisions in the New LPEI regarding the definition of minority schools must be assessed in light of these matters.

Minority schools, foreign schools and international schools are subject to different principles under Turkish Law. There was an attempt to define foreign schools differently in the New LPEI than in the Old LPEI. Foreign schools were initially defined as "schools where foreigners may enroll" but this definition may cause hesitation. Because foreigners can enroll in international schools and international school can also be opened by foreigners. It is a known fact that Turkish citizens also enroll in foreign schools that were established during the Ottoman Empire period and continuing their activities as a requirement of respecting acquired rights. Although international schools are defined in the New LPEI as "schools where only foreigners may attend", it enables to draw a conclusion as "it is foreign private school, if both Turkish citizens and foreigners are attending; international school if only foreigners are attending"; this conclusion is misleading. Therefore foreign schools definition in the New LPEI may cause hesitation.

There is no provision in the New LPEI concerning whether new foreign schools may be opened or not. In the Old LPEI period, foreigners did not have the freedom to open educational institutions for forty years. With an amendment to the Old LPEI in 1984, foreigners were bestowed the freedom to open international schools where only foreigners may be enrolled. The status of foreign schools in Turkish law rests on this historical basis. However it is still unclear whether foreigners may open new foreign schools or not. Article 16 of the Turkish Constitution stipulates that "fundamental rights and freedoms of aliens may be restricted by law consistent with international law." Since it is not restricted in the New LPEI to open foreign private schools in spite of this principle, which is a fundamental limitation of foreign rights in the Turkish Foreigners Law, it is necessary to conclude that foreigners may open such schools.

The phrase "of Turkish origin" in the Old LPEI for those persons appointed as vice principals in foreign schools, that was removed in the New LPEI, and authorizing the governor instead of the Ministry to approve alterations at foreign schools, is appropriate. In the New LPEI, different than the Old LPEI, the practice of transferring foreign schools only to the Ministry of National Education was abandoned and a regulation was set forth to enable foreign schools to be transferred also to foundations. This amendment is also appropriate. Moreover, the ratio of foreigners that may enroll in Turkish schools

is increased in the New LPEI. This ratio was increased from 20% in the Old LPEI of the students enrolled at these schools to 30% in the New LPEI. Narrowing the quantitative limitation is appropriate for the freedom of education for foreigners, because if there is no foreign schools in the geographical area where a foreigner lives and if that foreigner cannot benefit from those Turkish educational institutions due to the quota, then he/she will not be benefiting from the right to education.

In the New LPEI, the scope of the persons that may open international private education institutions is expanded. The language in the New LPEI stating that private law legal persons or legal persons administered by private law provisions, instead of only legal persons in the Old LPEI, enables also such legal persons to open international private educational institutions where only foreigners may attend. Other than that, references made to repealed laws were removed in the New LPEI. The amendments are also appropriate in this respect. However the legislature did not stipulate reciprocity as a requirement for opening international schools. The fact that the sensitivity shown in accepting reciprocity as an inevitable element in the area of freedom for minorities to open educational institutions has not been shown regarding foreigners constitutes a contradictory view.

In the New LPEI, the provision on general limitations concerning education and training activities was expanded by saying that "education and training in violation of indivisible integrity, security and interests of Turkish Republic with its territory and nation, and against national, ethical, humane, moral and cultural values of Turkish nation may not be carried out at these education institutions." Although it is our right to expect that the contents of programs of educational institutions opened by foreigners in Turkey to be towards improving international peace and cooperation and to impose limitations for this purpose, the concepts to be used in limiting the rights are required to be explicit. Since "national, ethical, humane, moral and cultural values" are abstruse and subjective statements, it would be more appropriate to use the public order criterion used in the general limitation of rights.

There is no special provision regarding property acquisition, increase in capacity, closure or transfer of international private schools stipulated in the New LPEI. It can be asked whether or not the regulations on foreign schools in these matters will also be applied to international schools by comparison. In our opinion, it is not possible to apply the provisions of limitations concerning increases in capacity by comparison, despite Article 16 of the Turkish Constitution on limiting the rights of foreigners.

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