Migration, Diasporas and Legal Systems in Europe

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source of rights and as an interpretative tool. Undoubtedly the most intriguing and significant, if rather elusive, development is the idea of a degree of solidarity between nationals of the Member States. And yet predictably, these developments have been measured and their limits apparent. This is no more so than in three areas – access to welfare and other public benefits, accession of new Member States, and expulsions – each of which demonstrates the continued tension between what are perceived to be legitimate and pressing interests of the Member States, and the realisation of the full legal potential of the concept of EU citizenship. Should one be disappointed in the progress that has been made in the first decade of EU citizenship? I would suggest a somewhat more realistic response. A degree of disappointment may certainly be justified, but should be combined both with an appreciation of the positive developments that have been seen, and with a realistic understanding that the development of EU citizenship was always bound to be a contested and gradual process.

CHAPTER 6

DISCRIMINATORY DENATIONALISATIONS BASED ON ETHNIC ORIGIN: THE DARK LEGACY OF EX ART 19 OF THE GREEK NATIONALITY CODE

*Nicholas Sitaropoulos**

Nationality in international law has been established as 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties'.[1] Following the 1948 Universal Declaration of Human Rights (Art 15), the right to a nationality has been expressly recognised and established as a human right in international law. Greek jurisprudence has rightly recognised it as 'a fundamental civil right' which is directly connected with a number of other rights and legal relations 'requiring stability and security par excellence'.[2] Like most human rights, the right to a nationality is also subject to lawful limitations through denationalisation (involuntary loss of nationality), especially in cases where vital interests of the country of nationality are harmed by a national's conduct inside or outside of this country. This right though of state reaction/defence has been limited by contemporary international and especially European nationality and human rights law.[3]

Ex Art 19 of the Greek Nationality Code (GNC, Legislative Decree (Law) 3370/1955)[4] was a provision applied from 1955 until 1998. It provided for the denationalisation of 'citizens of different [non-Greek] descent' ('alloyenis', as opposed to 'omoyenis', that is, 'of the same [Greek] descent') who left Greece 'with no intent to return'. It was a provision that followed a long relevant historico-legal tradition in Greece by which this relatively young (1832–) state attempted to rid itself of a host of members of ethnic or 'politico-ideological' groups viewed by the state as dangerous to the country's wished-for homogeneity, or even its territorial integrity.

The end result of ex Art 19 GNC was the denationalisation from 1955 to 1998 of 60,004 Greeks 'of different descent' ('alloyenis') and the consequent creation of a signifi-

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* The law is stated as at 10 November 2004. An earlier version of this chapter was published in 6 European Journal of Migration and Law, pp 205–23. All views expressed herein are strictly personal and bind solely the author.

1 International Court of Justice, *Nottebohm Case (second phase)*, Judgment of 6 April 1955, *ICJ Reports 1955*, p 4, at 23. See also Art 2a of the 1997 European Convention on Nationality (*ETS* 166): ' "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin'.

2 Greek Council of State (Supreme Administrative Court) judgments 1233/2002, 1237/2002, www.dsanet.gr (in Greek).

3 See eg 1997 European Convention on Nationality, ETS No. 166, (signed but not as yet ratified by Greece), Art 7, *infra*.

4 On 10 November 2004 a new Nationality Code entered into force (Law 3284/2004) that abrogated Legislative Decree 3370/1955 and mainly codified the existing nationality legislation. Art 19 of the 1955 Nationality Code was abolished in 1998 by Law 2623/1998.

cant number of stateless persons. The overwhelming majority of these persons were Greeks of Turkish origin (officially recognised by the Greek state as belonging to the 'Muslim minority') who used to live, or still live as stateless persons, in the region of western Thrace (north-eastern Greece) and who were originally protected by the 1923 Lausanne Peace Treaty. As shown in this chapter, ex Art 19 GNC was an overtly racially/ethnically discriminatory provision and the relevant state practice violated the peremptory rule of international law regarding ethnic/racial equality, thus entailing Greece's international responsibility. At the same time, it gave rise to a number of serious violations of international and European human rights and nationality law.

The denationalisation practice based on ex Art 19 GNC is not to be viewed as 'a matter of the past' since it actually ended as late as 1998. It has had complex, long-lasting negative effects on, *inter alia*, the ethnic (traditional) minority populations and the relevant local societies. At the same time, it contributed to the persistence of a central state mentality aiming, in effect, at the exclusion of 'the ethnically other' from modern Greek society. However, this aim has been proved futile by the existence of neo-minorities of alien immigrants who, especially since the early 1990s, have transformed Greece into a *de facto* multi-ethnic nation.[5]

The present chapter focuses on ex Art 19 GNC, viewing it as a test case that may provide an analysis of the position of ethnic minorities in Greek nationality law and practice, especially through the discriminatory use of the dichotomy between 'omoyenis' and 'alloyenis' Greek nationals. It also attempts to point to some of the major relevant issues that have arisen from this arbitrary denationalisation strategy in the context of contemporary international and European human rights and nationality law.

AN OVERVIEW OF ETHNIC AND RELIGIOUS MINORITIES IN GREECE

The traditional, large ethnic minority groups in Greece (whose current population is 11 million) have been those of Turkish origin, Pomaks and Roma (all three representing the 'Muslim minority' in Greece, protected by the 1923 Lausanne Peace Treaty). The Turkish minority has been the biggest part of the 'Muslim minority' in western Thrace (north-eastern Greece). Smaller ethnic groups in Greece consist of citizens who identify themselves as 'Vlachs', 'Arvanites' (central and northern Greece) and 'Slavomacedonians' (north-western Greece). Moreover, Roma are found in western Thrace but are also scattered all over the country. Official records seem to exist only with regard to the 'Muslim minority' in Thrace, estimated at 100,000.[6] Unofficial estimates of Roma refer to a

5 See Sitaropoulos, N, *Immigration Law and Management in Greece*, 2003, Athens: Ant. N Sakkoulas Publishers.

6 See UN Human Rights Committee, *Initial Report of Greece [submitted under Art 40 of the Covenant [ICCPR]]*, UN Doc CCPR/C/GRC/2004/1, 15 April 2004, para 898: 'It is estimated that the Muslim minority of Thrace numbers 100,000 out of a total of 362,000 inhabitants of this area, ie 29 per cent of the local population and 0.92 per cent of the total population of Greece of 10.62 million.' According to the same Report, the above 'Muslim minority' 'consists of three groups whose members are of Turkish origin (50 per cent of the minority population), Pomaks, a native population that speaks a Slavic dialect and espoused Islam during Ottoman rule (35 per cent of the minority) and Roma (15 per cent of the minority population)', *ibid* para 899.

number of 250,000.[7] However, Greece has become even more of a multi-ethnic society since the early 1990s with the inflow of large numbers of alien immigrants particularly from neighbouring Balkan and eastern European countries.

Throughout the twentieth century the existence of ethnic minorities was viewed by the Greek state as a taboo subject with 'dangerous implications' for its ethnic and territorial integrity. It is characteristic that Greek courts in the 1990s rejected an application for the registration of a non-profit association made up of Greeks claiming to be of 'Macedonian ethnic origin' at the town of Florina (north-western Greece). The courts 'discerned an intention on the part of the [above association's] founders to undermine Greek territorial integrity' and found that 'the promotion of the idea that there is a Macedonian minority in Greece . . . is contrary to the country's national interest and consequently contrary to law'.[8] The European Court of Human Rights found, in this case, that there was a violation by Greece of Art 11 ECHR (freedom of association).

The treatment accorded by Greece to her ethnic minorities may not be dissociated from her stance *vis-à-vis* her religious minorities (to the extent that this technical differentiation is applicable), given that religion has been a major, if not the most important, 'nation-building' element in the country. This has been one of the main reasons why the Turkish minority has been recognised by the Greek state solely as a religious ('Muslim') minority. Eastern Christian Orthodoxy is the religion of the vast majority (approximately and nominally 90 per cent) of Greece's population. There are no relevant official data, but it is estimated that, among other religious minorities, Old Calendarists account for approximately 500,000, Muslims (excluding the legal and illegal economic immigrants, mainly Albanians, who may reach one million) number around 100,000, Jehovah's Witnesses 50,000, Greek Catholics 50,000, Protestants 30,000 and Jews 5,000.

The 'prevailing religion' in Greece, according to its Constitution from 1822[9] to

7 See Council of Europe, Office of the Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles on his Visit to the Hellenic Republic, 2–5 June 2002*, Doc CommDH(2002)5, Strasbourg, 17 July 2002, paras 19-27; ECRI, *Second Report on Greece*, Doc CRI (2000) 32, Strasbourg, Council of Europe, 27 June 2000, *passim*; and ECRI, *Third Report on Greece*, Doc CRI (2004) 24, Strasbourg, Council of Europe, 08 June 2004, *passim*. See also UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Initial Report Submitted by Greece*, UN Doc E/C12/1/Add 97, 14 May 2004, para 10 where the above UN Committee expressed its concern that 'there is only one officially recognized minority in Greece, whereas there are other ethnic groups seeking that status'.

8 See *Case of Sidiropoulos and others v Greece*, judgment of the ECtHR, 10 July 1998, *Reports* 1998–IV, paras 10 and 11 *in fine*. On 19 December 2003 the Florina First Instance Court (judgment 243/2003 in Greek at www.kemo.gr [news category]) has anew rejected the above application and refused, in fact, to comply with the above judgment of the ECtHR. The case is currently pending before an appeal court. The Committee of Ministers of the Council of Europe concluded the supervision of this judgment's execution by Greece (Art 46, para 2 ECHR) by Resolution DH(2000)99 (www.coe.int/cm), taking into account, *inter alia*, the assurances provided by the Greek government that, given the direct effect of the judgments of the ECtHR in Greek law, 'the Greek courts would not fail to prevent the kind of judicial error that was at the origin of the violation found in this case'. In this context, see also UN Human Rights Committee, *Concluding Observations [on the initial report submitted by Greece]*, UN Doc CCPR/CO/83/GRC, 31 March 2005, para 20: '[T]he Committee notes with concern the apparent unwillingness of the [Greek] government to allow any private groups or associations to use associational names that include the appellation "Turk" or "Macedonian", based upon the state party's assertion that there are no ethnic, religious or linguistic minorities in Greece other than Muslims in Thrace'.

9 1822 Constitution, Art a.

date[10] remains 'that of the Eastern Orthodox Church of Christ'.[11] So far the Greek state has not managed to break this bond with the Church, thus representing an 'ethnic nation', in contrast to 'civic nations', for which religion, that is, Eastern Orthodox Christianity, has been its ethnicity litmus test. As a consequence, Greece remains today a 'problematic secular state,'[12] since an effective separation of Church and State has not yet taken place, either in law or in fact. This has undoubtedly contributed to the preservation of a general state intolerance *vis-à-vis* religious, even Christian, minorities,[13] particularly compounded where these religious minorities coincide with ethnic minorities, as in the case of the Turkish ('Muslim') minority in western Thrace.

GREEK NATIONALITY LAW AND THE IMPORTANCE OF GREEK DESCENT

Greek nationality law is based on the Greek Nationality Code (GNC, Law 3284/2004). The fundamental principle of the GNC is that Greek nationality is acquired automatically, upon birth, by the child of a Greek national (man or woman) ('*ius sanguinis*', Art 1.1 GNC). *Ius sanguinis* has prevailed in Greek law since the inception of modern Greek statehood (since the Constitution of 1827, Art 5c). It is to be noted that the prevalence of *ius sanguinis* was justified by the drafters of the 1955 GNC (on which the 2004 GNC is based) by the fact that 'a part of Greeks migrate [and consequently *ius sanguinis*] contribute[s] to the maintenance of the bond between these migrants and their descendants with the home-country'.[14] The prevalence of the rule of *ius sanguinis* in modern Greek nationality law may thus be viewed as a direct corollary of the fact that throughout the largest part of the twentieth century, Greece was a migrant-sending state that could not afford to keep out of its nationality ambit second-generation Greek emigrants.[15]

However, Art 1.2 GNC has also introduced the *ius soli* rule, providing that Greek nationality may be acquired upon birth by any person born on Greek territory, on

10 2001 Constitution, Art 3.1.

11 The fundamental legal principles enshrined in the Greek Constitution as resolutions of the 'Parliament of the Hellenes' are therein, according to the constitutional preamble, '[i]n the name of the Holy and Consubstantial and Indivisible Trinity'. See also Koliopoulos, JS and Veremis, TM, *Greece – The Modern Sequel – From 1831 to the Present*, 2002, London: Hurst & Co, pp 141–51 and 249–62; Pollis, A, 'Greek national identity: religious minorities, rights and European norms' (1992) 10 Journal of Modern Greek Studies, pp 171–95; Pollis, A, 'Eastern orthodoxy and human rights' (1993) 15 Human Rights Quarterly (HRQ), pp 339–56; Pollis, A, 'The state, the law, and human rights in modern Greece' (1987) 9 HRQ, pp 587–614, esp 609–11; US Commission on Security and Co-operation in Europe, Commission Hearing, *Human Rights in Greece: A Snapshot of the Cradle of Democracy*, Washington DC, 20 June 2002, transcript available through www.csce.gov, passim, esp. testimony of A Pollis.

12 Pollis, A, 'Greece: a problematic secular state', in Christopoulos, D (ed) *Legal Issues of Religious Otherness in Greece*, 1999 Athens: Kritiki (in Greek), pp 165–97; Sotirelis, G, 'The State-Church separation: the revision that never took place', *ibid* at 19–79.

13 See, *inter alia*, *Case of the Canea Catholic Church v Greece* ECtHR, Judgment of 16 December 1997, *Reports* 1997–VIII, 2843.

14 Introductory report of Legislative Decree 3370/1955 in Matzouranis, YK and Smailis, LP (eds) *Greek Nationality – Collection of Greek Nationality Legislation*, 1982, Athens: Ant. N Sakkoulas Publishers, pp 112–13 (in Greek). On Greek nationality law see also Papassiopi-Passia, Z, *Nationality Law*, 6th edn, 2003, Athens: Thessaloniki, Sakkoulas (in Greek).

15 The metamorphosis of Greece into an immigrant-receiving state in the 1990s (see Sitaropoulos, N *op cit*) should lead to an upgrading of the *ius soli* rule in Greek nationality law in the near future.

condition that they do not acquire upon their birth a foreign nationality, or if they are of 'unknown nationality', that is, they are *de facto* or *de iure* stateless. The aim of this subsidiary provision was the avoidance or reduction of statelessness in cases of persons born in Greece.[16] Nonetheless, although Greece has ratified the 1954 UN Convention relating to the status of stateless persons[17] (Law 139/1975), it has not as yet ratified the 1961 UN Convention on the reduction of statelessness.[18] The belated ratification of the 1954 UN Convention and the avoidance of being bound by the 1961 UN Convention are probably related to ex Art 19 GNC (see *infra*) and its incompatibility with these UN treaties. Nonetheless, after the abolition of Art 19 GNC in 1998 it is harder to explain, let alone justify, the reluctance of Greece to abide by the rules of the 1961 UN Convention.

Of crucial relevance to the subject matter of this paper is the establishment in Greek nationality law of the distinction between nationals of 'the same [Greek] descent' ('*omoyenis*') and nationals of 'foreign [non-Greek] descent' ('*alloyenis*').[19] These socio-legal concepts are inherently intricate and impossible to subject to any coherent, objective definition, let alone interpretation. Consequently, they have remained undefined by Greek legislation, albeit widely and rather arbitrarily applied by the Greek legislator and the administration.

The established legal doctrine in Greece has accepted that '*omoyenis*' means an alien who lives abroad and 'is linked with the Greek nation usually by a common language and religion, common traditions and above all common Greek national consciousness'.[20] In naturalisation practice the assessment of 'Greek national consciousness' is usually grounded in facts such as the 'participation of an alien who is abroad in Greek associations, the provision of support to Greeks abroad or the participation in events abroad of national importance'.[21] Aliens however should also be regarded as '*omoyenis*' if they reside in Greece and have been integrated into Greek society.[22] Inevitably, the 'national consciousness' element of '*omoyenis*', being subject to no objective assessment, has not been consistently applied in Greek nationality law. On many occasions Greek legislation has regarded aliens as '*omoyenis*' on the basis of their *stricto sensu* racial/ethnic origins, that is, their descent from Greek nationals alone.[23] However, the preferential treatment that the characterisation of a person as '*omoyenis*' entails in Greek nationality law (especially as regards the conditions of naturalisation) and the occasional use of *stricto sensu* racial/ethnic criteria by Greece in this characterisation process, may be argued to contravene contemporary fundamental principles of equality irrespective of racial or ethnic grounds.[24]

16 Matzouranis, YK and Smailis, LP (eds), *op cit*, p. 113. See also Rozakis, CL, 'Nationality law in Greece', in Hansen, R and Weil, P (eds) *Towards a European Nationality*, 2001, Houndmills: Palgrave, pp 173–92, esp 186–90.

17 360 *UNTS* 117.

18 989 *UNTS* 175.

19 This rare distinction also exists in Israeli nationality law.

20 Papassiopi-Passia, Z, *Nationality Law*, *op cit*, n 14 p 34.

21 Papassiopi-Passia, Z *op cit*, n 14, p 34.

22 See Voulgaris, I, 'The distinction between '*omoyenis*' and '*alloyenis*' and its effect on acquisition of Greek nationality', Armenopoulos, p 1360 (in Greek).

23 Papassiopi-Passia, Z *op cit*, n 14, p 35.

24 The 2004 GNC (Art 10) characteristically provides for a swift naturalisation procedure for '*omoyenis*' aliens living abroad without explicitly requiring any objective test for verifying the existence of any bond with Greece, as opposed to '*alloyenis*' aliens who apply for naturalisation. In the latter cases the law requires, in principle, the aliens' legal residence in Greece for at least ten years and an 'adequate knowledge of Greek language, history and culture' (Art 5, para 2 of the 2004 GNC).

The non-existence of a definition of '*omoyenis*' in Greek legislation has led to a serious confusion in theory and in practice and has provided the Greek state with an unduly wide discretion, equalling, in effect, arbitrariness, in the area of nationality, and consequently immigration, law. For example, Art 1, paras 2–3 of Law 2790/2000 on 'returning *omoyenis*' from the ex-USSR (now basically incorporated in Art 15, para 2 of the 2004 GNC (Law 3284/2004)) has provided that '*omoyenis*' from the ex-USSR may be granted Greek nationality after having been examined by a special three-member committee consisting of members of the competent Greek consulate. According to the same provisions, the attribute of '*omoyenis*', that is, Greek descent, may be affirmed by the above committee, which may take into account 'any kind of evidence that the applicant may produce and from which the existence of the above attribute may be presumed'. [25]

On the other hand, there also exists in Greek nationality law the notion of '*alloyenis*'. This category comprises aliens of non-Greek descent as well as Greek nationals of non-Greek descent. It is the latter group that was actually targeted by ex Art 19 GNC. There have been two major prisms through which the notion of 'alloyenis' has been interpreted. The first, indirectly followed by Greek statutory legislation, defined 'alloyenis' on a *stricto sensu* racial/ethnic ground (descent from non-Greek nationals). The second prism, followed by the Nationality Committee (a state organ in the Interior Ministry providing the Interior Minister with binding opinions on applications for the acquisition of nationality), grounded the notion of '*alloyenis*' in the lack of the aforementioned 'Greek national consciousness'.[26]

The use of the vague term 'Greek national consciousness' in Greek nationality law, especially in the cases of '*alloyenis*', has had negative effects, as shown below, upon members of ethnic minority groups and consequently on inter-ethnic relations in Greece. The vagueness is due to the fact that the above term contains the inherently subjective notion of 'national consciousness'. The use of such terms may not be regarded as being in conformity with international law that demands objectivity and certainty in issues pertaining to nationality.[27] This is also prescribed by European human rights law, according to which legislation affecting human rights should always meet the fundamental conditions of accessibility, precision and foreseeability,[28] despite the fact that the granting of national-

25 In 1998 one in three persons who acquired Greek nationality were citizens of the ex-USSR, see Eurostat, *Statistics in focus – Population and Social Conditions, Theme 3 – 3/2004, Acquisition of Citizenship*, 2. On the legal uncertainty of the dichotomy of *omoyenis – alloyenis* see also Papathanasiou, CH, 'The distinction between '*omoyenis*' and '*alloyenis*' in the new Nationality Code' (1959) Neon Dikaion, 211, 215 (in Greek); Kaminis, G, 'Discours d'introduction in European Commission for Democracy through Law', *The Protection of National Minorities by their Kin-State*, 2002, Strasbourg, Council of Europe, pp 75 ff at 77; and Pavlou, M, 'Greek state policy from 'irredentism' to 'home-coming/immigration'', *ibid*, 195 ff, *passim*.

26 Papassiopi-Passia, Z *ibid*, pp 37–8.

27 Judge Read, dissenting, opinion in the *Nottebohm Case (second phase)*, Judgment of 6 April 1955, *ICJ Reports 1955*, p 4, at 46: 'Nationality, and the relation between a citizen and the State to which he owes allegiance, are of such a character that they demand certainty . . . There must be objective tests, readily established, for the existence and recognition of the status'. The same thesis has been stressed by the Greek Council of State, judgments 1233/2002, 1237/2002, www.dsanet.gr (in Greek).

28 See, eg *Sunday Times v UK*, ECtHR judgment of 26 April 1979, para 49 Series A 30, *Al-Nashif v Bulgaria*, ECtHR judgment of 20 June 2002, paras 119–24 (www.echr.coe.int). It is also noted that the ECJ has also established clarity and precision as two basic characteristics that domestic legislation should possess when transposing directives, 'so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts' – see *Commission v Kingdom of the Netherlands*, Case C-190/90, judgment of 20 May 1992, *European Court Reports* 1992, p I-03265, para 17.

ity (naturalisation) rests, in principle, within the domestic jurisdiction (discretion) of the state concerned.[29] The (non) attribution of Greek nationality on the basis of such nebulous terms, let alone *stricto sensu* racial/ethnic origin, may not be regarded as lawful, especially given the fact that negative naturalisation decisions by the administration are not required by law to be reasoned.[30]

THE HISTORICO-LEGAL BACKGROUND OF EX ART 19 GNC

Attempts at ethnic and religious homogenisation have characterised the birth and development of the Greek nation-state from the early nineteenth century, similar to other Balkan nation-states, at least until the end of the twentieth century. Ethnic and religious minorities have been regarded by all Balkan states as posing a serious threat to their national security and, above all, territorial integrity. The 1919 Greco-Bulgarian and the 1923 Greco-Turkish agreements concerning the exchange of the relevant countries' ethnic/religious minority populations were the first treaties in history by which ethnic cleansing took the form of inter-state agreements.[31]

Thus, Art 19 GNC was not produced in 1955 in a socio-legal vacuum. In the Greek politico-legal history of the twentieth century there was a long tradition of similar legislative (denationalisation) measures aimed, in effect, at ethnic and ideological cleansing.[32] The first such major measure was the Presidential Decree of 12 August 1927 containing the following provision: 'Greek citizens of non-Greek descent [*alloyenis*] who leave the Greek territory with no intent to return shall lose their Greek nationality'. Contrary to ex Art 19 GNC, which provided for the *possibility* of denationalisation in the above-mentioned circumstances, the 1927 Decree was much more rigid, providing for automatic, *ipso iure* denationalisation. The vague wording of the above provision of the 1927 Decree facilitated its arbitrary application by the Greek state for almost two decades against thousands of ethnic minority group members who emigrated from Greece for a variety of reasons. The majority of these were migrant Vlachs from northern Greece (Makedonia region) and migrant Slavomacedonians of the same area. Other minority groups that were affected were migrant Jews and Armenians. Greek government documents of the inter-war period show that the Greek state at that time had a specific programme aimed at the reduction of the numbers of the above ethnic minority group members, especially Slavomacedonians.[33]

29 See also Art 3 of the 1997 European Convention on Nationality, according to which even though each State may determine under its own law who are its nationals, '[t]his law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality'.

30 According to Art 8, para 2 of the 2004 GNC, rejections of naturalisation applications are not reasoned. However, according to the 1997 European Convention on Nationality (Art 11), signed but not yet ratified by Greece, every European contracting state should 'ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing'.

31 See, *inter alia*, Pentzopoulos, D, *The Balkan Exchange of Minorities and its Impact on Greece*, 1962/2002, London: Hurst & Co, *passim* and Hirschon, R (ed) (2003) Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey, New York, Oxford: Berghahn Books, *passim*.

32 On ethnic cleansing in the late twentieth century, see Petrovic, D, 'Ethnic cleansing – an attempt at methodology', 5 European Journal of International Law, pp 342–59.

33 See detailed analysis at Kostopoulos, T, 'Denationalisation – The dark side of modern Greek history (1926–2003)' (2003) Synchrona Themata, pp 53 ff at p 54 (in Greek). See also

(Continued on p 114)

This ethnic cleansing policy through denationalisation was further pursued by the Greek state after the end of the Second World War, then acquiring also an (anti-communist) ideological attribute. It was at this period that the Greek government made clear to the United Nations Relief and Rehabilitation Administration (UNRRA) its objection to the return to Greece of 'undesirable aliens' as well as of Greek nationals belonging to 'enemy minorities' or to communist organisations, even though they had lived in Greece and fled from it during the war.[34] The consequence of this minority (*lato sensu*) – exclusion policy was the second major legislative ancestor of ex Art 19 GNC: the Thirty-Seventh Resolution of 7 December 1947 adopted by the Greek Parliament during the Greek civil war period.

The 1947 Parliamentary Resolution, which was of a statutory character, provided that 'Greek citizens who remain abroad temporarily or permanently during the insurgence [civil war, late 1940s early 1950s] and demonstrably act against the nation or support in any manner whatever the ongoing guerrilla war against the State, may lose their Greek nationality'. This legislation, once again intentionally vaguely worded, was bound to be abused by the Greek state even after the end of the Greek civil war. It aimed at purging Greece of left-wing/communist Greeks who had fled the country after the beginning of the civil war, and who had expressed in any manner whatever their political ideology or supported the left-wing guerrilla armed conflict in Greece. Again, this denationalisation measure had a large-scale character, affecting thousands of left-wing Greeks while the relevant administrative decisions lacked any serious reasoning.[35]

THE ANTI-ETHNIC-MINORITY ORIENTED APPLICATION OF EX ART 19 GNC AND ITS CONSEQUENCES

From the above it is clear that ex Art 19 GNC was rooted in a long Greek politico-legal tradition of the twentieth century aimed at homogenising the Greek nation-state by excluding from it Greek citizens belonging to ideological or ethnic/racial groups viewed as 'undesirable' by the state.[36] According to ex Art 19 GNC: 'a citizen of non-Greek descent ['*alloyenis*'] who leaves Greek territory with no intent to return may be declared to be a person who has lost Greek nationality'. In the framework of ex Art 19 GNC a Greek citizen of non-Greek descent ('*alloyenis*') meant an individual with Greek nationality who did not 'originate from Greeks, had no Greek consciousness and did not behave as a Greek [and consequently] it may be concluded that their bond with the Greek nation is completely loose and fragile'.[37] The Greek Supreme Administrative Court (Council of State) gave a similar definition of an '*alloyenis*' in the context of ex Art 19 GNC:

Bendermacher-Geroussis, A, 'Case law commentary', Nomiko Vima, pp 291–3. On the animosity between the Slavomacedonian minority and the Greekstate, see *supra* the *Sidiropoulos andothers* case (ECtHR).

34 See Fleischer, H, 'The narrow gate of the 'free world' restrictions of free movement to and from Greece during the civil war', in Nikolakopoulos, E, et al (eds), *The Civil War*, 2002, Athens: Themelio Publishers, pp 264–86 (in Greek).

35 Nostopoulos, T, *op cit*, pp 56 8. See also Alivizatos, N, *The Political Institutions in Crisis, 1922–1974*, 1986, Athens: Themelio, pp 487–95; Engolfopoulos, T, 'Nationality and its loss', (1963) Nomiko Vima 604, p 608 (both in Greek).

36 See Stavros, S, 'Citizenship and the protection of minorities' in Featherstone, K and Ifantis, K (eds) *Greece in a Changing Europe*, 1996, Manchester: Manchester University Press, pp 117 ff *passim*.

37 Papassiopi-Passia, Z *ibid* p 159, Papassiopi-Passia, Z, 'Case law commentary' (1975) Armenopoulos 724, p 726 (in Greek).

> a person whose descent is of a different [non-Greek] ethnicity and who through her/his actions has demonstrated feelings showing lack of Greek national consciousness, in a manner that s/he may not be considered as integrated into the ethnic Greek body that consists of persons connected by common historical traditions desires and ideals.[38]

Denationalisation according to the above provision was not to happen *ipso iure*, as had been the case with the aforementioned denationalisation Decree of 1927. It was carried out by virtue of a decision of the Greek Interior Minister who had to follow the relevant opinion of the Nationality Committee (a special committee of the Interior Ministry consisting mainly of public servants). According to the introductory report of the GNC the lack of intent to return to Greece could be presumed on the basis of a person's emigration taking along the whole family, liquidation of property or business in Greece or 'non-active practice of Greek citizenship' (sic).[39] In many cases the Greek Council of State accepted liquidation of property as the major evidence showing lack of intent to return or, conversely, the continuation of property ownership in Greece as evidence showing no intent to remain out of the country.[40]

Ex Art 19 GNC was in flagrant contravention of, *inter alia*, Art 4, para 3(2) of the Greek Constitution according to which 'withdrawal of Greek citizenship shall be permitted only in case of voluntary acquisition of another citizenship or of undertaking service contrary to national interests in a foreign country . . .'.[41] This was a significant constitutional provision aimed at the elimination of the pre- and post-Second World War practice of the Greek state of denationalising ideological 'opponents' (eg communists) or ethic/racial minorities.[42] However, the post-dictatorship Constitution of Greece (1975), expressing the wishes of the ruling socio-political forces in the country, kept ex Art 19 GNC in force, inserting into the Constitution the *ad hoc* 'transitional provision' of Art 111.6, according to which 'Art 19 of Legislative Decree 3370/1955 . . . shall remain in force until it is repealed by law'. This showed that the prevalent post-dictatorship political forces that forged the new Constitution had no intention of challenging the dominant Greek politico-legal tradition of supressing principles of human rights protection and nurturing state phobias *vis-à-vis* ethnic/religious minorities.[43]

Thus the Greek Constitution nurtured in its own corpus a serious contradiction that led, in effect, the Greek Council of State (Supreme Administrative Court) to uphold the lawful

38 Council of State judgment 57/1981, *To Syntagma*, 1982, 87 at 88 (in Greek).

39 Matzouranis, YK, Smailis LP (eds), *op cit*, n 14, p 118.

40 Council of State judgments 4262/1995, 4263/1995, 4264/1995, 4578/1995, 4104/1995, 3079/1998, 3654/2000, www.dsanet.gr (in Greek), 1565/1986 (transcript on file with the author).

41 See Dagtoglou, PD, *Constitutional Law Civil Rights, Volume B*, 1991, Athens: Ant. N Sakkoulas pp 1161–62; Papassiopi-Passia, Z *Nationality Law*, *ibid*, p 161, Voulgaris, I, 'The distinction between '*omogenis*' and '*alloyenis*' and its effect on acquisition of Greek nationality', (1999) Armenopoulos 1354, p 1359 (all in Greek). It was also, in principle, contrary to Art 12.4 of ICCPR (ratified by Greece by Law 2462/1997): 'No one shall be arbitrarily deprived of the right to enter his own country' and to Art 3.2 of the Fourth Protocol to ECHR (this Protocol has not as yet been ratified by Greece): 'No one shall be deprived of the right to enter the territory of the State of which he is a national'.

42 See Papadimitriou, G, 'The Constitution and the voluntary loss of nationality', *To Syntagma*, pp 418 at 420; Metallinos, SA, 'The influence of the new Constitution upon private international law' (1975) Nomiko Vima pp 1304–6 (both in Greek).

43 See also Tsatsos, D, *Constitutional Law, Volume A*, 1994, Athens: Ant. N Sakkoulas Publishers, p 318 (in Greek).

character of Art 19 GNC by virtue of the 'transitional' constitutional Art 111.6, even though it recognised in principle the former's incompatibility with the fundamental constitutional provision of Art 4, para 3 (2).[44] The unprincipled, schizophrenic stance of Greek law in this case was also exposed by the introductory report to Law 2623/1998, by which ex Art 19 GNC was abolished. In that report, the abolition of ex Art 19 GNC was characterised as a prescription required under Art 111.6 of the Constitution,[45] even though it was exactly that constitutional provision which had legalised ex Art 19 GNC from 1975–1998.

From 1955 until 1998 the total number of Greeks who lost their nationality by virtue of ex Art 19 GNC amounted to sixty thousand and four (60,004).[46] It is also worth noting that the abrogation of this provision did not have any retroactive effect. As a consequence, the only remedy available to these persons has been either an application for the revocation of the relevant administrative denationalisation decision or, in the cases of denationalised stateless persons residing in Greece, the long and costly naturalisation procedure available to aliens in general.[47] According to the Greek Interior Ministry the latter remedy was 'recommended by the above Ministry to the unsuccessful revocation applicants in cases where they reside in Greece as stateless persons'.[48] Between 1998 and June 2003 there were 111 revocation applications of which 61 were granted while the rest were still pending.[49] As is obvious from the above, the practice of denationalisation by the Greek administration created a number of stateless persons, contravening fundamental principles of contemporary international law on the reduction of statelessness (see *infra*). It is also to be noted that at least one hundred and thirteen (113) 'Muslims' (of Turkish origin) belonging to the group of the above denationalised stateless persons, and who resided in Greece in the late 1990s, applied for Greek nationality through the naturalisation procedure available to '*allogenis*' aliens.[50]

As with the pre-1955 denationalisation legislation, Art 19 GNC was a legal provision with an inherently arbitrary character which provided the Greek administration with an unduly wide margin of action. This led to unlawful administrative decisions, some of which have been quashed by the Greek Council of State. For example, in the *Chousein* decision, which concerned 'Muslims' (Greeks of Turkish origin) in Thrace, the Greek Interior Ministry had denationalised the applicants in 1991, even though the latter, at the time of the above decision, resided in Greece, had valid Greek passports and valid Greek state insurance cards as farmers.[51] In two other cases involving 'Muslim' Greeks, the

44 See, *inter alia*, Greek Council of State judgments 4262/1995, 4263/1995, 4264/1995, 4265/1995, 3654/2000, www.dsanet.gr (in Greek); Vrontakis, M 'Loss of Greek nationality and case law of the Greek Council of State' (1999) Armenopoulos, p 1382 (in Greek).

45 Reproduced in *Kodikas Nomikou Vimatos*, 1998, at 1121 (in Greek).

46 Greek Interior Ministry, information note dated 11 February 2004 (on file with the author).

47 It is to be noted that Greek naturalisation legislation (Law 2910/2001, Art 59) does not exempt stateless persons from the payment of a relatively high deposit (around 1,470 euros) contrary to Art 32 of the 1954 Convention relating to the Status of Stateless Persons (Law 139/1975). See also relevant report of the Greek Ombudsman dated 02 February 2004 (in Greek, on file with the author).

48 Information note of the Greek Interior Ministry dated 18 June 2003 (on file with the author).

49 *Idem.*

50 These 113 applications were submitted from 1999–2003; 68 of these applicants were naturalised until 11 February 2004. Greek Interior Ministry, information note dated 11 February 2004 (on file with the author).

51 The ministerial decision was annulled by the Greek Council of State judgment 4265/1995, www.dsanet.gr (in Greek). See also similar Council of State case and judgment 1743/1989 (transcript on file with the author).

Interior Minister denationalised them simply on the ground that they had moved to Istanbul in order to pursue university studies.[52] Even minors were not exempt from denationalisation, in contravention, *inter alia*, of Art 8 of the Convention on the Rights of the Child (ratified by Greece by Law 2101/1992), which proscribes unlawful state interference in a child's nationality, the latter being recognised as part of the child's own identity. In the case of a 'Muslim' minor from the island of Kos (south-eastern Aegean Sea) the Greek Interior Minister decided to denationalise him on the basis of an application he had filed with the Greek consulate of Izmir requesting the loss of his Greek nationality. Even though this statement had no legal effect according to Greek law due to the applicant's minor age, the administration used it as the major denationalisation ground.[53] Finally, in another case of a denationalised 'Muslim', the relevant decision by the Interior Minister was taken even though the person concerned was performing his military service in the Greek army at the time.[54]

The main target group of the denationalisation scheme of ex Art 19 GNC was the Turkish minority in western Thrace (north-eastern Greece bordering Turkey). This has compounded the already sour relations between the above ethnic minority group and the Greek state, but has also violated fundamental principles of racial/ethnic equality.[55] The clear incompatibility of this legislation and practice with European anti-discrimination standards and with the International Convention on the Elimination of All Forms of Racial Discrimination was expressly stressed by the European Commission against Racism and Intolerance[56] and the UN Committee on the Elimination of Racial Discrimination[57] respectively. Nonetheless, Greece has not shown any willingness to reintegrate the 'Muslim' (of Turkish origin) victims of ex Art 19 GNC, even after the abrogation of this provision in 1998. It is characteristic that while the Greek political refugees who lost their nationality by virtue of ex Art 19 GNC were reinstated into their nationality by an interministerial decision of 1982,[58] this has never happened with the denationalised 'Muslim' minority members.

Greeks of Turkish ethnic origin constitute the vast majority of the 'Muslim minority' in western Thrace, a *sui generis* ethnic minority population whose status is regulated in principle by Section III ('Protection of Minorities', Arts 37–45) of the 1923 Lausanne

52 The ministerial decisions were annulled by the Greek Council of State judgments 4263/1995 and 4264/1995, www.dsanet.gr (in Greek). See also the similar case and judgment 209/1993, *ibid.*

53 The ministerial decision was annulled by the Greek Council of State judgment 3065/1991, www.dsanet.gr (in Greek).

54 The ministerial decision was annulled by the Greek Council of State judgment 4648/1997, www.dsanet.gr (in Greek).

55 Papassiopi-Passia, Z, 'Art 15 UDHR and Greek Nationality Law', in Koufa, K (ed) *50 Years of UDHR, 1948–1998*, 1999, Athens: Thessaloniki, Sakkoulas p 93 (in Greek). Initially, target groups of Art 19 GNC have been left-wing political refugees who left Greece during the civil war, Slavophone Greeks from the Greek region of Makedonia, Jews who migrated to Israel, Greeks of Italian origin who migrated to Italy after the Second World War and Albanian Muslims who migrated to Turkey: Kostopoulos, T *op cit* n 33, pp 59–60.

56 ECRI, *Second Report on Greece*, Strasbourg, Council of Europe, 27 June 2000, paras 4 and 42 and ECRI, *Third Report on Greece*, Strasbourg, Council of Europe, 08 June 2004, paras 8–11.

57 CERD, *Concluding Observations of CERD*, UN Doc. CERD/C/304/Add.119, 27.04.2001, para 15.

58 Interministerial decision 106841/82, Interior Ministry, information note dated 11 February 2004 (on file with the author).

Peace Treaty.[59] The Lausanne Treaty was a significant agreement aiming at the effective protection of the 'Moslem' minority in Greece and the 'non-Moslem' minority in Turkey. Despite the reference to a religious characteristic the above treaty provides in fact for the protection of ethnic groups, that is, of ethnic Greeks in Turkey and of ethnic Turks in Greece. Although the Lausanne Treaty belongs to the League of Nations category of inter-war treaties which ceased to apply after the Second World War, both Greece and Turkey have time and again declared their adherence to this instrument since it provides for the respect by both countries of their respective minorities' civil and political rights.[60]

Under the Lausanne Treaty and by virtue of a series of Greek statutory provisions the 'Muslim' minority in Thrace has a special protective status in issues regarding its education and religion. According to Greek state data there are currently more than 200 primary minority schools in Thrace, with more than 400 'Muslim' teachers. There are also two minority secondary schools in the same area, while a 'special quota of 0.5 per cent for the admission of minority students to Greek higher education institutions' has been established.[61] A reform project of the Greek Ministry of Education, aimed at reinforcing the 'Muslim' minority education in the special minority (primary and high) schools of western Thrace has been under way since 1997.[62] According to the Greek Ministry of Education this positive action ('positive discrimination' in the words of the Ministry) has led to a reduction of 'Muslim' children dropouts after primary school and to a significant increase in the rates of these children in high schools.

Despite its end-result, ex Art 19 GNC was arguably not tailor-made in 1955 to be used against Greeks of Turkish origin in Thrace. The massive denationalisation measures against this particular category of population seem to have been taken by Greece as countermeasures to actions of the Turkish authorities against the ethnic Greek minority in Turkey. It is characteristic that the peak in denationalisations coincided with the occasional worsening of Greco-Turkish relations as well as with dark political periods of Greece (eg late 1950s–early 1960s, when Turkey adopted measures leading to forced emigration of Greeks in Istanbul; 1967–1974, the period of Greek dictatorship;[63] after 1974 (year of the Turkish invasion in Cyprus and of a state of war between Greece and Turkey); 1986–1987, years of high tension between Greece and Turkey).[64] The average yearly number of

59 Ratified by Greece by Legislative Decree of 25 August 1923, reproduced in Constantopoulou, PH (ed), *The Foundation of the Modern Greek State: Major Treaties and Conventions (1830–1947)*, 1999, Athens: Kastaniotis, pp 123–45. See also Baltsiotis, L, Tsitselikis, K (eds) *The Minority Education in Thrace*, 2001, Athens: Ant. N Sakkoulas, pp 33–7 (in Greek). See also Asimakopoulou, F, 'The Muslim minority of Thrace', in Asimakopoulou, F and Christidou-Lionaraki, S, *The Muslim Minority in Thrace and Greco-Turkish Relations*, 2002, Athens: A.A. Livanis, pp 209 ff (in Greek).

60 See also use of Arts 37–45 of the Lausanne Treaty by the Greek Supreme Administrative Court (Council of State) in its judgment 1333/2001, *To Syntagma* (2001), 917 (in Greek).

61 Report by Greece to the United Nations Committee on the Elimination of Racial Discrimination, UN Doc CERD/C/363/Add.4, 30 May 2000, paras 22–9.

62 Information note by Prof. A Frangoudaki, November 2002 (on file with the author); see also www.ecd.uoa.gr/museduc.

63 Meinardus, R, 'Muslims Turks, Pomaks and Gypsies', in Clogg, R (ed), *Minorities in Greece*, 2002, London: Hurst & Co, p 89: 'There is considerable evidence that demonstrates that, after 1967, the Muslim minority for the first time suffered systematic repression and discrimination'.

64 Kostopoulos, T, *op cit*, n 33, pp 60 and 63, who also provides unofficial denationalisation statistics from 1976 to1997. In this period the yearly number of denationalisations ranged from 89 (1997) to 1,759 (1977).

denationalisations from 1976 to 1997 was 585.[65] From the available relevant unofficial statistics it is obvious that the vast majority (approx 47,000) of these denationalisations took place between 1955 and 1975. The decisions of the Nationality Committee, with which the relevant Ministerial decisions should coincide, were extremely short and lacked any kind of coherent, analytical reasoning. It is characteristic that with single decisions of this character, massive denationalisations took place.[66] The abolition of Art 19 GNC in 1998 by Law 2623 was certainly a product of the international criticism and pressure exerted on Greece. However it is to be noted that 1999, a year later, marked the start of a period of détente and development by Greece of her diplomatic relations with Turkey.

DENATIONALISATIONS IN THE CONTEXT OF INTERNATIONAL AND EUROPEAN HUMAN RIGHTS LAW

Ex Art 19 GNC contravened the fundamental principle of racial equality prohibiting racial discrimination, as defined by Art 1 of the 1966 International Convention on the Elimination of all forms of Racial Discrimination (ICERD). According to ICERD (Art 1.1) racial discrimination means

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Of particular interest in our case is Art 5(d) ii–iii, ICERD by which states undertake to guarantee everyone's enjoyment of, *inter alia*, (a) the right to leave any country, including one's own, and to return to one's country, and (b) the right to a nationality. These are two out of a list of *notable rights* that the contracting states are to guarantee to everyone without distinction as to race, colour, or national or ethnic origin.[67] Even though Greece ratified ICERD in 1970 by Legislative Decree 494 (without accepting thus far to apply Art 14 on communications to CERD), it continued to apply Art 19 GNC against its own racial/ethnic minorities, as shown above, in clear contravention of the aforementioned fundamental provisions of ICERD.

Ex Art 19 GNC also contravened, in a flagrant manner, a number of provisions of the International Covenant on Civil and Political Rights (ICCPR, ratified by Greece by Law 2462/1997). Here we may focus in particular on Art 12.4 ICCPR according to which no one may be arbitrarily deprived of the right to enter his or her 'own country'. This

65 *Idem.*

66 See proceedings of the Nationality Committee (NC) dated 09 February 1956, which decided the denationalisation of 717 persons and proceedings of NC dated 15 March 1956, which decided the denationalisation of 122 persons, reproduced in *Ephimeris Ellinikis kai Allodapis Nomoloyias*, 1957–1958, 283–4, 294–5 respectively (in Greek).

67 See also CERD General Recommendation XX on Art 5 of the Convention, 1996, UN Doc. A/51/18. See also *Oppenheimer v Cattermole*, [1975] 1 All ER 538, where the House of Lords, following a similar earlier thesis of the German Federal Supreme Court, stressed that legislation providing for expropriation without compensation on racial grounds, coupled with denationalisation, 'is contrary to international law and constitutes so grave an infringement of human rights that the English courts ought to refuse to recognise it as law at all', *ibid*, p 556, cited in Donner, R, *The Regulation of Nationality in International Law*, 2nd edn, 1994, Irvington-on-Hudson: Transnational Publishers Inc, p 173.

particular freedom in Art 12.4 ICCPR is one facet of the freedom of movement guaranteed by Art 12 ICCPR. The Human Rights Committee (HRC) has rightly stressed that freedom of movement 'is an indispensable condition for the free development of a person'. The notion of 'own country' in the ICCPR is not identified solely with the country of nationality. Its scope covers also persons who, because of their special ties or claims regarding a certain country, may not be considered as 'aliens'. In this category are included, *inter alios*, persons stripped of their nationality in contravention of international law.[68] The HRC was categorical in its General Comment No 27 that state parties 'must not, by stripping a person of nationality . . . arbitrarily prevent this person from returning to his or her own country'.[69]

Of special significance for the interpretation and application of the above provision of the ICCPR is the notion of arbitrariness in a state's relevant action. The HRC has rightly underlined that the notion of arbitrariness in the ICCPR 'is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances'.[70] There can be no doubt that the application of ex Art 19 GNC led to an arbitrary interference with the affected persons' right to enter their 'own country'. The arbitrariness in this case was grounded in the fact that the application of the above piece of Greek legislation was clearly against, *inter alia*, the aims and objectives of the ICCPR which include the observance by state parties of the prohibition of discrimination on, *inter alia*, racial or national origin grounds (Art 2.1, ICCPR).

With regard to European human rights law (ECHR), ex Art 19 GNC raised issues under Art 3 ECHR as well as Art 3.2 of Protocol No 4 to ECHR (1963).[71] In *East African Asians v the UK*,[72] the European Commission of Human Rights dealt with a case, similar to ex Art 19 GNC, concerning the exclusion from British territory of East African Asians, 25 of whom were 'citizens of the UK and Colonies'. They had only that citizenship and were forced to leave East Africa for political reasons in the 1960s ('Africanisation' policies of certain African states).[73] It was established before the Commision that the relevant British

68 HRC General Comment No. 27 (1999), *Art 12 (Freedom of movement)*, UN Doc. CCPR/C/21/Rev 1/Add 9, para 20: 'The wording of Art 12, para 4, does not distinguish between nationals and aliens ('no one'). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase 'his own country'. The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them . . .'.

69 *Ibid*, para 21. See also Hannum, H, *The Right to Leave and Return in International Law and Practice*, 1987, Dordrecht: Martinus Nijhoff, pp 60–3.

70 HRC General Comment No 16 (1988), *Art 17*, para 4, in UN Doc HRI/GEN/1/Rev 5, 26 April 2001, p 129.

71 Greece has ratified ECHR by Legislative Decree 53/1974. She has not ratified the Fourth Protocol to ECHR that prohibits, *inter alia*, expulsion of nationals 'by means either of an individual or of a collective measure' and provides that 'no one shall be deprived of the right to enter the territory of the State of which he is a national.' (Art 3).

72 *Decisions and Reports* 78–A, 1994 (Report of the Commission, 14 December 1973).

73 See, *inter alia*, Sharma, VD and Wooldridge, F, 'Some legal questions arising from the expulsion of the Ugandan Asians' (1974) 23 *International and Comparative Law Quarterly* 397 ff.

immigration legislation had 'racial motives' and was 'directed against the Asian citizens of the United Kingdom and Colonies in East Africa'. The Commission stressed, and established in ECHR case law, that racial discrimination may, in certain circumstances, 'amount to degrading treatment within the meaning of Art 3 of the Convention'. This was rightly found to apply to the above case. In the Commission's view, 'publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity'. As a consequence, 'differential treatment of a group of persons on the basis of race might . . . be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question'.[74]

Ethnically/racially discriminatory denationalisation, as was the case under ex Art 19 GNC, gives rise to issues very similar to the ones raised by the above ECHR case. Ex Art 19 GNC was motivated and applied in a racially/ethnically biased manner, as shown above, and that amounted to 'degrading treatment' of the denationalised individuals, especially those who remained stateless for decades or even until their death. Ex Art 19 GNC, however, also contravened Art 3.2 of the Fourth Protocol to ECHR, according to which 'no one shall be deprived of the right to enter the territory of the State of which he is a national'. Stripping all the above ethnic minority members of their nationality directly and flagrantly affected the above individual freedom.[75] It is to be noted that a Greek case concerning stripping a 'Muslim' Greek (of Turkish origin) of his nationality by virtue of ex Art 19 GNC was brought before the European Commission of Human Rights, but the application was rejected for reasons related to inadmissibility *ratione materiae* and to the non-exhaustion of domestic remedies.[76]

The Greek state's international responsibility for the application of ex Art 19 GNC has also arisen in the framework of international law on nationality and statelessness, as developed after 1948 when the Universal Declaration of Human Rights (UDHR, Art 15)

74 *op cit*, n 72, paras 207–8. Affirmed by the European Court of Human Rights in *Cyprus v Turkey*, judgment of 10 May 2001, *Reports* 2001–IV, paras 302–11.

75 See also Ovey, C and White, RCA, *Jacobs & White European Convention on Human Rights*, 3rd edn, 2002, Oxford: Oxford University Press, p 34 and esp McDougal, MS, Lasswell, HD and Chen, L-C, 'Nationality and human rights: the protection of the individual in external arenas', in McDougal, MS and Reisman, WM (eds), *International Law Essays: A Supplement to International Law in Contemporary Perspective*, 1981, Mineola NY: Foundation Press, p 596: 'The emerging peremptory norm (*jus cogens*) of nondiscrimination will . . . make unlawful many types of denationalisation. In sum, the whole complex of more fundamental policies for the protection of human rights, as embodied, for instance, in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other related instruments and programs, global as well as regional, may eventually be interpreted to forbid use of denationalisation as a form of "cruel, inhuman and degrading treatment or punishment".'

76 *Salahaddin Celik c. Grèce*, Req, no 17309/90, décision sur la recevabilité, 30 August 1994. No allegations of Art 3 ECHR violations were made before the Commission. The application grounds related to alleged violations of Arts 6, 7, 8, 9, 10 and 11 ECHR, in conjunction with Art 14 ECHR. The applicant, a journalist living in Istanbul at the time of the application, was first stripped of his Greek nationality by virtue of Art 19, GNC. He had this decision annulled by the Greek Council of State (judgment 1565/1986, *supra*) but then he was again stripped of his Greek nationality on the basis of ex Art 20, para 1(c) GNC (now Art 17, para 1(b) of GNC) (denationalisation on the ground of a person's acts abroad that harm 'the Greek state's interests'). The Commission has dealt with similar denationalisation cases concerning other states: *X v Austria*, App No 5212/71 (decision of 05 October 1992), *Senket Kafkasli c. Turquie*, Req no 21106/92 (rapport 01 juillet 1997) (www.echr.coe.int).

affirmed, *inter alia*, that every person has the right to a nationality and that no one may arbitrarily be deprived of it. Art 15 UDHR is the legal reflection of and reaction to the mass denationalisation programmes applied by a number of totalitarian regimes in Europe such as that of the Soviet Union in the early 1920s,[77] and Nazi and fascist regimes in the rest of Europe in the 1930s and early 1940s. All these denationalisations constituted, in fact, racial, religious or political persecution,[78] which entitled the denationalised persons to refugee status in host countries.

Even though Greece has ratified the 1954 UN Convention relating to the Status of Stateless Persons[79] (Law 139/1975), it has not even signed the 1961 UN Convention on the Reduction of Statelessness.[80] The application of Art 19 GNC contravened two major provisions of the 1961 UN Convention: Art 9, which proscribes the deprivation of nationality on racial, ethnic, religious or political grounds; and Art 8.1 which also categorically proscribes denationalisation if this renders the denationalised person stateless. Ex Art 19 GNC flagrantly contravened both these provisions.

The legacy of ex Art 19 GNC also seems so far to have prevented Greece from ratifying the 1997 European Convention on Nationality.[81] Art 4 of this Convention has enshrined everyone's right to a nationality and proscribed statelessness ('statelessness shall be avoided'). Also Art 5 proscribes *expressis verbis* discrimination in nationality legislation on the grounds of sex, religion, race, colour or national or ethnic origin. As a consequence, and as a logical outcome of these fundamental provisions, Art 7.1 of the above Convention has rightly laid down in a negative, restrictive manner, the grounds on which denationalisation ('loss of nationality *ex lege* or at the initiative of a State Party') may be based. The denationalisation reasons provided for by the 1997 Convention are of a purely objective nature[82] allowing no leeway to states to proceed to denationalisation measures on grounds of a subjective or nebulous nature, such as 'emigration with no intent to return' contained in ex Art 19 GNC.

77 Williams, JF, 'Denationalisation' (1927) 8 British Yearbook of International Law 45; Scheffel, J. L'apatridie des réfugiés russes' (1934) 61 Journal du Droit International Privé 36.

78 See United Nations, *A Study of Statelessness*, 1949, Doc E/1112, 141-42, McDougal, MS et al, *op cit*, n 75, pp 591-5.

79 360 *UNTS* 117.

80 989 *UNTS* 175.

81 *ETS* No 166. It was signed by Greece on 06 November 1997. See also Sitaropoulos, N, 'Legal principles and practice regarding race equality in Greece' (1999) 11 European Review of Public Law 755, 757–8.

82 Art 7.1: 'A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases: (a) voluntary acquisition of another nationality; (b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant; (c) voluntary service in a foreign military force; (d) conduct seriously prejudicial to the vital interests of the State Party; (e) lack of a genuine link between the State Party and a national habitually residing abroad; (f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled; (g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.' Similar to (a), (c) and (d) is the provision of Art 20.1, GNC.

CONCLUSION

Contemporary international law has recognised nationality as one of the fundamental rights whose loss is similar to an expulsion from polity, that is, from humanity.[83] Nationality has been established as a universal right to be enjoyed by every person without any distinction whatsoever. Like most human rights and freedoms, the right to a nationality is also subject to lawful restrictions. Thus states still have the legitimate right to deprive persons of their nationality in cases where, for example, nationals acquire another nationality or they voluntarily serve in a foreign military force or they conduct themselves in a manner prejudicial to the vital interests of the nationality state. However denationalisation based *de iure* or *de facto* on racial/ethnic grounds is inherently arbitrary and contravenes the peremptory international law rule of non-discrimination on racial/ethnic grounds.[84]

In cases where such denationalisation schemes take on a gross or systematic form there may be no doubt that they entail a 'serious breach' of the above peremptory rule and consequently the relevant state's international responsibility under contemporary international law.[85] Discriminatory denationalisations may be characterised as gross on the ground of their intensity affecting large numbers of individuals. On the other hand, denationalisations may be regarded as systematic if they are in fact organised by a state or are carried out deliberately.[86] In either case, discriminatory denationalisations give rise to international state responsibility and, as a consequence, the relevant human rights that are violated may be protected by all states.

The denationalisation measures based on ex Art 19 GNC bear all the traits of a serious breach by Greece of the peremptory international law obligation of non-discrimination on racial/ethnic grounds which entails Greece's international responsibility. There is no doubt that out of the 60,004 persons denationalised under the above legislation between 1955 and 1998, the overwhelming majority were Greeks of Turkish origin in western Thrace. The denationalisation of these persons was obviously discriminatory since it was based on these persons' racial/ethnic origin. At the same time, the denationalisations were not only gross but systematic. They were gross because of the mass nature they had and, at the same time, they were systematic since they were intentionally used by Greece with a view to forcing the members of the above ethnic minority outside the borders of the state.

At the same time this grossly unjust and discriminatory state practice was in direct conflict with a series of Greece's obligations deriving from international and European human rights treaties, such as ICERD, ECHR and ICCPR. It is to be noted that international treaties ratified by Greece have supra-statutory force according to Art 28.1 of the Constitution. Greece violated the above minority members' right to a nationality, their right to leave and return to their own country and their fundamental right to freedom from degrading treatment. These grossly mass denationalisation measures were taken in a manner which has been outright degrading since it was racially/ethnically biased and at the

83 See Arendt, H, *The Origins of Totalitarianism*, 1966, San Diego: Harcourt Brace & Co, p 297.

84 Weis, P, *Nationality and Statelessness in International Law*, 2nd edn, 1979, Alphen aan den Rijn: Sijthoff & Noordhoff, pp 119–27; Hannum, H *op cit*, n 69, Brownlie, I, *Principles of Public International Law*, 6th edn, 2003, Oxford: Oxford University Press, pp 546–9.

85 See Crawford, J, *The International Law Commission's Articles on State Responsibility*, 2002, Cambridge: Cambridge University Press, pp 242–8.

86 *Ibid*, p 247.

same time led a significant number of these persons to statelessness, even if they continued to reside in Greece.

However this degrading treatment arguably persisted even after the abrogation of Art 19, GNC in 1998. Greece did not proceed to a *restitutio in integrum*[87] which could have taken the form of an automatic reacquisition by the victims of the lost Greek nationality. Instead, it allowed nationality reacquisition to happen either through an administrative application for the revocation of the denationalisation decision or, in the cases of Art 19 GNC stateless residing in Greece, through the normal (long and costly) naturalisation procedure applied to aliens in general.

Ex Art 19 GNC originated in the long-established separation of nationals by Greek nationality law between '*omoyenis*' (of Greek descent) and '*alloyenis*' (of non-Greek descent); policy continued, in effect, by the 2004 GNC.[88] This led to flagrantly discriminatory statutory legislation and arbitrary administrative practice in the area of nationality acquisition and loss. This distinction based solely on purely racial/ethnic considerations or solely on the nebulous concept of 'Greek national consciousness' is to be abolished. Greek nationality law should be revamped and acquire, even belatedly, the characteristics of certainty and objectivity prescribed by international law. What is probably more important is that the Greek legislator should proceed to a radical review of Greek nationality law, taking into account the morphology and long-term needs of the evolving, modern Greek society while, concurrently, strictly abiding by contemporary human rights standards.

The above anomalous dichotomy between '*omoyenis*' and '*alloyenis*' is directly linked to the long historico-legal tradition of legislative exclusion/elimination of ethnic or ideological opponents or minorities considered by the Greek state to be 'enemies of the nation' throughout the twentieth century. Ex Art 19 GNC was introduced in a period (the 1950s) which followed the catastrophic Greek civil war and witnessed a series of totalitarian, repressive political regimes that showed no respect whatsoever for civil and political rights. The case of ex Art 19 GNC was a characteristic example of gross human rights violations in modern Europe carried out by states intolerant and chronically phobic towards their own ethnic minority populations.

Regrettably, the Greek state did not make any serious attempt to rid itself of this dominant anti-ethnic minority mentality throughout the twentieth century[89] which has

87 See Kamminga, M, 'Legal consequences of an internationally wrongful act of a state against an individual' in Barkhuysen, T et al (eds), *The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order*, 1999, The Hague: Kluwer Law International, pp 65–74.

88 However, it is worth noting that one of the basic purposes of the 2004 GNC amendment (Law 3284/2004) was allegedly 'the adaptation of [the GNC] to the need to respect the individual's personality, as well as to the requirements of a modern and democratic state governed by rule of law', see preamble, *in fine*, of introductory report of the above Law, 12 October 2004, in Greek at www.parliament.gr/ergasies/nomosxedia.asp.

89 See, *inter alia*, *Sidiropoulos and others* case (ECtHR), *supra* n 8 and Ouranio Toxo et autres c Grèce, judgment of the ECtHR, 20 October 2005, www.echr.coe.int. On 14 May 2004 the UN Committee on Economic, Social and Cultural Rights urged Greece, *inter alia*, 'to reconsider its position with regard to the recognition of other [except for the "Muslim"] ethnic, religious or linguistic minorities which may exist within its territory, in accordance with recognized international standards', *Concluding Observations on the Initial Report Submitted by Greece*, UN Doc E/C12/1/Add 97, 14 May 2004, para 31. See also UN Human Rights Committee, *Concluding Observations*, 31 March 2005, *op cit*, n 8.

been detrimental not only to the victimised minority members but also to the Greek state and the domestic society themselves. Measures like discriminatory denationalisation have naturally contributed to the creation and preservation of a climate where ethnic intolerance has reigned and hostility towards 'the other' has torn the local bodies politic apart, especially in western Thrace.

The long-term deleterious effects of this situation are currently reflected in the socio-legal status of members of neo-minorities such as alien immigrants whose inflows, especially since the early 1990s, have changed the whole country's population morphology. The socio-legal marginalisation to which alien immigrants in Greece have been subjected[90] cannot but be seen through the prism of this country's inability or unwillingness, thus far, to fully accept in its body and to openly acknowledge the value of 'other'/'different' ethnic or religious groups (traditional minorities living there for centuries). Immigration though has transformed modern Greece into a *de facto* multi-ethnic/religious country. It is certainly in the country's own long-term interest to realise this and to conduct itself in a manner that fully corresponds to its international obligations and is respectful of fundamental human rights law principles.

90 See Sitaropoulos, N, *op cit*, *passim*.