

1. INTRODUCTION

According to our contemporary world of politics, the sole concept that people intend to abstain from is 'minority'. In a world where democracy is the most popular regime, considering the roots of the word, it is very worth researching why even the most pluralist system could not find a solution for this matter yet. This paper is prepared in order to analyze minority issues and the reasons of impossibility to create an absolute solution, arising from personal curiosities, raised after Baskın Oran's last book promotion.

In the light of researches made, any consideration of minority rights is premised on a series of problems: the definition and classifications of minorities; whether minority rights belong to the minority or to its individual members; whether minority rights are human rights; and whether legally justiciable rights are adequate on their own for the protection and promotion of minority groups. These questions are addressed throughout this paper.

In November 1998, Turkey's Kurdish question returned to the top of the international agenda with the seizure in Italy of Abdullah Öcalan, leader of the rebellious Kurdistan Worker's Party (Partiya Karkaren Kurdistan—PKK). Kurdish case is selected, as being one of the major issues for Turkey in the path of EU membership, so that, the complexity of the minority concept strengthens. It is tried to give an explanatory work by linking conceptual, legal and actual sides of the concept, as attentively as possible.

Obligations that Turkey should fulfill, related reforms that it did considering approachment to the EU standards, recommendations and some solutions to major problems arising from legal arrangements are taken as references in this paper, despite lacks of definitions, holes and contradictions in the legislations, with the objective to provide a more concrete and clear opinions in minds.

2. THE EVOLUTION AND DEFINITIONS OF THE MINORITY CONCEPT

2.1 THE BIRTH OF THE MINORITY CONCEPT

The concept of minority which is very familiar for us today, is relatively a new concept and is being used just since the reform movements of 16th century in Europe. The integrity of religion in middle ages, did not allow to appear for such a complex concept. Although Jewish people were constituting a religious minority group in that integrity under the roof of Catholic Church, and because of the fact that they were incapable to come up with their dissimilarity in front of catholic dominance and were totally excluded; they were not perceived as “minority”, were only humiliated.

The concept of minority needed both the birth of “different” group revealed from the integrity ruined, and the understanding of the need to protect this group. Naturally, the belief of the dissolution of the integrity would only become into being in a centralist state. Because empires are not centralists; they are not interested in ethnical, religious or linguistic integrity, they are interested in loyalty.¹ Within empires, allegiance and ‘belonging’ were matters of geography, or of loyalty to a sovereign, rather than of race or ethnicity.²

¹ Oran Baskın; (2004); “Türkiye’de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama”; Tesev Yayınları, İstanbul; p.5-6

² Pogany, Istvan(Dr.); (1999); “*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.144

The first centralist state form is the Absolutist Kingdom and its birth was in 16th century with the coalition of two components commencing to be constituted since 12th century: The bourgeoisie who wants to broaden its market but who can not trade in safe because of unrest; and the King who wants to extend its territory. This new political unit, in the length of time, became the matrix in which a new social unit that we call “nation” today, developed. Law and order provided trade to grow up and develop; as a result “a common economic market” became into being; in this market a common language and common feelings, in the length of time, provided the concept of “nation” to become into being.

The bourgeoisie that got strong and started to reduce the power of the church in this environment, had to find a sum of values more appropriate than religion (catholicism) which gathered the Absolutist Kingdom, thus; the bourgeoisie had to make itself autonomous from both the kingdom and religion. The bourgeoisie found that character in evangelical denomination that encourages to work hard and to save by consuming less, (so making investment), opposing catholicism of aristocracy who prefers to consume and not to work. The first type of minority arised in this way in western european countries like France and UK concurrently with the formation of “nation”.³

In a nation-state, the issues raised by the presence of heterogeneous groups are much more acute than in an empire.If, in a mixed area, one group makes good a territorial

³ Oran Baskın; (2004); “Türkiye’de Azınlıklar:Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama”; Tesev Yayınları, İstanbul; p.9-11

claim and establishes a nation-state, other groups will feel threatened and resentful. For them to be ruled by one group claiming to rule in its own national territory is worse than to be governed by an empire which does not base its title to rule on national grounds. To an imperial government the groups in a mixed are all equally entitled to some consideration, to a national government they are a foreign body in the state either to be assimilated or rejected.⁴

2.2 THE DEFINITION OF THE MINORITY CONCEPT AND RELATED CONCEPTS

The word 'minorite', comes from Latin *fraises minores* literally .inferior brothers, a name emphasizing their humility.. Thus the term 'minority' can have a pejorative meaning for some; a term that shows a disparaging value.⁵ That can be seen as the reason of why some states like France do not want to integrate the term of minority in their internal law and also, the reason why defining the concept is so hard and easy to criticise.

Aside from the impossibility of defining the term "minorities" formally by reference to grammar, emphasis upon the adjectives like ethnic, national, cultural or linguistic

⁴ Pogany, Istvan(Dr.); (1999); “*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.144

⁵ Debate on Minorities: From the Racial-Religious-EthnoNationalist Violence Internet Discussion List (December, 1994); <http://www.hartford-hwp.com/archives/28/016.html>

becomes largely irrelevant since they too lose their meaning in the absence of the noun.⁶

International Institutions and authorities avoid using the term and its definition. It has been correctly observed that international law supposes the existence of minorities both in general and of specific types. However, while the existence of human beings and states are "axiomatic" in international law, the existence of human groups is problematic.⁷ Before examining institutional implications of the term, let's find out the general frame of the concept.

The minority concept can be taken on from two sides: One is sociological, and the other is forensic. The former defines the concept as a group which constitutes numerically a minority group, which is not dominant and which owns characteristics different from the majority. This is the most general definition of minority, and includes also homosexuals. The latter one, the forensic view –even if the definition did not take place in the Declaration on the Rights of Persons belonging to National or Ethnic , Religious and Linguistic Minorities of UN⁸ - defines the concept according to UN rapporteur Capotorti. Capotorti defines the concept this way:

*An ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population.*⁹

⁶ Gilbert, Geoff; (1996); "The Council of Europe and Minority Rights"; Human Rights Quarterly 18.1/160-189; The Jhon Hopkins University Pres, Baltimore; p.169

⁷ Ibid; p.162

⁸ Çavuşoğlu, Naz; (2001); "Azınlık Hakları"; Su Yayınları, İstanbul; p.38

⁹ Ibid; (UN.Doc. E/CN.4/Sub 2/384/Rev.1,U.N.(1979),repr.(1991)Sales No. E.91 XIV.2), p.7

Capotorti's definition made in 1978 constitutes the frame of experiments of definitions that will be made after.¹⁰ Additionally, Capotorti ranks the characteristics necessary to admit the existence of a minority. These characteristics are ; being different from majority in diverse ways (ethnic, religious, linguistic); being numerically minority in the country, it does not matter if the minority exists in a specific geography of the country; not being dominant, because there can be such a minority that overwhelms the majority, like whites in Republic of South Africa in apartheid period; being citizen, because if the minority is not citizen, then is "stranger" which is a very different category. If there is an intention of counting as minority the ones who are not citizen, like immigrants and refugees which are mentioned as "new minorities", it would be right to count them as "disadvantaged groups who benefit from minority rights with protection purpose".

These four components constitute objective conditions of being minority. The subjective condition is "the existence of consciousness". Without the consciousness of class, there can be no class, likewise an individual or a group who are not aware of their difference and who do not count this difference as the indispensable condition of their identity, can not form a minority. An individual or a group who want -as a volunteer- to be assimilated, are not counted as minority.¹¹

i) National Minorities

Contemporarily, beside the well-known minority term relying on the criteria of .ethnic, religious, linguistic' trio, the term of .national minorities' becomes the

¹⁰ Çavuşoğlu, Naz; (2001); "Azınlık Hakları"; Su Yayınları, İstanbul; p.35

¹¹ Oran Baskın; (2004); "Türkiye'de Azınlıklar:Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama"; Tesev Yayınları, İstanbul; p.16-17

subject. subject. There are several ways of using the term 'national minority'. Minority that is powerful in one's state, minorities that are ethnic, linguistic or religious –like used in Northern Europe-, minority that has a 'kin state' (irredentism¹²), or minority that is a group whose statute is determined by international documents –like used in Turkey-. To give the most general definition, national minorities can be explained as the opposite concept of 'new minorities', which are defined as minorities like immigrant workers. This definition refers to the fact that only those minority groups whose members are nationals of the state may qualify.¹³

A detailed definition for 'national minority' is given by the 'Proposal for an Additional Protocol to the ECHR concerning Persons belonging to National Minorities'. In its first chapter, article 1;

*“For the purposes of this Convention, the expression ‘national minority’ refers to a group of persons in a state who; a.reside on the territory of that state and are citizens thereof, b.maintain long standing, firm and lasting ties with the state, c.display distinctive ethnic, cultural, religious or linguistic characteristics, d.are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state, e.are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language”.*¹⁴

The 1990 OSCE Copenhagen Document states that membership of a national minority, 'is a matter of a person's individual choice and that no disadvantage may arise from the exercise of such choice,' while persons belonging to national minorities have the right to be free of any attempts at assimilation against their

¹² Gilbert, Geoff; (1996); "The Council of Europe and Minority Rights"; Human Rights Quarterly 18.1/160-189; The Jhon Hopkins University Pres, Baltimore; p.170

¹³ Ibid; p.165

¹⁴ Çavuşoğlu, Naz; (2001); "Azınlık Hakları"; Su Yayınları, İstanbul; p .38

will'(para. 32). For its part the Framework Convention, which entered into force in February 1998, provides, 'every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice' (Art. 3).With respect to involuntary assimilation, the Convention states that, 'the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation'.¹⁵

The similarity of definitions of 'nation' and 'minority' in history, seems to indicate that the terms of nation, nationalism and minority denote different aspects of the same general concept.¹⁶ This result brings us to the idea that this relatively new concept of 'national minority' , in fact existed always.

Moreover, Jennifer Jackson Preece's definition of minority, insinuates the relation between nationalism and minority:

*Minorities are none other than ethnonations who have failed to secure the ultimate goal of ethnic nationalism—independence in their own nation-state—and consequently exist within the political boundaries of some other nation's state; their very existence is an uncomfortable reminder of the 'national self-determination fudge' in international society.*¹⁷

¹⁵ Pogany, Istvan(Dr.); (1999); "*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*"; "Minority and Group Rights in the New Millenium"; Martinus Nijhoff Publishers, Leiden; p.150

¹⁶ Preece, J. Jackson; (1998); "National Minorities and European Nation-States System"; Clarendon Pres; Oxford; p.29

¹⁷ Preece, J. Jackson; (1998); "National Minorities and European Nation-States System"; Clarendon Pres; Oxford; p.29

The term "minority" should be distinguished from that of "people" who not only desire preservation and further development of their specific characteristics but, beyond that, also want to attain sovereignty and full independence. From this point of view, "minorities" are characterized by the fact that there usually exists a country of origin, whereas "people" may be qualified as nations without states. Thus, for example, in Yugoslavia, Albanians can be qualified as a "minority," whereas Croats and Slovenians are "people".

If there is this distinction, then the types of rights ordinarily guaranteed to minority groups are only appropriate for national, ethnic, religious, cultural, and linguistic groups seeking to preserve their identities within the state. Secession raises completely different issues, although even groups with secessionist tendencies are still minorities and entitled to those rights guaranteed under international law.¹⁸

On the other hand, Dr. Istvan Pogany gives another related argument:

We need to 'uncouple' notions of the 'State' and of the 'Nation'. The attempt to reconstitute 'Nations' as 'States' has been an almost unmitigated disaster and has been responsible for untold loss of life. We need to construct new conceptions of the state which are inclusive, rather than exclusive, embracing the diversity – cultural, ethnic, linguistic etc.- found within individual societies. In this endeavour, education may be of overriding importance, both to 'unlearn' prejudices and stereotypical patterns of thinking as well as to lay the foundations for a broader, less ethnically focused understanding of the 'State'.¹⁹

¹⁸ Gilbert, Geoff; (1996); "The Council of Europe and Minority Rights"; Human Rights Quarterly 18.1/160-189; The Jhon Hopkins University Press, Baltimore; p.168

¹⁹ Pogany, Istvan(Dr.); (1999); "Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?"; "Minority and Group Rights in the New Millenium"; Martinus Nijhoff Publishers, Leiden; p.159

These kinds of statements can be seen as the proof of the need of a new, different structural definition for human groups which will help us to be saved from bad memories and aspects of concepts like 'nation', 'minority', 'ethnicity' etc., as well as the of the fact that we are approaching to a new era.

3. THE MINORITY RIGHTS

3.1 DISTINCTIONS BETWEEN MINORITY AND HUMAN RIGHTS

Minority rights are the special human rights which can be used as a group and given by the state to the minority individuals living in a country. The issue of meeting the international standards or getting behind of these standards of rights, is mainly related to the level of democratisation of the related state.

To understand the minority rights, firstly, we have to examine two different but related types of rights:

3.1.1 Negative Rights

These are individual rights that all citizens of a state have. Equality before the law, equality of political right, liberty of religious application are some of the examples of the negative rights.

3.1.2 Positive Rights

The rights that are only for minorities. The individual of minority uses these rights with his minority group, that is to say these are rights of groups. For instance, in Turkey, according to Lausanne Treaty, only, people who are not muslim have the right to establish their own school and the right to teach in their own language.²⁰ I will examine this issue in pages ahead.

²⁰ Oran Baskın; (2004); “Türkiye’de Azınlıklar:Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama”; Tesev Yayınları, İstanbul; p .22-23

3.2 SORTS OF MINORITY RIGHTS

Much of the literature in law, philosophy and political science focused on the issue of individual versus group (or collective) rights seeks in fact to address the question of whether it is the individual or the community to be given priority in terms of rights recognition and protection. Thus, it is possible to classify writers (roughly) as “individualists” or “communitarians”. Unlike individualists, communitarians emphasise the social dimension of the individual and describe his or her rights and duties on the basis of their relations to other individuals and groups.²¹ The question is usually addressed from the point of view of individual versus group(or collective) rights. In general terms, protection for minority groups is being currently discussed in relation to the role of multiculturalism in a liberal social context.²²

3.2.1 Individual Rights

In the Universal Declaration of Human Rights, in its article 27, minority rights are expressed in the context of individual rights. The expression of ‘member of a minority group’ that is used in other international documents, aims to emphasize that the subject in minority rights is ‘individual’. To Put another way, rights are not given to a community or a group, but to individuals or members of a community or a group. At this point, the argumentations of individual rights/collective rights, focus on which subject of rights should be taken as a base for effective protection of minorities.

²¹ Pentassuglia, Gaetano; (2002); “Minority Issues Handbook: Minorities in International Law”; Council of Europe Publishing, Strasbourg; p.47

²² Ibid, p.46

3.2.2 Collective Rights

Collective rights, while being defined as rights that can be used by individuals only with other people, are also considered as rights that can be used in the name of a collective benefit or a profit for a community. Additionally, individual rights, rights of groups and collective rights are differentiated, but in the case of considering group rights as collective rights, the term ‘group’ can be construed differently from a community assembled for any objective or cause. In this frame, when group rights are defined as the sum of rights of group members (individuals); or an agent right to acquire their individual rights by assembling; and collective rights are defined as rights that communities can use to protect and develop their different culture; the difference between collective rights and rights of groups becomes indistinct when a special sense is installed into the term of ‘group’. The objective of collective rights is to protect different identity and physical actuality of a ‘group’ that owns an identity and an entity other than members. In other words, these rights are arranged to protect and to assure the survival of the group.²³

3.3 POSITIVE DISCRIMINATION FOR EQUALITY WITH POLICIES

Recognizing such ‘additional’ rights to some citizen, giving the impression that the principle of equality is corrupted, relies on the truth that there is no other way for disadvantaged minority groups to succeed in getting equality.²⁴ Equality does not mean .treating everyone the same for all purposes,. but may require treating some individuals differently, and in fact more favorably, than others precisely because they are different. The principles of equality and affirmative action, are not contradictory.

²³ Çavuşoğlu, Naz; (2001); “Azınlık Hakları”; Su Yayınları, İstanbul; p .53-57

²⁴ Oran Baskın; (2004); “Türkiye’de Azınlıklar:Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama”; Tesev Yayınları, İstanbul; p .22-24

On the contrary, they are interdependent because the former justifies the latter and the latter is often a prerequisite to achieve the former.²⁵ Being minority, means to experience anyway difficulty in protecting its different identity, all over the world. The aforementioned affirmative action which is the positive discrimination, essentially takes us to the real equality.

Affirmative action must be adapted to the specific situation. It therefore needs careful study and analysis. Moreover, to help public institutions implement positive measures such as affirmative action, accurate documentation on the existence of national minorities is necessary. Indeed, it is a prerequisite for the formulation of good government policy and fundamental to the task of promoting human rights and minority rights, especially the right to equal opportunities. Except for the measures to ensure gender equality, positive measures to ensure higher participation and better integration of minorities are often controversial. One legal measure that has gained recognition as a positive integration tool is affirmative action. Unfortunately, affirmative action is often considered a compensation tool for past wrongs and to reward the deserving rather than what it also is, namely a tool to help institutions change their behaviour so that they can comply with the standards mandated by the legal framework on non-discrimination.

The differentiation of negative and positive rights mentioned before, effectively, becomes concrete in two complementary policies named ‘prevention of

²⁵ Kurban, Dilek; (2003); “Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey’s Path to the European Union”; Columbia Human Rights Law Review, vol. 151, No.35, New York; p.162

discrimination' and 'protection of minorities'. The first policy aims to provide 'forensic equality' of individuals or groups, in other words, aims to prevent discrimination. The second policy tend to provide real equality with the way of helping individuals or groups of minorities to protect their different identity.²⁶ Dilek Kurban describes and argues these policies in other words by asking :

Should a state's posture vis-à-vis its minorities be negative ("I will leave you alone and punish those who do not") or positive ("I will ensure that you live in equal conditions with the rest")? Are these mutually exclusive strategies or should a state be expected to do both?²⁷;

qualifying the first policy, negative and the other, positive. The answer of this question is reserved in the intentions of states and expectations of international order. The new direction that minority protection discourse takes is one advocating both the prohibition of discrimination to prevent further injustices (negative rights) and the imposition of affirmative obligations on states to eradicate past injustices and to achieve equality in law and in fact (positive rights).²⁸

In addition to this juxtaposition of principles, Dilek Kurban states that: .As a result of the overlapping of Human Rights Law which is fundamentally universal and Minority Rights Law which is fundamentally congregational, since fifteen years; a legal understanding oriented on protection of minorities is developing. Even if this understanding did not determine precisely the frontiers and did not create an evident

²⁶ Kurban, Dilek; (2003); "Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union"; Columbia Human Rights Law Review, vol. 151, No.35, New York; p.160-161

²⁷ Ibid.

²⁸ Ibid; p.163

minority concept, predicts to protect minorities in the frame of the principle of constitutional equality.²⁹

²⁹ Kurban, Dilek; (2004); “Devlet Karşısında Yurttaş”; <http://www.bianet.org/2004/10/27/45940.htm>

4. TURKEY'S MINORITY HISTORY

When the Turkish republic was created in 1923, a large proportion of its population consisted of recent immigrants of Slavic, Albanian, Greek, Circassian, Abkhaz, and Chechen origin, whereas people that could claim descent from the Turkic tribes that had come from Central Asia were certainly a minority of Anatolia's population. It was in this complex setting that Ataturk and his associates aimed to create a modern nation-state, an integrated, unitary polity of the French type. For that reason, the model of the nation that Ataturk and his associates adopted was civic, as expressed by the maxim that lies at the basis of Turkish identity: "Ne mutlu Turkum diyene," best translated as "Happy is whoever says 'I am a Turk'"--not whoever is a Turk. To be a Turk meant to live within the boundaries of the republic and thereby be its citizen. The very use of the word Turk, moreover, was a breakthrough, since it had been a derogatory term during Ottoman times, referring to the peasants of the Anatolian countryside. Thus, the word Turk defined a new national community into which individuals, irrespective of ethnicity, would be able to integrate.³⁰

Ataturk's maxim was generous in allowing everyone who desired to do so to become a Turkish citizen, but it did not provide a solution for those who were not prepared to abandon their previous identities in favor of the new national idea. This, in a nutshell, was the problem of a significant portion of the Kurdish population, which differed

³⁰ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics";
http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

from the rest of the population not only because of language, but also because of its clan-based feudal social structure.³¹

4.1 THE CODIFICATION OF AN OFFICIAL MINORITY POLICY: THE TREATY OF LAUSANNE AND ITS CRITICS

In 1923 Turkish nationalists led by Mustafa Kemal (later known as Atatürk) revolted and carved out a Turkish State of the proportions which exist today. These new boundaries were legalised at the Treaty of Lausanne signed in 1923. Although this treaty does contain some minority rights guarantees, the lack of reference to non-Turkish minorities has been interpreted as effectively excluding the Kurds from the definition of minority.³²

The legal statute of minorities in Turkey is arranged by the Treaty of Lausanne that carries basic features of minority rights regime of Turkey. But in opposition to the other treaties that bring protection to ethnic, linguistic and religious minorities, and that are signed with other defeated states of WW1, the Treaty of Lausanne cited only non-muslim minorities, so only religious minorities.³³ During the talks at Lausanne, the chief delegate of Turkey, Ismet İnönü Pasha stated that the concept of minorities in Turkey referred to the non-muslim minorities and that this fact has taken place in the National Pact of 1920. In the speeches he made, he clearly stated that there was

³¹ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics"; http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

³² Yıldız, Kerim; (1999); "The Human Rights and Minority Rights of the Turkish Kurds"; "Minority and Group Rights in the New Millenium"; Martinus Nijhoff Publishers, Leiden; p.163-164

³³ Güvenç, Şükri; (2005); "Uluslararası Alanda ve Türkiye'de Azınlık Hakları"; Halkların Tarih-Kültür Dizisi no:15; Sorun Yayınları, İstanbul; p.73

no muslim minority in Turkey.³⁴ Some say that that Lausanne is a treaty that forms a special law regime for “privileged and West-supported” minorities.³⁵ And this discrimination of treaties according to states, lead to an unequal arrangements of Turkey’s minority regime. There are estimated to be over 30 million Kurds living in an area which encompasses parts of Iran, Iraq, Syria and Turkey. More than half of these Kurds live in Turkey, where they constitute over a third of the entire population of Turkey. In spite of the numerical strength of Turkey’s Kurdish minority, Turkey has for long denied the very existence of its Kurdish population.³⁶ With 6,198,000 people, the Kurds are the largest national minority in Turkey, representing 9.8% of the total population. There is not, however, agreement as to the exact number of Kurds who live on the territory of Turkey. At present, their numbers are estimated at around 13,000,000, amounting to 20% of the population, although other sources estimate their number at 6 to 12 million. The Kurds are concentrated in the South Eastern Anatolian region of Turkey but, at present, they are displaced in other regions of Turkey, particularly after the upheaval in the 1990s, which led to the evacuation of a large proportion of the population. Thus, at least 6 millions Kurds live in Istanbul, Ankara, Izmir and other industrial centres.³⁷

Although Lausanne did not discriminate non-muslims, Turkish application comprised only few minority groups. Though, this kind of a false should not lead to nationalistic

³⁴ Özel, Mehmet; “Lausanne on its 70th Anniversary”; Ministry of Culture of the Turkish Republic, Ankara; p.48

³⁵ Güvenç, Şükrü; (2005); “Uluslararası Alanda ve Türkiye’de Azınlık Hakları”; Halkların Tarih-Kültür Dizisi no:15; Sorun Yayınları, İstanbul; p.75

³⁶ Yıldız, Kerim; (1999); “*The Human Rights and Minority Rights of the Turkish Kurds*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.163

³⁷ Malloy, Towe H.; (2005); “National Minority ‘Regions’ in the Enlarged European Union: Mobilizing for Third Level Politics?”; ECMI Working Paper no:24; European Centre for Minority Issues, Flensburg; p.38

arrangements. According to the Treaty of Lausanne, determined non-muslims were Jews, Armenians and Greeks and they were de facto minorities. Assyrians, Protestants, Chaldeans, Georgians, Maronite Christians and Bahais were excluded of this list. The other unrecognized minorities can be listed like that: Kurds (Sunni, Alevi, Caferi), Arabs(Sunni, Alevi, Christian), Laz, Circassians, Georgians, Bosnians, Romans; unrecognized religious/sectarian minorities are Alevis (Turks, Kurds) and Caferis; and finally unrecognized linguistic/ethnic minorities are Zazas.³⁸ This pillarization along religious lines left the Treaty of Lausanne behind the international law standards, even at the time of Treaty. Now, the trio of ‘ethnic, linguistic, religious‘ became ossified and universal. The subject of whether in a state a minority exists or not or which type of minority exists, is not left to the related state’s discretion. If there exists groups that show ethnic, linguistic or religious differences and groups that count this difference as the integral part of their identity, it is decided that there is a minority in that state. Anyhow Turkey , after the Treaty of Lausanne, signed a lot of international treaties that protect minority rights like OSCE. In addition to this, it does not matter if OSCE texts are counted as soft law, because the objective existence of minority is accepted in international law since 1930 and other international texts that issue minority rights are sufficiently binding for Turkey like Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities of UN or Charter of Paris for a New Europe.

³⁸ Kurban, Dilek; (2005); “Unraveling a Trade-off: Reconciling Minority Rights and Full Citizenship in Turkey”; a presentation by Dilek Kurban;
http://66.102.9.104/search?q=cache:QFghiOvFNcoJ:ecmi.de/download/DKurban20050412_ProtectionofMinoritiesinTurkey.ppt+unraveling+a+trade-off&hl=tr

Another subject that is very surprising is that fundamentally, Treaty of Lausanne had some arrangements that are not limited with non-muslims. Article 39 of the Treaty of Lausanne, giving the right -to citizens of Turkey who use a language other than Turkish- of “providing sufficient possibility for oral use of their own language in courts”, and the right –to all citizens of Turkey- of using language that they prefer , ‘in trade, special relations, religion, press, publication or public meetings‘; is rendered invisible in favor of Turkification policies in early years of the Republic.³⁹ In the way of constructing a national identity, forced cultural assimilation occurred. Turkifying names, speaking Turkish, praying in Turkish in synagogues, turkifying schools, sending children to Turkish schools, getting engaged in national issues, sticking together with turks, affiliating themselves with the community spirit, fulfilling duties in the national economy and being aware of rights, were imposed to the minority groups.⁴⁰ Besides coup d’état of September 12 caused people forget their rights.⁴¹

Furthermore, the specified minority groups of Turkish minority regime, could not use their rights completely and freely. For instance, government intervention to the management of religious institutions and institutions of education of non-muslim minorities violated the right of managing and controlling their own institutions. Additionally, this application, under the statute of foundation ,to place institutions that have vital importance like church, school, hospital under the scope of Law of

³⁹ Güvenç, Şükrü; (2005); “Uluslararası Alanda ve Türkiye’de Azınlık Hakları”; Halkların Tarih-Kültür Dizisi no:15; Sorun Yayınları, İstanbul; p.73

⁴⁰ Kurban, Dilek; (2005); “Unraveling a Trade-off: Reconciling Minority Rights and Full Citizenship in Turkey”; a presentation by Dilek Kurban;
http://66.102.9.104/search?q=cache:QFghiOvFNcoJ:ecmi.de/download/DKurban20050412_ProtectionofMinoritiesinTurkey.ppt+unraveling+a+trade-off&hl=tr

⁴¹ Güvenç, Şükrü; (2005); “Uluslararası Alanda ve Türkiye’de Azınlık Hakları”; Halkların Tarih-Kültür Dizisi no:15; Sorun Yayınları, İstanbul; p.73

Foundation which is a very archaic, complex and restrictive law, gave rise to applications that extremely restrict the right of property of these institutions.⁴²

The outcome of this old philosophy which sees minorities as potential threat to national security, was ‘exclusion from citizenship rights’ for minorities. On the other hand, systematic violation of Lausanne rights resulted as ‘inability to exercise minority rights’.⁴³

The non-muslim citizens of Turkey, beside being rendered unable to benefit from rights that they own, they also had been the victims of ‘minority’ etiquette and became the target of political and social discrimination. That’s why Alevi and Kurd citizens of Turkey, emphasize on the words telling that they are not minority, they are “incorporator factor”. This social and historical reality gets us to the question of “Does refusing the concept of minority means refusing the minority rights?” At the first blush, this statement can look paradoxical, but it is possible to understand by considering the evolution of minority rights in international law and the analysis of minority concept made at the beginning of the paper. Declaring that they are not minority, does not mean that they do not want or need minority rights.

⁴²Güvenç, Şükrü; (2005); “Uluslararası Alanda ve Türkiye’de Azınlık Hakları”; Halkların Tarih-Kültür Dizisi no:15; Sorun Yayınları, İstanbul; p.74

⁴³Kurban, Dilek; (2005); “Unraveling a Trade-off: Reconciling Minority Rights and Full Citizenship in Turkey”; a presentation by Dilek Kurban; http://66.102.9.104/search?q=cache:QFghiOvFNcoJ:ecmi.de/download/DKurban20050412_ProtectionofMinoritiesinTurkey.ppt+unraveling+a+trade-off&hl=tr

4.2 KURDISH QUESTION

The Kurdish question is arguably the most serious internal problem in the Turkish republic's history and certainly the main obstacle to its aspirations to full integration with European institutions. Most Westerners define the problem simply as a matter of oppression and denial of rights by a majority group (the Turks) of an ethnic minority (the Kurds). The civil war in southeastern Turkey that raged between 1984 and 1999 is accordingly viewed as a national liberation movement and enjoys widespread sympathy both in the West and in the Third World. The Turkish political elite, for its part, promotes an entirely different view of the problem, which is often misunderstood and ridiculed in the West. In official Turkish discourse, there is no Kurdish problem, but rather a socioeconomic problem in the southeastern region and a problem of terrorism that is dependent on external support from foreign states aiming at weakening Turkey. In reality, neither the official Turkish view nor the dominant Western perception holds up to close scrutiny. A deeper study of the problem reveals its extreme complexity, with a number of facets and dimensions that tend to obscure the essentials of the conflict.⁴⁴

4.2.1 Historical Background

The Turks, whose roots are in Middle Asia, migrated to Anatolia via Iran after the eleventh century and founded the Selchuk and subsequently the Ottoman states. For a long time, Kurdistan was the theater of military clashes between the Ottoman and the Persian empires. During this period, the Kurdish princes sided first with one side, then the other, thus maintaining their autonomy. But in the year 1638, Kurdistan was

⁴⁴ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics"; http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

officially divided between these two states in the Treaty of Kasri Shirin. From that time until the mid-nineteenth century, both states made armed attacks on the Kurdish princedoms in order to destroy them. The Kurds' struggle against these two great states took on a nationalistic character at the beginning of the nineteenth century.

After World War I, the Ottoman Empire became past history: new states arose on its former territory. According to the Treaty of Sèvres, which was signed on 10 August 1920, the state of Kurdistan was also to be established in the region. But this intention was not subsequently implemented. In the Treaty of Lausanne, signed on 24 July 1923, that part of Kurdistan which had been part of the Ottoman Empire was carved up again. Part of it was included in the British and French Mandates, where Syria and Iraq later came into being. The largest part of Kurdistan remained within the state borders of the Republic of Turkey, which had been founded on the ruins of the Ottoman Empire.⁴⁵

Kurdish rebellions before World War II had a strong tribal and religious character that often overshadowed the national component, but in the postwar period this pattern underwent significant change. Turkey held its first multiparty election in 1950, resulting in the electoral defeat of Ataturk's Republican People's Party and a transfer of power to the center-right DP. The new government allowed exiled shaykhs and aghas to return, co-opting them into the system as outlined above. The strengthened position of tribal leaders gave further impetus to the migration of Kurds

⁴⁵Burkay, Kemal; "The Kurdish Question- Its History and Present Situation"; <http://members.aol.com/KHilfsvere/Kurds.html>

to the urban areas of western Turkey, where a number of them benefited from the increasingly market-oriented economic policies of the government.⁴⁶

Within a short time, a movement called "Eastism" (Doguculuk) emerged, advocating economic development efforts in eastern and southeastern Anatolia. After the military coup of 1960, a new and more liberal constitution was adopted that included substantial protections for democracy, freedom of expression, and human rights. Indeed, the 1961 constitution (which was superseded in 1982) was the most liberal that Turkey has ever had. These freedoms led to a mushrooming of leftist activity among Kurds and others in Turkey.⁴⁷

4.2.2 PKK

The emergence of PKK in 1984 as a revolutionary organization in quest of Kurdish independence marks a major new phase in the evolution of the Kurdish national movement, entering a stage of sustained armed struggle now of over thirteen years' duration—the longest Kurdish rebellion in modern Turkish history. The transformation of the Kurdish problem in Turkey into its present form is not only due to the PKK: Events in other parts of the Middle East, specifically the Iran-Iraq and the Gulf wars, provided the PKK with significant political and military room to maneuver. The organization's ability to profit from geopolitical changes and its resilience on the ground have clearly touched a nerve within Turkey. Whether the

⁴⁶ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers & Carnegie Publications, New York; p.27

⁴⁷ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics"; http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

organization survives or not in the longer run, the fact remains that it has managed to change Turkey's foreign and domestic politics.⁴⁸

During the 1970s, leftist radicalization intensified as migration to urban areas of western Turkey continued and enrollment in higher education increased. These parallel processes heightened awareness of economic and political disparities between the southeast and the rest of the country, and Kurds were socioeconomically predisposed to be absorbed into the leftist climate predominant among the student body in Turkish universities. Gradually, however, Kurdish leftists became alienated from their Turkish colleagues and formed separate political movements.

Having its origins in an informal grouping around Abdullah Ocalan dating back to 1973, the PKK was formally established as a Marxist-Leninist Kurdish political party in 1978 and advocated the creation of a Marxist Kurdish state. From the outset, the PKK defined Kurdish tribal society as a main target of the revolutionary struggle. It described Kurdistan as an area under colonial rule, where tribal leaders and a comprador bourgeoisie colluded to help the state exploit the lower classes Kurds. The PKK left Turkish Kurds with few choices. Unless they decided to stay out of politics completely, Kurds were forced either to side with the state, thereby expanding their opportunities as Turkish citizens at the price of suppressing their ethnic identity, or else join the PKK and fight the state. Any option ranging between

⁴⁸ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers & Carnegie Publications, New York; p.31

these two extremes became highly dangerous, since any form of peaceful advocacy of Kurdish rights would attract the wrath of both the state and the PKK.⁴⁹

The PKK launched its military operations against the state in earnest in August 1984 after consolidating its position in the southeast following a bitter internecine struggle with rival Kurdish organizations. From then on, the PKK began to gather strength. Though amateurish at the beginning, its recruits with time gained experience as the PKK reached its peak between 1991 and 1993. Ankara was caught unprepared for the kind of challenge the PKK offered.⁵⁰

The fighting in the southeast region of the country has involved attacks by both the Turkish military and the PKK against the civilian population. Both the PKK and the Turkish military have each blamed the civilians for aiding the other side. The Kurdish issue did not gain international attention until 1991 during the Gulf War. During the war over half a million Iraqi Kurds crossed the border into Turkey to escape Saddam Hussein's persecution. After the war the Western powers created Operation Provide Comfort, composed of U.S., French, and British aircraft as well as Turkish ground troops, to provide Kurdish refugees with food and shelter and the possibility of returning home some day. The influx of Iraqi refugees into Turkey further complicated the already tense situation there. Since the end of the Gulf War Turkey has spent approximately six to eight billion dollars a year in its fight against the Kurdish insurgency. In a 15 year period of fighting between the PKK and the

⁴⁹ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics";
http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

⁵⁰ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers&Carnegie Publications, New York; p.32

Turkish military approximately 40,000 people have been killed in Turkey.⁵¹ Since 1984 when the outlawed Kurdistan Workers Party (PKK) took up arms against the Turkish government for self-rule in the country's mainly Kurdish southeast, about 37,000 people have been killed. Thousands were displaced by fighting, accompanied by allegations of human rights violations on both sides, extrajudicial killings and the torching of villages by security forces.⁵²

4.2.3 Solutions

Having defeated the PKK, Turkey has still not resolved its Kurdish question, since the PKK never represented the opinions of a majority of Turkey's Kurds. Although few reliable sources are available on Kurdish attitudes, there is conclusive evidence that only a minority of Kurds see the PKK as their main representative organ and that the majority desires to remain within the Turkish state.

Some Kurds argue that the emergence of the PKK actually worsened the situation for the Kurdish cause overall; it polarized the situation and reduced yet further the already limited organizational freedoms that the Kurds had gained as they sought to build national consciousness over the long term in nonconfrontational ways. The heavy military presence in the southeast has significantly diminished other forms of Kurdish

⁵¹ Gökçek, Gülriz Gigi; (2002); "Ethnic Conflict and Interstate War: An Analysis of the Kurdish Problem"; <http://www.isanet.org/noarchive/gokcek.html>

⁵²http://www.eubusiness.com/East_Europe/060223140613.7afama8s

political activities as well, including demonstrations, shop closings, strikes, and other forms of civil disobedience.⁵³

One observation that should be made at the outset is that the Kurdish issue in Turkey differs in many respects from such recent ethnic conflicts as those in Bosnia, Chechnya, Kosovo, Liberia, Nagorno-Karabakh, and Rwanda. Despite almost two decades of armed conflict and thousands of casualties, open tensions in society between Turks and Kurds remain, under the circumstances, minimal. Foreigners are startled by the discovery that a significant portion of Turkey's political and business elite is of Kurdish origin, including three of the country's nine presidents--something unthinkable for Kosovars or Chechens--and that Kurds' representation in the country's parliament is larger than their proportion of the population.⁵⁴

Deriving from the fact that Turkey's Kurdish question has never been close to any ethnic conflict of the world, we have to avoid extreme types of solutions and consider fragile status of the geography. The first thing that The Turkish state needs, is to act in accord with its own rhetoric stipulating that the Kurdish issue is distinct from PKK terrorism. There is no doubt that this problem can not be solved by the army or the police. A peaceful solution is possible through dialogue and the recognition of Kurdish rights, and this is in the interests of both peoples. Thus peace

⁵³ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers & Carnegie Publications, New York; p.45

⁵⁴ Cornell, Swante E.; (2001); "The Kurdish Question in Turkish Politics"; http://www.cacianalyst.org/Publications/Cornell_Orbis.htm?SMSESSION=NO

and democracy could move into the country, and Turkey as a whole and Kurdistan in particular could enter into a phase of development.

During recent years, groups of reasonable people have been increasingly criticizing the policy that has been followed so intensely for the past seventy years, which has brought nothing to anybody and led the country ever deeper into an impasse. They have committed themselves to a peaceful solution. Groups of businessmen and workers, intellectuals and the media are increasingly allying themselves with this point of view. The international situation is also forcing Turkey toward a change of course.

One of the major grounds for hope for a peaceful solution to Turkey's Kurdish problem is its relatively advanced stage of political development. At least three critically important qualities already exist in Turkish political culture: democratic process and governance, the existence of a large and vibrant civil society, and an open press. In each of these areas there is something left to be desired, but these characteristics nonetheless function quite impressively by any regional standards, including those of most of Eastern Europe and the Balkans. Unfortunately, these institutions have not functioned well in terms of handling the Kurdish problem. The Kurdish problem seems to fall well outside most of the normal processes of Turkish government and society. To put it another way, Turkey's democratic features are largely nonfunctional when it comes to the Kurdish issue.⁵⁵

⁵⁵ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers & Carnegie Publications, New York; p.79

In recent years, the Kurdish question has developed from a regional problem into an international one. In this connection, the UN resolution to protect the Iraqi Kurds is extremely significant. Turkey, which wants to be accepted into the European Union, must adapt its political and cultural life to European standards, and put into practical effect the international treaties which it has signed.⁵⁶

For the Kurds, Turkey's accession to the EU presents the possibility of an end to decades of repression and abuse at the hands of the Turkish state, and offers an unprecedented chance to ensure that their identity is acknowledged and respected. According to Boris Blauth, main coordinator of 'voice for europe', these are very high expectations. Given the depth and longevity of the problem, it is highly optimistic, bordering to naïve, to simply take this for granted.⁵⁷

The EU continues to appear indifferent to calls for a more open and meaningful engagement for Kurdish problem, seemingly unwilling to use its influential position in relation to Turkey, at least publicly, to fulfil its obligation to ensure that the Kurdish problem is tackled. Turkey, on the other hand, confronting a severe lack EU effort to solve the Kurdish problem, do not perform as committed before for EU

⁵⁶ Burkay, Kemal; "The Kurdish Question-Its History and Present Situation"; <http://members.aol.com/KHilfsvere/Kurds.html>

⁵⁷http://www.voiceforeurope.org/downloads/Kurdish_situation.pdf

reforms.⁵⁸ This mutual state of avoidance of both parties will unfortunately postpone a possible solution for Kurdish Question. As I already mentioned, Kurdish question is unique and so fragile that, unfortunately, trying to solve it in very transparent way as EU tries to do so, will render it more fragile than it is today, and will lead to a big harm for Turkish progress and towards reform and EU membership.⁵⁹

Turkey possesses a broad spectrum of options in handling the Kurdish ethnic problem— ranging from totally repressing all ethnic expression of Kurds to granting the Kurds total independence. Both of these are undesirable extremes, with obviously a great range of choice in between. And while the problem is essentially an ethnic one, improvement of economic factors in the southeast will always have a beneficial influence on any situation, however bad.

Fuller and Barkey's recommendations are the most appropriate ones for Turkey. According to them, the "solution" of repression is no longer realistic. Kurdish ethnic demands will have to be met to some extent, and they will grow more radical and extreme in expression as long as assimilation is the Kurds' only choice. Failure to acknowledge Kurdish ethnicity and cultural aspirations can only damage Turkey's economy, moral tone, stability, democratic order, and international standing. Regarding democratization, the state can quickly make several cultural gestures to the Kurds, particularly in the areas of the Kurdish language. Additionally, major economic improvements are essential to a solution of the Kurdish problem but are

⁵⁸ http://www.voiceforeurope.org/downloads/Kurdish_situation.pdf

⁵⁹ Ibid

not sufficient in themselves if they ignore the question of ethnic identity and cultural rights. Diminished Security Presence would also impress upon Kurds that new policies were underway and would stimulate a great deal of hope for the future, especially if combined with cultural concessions, even if it looks like a great risk for the State. Decreasing the role of the military and devolution of power to local authorities may also be useful for a good solution.⁶⁰ But political autonomy and federal solutions which are given by Barkley and Fuller as recommendations are quite far from the Turkish state structure, according to the researches made.

⁶⁰ Barkey, Henry J. & Fuller, Graham E.; (1998); "Turkey's Kurdish Question"; Rowman and Littlefield Publishers & Carnegie Publications, New York; p.77-83

5. EU AND MINORITY RIGHTS

5.1 A HISTORICAL REVIEW: EU'S FIRST STEPS FOR EU'S INTERESTS

Minorities problems in Central and Eastern Europe are the product of several factors. In part, they stem from the fact that there are more than fifteen national groups compressed into an area approximately two-thirds the size of Western Europe.⁶¹ The existence of pluralism, whether religious, linguistic, ethnic or cultural is not, of itself, an inevitable cause of intercommunal strife. At least two elements must be added to generate conflict of the type found over much of Central and Eastern Europe. First, the existence of problems arising from national minorities presupposes the existence of national majorities. In other words, minorities problems of this type would be inconceivable in political units which were not founded on the principle of national self-determination. Thus, the effort to create 'Nation'-States in Central and Eastern Europe after the First World War, itself an attempt to accommodate the rising tide of nationalism in the region, was undoubtedly a contributory factor in the proliferation, or aggravation, of minorities problems.⁶²

It is observed that, with the collapse of Communist regimes, in Central and Eastern European Countries that seek the way of integrating with Western Europe, communities that constitute minority groups, became conscious and as a natural

⁶¹ Pogany, Istvan(Dr.); (1999); "*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*"; "Minority and Group Rights in the New Millenium"; Martinus Nijhoff Publishers, Leiden; p.142

⁶² Ibid, p.143

result, ethnic, religious and cultural problems became apparent once again. These problems gave rise to bloody combats as we have all seen in Former Yugoslavia.

These events that occurred after the collapse of Eastern block, introduced minority issues so dramatically that after the period of Cold War, to strike into this subject, showed up as an obligation. EU's gradual enlargement upon Eastern Europe is thought as the way of solution for minority issues in European continent. EU decided to require that Central and Eastern European Countries which want to join the union, should fulfill some obligations on the issue of minority rights. After the Cold War period, EU made clear its will about seeing the states of European continent with multicultural and pluralist structures.⁶³ The Council of Europe, with a decision taken in 1993, announced that candidate states should fulfill the Copenhagen Criteria, and accepted .respect for and protection of minorities. as one of the political criteria. Accordingly, minority rights that became a condition of absolute view, had been included in external politics of EU.

Considering international law of our days, the issue of protection of minority rights is out of exclusive competences of states. The reason of insistence of EU member states about solving the minority issues in Central and Eastern European Countries, is to avoid the armed conflicts that can occur in this region. Briefly, the concern of "balcanisation" has a determining role. The outstanding effects of this kind of actions to Western Europe, is attaining of people who intend to escape from political

⁶³ Bilener, Tolga; (2003); "*AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri*"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.165

instability, in the form of refugee waves to Western Europe. This kind of an incursion, shakes the social stability in the said states; for instance, invigorates extreme movements like racism. Accordingly, EU has realized that neighbor states of instability can easily affect its internal stability. Relatively, initiatives of solving the minority issues in the context of international law, about making a stable structure of peace in European Continent, have been speeded up. In the second half of 90's, EU which attempted the most extensive enlargement movement of its history; while being in preparation of incorporating ex-states of Eastern Block, were supporting -in the name of making a contribution for regional stability- the attempts to solve the problems appeared in the geography of Central and Eastern Europe, grew out of the existence of minority groups or gained speed because of these groups. In this regard, it is declared to the all candidate states, that 'respect for minority rights' is a precondition to join the Union. EU showed its determination on this subject, by initiating negotiations according to progresses made about protection of Human Rights.⁶⁴

Dr. Istvan Pogany explain the success of Eastern enlargement in the context of minority with this statement: "The 'exclusivist' aspirations of most national groups in Central and Eastern Europe have been shaped, in part, by the history of the region. The history of Eastern European Nations has largely been one of struggle for existence, against outsiders or against each other –or against both simultaneously'. This has given rise to a culture of retrospection in which each national group

⁶⁴ Bilener, Tolga; (2003); "AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.165

cherishes the memory of its political and military successes, as well as of its greatest defeats and disasters. This obsession with the past, while understandable, is scarcely conducive to a climate of tolerance and pluralism, particularly towards minorities who are associated with earlier reverses suffered by the majority population within these States.”

The famous Copenhagen Criteria, created for Central and Eastern European Countries in the first place, had been a precondition for accession to the EU for all candidate states in the course of time, which later became constitutional principle.

5.2 THE EVOLUTION AND THE ROLE OF MINORITY RIGHTS IN EU ENLARGEMENT

Except EP's several attempts made in the period before the Maastricht Treaty, generally human rights and specially protection of minority rights were not in the agenda of EU. The first fact that stands out, is that in Rome Treaty, there was any emphasis on human rights. The basic reason of this, is that the integration in Europe was only economy-oriented. However, with EEC, taking giant steps toward political integration, the issue of minority rights gained importance in internal and external fields of EEC. For instance in the introduction of Single European Act which is signed in 1987; It is giving way to the expression of “To keep democracy alive together, relying on concepts of fundamental rights, especially liberty, equality, social equity that are followed in legal and constitutional arrangements of memberstates, in European Convention on Human Rights and European Social

Charter” and also, responsibilities of Europe about democracy, rule of law and protection of human rights are mentioned. In this first period, the role of EEC about the protection of minority rights consisted of oppressing economically and politically memberstates. Briefly, in this period, minority rights issues did not have an important role in relations with non-memberstates.

In the article F/1 of Maastricht Treaty 1992, it is emphasized that the Union is constituted of democracies and respect for fundamental human rights is a precondition for membership. The Treaty announced that human rights is one of the basic concerns of EU and EU memberstates are engaged to set their external relations according to this base.

One of the very first joint actions undertaken in the framework of the EU’s Common Foreign and Security Policy, immediately after the entry into force of the Treaty of Maastricht, was the ambitious initiative inspired by France, to convene an international conference at which the stability of Europe would be ensured by means of a range of bilateral treaties and declarations establishing good-neighbourly relations between countries of Central and Eastern Europe. There is no doubt that the active role and apparent commitment shown by the European Union in this matter was a decisive factor in preparation for the Stability Pact. The Pact, as eventually adopted at a conference in Paris in 1995, included only one important new instrument for minority protection, namely the bilateral treaty between Hungary and Slovakia, which was signed on the eve of the Paris Conference. The negotiations on a similar treaty between Hungary and Romania were concluded only later, in 1996.

The Stability Pact was deposited with the OSCE, and that organisation was entrusted with monitoring the implementation of obligations contained in it. The European Union itself lost interest in the Pact, and now directs its efforts mainly at bringing about reforms in the domestic laws of the Central and Eastern European Countries. Yet, the spirit of the Stability Pact is still reflected in the financial support given by the EC Phare programme to cross-border co-operation actions.⁶⁵

In the Amsterdam Treaty 1997, it is stated that, .EU is founded on principles of liberty, democracy, respect for human rights and fundamental liberties, and rule of law, which are shared by memberstates. It is also predicted that in case of infringements of aforesaid principles, suspension of memberstates' voting rights and other sanctions will be applied. Additionally, in Amsterdam Treaty, political criteria gained more importance. According to the article 49 of the said Treaty, only European states that are respectful for the principles stated in article 6.

European Parliament which is one of the basic institutions of EU, has always been an institution whose sensitivity about minority rights grows up day by day. Though EP do not have power of sanctions, has taken decisions that affect public opinion. EP stated that, EU's enlargement is not only about memberstates' economic progress, on the contrary, before all else , EP emphasized the necessity of constituting an atmosphere that guarantees political, economical, social and cultural rights of individual and that provides internal peace. EP, is accentuating on cultural rights like

⁶⁵ De Witte, Bruno; (2000); "Politics versus Law in EU's Approach to Ethnic Minorities"; European University Institute Working Papers; Rsc no.2000/4, Florence; p.6

protection and development of cultures and languages of minorities and is defending liberty of improvement and sustenance of languages and cultures of minorities in the social and private contexts.

The Council of Europe and the EU are stepping up the level of minority rights “preventive” supervision in connection with their own human rights admission requirements and/or within the context of a coherent strategy based on the principle of conditionality.

The EU is conditioning EU membership and –as part of a special strategy with certain countries of south-east Europe – trade preferences, financial aid, economic co-operation and contractual relation, inter alia, .respect for and protection of minorities., and its drawing extensively upon a so-called “human rights clause” (and similar instruments), frequently coupled with minority rights references, in agreements with (and autonomous programmes for) third countries.

Generally speaking, the supervision of the implementation of , inter alia, minority rights standards, is being carried out on the basis of internal reporting, supplemented by available resources from other international organisations or bodies. Depending on the initiative pursued, a number of “sanctions” are provided for as a last resort against non-compliant states, ranging from suspension or termination of the relevant agreement to other “appropriate steps”, including suspension of financial assistance and/or trade preferences, to denial membership.

The importance of protection of minority rights is introduced with a strong determination for EU's enlargement movement, by declaring in Copenhagen Summit 1993, that only candidate states that are respectful for minority rights will be accepted.

To realize criteria, named as "Copenhagen Criteria" that The Council of the European Union which gathered and formulated in 21 and 22 June 1993 in Copenhagen, capital city of Denmark, is the precondition for the membership of a candidate state. In the same summit, as told earlier, it is declared that Central and Eastern European Countries, if they fulfill the criteria, they can be memberstates of EU. This criteria is listed as: the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of an active market economy; the capacity to cope with competition in EU and market powers. Membership assumes that candidate state can commit itself to obligation of membership including accession to political, economic and monetary union(EMU).

European Council defined the political criterion that all applicants must meet before they could join the European Union. Namely, among other things, they must respect and protect minorities. This is a soft law and it is clear that there are no minority rights standards which would have been integral part of the *acquis*.⁶⁶

⁶⁶ Tabajdi, Csaba; (2006); "New Challenges for the Traditional Minorities in Europe"; FUEN Congress; <http://www.fuen.org/pdfs/20060525Tabajdi.pdf>

The basic Copenhagen conditions are largely declarative, allowing flexibility of interpretation and do not indicate at what standards these criteria will be judged. The tools used to measure progress and the standards applied in meeting the political and human rights criteria for accession are therefore highly subjective. In addition to any changes in criteria or evaluation standards that might come from the Commission, the European Parliament (EP) has taken decisions independently that may further expand the accession criteria. Although the EP's role in determining accession criteria is limited, it does vote on the accession of new member states, and therefore any decision it takes are plausible additions to the already numerous accession criteria. Therefore, evaluating which rights have been included in conditionality requirements for aspiring members, what standards are required, how human rights protection is measured, and how the EU will 'punish' those countries that do not comply with those conditions is somewhat problematic.⁶⁷

It is declared -in the meeting of the Council of the European Union in Luxembourg 1997- that this criteria specified for Central and Eastern European Countries that are disposed in the conclusion announcement of Copenhagen Summit, are not only about the said countries and that the criteria are binding for all candidate states. Thereby, it is emphasized that Turkey, Malta and Cyprus are affiliated to the same criteria. In the programme named "Agenda 2000- For a Stronger and Wider Union", that European Commission published in 1997, Copenhagen criteria are defined with more details and are strengthened as the content. The essential goal of minority

⁶⁷ Gelazis, Nida M.; (2000); "The Effects of EU Conditionality on Citizenship Policies and Protection of National Minorities in Baltic States"; European University Institute Working Paper RSC No.2000/68, Florence; p.19

issues in Agenda 2000, is to take measures providing integration for minority groups with the society that they live together. Put another way, positive discrimination is required. In addition to the necessity of being represented by especially local institutions in political context, the very accentuated subject is the protection of cultural differences. Thus, minority languages gain a special importance.

The evolution of minority issues in Europe continued with ‘progress reports’. In the course of the meeting of the Council of Europe in Luxembourg 1997, Commission opinions are published that treat one year-progresses of each candidate state. The point that attracts attention in these reports, is that the chapters reserved for minority rights are more detailed and critical than the parts of economic and social rights and that it is focused more on actuality than legality.⁶⁸ But the deficiency is that the references made by the European Union institutions, in their recent documents addressed to candidate states like Turkey, to minority protection standards remain very generic. The actions expected from these countries are specified but the instruments or standards, which serve as the basis of the EU’s exigencies, are not named, perhaps for fear that they could return as a boomerang against the EU member states themselves.

Although some developments have taken place, but many countries in Western Europe - especially France - has failed to fundamentally reform their reserved

⁶⁸ Bilener, Tolga; (2003); “*AB’nin Azınlık Hakları Anlayışı ve AB’yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri*”; “Dünden Bugüne Avrupa Birliği”; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.167-174

approach to the minority issues. This is the main obstacle that stands in the way of elaborating a legally binding minority protection mechanism on the EU level.⁶⁹

Minority protection is, then, an ill-defined political requirement with which the candidate states are expected to comply because of the considerable carrot of accession offered to them.⁷⁰ In fact, according to Toggenburg, the (so far) unique establishment of political criterion for accession to the EU in the recent enlargement demonstrates how values such as e.g. “respect for and the protection of minorities” are voiced at the political level but subsequently left to the legal system for further ‘digestion’.⁷¹

The Amsterdam Treaty transposed all the Copenhagen-criteria –except the one concerning minority protection into primary law. By doing so, the Treaty gave the criteria a clear legal quality and defined them as founding principles of the EU which are common to all the member states and which are to be respected by any state applying for membership. The fact that the minority clause was kept separate appears to indicate that its inclusion whereby it would have assumed a clear binding force and an internal dimension - was not desired. Hence, it is necessary to examine the

⁶⁹ Tabajdi, Csaba; (2006); “New Challenges for the Traditional Minorities in Europe”; FUEN Congress; <http://www.fuen.org/pdfs/20060525Tabajdi.pdf>

⁷⁰ De Witte, Bruno; (2000); “Politics versus Law in EU’s Approach to Ethnic Minorities”; European University Institute Working Papers; Rsc no.2000/4, Florence; p.21

⁷¹ Toggenburg, Gabriel N.; (2004); The Debate on European Values and the Case of Cultural Diversity”; European Diversity and Autonomy Papers; www.eurac.edu/edap; p.6

expressiveness and the nature of a Copenhagen criterion which was not elevated to the mobility of primary law.⁷²

5.3 FUTURE PERSPECTIVES

One may suppose that the minority factor will become far more important to EU politics than it is at present. This will occur because trends and realities from both parts of the Union will converge in a highly dynamic combination. On the one hand, the Union will contain a significant number of new members with important marginalized minorities. On the other hand, it will be made up of old members where minorities are more integrated and less numerous but where a culture of minority promotion and of minority rights has been developing. West European minorities will find themselves reinforced, perhaps reinvigorated, and will intensify their strategies aiming at European-wide recognition. At the same time, in the new members of the Union minorities will invoke West European precedents and norms to pursue their case in favour of an improved status, including greater cultural autonomy and, in some cases, territorial autonomy.

To be sure, tensions might be reduced by the new element of mobility. In the forefront of those who will avail themselves of the opportunity to cross borders freely will be minority members who will gravitate towards the countries of their language or ethnic kin to take up jobs and, in the long run, to settle down. This factor may, just as easily, operate in a reverse direction. Diaspora communities have always

⁷² Von Toggenburg, Gabriel; (2001); “*A Rough Orientation through a Delicate Relationship: the European Union Endeavours for its Minorities*”, “Minority Rights in Europe: European Minorities and Languages”; TMC Asser Press; Editor: Snezana Trifunouska, The Hague; p. 225

been important to the development of nationalism and today's ease of communications means that they can play an even greater role in the politics of the land they have left. Moreover, mobility will eventually force a reformulation of the very term minority. At present, though there is no universally accepted definition of the term, there is agreement that a minority must be made up of citizens of the country of residence. Thus, Turks in Germany are not a Turkish minority in Germany and the only Polish minority in Germany is that made up of German citizens, a qualification which limits the weight of this group both numerically and conceptually. Such restrictions will no longer be tenable in a Union where everyone shares European citizenship. This does not mean, however, that members of the Union will cease to intervene on behalf of their own nationals abroad, along the patterns of earlier interventions on behalf of minorities. In fact, the opposite will probably be the case.

In order to confront the deficiencies of enlargement, EU has some future tasks like ensuring the possibility for minorities with an additional protocol to the European Human Rights Convention to be able to turn to the European Court of Human Rights; linking the European Union with the Council of Europe – better co-operation in order to avoid the wasteful parallelisms: the Council of Europe has two legally binding instruments for the protection of minorities and minority or regional languages: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Both have an effective

control mechanism. The Council of Europe also has a human rights ombudsman, not specifically for minority rights, but the ombudsman can also deal with them.⁷³

Csaba Tabajdi adds that:

The enlargement of the EU by the 10 new Member States brings a challenge to the minority policy too. The EU will find itself in a "mousetrap situation", because the accession criteria formulated in Copenhagen in 1993, as well as the monitoring process of the enlargement remains obligatory for the Member States. This means that the Member States may not ignore these level of requirements, but should respect them. In the new Member States the minority issues are of a greater relevance. It is still a big question, what will be the effects of the enlargement on the minority rights in the EU of 25. In this field we can observe an awkward situation: double standards. If I compare the minority rights in the 10 and the 15, I certainly come to the conclusion that the level of the direct protection of the rights of minorities in the new Member States is higher than in the EU-15. To a large extent, it is a consequence of the Copenhagen criteria and the monitoring process. What will be the future of the minority rights in the enlarged EU? The new Member States will decrease the level of the protection of minority rights - which scenario should be avoided - or the old Member States will adjust their current regime to that of the new countries? We must preserve our achievement not because of the EU, but because of our internal stability of good neighbourhood and of good regional cooperation.⁷⁴

This statement clearly explains the important concerns of EU's political authorities on minority protection with the new memberstates. EU is eventually on a successful phase in minority matter despite lack of a coherent Community minority policy, common standard. The political pressure, and the attractiveness of the Union have been beneficial for European minority issues. But , could the European Union be instrumental in protecting the position of minority groups inside its member countries, like the Canadian federal government protecting the position of Indians and Inuits living in the province of Quebec, or the Swiss federal government

⁷³ Tabajdi, Csaba; (2006); "New Challenges for the Traditional Minorities in Europe"; FUEN Congress; <http://www.fuen.org/pdfs/20060525Tabajdi.pdf>

⁷⁴ Ibid.

guaranteeing the rights of the Romansh-speakers who are outnumbered by the German-speakers in their home canton of Graubünden.

Bruno de Witte, answers to this question as follow;

*It was, and is, entirely unacceptable for the EU to interfere in the relations between the central governments of the member states and the ethnic minorities living within their borders. This can be seen both in the institutional structure of the EU and in the actual policies pursued by the Union.*⁷⁵

5.4 EU'S UNDERSTANDING OF MINORITY RIGHTS

Considering Human Rights or Minority Rights, European Union do not have concerns about creating a concept. EU's understanding of minority rights relies on international documents already prepared by the other active institutions in Europe. Thus EU , adopted especially the principles, references and rules that Council of Europe composed.

The basic work of the Council of Europe is to prepare conventions in order to provide consistency of arrangements in memberstates' structure. The basic convention oriented on the protection of human rights and minority rights are, European Convention on Human Rights 1950, European Convention on Local and Regional Languages 1992 and The Framework Convention for the Protection of National Minorities 1995.

⁷⁵De Witte, Bruno; (2000); "Politics versus Law in EU's Approach to Ethnic Minorities"; European University Institute Working Papers; Rsc no.2000/4, Strasbourg; p.15

Framework Convention for the Protection of National Minorities

Although the post-1990 work has proved remarkable, the Council of Europe's efforts to develop minority rights standards are not new but date back to the first decades of the Organisation's activities. As early as the late 1940s, a proposal was indeed made to include a provision on minorities in the ECHR, but it was eventually discarded. That was basically due to the still unclear relation between the concept of human rights and the concept of minority rights, the preference for provisions to be interpreted (at least at that time) as generating purely "negative" obligations, and the absence of minority provisions in one of the main sources of inspiration of the ECHR (European Court of Human Rights), namely the UDHR (Universal Declaration of Human Rights). The Committee of Ministers considered the draft and decided to postpone decision on the matter. The discussion was resumed by the Committee of Experts on Human Rights in 1973, which concluded that there was no special need to make minority rights the subject of a further protocol to the ECHR, though there was "no overriding obstacle of a legal character" against this.⁷⁶

The Council of Europe's Framework Convention for the Protection of National Minorities, is the principal international document establishing minority rights in a legally binding way.⁷⁷ Also we should not forget that it is the direct consequence of changes in Central and Eastern Europe after 1989.⁷⁸ The Convention was open for

⁷⁶ Pentassuglia, Gaetano; (2002); "Minority Issues Handbook: Minorities in International Law"; Council of Europe Publishing, Strasbourg; p.119-120

⁷⁷ <http://www.akademika.no/vare.php?ean=9780199278589>; accessed on 19.04.05

⁷⁸ Bilener, Tolga; (2003); "AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.174

signature in 1995, and entered into force on 1 February 1998. Many minority rights such as those to political participation, non-assimilation, and the use of native languages are not incorporated in other major human rights agreements. The Convention is therefore often taken to be the leading standard in the international law of minority rights.⁷⁹

The Accession Partnerships clearly specify the demand that applicant countries sign and ratify the Convention. FCPNM seems to be important since attitudes towards minorities and foreigners have important consequences in foreign policy and security. The Common Foreign and Security Policy sections of the Opinions concentrate on revealing the applicant countries' good relations with their neighbors which can be destroyed easily by ill-treatment of the neighbor's émigré groups. It may also be an indication of how receptive these countries will be to the free movement of workers and capital after accession.⁸⁰

The Framework Convention creates legally binding obligations on states in international law, but does not establish a supranational enforcement mechanism. The Framework Convention merely establishes a system for monitoring by the Committee of Ministers of the Council of Europe of regular state reports. Implementation of the principles in the Framework Convention is to be achieved through "national legislation and appropriate governmental policies."

⁷⁹ <http://www.akademika.no/vare.php?ean=9780199278589>; accessed on 19.04.05

⁸⁰ Gelazis, Nida M.; (2000); "The Effects of EU Conditionality on Citizenship Policies and Protection of National Minorities in Baltic States"; European University Institute Working Paper RSC No.2000/68, Florence; p.21

Because there is no organ, international or domestic, to which individual members of the minority group can petition, it is only between states that legally binding obligations arise: states parties are bound to uphold the treaty provisions under international law. However, everything is at the discretion of the state with regard to its own particular circumstances and nothing is directly applicable.

A series of questions are raised by the Framework Convention. First, the Framework Convention places minority rights firmly in the regime of international human rights law. Article 1 of the Convention clearly stated this expression:

*Article 1. The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.*⁸¹

Minority rights, therefore, are a matter of international concern and cannot be dismissed as a matter solely within the competence and sovereignty of the state.⁸² This expression also reveals the problem of establishing cross-border relations which can cause “irredentism” and self-determination debates. In this case, it becomes easy to understand why in the Convention individual rights are preferred to collective rights. It is assumed that if minority rights are disposed in the context of ‘collective rights’, the discussions on the principle of selfdetermination and demands for

⁸¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>; accessed on 26.05.06

⁸² Gilbert, Geoff; (1996); “The Council of Europe and Minority Rights”; Human Rights Quarterly 18.1/160-189; The Jhon Hopkins University Press, Baltimore; p.175

irredentism would become intense. While considering protection of pluralism as the important part of a democratic society, the integrity of state is also guarded.⁸³

Another question is that, whether there are limits of protection, considering the Framework Convention do not give a definition of 'national minority'. Put another way, the question is "will noncitizens be protected?".As it is stated in Gilbert Geoff's article, "national" in the Framework Convention is limited to all minorities resident within the national territory of a state who are citizens thereof.⁸⁴

The characteristics of a national minority are set out in Article 5.1 of the Framework Convention, which lists "the essential elements of their identity" as "their religion, language, traditions and cultural heritage."⁸⁵ A minority group need only be distinctive for any one of those reasons. Such a comment plays into the hands of states that wish to deny national minority status to a particular minority group.

Because the subject of minorities is very sensible, states avoid and hesitate to enter in international obligations. Relatively, the Framework Convention preferred to use the concept of minority without a definition. As a result, the question of 'to whom will be applied the Convention?' arises. This problem is also been dissolved in a very

⁸³ Bilener, Tolga; (2003); "AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.176

⁸⁴ Ibid.

⁸⁵ Ibid., p.178

pragmatic way; it is emphasized strongly that to be a member of a minority group, is totally an individual preference.⁸⁶

The last question is that whether the Framework Convention accords individual or collective rights. The drafters wanted to accord rights only to the individual members not to the collectivity. However, this "protection" of national minorities is also deemed by Article 1 to be an integral part of international human rights law and, in certain circumstances, the only way of affording that protection might be through collective action.⁸⁷

The Framework Convention which is composed of 32 articles in five main headings except introduction, stressed that protection of persons belonging to national minorities, occupies a fundamental point of protection of human rights. The aim of the "national minority" expression in the Convention, is to show that only individuals who are citizens of the party state, can benefit from minority rights. Accordingly, groups of refugees, statelesses or guest workers have no possibility to benefit from these rights.⁸⁸

According to Naz Çavuşoğlu, The Framework Convention brings predominantly a political and loose control mechanism. In spite of the fact that article 26 of the

⁸⁶ Bilener, Tolga; (2003); "*AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri*"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.175

⁸⁷ Gilbert, Geoff; (1996); "The Council of Europe and Minority Rights"; Human Rights Quarterly 18.1/160-189; The Jhon Hopkins University Press, Baltimore; p.177

⁸⁸ Bilener, Tolga; (2003); "*AB'nin Azınlık Hakları Anlayışı ve AB'yle Bütünleşme Sürecinde Orta ve Doğu Avrupa Ülkeleri*"; "Dünden Bugüne Avrupa Birliği"; Derleyen Beril Dedeoğlu; Boyut Yayınları, İstanbul; p.175-176

Convention predicts establishment of an Advisory Committee composed of experts, the assignment of auditing the applications of the Conventions by states, is given to a political organ, to the Committee of Ministers of the Council of Europe. The absence of arrangements about sanctions that will be applied in case of measures are found incomplete, and Committee's evaluation of the Convention's applications that is limited by the reports given by the states, shows the looseness of the mechanism.⁸⁹ In this regard, we can say that the success of the Convention is dependent on domestic legislation and procedures to protect minorities.

According to *Stefan Troebst*, the Framework Convention for the Protection of National Minorities of the Council of Europe resembles a net, which is not only very wide-meshed but contains a great number of large holes. If a government intends to slip through this net, it will no doubt succeed. By naming the document a "framework convention" its legal weight is diminished. In addition the wording is vague and the monitoring mechanism weak. For these reasons, the convention is labeled "the worst of all worlds."⁹⁰

In a number of respects, the Framework Convention for the Protection of National Minorities represents something of a disappointment for those who had looked forward to a significantly enhanced level of protection for the rights of persons

⁸⁹ Çavuşoğlu, Naz; (2001); "Azınlık Hakları"; Su Yayınları, İstanbul; p.131-132

⁹⁰ Troebst, Stefan; "The Council of Europe's Framework Convention for the Protection of National Minorities Revisited"; <http://www.greekhelsinki.gr/english/articles/chrf-sar2-conseil.html>

belonging to national minorities in Europe.⁹¹ The Framework Convention represents a separate and somewhat tentative text whose enforcement provisions, in particular, give rise to serious doubts.⁹² The absence of a definition of the term ‘minorities’, the absence of a mechanism for monitoring the implementation of the Convention, but the responsibility of supervising the contracting states given to the Committee of Ministers of the Council of Europe which is obviously a political institution, can be the most important sources of doubts. Coming to the reasons, it can be said that a significant number of Member States were unwilling to confer judicially-enforceable rights on members of national minorities. Although the Convention may seem overly cautious in its wording and too respectful of the states’ sovereignty, it does constitute an important stage in international standard-setting, to be used and taken further through international recommendations, bilateral negotiations, political pressure, and advocacy by NGOs.⁹³ The optimistic scenario is that the Framework Convention should be judged not in terms of its immediate benefits, but rather as initiating a process, leading gradually and incrementally, to more effective protection of minority rights in Europe., like gives the argument Dr. Istvan Pogany.⁹⁴

⁹¹ Pogany, Istvan(Dr.); (1999); “*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.152

⁹² Pogany, Istvan(Dr.); (1999); “*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.153

⁹³ De Witte, Bruno; (2000); “Politics versus Law in EU’s Approach to Ethnic Minorities”; European University Institute Working Papers; Rsc no.2000/4, Florence; p.11

⁹⁴ Pogany, Istvan(Dr.); (1999); “*Minority Rights in Central and Eastern Europe: Old Dilemmas, New Solutions?*”; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.154

6. TURKEY-EU RELATIONS IN THE CONTEXT OF MINORITY RIGHTS

The transformation and evolution in the nature of global politics and European Union as well have affected Turkey's relation with the community. The political conditions in Turkey after 1980 and the 'new' priorities of the EU have constituted the new framework of the relations. Both the EU and Turkey have been facing their own dilemmas.⁹⁵

Turkey, aiming to be a part of the EU, is bound to abide by the written and unwritten norms and principles of the European human rights regime and the minority rights sub-regime. I already accentuated that a common definition pertaining to minority rights does not exist. Each country defines its minorities and treats them as it sees appropriate. This is the case even for the Member States of the EU. Differences in socio-economic and cultural structures and histories affect the status of and the attitude towards minorities. As discussed earlier, Turkey has placed reservations to OSCE documents codifying minority rights, as being a founding member of the Organisation for Security and Co-operation in Europe. Kurds that form the subject of many EP resolutions are not considered as a minority by the Turkish government, as mentioned in Lausanne. Therefore, in Turkey Kurds were enjoying basic human rights but not minority rights stemming from international documents.

⁹⁵ Çakmak, Cenap; (2003); "Human Rights, The European Union and Turkey"; p.15; <http://66.102.9.104/search?q=cache:jDYYb3PP2dQJ:www.alternativesjournal.net/volume2/number3and4/cakmakpdf+Turkey-EU+Relations+in+the+context+of+Minority+Rights&hl=tr>

Turkey is quite sensitive on the issue due to two main reasons. Firstly, it believes that granting minority status would lead to demands for autonomy and secession, and therefore pose a security threat for the unity and indivisibility of the country, as i mentioned in the chapter of collective rights. Article 3 of Turkey’s Constitution of 1982 states that fundamental principle of the Kemalist Turkish State – one which does not permit the existence of a national minority:

“The Turkish State with its territory and border is an indivisible entity. Its language is Turkish.”

Similarly, Article 5 places first among the general aims and duties of the State:

“To safeguard the independence and integrity of the Turkish nation, the indivisibility of the country, the republic and democracy.”

Although the Constitution does contain many of the usual guarantees of human rights, including a prohibition on discrimination and freedom of expression, under Article 13 these rights may be restricted in order to safeguard the integrity of the State. These constitutional provisions form the basis for a wide range of Turkish laws limiting minority rights.⁹⁶

Secondly, it is argued that it would damage the socio-cultural basis of the Turkish society. Since the Turkish society is comprised of people of different ethnic origins, granting minority status would destroy the mosaic forming the Turkish nation. Moreover due to inter-ethnic marriages it is very difficult to differentiate between the ethnic origins of citizens. There are many people who come from both Turkish and

⁹⁶ Yıldız, Kerim; (1999); *“The Human Rights and Minority Rights of the Turkish Kurds”*; “Minority and Group Rights in the New Millenium”; Martinus Nijhoff Publishers, Leiden; p.167

Kurdish origin. Most people of different ethnic origins including the Kurds have acquired important positions in the society. They are equal citizens provided that they accept the main tenets of the Turkish State. Granting minority status is seen as a factor, which would not match this particular structure.⁹⁷ Turkey has always adamantly refused to acknowledge minority status for larger religious groups. For example the Alevi Muslims for linguistic groups, the Kurds, (approximately 20 per cent of the population), and the Arabs (approximately 2 per cent). The state insists that all citizens are Turkish, and that this is a socio-cultural definition, not an ethnic one.⁹⁸

The Regular Report of the EC in October 2004 states that Turkey faces enormous difficulties due to the fact that since the past 80 years the minority conception, definition and rights has moved forward considerably elsewhere and not in Turkey, especially in the 1990s. The problems arising are not only because of the narrow definition of the Lausanne Agreement but because Turkey institutes an even narrower interpretation by putting forth reservations (exceptions, derogations) to international agreements she has signed. Turkey puts forth, in the international arena, not only Lausanne but also the restrictions of the 1982 Constitution, declaring that the rights brought by the agreements can not be implemented in case it brings rights to those not accepted beyond Lausanne, and when it consists of one of the forbidden rights in the 1982 constitution. According to this report Turkey is not applying the

⁹⁷ Nas, Çiğdem; (1998); "The Approach of the European Parliament to the Issue of Ethnic Minorities and Minority Rights in Turkey within the Contexte of the European Minority Rights Sub-Regime"; <http://aei.pitt.edu/archive/00000404/01/jmwp18.htm>

⁹⁸ Yıldız, Kerim; (1999); "*The Human Rights and Minority Rights of the Turkish Kurds*"; "Minority and Group Rights in the New Millenium"; Martinus Nijhoff Publishers, Leiden; p.163

Lausanne agreement as she should and thus is violating some of the provisions of its constitutional treaty.⁹⁹

The EP's proposals concerning the situation in Turkey are rational and illuminating. However, the attitude and style adopted is authoritative, subjective and overbearing. It neither attempts at understanding the situation in Turkey with its particular socio-economic, cultural and historical background; nor does it devise more constructive methods of triggering developments concerning human and minority rights in Turkey. It totally ignores cultural and contextual variations between countries. Turkey, on the other hand, was leading austere and anachronistic policies in this regard.¹⁰⁰ It is bound to pursue universal trends and honour the political and legal obligations stemming from membership of European organizations. But Turkey has not signed the Framework Convention. Because Turkey's one of the founding members of the Council of Europe, and its ultimate ambition to become a full member of the European Union, the Turkish government is particularly susceptible to criticism from its western European neighbors. As expressed by the EP, violations of human rights should be rare exceptions rather than the rule. Especially in South-east Anatolia where the Turkish armed forces fight against terrorism great care should be taken not to harm civilians and violate human rights. As part of the European human rights regime and minority rights subregime, the observance of the international legal norms and moral principles these regimes are based on, is an

⁹⁹ Tsitselikis, Konstantinos; (2004); "How Far Have EU Policies Affected Minority Issues in Greece and Turkey?"; <http://www.euborderconf.bham.ac.uk/case/GreeceTurkey/Gr-Tsitselikis.pdf>; p.5

¹⁰⁰ Nas, Çiğdem; (1998); "The Approach of the European Parliament to the Issue of Ethnic Minorities and Minority Rights in Turkey within the Contexte of the European Minority Rights Sub-Regime"; <http://aei.pitt.edu/archive/00000404/01/jmwp18.htm>

obligation the Turkish State owes to all its citizens whether belonging to the majority or a minority.¹⁰¹

To the surprise of most observers, Turkey experienced a series of rather path-breaking legislative changes on the democratization front in August 2002. A number of important reforms such as the abandonment of death penalty altogether and a radical extension of cultural rights for minority groups, with direct implications for the Kurdish segments of the population, reforms which would have been unimaginable only a few years ago, became a reality by the end of the summer of 2002. Given the pace whereby the reform process was accomplished, the impending Copenhagen Summit was greeted with considerable enthusiasm by wide segments of the Turkish public. The expectations concerning a favorable decision emerging at the Copenhagen Summit were raised considerably at a time when the anti-EU coalition clearly found itself in a defensive position.¹⁰²

Taking all of the reforms into consideration, Turkey has taken some significant steps towards meeting the Copenhagen criteria. The AKP government has made the EU accession process its priority since it came into power. Many taboos have been broken, especially regarding to the non-Muslim minorities and the Kurdish community, who have long been treated as a danger to the unity of the state. The reforms regarding the property rights of non-Muslim minorities, broadcasting in

¹⁰¹ Nas, Çiğdem; (1998); “The Approach of the European Parliament to the Issue of Ethnic Minorities and Minority Rights in Turkey within the Contexte of the European Minority Rights Sub-Regime”; <http://aei.pitt.edu/archive/00000404/01/jmwp18.htm>

¹⁰² Öniş, Ziya & Keyman, Fuat; (2003); “Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State”, http://www.yale.edu/eustudies/Cyprus_Conference_Onis.pdf; p.6

minority languages and the legalizing of private language courses are of particular note.¹⁰³ However further amendments are needed to meet the Copenhagen criteria and the EU standards.

For the subject of international commitments and recognition of minorities, Turkey should sign the Framework Convention for the Protection of National Minorities (FCPNM) immediately and ratify without any declarations, remove its declaration with regard to Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which grants members of ethnic, religious and linguistic minorities the right to practice their culture and religion, and to use their language in community with other members of their group. All ethnic, religious and linguistic groups that qualify internationally as minorities should be treated as such domestically, and granted their rights under international and national law on an equal basis.

For the subject of Religious minorities, regarding the non-Muslim foundations, the dual systems applied to the foundations should be abolished in Turkey and the non-Muslim foundations should be subject to the Civil Law that is applied to the other foundations. The pending cases brought against the non-Muslim foundations before and after the reforms should be dismissed by the Courts. The law on the property rights of non-Muslim foundations should be changed in order to return the properties that have been taken since 1974. Religious institutions should be recognized as

¹⁰³ Kaya, Nurcan & Baldwin, Clive; (2004); "Minorities in Turkey: Submission to the European Union and the Government of Turkey"; Minority Rights Group International, London; p.40

having a legal personality and religious education should also be allowed for the Syriac and Protestant communities. The Clergy School in Heybeliada should be reopened. The right to establish places of worship should also include Alevis' *cemevis*. The restrictions on the establishment of worship places should be removed. The classes on 'religious culture and knowledge of morality' should become selective and should include true and tolerant information on the other religions. The Presidency of Religious Affairs should be reformed so as not to discriminate between religions.

For the subject of Educational rights of minorities, Article 42 of the Constitution should be amended or abolished to allow for private minority language education without restriction, and for minority language education in public education when linguistic minorities are a high proportion of the population. The Regulation on the Implementation of the Foreign Language Education and Teaching Law must be amended to abolish or at least greatly limit the restrictions about establishing such courses. The state should support minorities that do not have sufficient resources to establish their own courses when there is a demand. No one should be prosecuted or otherwise persecuted for requesting education in particular languages or on particular cultures. School textbooks should include information about the history and culture of minorities, and all discriminatory references should be prohibited.

For the subject of Political participation of minorities, The Turkish Constitution should specifically guarantee the right of persons belonging to all minorities to take part in public life, including voting, being elected, participating in public office, and freedom of association and expression. The 10 per cent threshold should either be

lowered for all parties, or a particular provision, as in Germany and Poland, be created which means that the threshold will not apply to parties representing minorities. Article 81, the 'Prevention of the Creation of Minorities' clause in the Political Parties Law should be abolished. All restrictions on using languages other than Turkish in political affairs should be abolished, including Article 81(b) of the Political Parties Law. The authorities should ensure that election material is available in minority languages, particularly in areas where large numbers of the population do not speak Turkish as a first language. Special measures should be adopted to ensure that all internally displaced peoples can vote. No politician should be investigated, prosecuted or otherwise harassed for peacefully advocating any minority issue or for using any language. The Turkish government should develop an institutional dialogue with minorities. The composition of the Board on Evaluation of Minority Problems must be changed to include representatives of minorities and its remit should cover all aspects of implementation of European standards for all minorities. Its name should be changed to Minority Issues. The human rights boards of regional and local authorities should be required to consult the minorities in their region.

For the subject of Freedom of expression and broadcasting in minority languages, Article 312 of the Turkish Penal Code should be amended to make clear that expressions regarding minorities do not constitute grounds for any conviction. Restrictions on the use of language in broadcasting should be abolished. The licensing of private broadcasters should follow clear, accessible rules that do not discriminate on the grounds of language. The right to broadcast in minority languages should be immediately given to local broadcasters. In particular the limits

on the length of such broadcastings and restrictions on the type of programmes, the prohibition on broadcasting programmes for children and the teaching of languages should be removed from the law. The state broadcaster TRT should broadcast in other languages that are requested, such as Laz and Roma. Clear, non-discriminatory rules should set out the allocation of airtime for minority language broadcasting. The High Board of Radio and Television's mandate on the closure of stations regarding minorities should be strictly limited.

For the subject of alphabet, using personal and place names in a minority language and using a minority language in administrative and judicial services, the restriction on using personal names should be abolished in order to guarantee the public recognition of all names, including Kurdish names that include 'w', 'x', 'q'. Place names that have been changed into Turkish, should also be displayed once more in the minority language where minorities request. Article 2 of the Provincial Administrative Law should be abolished. Where minorities constitute a significant proportion of the population and if they request it, they should have the right to be served in public institutions in their first language. Article 3 of the Constitution should be amended to make this clear. Professional interpretation in Kurdish should be provided before all courts and health services in Kurdish areas and in major cities.

For the subject of Right to association and peaceful assembly, limitations on the establishment of associations on the basis of race, ethnicity, religion, sect, region, or any other minority group, should be abolished. Harassment of minority associations and minority rights defenders should be stopped.

For the subject of Freedom of movement and internal displacement, all official restrictions on persons returning to their homes are unlawful and should be stopped. The government should immediately acknowledge its duty to ensure the return and compensation of internally displaced peoples. First, the evacuated villages and lands should be cleared of landmines, the state should demobilize the 'village guards' and ban their control over the properties immediately. The destroyed infrastructure of the villages should be rebuilt, including the schools. The internally displaced who are willing to return to their villages must be economically supported to do so, and this support should be sustained. All losses relevant to internal displacement must be compensated according to the relevant decisions of the ECHR.

These losses must be investigated by a commission that consists of public officials and civil society. Limitations of freedom of movement that are discriminatory against the Roma should be abolished.

For the subject of discrimination, the government should immediately begin consultation on and the drafting of a comprehensive anti-discrimination law, that will meet the EU criteria, including:

- prohibiting direct and indirect discrimination;
- providing effective remedy for discrimination cases immediately;
- allowing groups to be involved in the judicial proceedings regarding discrimination;
- creating a public body that will deal with discrimination issues.

- The discriminatory provisions in the school textbooks should be removed

The Circular issued by the Ministry of National Education, which requires the inclusion of information on the ‘so-called Armenian Genocide’ and ‘allegations of the Greeks and Syriacs’ in the school books and in related activities, should be withdrawn and the textbooks should include balanced information about minorities to contribute to cultural understanding and tolerance.¹⁰⁴

But some critics on the EU side can be revealed from the minority issues: EU does not deal with the core problem of the treatment of minorities and here are the difficult question to deal with: Have member states dealt with the first stage of the problem which is nationalism in Europe already? And is it possible to justly regulate minority issues without having accommodated counter national ideologies? EU member states ride sharp polarisations along nationalistic lines and therefore EU policies have not a clear orientation on this subject.

Minorities and minority issues are still seen as, under the influence of nationalism, a problem of security or an issue subject to the attribution of rights on the basis of a rather arrogant form of human rights philanthropy.

Thus the imposition to Turkey of human and minority rights are used as a remedy for occasional symptoms rather than healing structural problems of the nation state. As it

¹⁰⁴ Kaya, Nurcan & Baldwin, Clive; (2004); “Minorities in Turkey: Submission to the European Union and the Government of Turkey”; Minority Rights Group International, London; p.42

is the case for her member states, the EU is not creating a political ideology aiming or potentially capable to replace the dominant national ideology (in this case Kemalism in Turkey) nor to eradicate Jacobinism in Greece and ideological fear against minority and migrant otherness, which still is omnipresent.¹⁰⁵

¹⁰⁵ Tsitselikis, Konstantinos; (2004); “How Far Have EU Policies Affected Minority Issues in Greece and Turkey?”; <http://www.euborderconf.bham.ac.uk/case/GreeceTurkey/Gr-Tsitselikis.pdf>; p.7

7. CONCLUSION

The function of minority rights is to provide the principle of constitutional equality not to be limited with procedural equality, and citizens to be equal in all areas of society without discrimination of language, religion or ethnicity. To consider minority rights in this perspective and seeing them as legitimate, legal and necessary rights rather than a political tool, will be more rational and scientific.

The world of 21st Century owns a pluralist understanding on the contrary of the world of 20th century which had a monist understanding. Democracy is defined now by the respect for minority, not by the number of hands up. This expression is related to the fact that state.s respect for minority and human rights are directly depending on the democratization level of that state.

Do the minorities, or their demands, represent a threat to the territorial integrity, political independence or cultural identity of the State? This question mostly matches with Turkey's Kurdish question. Even if there is no answer, the essential is that minority rights should not be seen as furnishing a legal basis for secession from existing States.

Turkey has been an ideal case for minority issues, with its long trip in the path of European Union membership. Regarding the fact that EU made the political criteria, one of the constitutional principles, its will of a complete social and political integration became obvious. Its nature of leaving to the states which standards and agents should be used in order to reach the objective given by the EU, mostly works

in almost all areas that EU legislates, but it did not work in minority issues. This leads us to the idea that EU firstly should find solutions to the origins of minority related problems, rather than imposing its demands to candidate or member states.

Considering all documents that I referred in my paper, the last point of the evolution of minority rights shows up with the desire of avoiding chaotic environment. Pluralist Democracy is the best way to attain this will. The attempts made for world peace, are the proof of the success of international dialogue and interdependence.

But because of the lack of a concrete minority definition, states are reluctant to place themselves under international obligations and they keep their internal law same in order to keep their unity, opposing the nature of the change. These natural intentions arise from the belief of minorities are a threat. But the experiences show that the way of strengthening a nation is passing from transforming individuals that form the 'nation' to 'voluntary citizens' from 'compulsory citizens'. In other words, the etiquette of 'minority' should be eradicated from minds.

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