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**AVRUPA BİRLİĞİ SİYASETİ VE ULUSLARARASI İLİŞKİLER  
ANA BİLİM DALI**

**MULTICULTURALISM IN THE EUROPEAN UNION:  
THE CASE OF FREEDOM OF RELIGION**

**YÜKSEK LİSANS TEZİ**

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**Danışman: Yrd. Doç. Dr. Rana İZCİ CONNELLY**

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ONAY SAYFASI

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Fatmanur Kaçar

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## **ABSTRACT**

The gradual formation of multicultural societies in Europe has become one of the complex and dynamic dimensions of the integration process and necessitated some issues to be analysed in depth. The issue of freedom of religion and the efforts to promote and guarantee this freedom in the European Union (EU) have become one of these issues. Considering it both as an essential human right and an integral part of multicultural fabric, the EU has taken steps to promote freedom of religion in its Member States and candidate states. However, gradually politicized religious freedoms in some Member States might hamper multiculturalism and might render “United in Diversity” discourse problematic. To prevent future problems, the EU integrates the freedom of religion concept into its enlargement process, evaluates the situation of the principle in the applicant countries and uses its political conditionality aiming at improvements. But as the political conditionality for the freedom of religion is not high, the EU fails to reach the desired effects. Moreover, the “United in Diversity” claims are jeopardized by the challenges diversity may pose. In this framework, this thesis tries to elaborate on the crucial question whether the practical application of the freedom of religion in the EU Member States support the motto of “United in Diversity” or it solely exists in EU Treaties, and documents. The thesis also aims to shed light upon the place of the freedom of religion in Turkey’s EU Membership process and analyses the impact of the accession process on the freedom of religion in Turkey. The thesis concludes that there is a gap between legal systems and practice on the freedom of religion both in the EU and Turkey and this gap render the “United in Diversity” discourse of the EU contestable.

***Key Words: Freedom of Religion, Multiculturalism in the EU, Political Conditionality, Turkey’s Candidature Process to the EU.***

## ÖZET

Avrupa’da giderek çokkültürlü toplumların ortaya çıkışı, entegrasyon sürecinin çok yönlü ve dinamik boyutlarından biri olup bazı mevzuları incelemeyi gerekli kılmıştır. Din özgürlüğü ve AB’de bu özgürlüğü garanti altına alma ve geliştirme meselesi bu mevzulardan biri olmuştur. Din özgürlüğünü hem temel bir insan hakkı hem de çokkültürlü dokunun vazgeçilmez bir parçası olarak kabul eden AB, Üye Devletlerinde olduğu gibi aday ülkelerde de bu özgürlüğü teşvik etmek için adımlar atmıştır. Ancak, bazı Üye Devletlerde dini özgürlüklerin giderek siyasileştirilmesi halihazırda inşa sürecinde olan çokkültürlülüğü engelleme ihtimalini de beraberinde getirmiş ve AB’nin “Çeşitlilik içinde Birlik” söylemini problematikleştirmiştir. Olması muhtemel problemlerin önüne geçmek için, AB din özgürlüğü kavramını genişleme sürecine dahil etmekte, özgürlüğün aday ülkelerdeki durumunu değerlendirmekte ve gelişme amaçlayarak siyasi şartlılık ilkesini kullanmaktadır. Fakat, din özgürlüğü için siyasi şartlılık yüksek olmadığından, AB istediği etkiye ve sonuca ulaşamamaktadır. Buna ek olarak, “Çeşitlilik içinde Birlik” iddialarının da tehlikeye düşebileceği açıktır. Bu çerçevede, bu tez AB’ye Üye Devletlerin pratikteki din özgürlüğü uygulamalarının “Çeşitlilik içinde Birlik” sözünü desteklediği mi yoksa bu kavramın sadece AB yasal zemininde mi var olduğu sorusunu irdelemektedir. Aynı zamanda bu arkaplanda, tez Türkiye’nin AB’ye adaylık sürecinde din özgürlüğü kavramının yerini açıklığa kavuşturmayı amaçlayıp Türkiye’deki din özgürlüğünün katılım sürecine etkilerini incelemektedir. Tez, hem AB’de hem Türkiye’de din özgürlüğü kavramının yasal zemini ve pratikte uygulanışı arasında boşluk olduğu ve bu gözardı edilmesi zor boşluğun AB’nin “Çeşitlilik içinde Birlik” söylemini tartışmalara açık kıldığı sonucuna varmaktadır.

***Anahtar Kelimeler: AB’de Çokkültürlülük, Din Özgürlüğü, Siyasi Şartlılık, Türkiye’nin AB’ye Adaylık Süreci.***



## **LIST OF ABBREVIATIONS**

- ASEM:** Asia-Europe Meetings
- BOC:** Bulgarian Orthodox Church
- CBP:** Common Basic Principle
- DG EAC:** Directorates-General for Education and Culture
- EC:** European Community
- ECSC:** European Coal and Steel Community
- EEC:** European Economic Community
- EP WG:** European Parliament Working Group
- EU:** European Union
- Ibid.:** Ibidem
- ICCPR:** International Covenant on Civil and Political Rights
- ICESCR:** International Covenant on Economic, Social and Cultural Rights
- MCP:** Multiculturalism Policies
- MEP:** Member of the Parliament
- Op. Cit.:** Opus. Citatum
- PVV:** Partij voor de Vrijheid
- TFEU:** Treaty on Functioning of the European Union
- UN:** United Nations
- UDHR:** Universal Declaration of Human Rights
- WGSRP:** Working Group on Separation of Religion and Politics

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## INTRODUCTION

Throughout the ages, religion never ceased to function as a social and cultural phenomenon affecting societies. It has never lost its importance. On the contrary, the visibility of religion in public sphere has grown immensely in recent decades. Thus, religious individuals and groups as well as different religious practices have been increasingly included in debates on a wide range of political issues from legal debates about hate speeches, xenophobia, discrimination and freedom of religion to social policy debates. Often emerging as a part of culture and identity debates, religion and freedom of religion<sup>1</sup> have been lively discussed in various platforms as it has been in Europe.

Freedom of religion is certainly one of the main components of socio-cultural diversity and hence multicultural societies. Multicultural societies and multiculturalism are often thought together. However, they do not point out the same situation even though the diversity constitutes the essence of these two terms. People can live in socially and culturally diverse societies. Nonetheless how diversity is regarded and responded shape multiculturalism. There could be various responses to multiculturalism from toleration to protecting and promoting diversity.<sup>2</sup>

Roots of freedom of religion can be traced back to enlightenment. Protecting this freedom and “living with our differences in a shrinking world”<sup>3</sup> offer the best means to overcome the problems of the 21<sup>st</sup> century. The European Union (EU) expresses its will to protect freedom of religion at different platforms. All in all, the EU aims to protect and guarantee freedom of religion as an essential human right and to

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<sup>1</sup>‘Belief’ and ‘religion’ are concepts holding a broad meaning, and including new religions and belief systems in addition to traditional institutional religions. In this thesis, freedom of religion is interchangeably used with freedom of religion, conscience, and belief. Thus, a holistic point of view that does not discriminate between religions, sects, and beliefs is adopted.

<sup>2</sup>Kristin Henrard, “The Intractable Relationship between the Concepts ‘Integration’ and ‘Multiculturalism’: About Conceptual Fluidity, (Substantive) Context Specificness and Fundamental Rights Perspectives,” in *Challenges of Multiculturalism*, ed. M. Podunavac (The South Eastern European Perspectives in the European Discourse, Heinrich Böll Foundation, 2013), 107-124.

<sup>3</sup>Allen D. Hertzke, “Religious Freedom in the World Today: Paradox and Promise,” in *Universal Rights in a World of Diversity. The Case of Religious Freedom*, ed. M.A. Glendon and H. Zacher (Vatican City: Acta, 2012), 111.

promote cultural diversities. Common values<sup>4</sup> and culture have, therefore, become important topics for the future of the EU. Particularly, the idea of EU citizenship necessitates the existence of common values but also respect to cultural diversity.

In 2000, the EU has adopted the motto “United in Diversity” highlighting the multicultural fabric of the Union. Article 167 of the Lisbon Treaty also aims to foster common cultural heritage and respect for national diversities. Nonetheless, migration flows to several EU Member States challenges the cultural diversity ideals in the EU. Harsh comments by the politicians and academic circles have been raised against those efforts, as Europe has been experiencing increasing tensions between national majorities and ethnic or religious minorities since the end of 1990s. Violent conflicts between native British and Asian Muslim youth taking place in northern England in 2001, the cartoonizing of the pictures of the prophet Muhammad in Denmark resulting in the ‘cartoon crisis’ in 2005, and murder of Theo van Gogh because of the film *Submission*, which criticized the treatment of women in Islam are the well known examples of such tensions and heated conflicts. Moreover, local mosque building controversies in the EU Member States such as Italy, Greece, Germany and France have intensified these tensions. It seems that even toleration losing its battle ground all around the world. More recently, there have been lively public discussions on faith schools in England. Vickers claims that the most high profile and contentious debates have focused on the admission of students to the schools.<sup>5</sup> She states that discrimination against teachers on the basis of faith or belief is just as significant an issue, especially because schools are treated in English law differently when compared to other organisations with a faith ethos; besides, according to some circles the coming months may see a clash between English and European equality law on this issue.<sup>6</sup>

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<sup>4</sup>Human dignity, freedom, democracy, equality, the rule of law and the respect for human rights are listed as the core values of the EU which are set out at the beginning of the Treaty of Lisbon. They need to be implemented and guaranteed by all Member States, and any European country wishing to become a member of the Union must respect them.

<sup>5</sup>Lucy Vickers, Religious discrimination against teachers in faith schools, <http://www.publicspirit.org.uk/religious-discrimination-against-teachers-in-faith-schools/> (Accessed 01.07.2014).

<sup>6</sup>Ibid.

Therefore, it appears that the clash of two freedoms, freedom of religion and freedom of expression (expression of criticism against religious freedom) challenge the idea of “United in Diversity” in the EU. Multiculturalism, at this point, appears to be an important framework to analyse the current socio-political development within the EU. Most studies focus on solely on freedom of religion as a human right but usually neglect the impact of multiculturalism on this freedom. However, depending on Kymlicka’s claim that multiculturalism is inspired by human rights norms,<sup>7</sup> freedom of religion as a fundamental human right can be included within the scope of multiculturalism.

It can be argued that although it has flaws in practice the EU has a commitment to respect and promote freedom of religion. However, it is not easy to set common standards and rules to reinforce freedom of religion within Member States with different historical backgrounds. It is often claimed that the EU is an unfinished project under construction to which each European is contributing and from which many has been affected. In this respect the EU’s transformative power likely to emerge as a harbinger of a better future. European integration has already transformed the political and social situation in Europe since the World War II. Thus, European policies, respectively, has been identified as “a major route through which ideas may transform the behaviour, structures and identities of states”.<sup>8</sup> Nevertheless, it would be wrong to conclude that the EU only tries to transform its Member States. The EU tries to use its transformative power on EU candidate states via its conditionality which can be summarized as “the accession is conditional on a country fulfilling the criteria for membership”.<sup>9</sup> The importance of the conditionality lies in the fact that through conditionality, the EU tries to change certain conditions of countries with assistance, rewards, and incentives.

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<sup>7</sup>Will Kymlicka, “The rise and fall of multiculturalism? New debates on inclusion and accommodation in diverse societies,” in *The Multiculturalism Backlash European discourses, policies and practices*, ed. Steven Vertovec and Susanne Wessendorf (London; New York: Routledge, 2010), 40.

<sup>8</sup>Steven Vertovec and Susanne Wessendorf, “Introduction: assessing the backlash against multiculturalism in Europe,” in *The Multiculturalism Backlash European discourses, policies and practices*, ed. Steven Vertovec and Susanne Wessendorf (London; New York: Routledge, 2010), 7.

<sup>9</sup>Graham Avery, “EU Expansion and Wider Europe,” in *The European Union: How does it work?*, 3<sup>rd</sup> ed., ed. Elizabeth Bomberg, John Peterson, and Richard Corbett (Oxford; New York: Oxford University Press, 2012), 163.

### **a. Aim of the Study and Research Questions**

This thesis argues that freedom of religion both as an essential human right and an important component of multiculturalism matches with “United in diversity” claims of the EU. Yet, it also claims that when practising these rights, problems may emerge at the Member State level since the EU leaves the matters such as culture and religion to the Member States and each Member State’s approach to cultural and religious diversity may differ. What is more, as the political conditionality for the concept of freedom of religion is low, the EU fails to deal with the concept in a successful way in its enlargement. This may result in at least two consequences; recent candidate states such as Romania and Bulgaria may continue to have freedom of religion oriented problems after their accession to the Union; and as a candidate state, Turkey whose religious diversity and freedom of religion leads more “controversy” in the EU makes the “United in Diversity” claims contentious. Therefore, this thesis tries to answer the following questions:

- How has the idea of multiculturalism evolved within time through the European integration process;
- How and to what extent has religious freedoms been evolved within the framework of multiculturalism;
- How has the concept of freedom of religion historically and socially formed in the EU and what are the legal and political frameworks regulating it;
- As value and rights based Union what kinds of efforts has the EU made for the freedom of religion;
- What are the religious freedom’s likely implications on Member States; and on candidate states;
- How does the EU adopt the term in its enlargements;
- In what ways and cases does the EU see the cultural diversity as richness and does the EU have a consensus on the limits of “United in Diversity”.

## **b. Methodology**

To elaborate and analyse these questions, official documents and secondary sources on the historical evolution of freedom of religion in the European integration are examined. Furthermore, through literature review, the case of freedom of religion in Romania, Bulgaria and Turkey are tried to be analysed with a view to present current challenges arising from diversity question. Bulgaria and Romania seem to provide good examples to present conflicting opinions on the EU's impact on the problems with regard to freedom of religion. EU conditionality in this respect seems not to be very powerful to change the existing problems in these states. Beyond that, these two countries shared an intersected history with Turkey in the era of Ottoman Empire; and stemming from that they have alike problems regarding the freedom of religion. Therefore, it is important to answer a two-fold question here. The first one is about how the political conditionality of the EU is likely to change the situation with regard to freedom of religion in Turkey. Secondly, it is also important to examine how and to what extent Turkey's possible accession to the EU will affect the EU's future with its multiculturalism claims.

## **c. Outline of The Study**

In this background, this thesis is divided into three main chapters. The first chapter of the thesis examines and presents the theoretical background to multiculturalism. It also examines the interaction between multiculturalism and European notion of cultural diversity and criticisms raised against them. As religion takes its part as an integral part of culture; so does the freedom of religion. Furthermore, religion constitutes and plays an important role in the current debates of multiculturalism. Therefore, this chapter also examines the theoretical basis and framework of the freedom of religion in a multicultural context. Adopting liberal theories, which in their essence claim that primary emphasis should be placed on securing the freedom of the individual, may be the relevant theoretical base for freedom of religion. Inasmuch as, at the roots of the concept of freedom of religion liberal notions lie. Liberalism contains the core concepts, which pay the way toward freedom of religion. Individualism, toleration, equality, and freedom are among these core concepts that tried to be maintained by the advocators of freedom of religion. Moreover,

Durante claims that “a liberal theory of multiculturalism is the best means of coping with religious and cultural pluralism in a liberal democracy”.<sup>10</sup> Here, it should be noted that with the proliferation of works and debates on the field of multiculturalism, new concepts such as multiculturalism and interculturalism has also emerged. These concepts are contested and there are slight distinctions between them. Yet, in line with the above definitions the concept of ‘multiculturalism’ is used in this study. Triandafyllidou defines these concepts as

- a) Multiculturalism, is a descriptive term which refers to the existence of several cultural or ethnic groups within a society with their distinct identity and traditions.
- b) Multiculturalism is a normative term and is referred to by many as the dogma which dictates that different communities should not be forced to integrate but should rather be allowed to maintain their own cultures and identities and live in ‘parallel societies’ within a single state. However, multiculturalism has been used as a policy label and as a political science concept to encompass different policies and perspectives on how to deal with individual and collective ethnic, cultural and religious diversity.
- c) Interculturalism, or the intercultural approach, by contrast to multiculturalism, focuses on individuals rather than collectivities.<sup>11</sup>

When the words ‘religion’ and ‘Europe’ are used together, they often connote the Christian roots of the continent. However, in the second chapter of the thesis, beyond and rather than discussing whether the EU is a Christian Club or not, the evolution of the concept of freedom of religion in the EU is examined conceptually. In its essence, freedom can be considered as the root of all other human rights. The freedom of religion is then considered as the right that supports the notion that individuals and communities are free to choose the religion (or not to choose), or belief in which they want to believe and live in that way. In this chapter, historical evolution of the concept of freedom of religion and to what extent the religious freedoms granted by the Treaties and internalized in the EU will be examined. Religious diversities are not always welcomed for different reasons in different EU Member States. Moreover, it is important to understand whether the religious freedom is completely implemented and practiced in the Member States within a multicultural fore; if it is not, then it is necessary to examine the factors, which hamper implementation of religious freedoms.

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<sup>10</sup>Chris Durante, “Religious Liberty in a Multicultural Society,” *Journal of Church and State* Vol. 54, No. 3 (2012): 352.

<sup>11</sup>Anna Triandafyllidou, “Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries,” (Italy: European University Institute, Robert Schuman Centre for Advanced Studies, 2012), 28.



Freedom of religion has certainly sociological and theological roots. However, EU discourses on freedom of religion is shaped by and depend on human rights and multiculturalism frameworks. This thesis is also focusing on these two frameworks not on the theological explanations, which elaborate on the concept religion by religion. Equal worth, dignity, reason, conscience, and community- these traits of common humanity provide the clues to the right, and scope, of religious liberty.<sup>12</sup> Accordingly, investigating the milestones of this process in the EU level is of crucial importance to analyse the effects of this freedom as a part of the Copenhagen Political Criteria on the Candidate States.

The EU, incorporates the concept of freedom of religion in its enlargement policy. Thus, the third chapter of the thesis briefly examine the political conditionality of the EU and then question the freedom of religion within this conditionality particularly, with regard to EU's 2004 enlargement. This chapter argues that although the EU respects cultural diversities and is a *de facto* multicultural entity, in the enlargement process, it fails to handle the concept of freedom of religion, which is a part of multiculturalism in practice. Consequently, recent Member States such as Romania and Bulgaria may continue to have freedom of religion problems after their accession to the EU. This may be mainly because, as Hughes and Sasse claim, "the EU's main instrument for accession and convergence, the Regular Reports, have been characterised by ad hocism, inconsistency, and a stress on formal measures rather than substantive evaluation of implementation".<sup>13</sup> The concept of freedom of religion is also monitored and evaluated in Turkey which is a *sui generis* candidate. This *sui generis* situation stems from its historical and internal dynamics *vis-a-vis* the religious plurality of the country. Towards the end of the Ottoman era, it was claimed that religious minorities were threatening the survival of the nation and this perception has lasted and affected current approaches: religious plurality should be under the state control. This chapter finally tries to analyse Turkey's situation and credibility of the political

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<sup>12</sup>Hertzke, "Religious Freedom in the World Today: Paradox and Promise," 111.

<sup>13</sup>James Hughes and Gwendolyn Sasse, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs," *Journal of Ethnopolitics and Minority Issues in Europe* Issue 1 (2003): 1.

conditionality in this respect and discusses the limits of “United in Diversity” discourse of the EU when Turkey is of concern.

All in all, freedom of religion has a dynamic facet reconstructed and reshaped within time. Religious freedoms in the EU have been evolving and being at stake because of various factors including migration, enlargements, daily life practices, religious fundamentalism, the pluralist structures and identity issues. And all these elements, renders the freedom of religion both more delicate and sensitive.

The freedom of religion brings along the issues of recognition, toleration for the individuals and groups when it is put into practice. Freedom of religion is a right that bears consequences for societies in which it is practiced. When practiced properly, it leads to prosperity and a “United in Diversity”. Yet, when it got problematized and limited, it results in social conflicts. The EU as rights based union which has emerged as a mean to peace, examines the situation of freedom of religion of the applicants as part of the Copenhagen Political Criteria and incorporates the concept of freedom of religion in the Regular Progress Reports. It tries to protect and guarantee the concept in legal and institutional base, but its success is limited.

Last but not least, freedom of religion is a complex and comprehensive field that includes issues from education to worship. This study aims to outline and understand the main points in the freedom of religion debates in the EU with references to multicultural nature of the EU and to understand and to analyse how freedom of religion is integrated into the EU enlargement process.

# 1. AN OVERVIEW AND ASSESMENT OF MULTICULTURALISM IN THE EUROPEAN UNION

The term ‘multicultural’ is initially used in English in 1941 to describe a cosmopolitan society comprising of unbiased and unattached individuals for whom old nationalities do not have significance.<sup>14</sup> However, in its historical context, it is acknowledged that the roots of multiculturalism as a concept and a political system dates back to early Roman, Ottoman and Habsburg Empires. It can be claimed that these empires laid the foundations of contemporary multiculturalist discourse.

Contemporary multicultural societies have emerged against the background of nearly three centuries of the culturally homogenizing nation-state. In almost all pre-modern societies the individual’s culture was deemed to be an integral part of his identity in just the same way as his body was. Cultural communities were therefore widely regarded as the bearers of rights and left free to follow their customs and practices in their autonomous cultural spaces. This was as true of the Roman as of the Ottoman and Habsburg empires.<sup>15</sup>

Although these empires had a notion of multiculturality, they had different and various visions and practices of multiculturalism when compared to the contemporary practices. Besides, multiculturalism has been used both as a unifying factor and a divisive tool from time to time.

Prior to World War II, ethno-cultural and religious diversity in the West was characterized by a range of illiberal and undemocratic relationships of hierarchy<sup>16</sup> justified by racialist ideologies that explicitly propounded the superiority of some peoples and cultures and their right to rule over others.<sup>17</sup>

Multiculturalism as a policy has first appeared in Canada and Australia<sup>18</sup> in the 1960s and 1970s with the emerging socio-cultural, socio-economic and socio-political

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<sup>14</sup>Milena Doytcheva, *Çokkültürlülük*, 2<sup>nd</sup> ed. Tuba Akıncılar Onmuş, trans., (İstanbul: İletişim Yayınları, 2013), 15. (cited from Lacorne, 1967).

<sup>15</sup>Bhikhu Parekh, “Political Theory and the Multicultural Society,” <http://red.pucp.edu.pe/wp-content/uploads/biblioteca/081232.pdf> (Accessed 12.02.2014).

<sup>16</sup>Including relations of conqueror and conquered, colonizer and colonized, master and slave, settler and indigenous, racialized and unmarked, normalized and deviant, orthodox and heretic, civilized and primitive, and ally and enemy. See: Will Kymlicka, *Multiculturalism: Success, Failure, and the Future*, Washington, DC: Migration Policy Institute, 2012, 5.

<sup>17</sup>Ibid.

<sup>18</sup>For the emergence of the concept of multiculturalism as policy see: Doytcheva, *Çokkültürlülük*, 2013.

changes which occurred mainly due to migrant workers. They implemented government policies promoting cultural diversity. As for Europe, it can be argued that the continent had already relatively multicultural societies in itself. Doytcheva claims that being one of the tools of industrialization, the foreign population in France significantly increased in 1930s and as a result, France became the country where much more foreigners lived than the other parts of the world.<sup>19</sup> Other European states including Germany and Belgium has also started to implement relative multicultural policies, respectively following Canada, and Australia, initially on the basis of migrant workers since the early 1970s. Therefore, the concept of multiculturalism has actively taken its place on various debates, national and international agendas since 1960s in various parts of the world including Europe in almost a few years later. Thus, multiculturalism, as an evolving concept, has been at the heart of the political discourse and debated throughout the European integration process.

Being in a state of perpetual change and thus evolving from an economic Union to a social, political and a cultural Union in due course, the European Union (EU) has also adopted and forged multiculturalism in various contexts and ways. Moreover, multiculturalism in the EU has been affected by the EU enlargement, migration flows to the Member States from third countries and among Member States as well as socio-economic and political changes of time. Multiculturalism, at this point, appears to be an important framework to analyse the current socio-political development within the EU despite of the recent harsh comments by politicians and of scholarly criticisms raised against the very idea of it. Although in the past multiculturalism was regarded as the best possible solution to reduce problems arising within multicultural societies, nowadays there are conflicting views on the role of multiculturalism in easing social tensions. Some argue that it is a still viable concept and ideology or public policy to manage diversity efficiently, while others argue that it is the root causes of the ever increasing tensions in societies. This can be seen in the results of the European Parliament elections of 2014 in which far right parties having discriminative and xenophobic discourses have won more than 25% votes. For example, in Netherlands

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<sup>19</sup>Ibid.,31. (The proportion of foreigners in the USA was 492 in 10.000 whereas it was 515 in 10.000 in France).

PVV got 13%, and in France, Front National received 26% votes.<sup>20</sup> Considering the values of the Union and its approach toward cultural differences, these turnouts may be regarded as worrying for both multicultural nature of the EU and the freedom of religion in the EU. Freedom is a concept having a wide of range (intended and unintended) of consequences; multiculturalism can be considered as a consequence of the practice of freedom of religion. In this background, this chapter aims to examine multiculturalism with a view to understand its significance in the European integration process. Accordingly, the chapter also tries to analyse the place of the concept of freedom of religion in the context of multiculturalism. The will to believe is inherent in human nature. Although practices resulting from religions or beliefs may be hampered, belief and thought cannot. In the cases of prosperity of freedom of religion, compromises and peaceful coexistence in the society increase. Yet in the scenario of reduced or limited freedom of religion, it may result in conflicts in society. “Multiculturalism is inspired by human rights norms”<sup>21</sup> and as an essential human right the freedom of religion takes its place under the auspices of multiculturalism.

### **1.1. A Contested Concept: Multiculturalism as Ideology, Public Policy and Philosophy**

The concept of multiculturalism can be examined and analysed from various standpoints including sociology, anthropology, cultural studies and political science. Multiculturalism is a multifaceted concept having different meanings in different contexts. Pierik reiterates this notion by stating that “debates in Europe have long been dominated by the issue of migrant workers, debates in Canada by the threat of Quebec separatism, and in the United States by the history of slavery and the position of African Americans”.<sup>22</sup> In addition to that, according to Jura “multiculturalism in Europe has

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<sup>20</sup>European Parliament, *Results of the 2014 European elections*, <http://www.results-elections2014.eu/en/country-introduction-2014.html> (Accessed 13.06.2014).

<sup>21</sup>Kymlicka, “The rise and fall of multiculturalism? New debates on inclusion and accommodation in diverse societies,” 40.

<sup>22</sup>Roland Pierik, “Multiculturalism,” in *The International Encyclopedia of Ethics*, ed. Hugh LaFollette, 3470-3480, (Wiley-Blackwell, 2013).

often been compared with assimilationism and social integration and has been described as a ‘salad bowl’ or a ‘cultural mosaic’ rather than a ‘melting pot’.<sup>23</sup>

In a general sense, the concept of multiculturalism relates to an ideology or policy which contains cultural diversity or pluralism as its name implies. The concept can be defined as “the state of society or the world containing many cultures that interact in some significant way with each other”.<sup>24</sup> Moreover, the concept can be examined under “the politics of recognition and difference”.<sup>25</sup> The concept can also be recapitulated as in the following statements.

For some, multiculturalism corresponds to cultural identities, to equal rights and the equality of chances, and it constitutes the foundation of democracy; for others, on the contrary, it is related to “tribalism” and in fact challenges the national integrity and unity heretofore guaranteed by the state. For some, it serves to thwart nationalism and for others, inversely, it serves as the basis of national sentiments and expressions.<sup>26</sup>

The concept has been on the focus of many political and scholarly debates since its emergence in world politics. As well as its definition, the ontological and epistemological nature of multiculturalism can be claimed as contested. Accordingly, the concept of multiculturalism can be understood in different forms:

- a) demographic description of a society (presence of x numbers of immigrants in a society),
- b) exotic otherness observed in the society with lively festivals, spirited dances, spicy cuisines,
- c) a vague vision of how society with its minorities should function,
- d) public policy aimed at minorities including the promotion of equal opportunity,
- e) distinctive institutional arrangements for the benefit of specific minority groups including special advisory offices, consultation boards, representatives and funding.<sup>27</sup>

Besides, multiculturalism can be considered both as a public policy nurtured by political theory and as a philosophy. It might also be useful to explain succinctly these

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<sup>23</sup>Cristian Jura, “Multiculturalism – A Confusing European Approach,” *Journal of Politics and Law* Vol. 5, No. 2 (2012):110.

<sup>24</sup>Charles Taylor, “The Politics of Recognition,” in *Multiculturalism and the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994), 46-94.

<sup>25</sup>The gist of politics of recognition can be put forward as “*everyone* should be recognised for his or her unique identity. ... [Within] the politics of difference, what we are asked to recognise is the unique identity of this individual or group, their distinctness from everyone else” (italics in original). See: Taylor, “The Politics of Recognition,” 38.

<sup>26</sup>Riva Kastoryano, “Introduction ‘Multiculturalism’: An Identity for Europe?,” in *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, ed. Riva Kastoryano (New York: Palgrave Macmillan, 2009), 4.

<sup>27</sup>Steven Vertovec, “Multiculturalism, Culturalism and Public Incorporation,” *Ethnic and Racial Studies* Vol. 19, No.1 (1996): 50.

two dimensions of multiculturalism. As a political theory with policy dimensions, multiculturalism has often been described as “marking a shift from previous stages where differences remained unrecognised and were simply subsumed into dominant groups and institutions”.<sup>28</sup>

Gunew also states that “multiculturalism as an idea and philosophy is linked with preserving universal rights for both individuals and distinctive groups, although there are often tensions between the two”.<sup>29</sup> Many philosophers refer to the works of Immanuel Kant -and his notion of universal hospitality-, John Locke -and his notion of toleration-, and Isaiah Berlin -and his plural liberalism- to define multiculturalism. It is clear that, the concept of multiculturalism both politically and philosophically has been lively debated in academic circles. Joppke’s and Morawska’s statements regarding the *de facto* multiculturalism can be referred to highlight and recapitulate the difference between the policy and philosophy dimension of multiculturalism in that context.

Regarding multicultural policies, one must distinguish between *de facto* multiculturalism, which is required by the logic of liberal states, and official multiculturalism, in which states have deliberately and explicitly recognised and protected immigrants as distinct ethnic groups. *De facto* multiculturalism has become a pervasive reality in liberal, immigrant receiving states. It has many facets, from the principled protection of rights to pragmatic concessions in the interest of public health or security.<sup>30</sup>

The EU also tries to mainstream multiculturalism into its structure within different contexts. It can be claimed that the concept of multiculturalism has entered into the EU’s agenda and the political discourse in the 1970s with migrant workers. In due course, from 1970s political and cultural discourse to Lisbon Treaty (2007) and afterwards multiculturalism has prospered to a certain degree in socio-political and legal aspects. Moreover, the roots of cultural politics in the EU can be traced back to the attempts of the Commission. For the Commission, the first significant step towards defining a cultural basis for European unification came out in 1973 when leaders of the

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<sup>28</sup>Sneja Gunew, “Multiculturalism,” in *The Wiley-Blackwell Encyclopedia of Globalization*, 1<sup>st</sup> ed., ed. George Ritzer. Blackwell Publishing Ltd. 2012. (Wiley-Blackwell, 2013).

<sup>29</sup>Ibid.

<sup>30</sup>Christian Joppke and Ewa Morawska, “Integrating Immigrants in Liberal Nation-States: Policies and Practices,” in *Toward Assimilation and Citizenship Immigrants in Liberal Nation-State*, ed. Christian Joppke and Ewa Morawska (New York; London: Palgrave Macmillan, 2003), 8.

then nine EC Member States signed the “Declaration on the European Identity”.<sup>31</sup> It can be stated that since 1973, the attempts by the Commission and the Parliament have lasted on the field of culture gradually. Over time, the Commission adopted the motto “United in Diversity”<sup>32</sup> in 2000. However, what is meant by this diversity is questioned frequently and so far to what extent the diversity is considered as richness for the Union has been ambiguous and ill-defined.

Even though, the debates on multiculturalism in Europe have long been dominated by the issue of migrant workers, it is only one dimension of multiculturalism. Including also migration, the multiculturalism debates can be collected under the following titles and contexts.

- a) Desecuritization of ethnic relations
- b) Human rights
- c) Border controls
- d) Diversity of immigrant groups
- e) Economic contributions.<sup>33</sup>

Religion-oriented issues, especially the freedom of religion can be examined within the context of multiculturalism with frequent references to human rights. Multiculturalism in this framework can offer useful insights for the promotion of freedom of religion since it rests on the assumption that “there is a shared commitment to human rights across ethnic and religious lines”.<sup>34</sup> Besides, the place of religion in the EU public order is of great importance and has unequal dynamics with regard to specific implementations of Member States. In this sense, one may postulate that because of their identity and culture-related dimensions and consequences, religion and thus the freedom of religion are integral parts of multiculturalism. Although there may emerge some problems regarding the implementation of the freedom of religion as a human right in Member States, it can be asserted that the EU functions as a guardian by

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<sup>31</sup>Chris Shore, *Building Europe: Cultural Politics of European Integration* (London; New York: Routledge, 2000), 44.

<sup>32</sup>“United in Diversity” is the motto of the European Union which first came into use in 2000. It signifies how Europeans have come together, in the form of the EU, to work for peace and prosperity, while at the same time being enriched by the continent’s many different cultures, traditions and languages. See: Europa, The EU Motto, [http://europa.eu/about-eu/basic-information/symbols/motto/index\\_en.htm](http://europa.eu/about-eu/basic-information/symbols/motto/index_en.htm) (Accessed 02.02.2014).

<sup>33</sup>Kymlicka, *Multiculturalism: Success, Failure, and the Future*, 2.

<sup>34</sup>Ibid.



promoting and protecting the concept of freedom of religion. Moreover, the EU reflects the implementation of this concept upon its candidate states such as Turkey within the framework of Copenhagen Political Criteria.

### **1.1.1. Liberal Theories of Multiculturalism**

Multiculturalism, from the theoretical standpoint, is mainly analysed on the basis of liberal theories. Before dwelling into the theory dimension, it would be useful to define key concepts of liberalism such as ‘individualism’, ‘toleration’, ‘equality’, and ‘freedom’<sup>35</sup> with respect to the subject matter. These concepts may be defined respectively as

- a) Individualism, as the core principle of liberalism, reflects a belief in the supreme importance of the human individual as opposed to any social group or collective body. Human beings are seen first and foremost as individuals. This implies both that they are of equal moral worth and that they possess separate and unique identities. The liberal goal is therefore to construct a society within which individuals can flourish and develop, each pursuing the “good” as he or she defines it, to the best of his or her abilities.
- b) Toleration is both a guarantee of individual liberty and a means of social enrichment. Liberals believe that pluralism, in the form of moral, cultural and political diversity is positively healthy: it promotes debate and intellectual progress by ensuring that all beliefs are tested in a free market of ideas.
- c) Equality: Individualism implies a belief in foundational equality, that is, the belief that individuals are “born equal”, at least in terms of moral worth.
- d) Freedom: Individual freedom or liberty is the core value of liberalism; it is given priority over, say, equality, justice or authority. This arises naturally from a belief in the individual and the desire to ensure that each person is able to act as he or she pleases or chooses. Nevertheless, liberals advocate “freedom under the law”, as they recognise that one person’s liberty may be a threat to the liberty of others; liberty may become license they therefore endorse the ideal that individuals should enjoy the maximum possible liberty consistent with alike liberty for all.<sup>36</sup>

As for the different dimensions of the theory, one may commence with Will Kymlicka’s approach to liberalism and multiculturalism. Kymlicka makes a distinction between two sources of cultural diversity. The first is ‘multinationality’, namely the coexistence within a state of more than one nation, where ‘nation’ refers to a societal

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<sup>35</sup> Andrew Heywood, *Politics* (New York: Palgrave Macmillan, 1997), 41-42.

<sup>36</sup> *Ibid.*

culture. According to Kymlicka, the other form of cultural diversity is ‘poly-ethnicity’ which he defines as “the cultural diversity that resulted from immigration of individuals and families into a society and who are allowed ‘to maintain some of their ethnic particularity’”.<sup>37</sup> As in the case of the EU both sources of cultural diversity seem to be relevant.

It is widely accepted that one of the basic principles of liberalism is the principle of individual freedom. In this direction, Kymlicka argues “individuals make choices on the basis of their preferences – beliefs about the value of the various options available; freedom of choice is not something that is ‘free-floating in the void’”.<sup>38</sup> With regard to the cultural politics, he also relates liberal freedom with culture by asserting that “freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us”.<sup>39</sup> Briefly, the freedom of choice may change depending on culture, environment and religion. These possible and potential roots of choices impact individual freedoms like the freedom of religion. Kymlicka asserts the importance of societal culture for individual freedom as such

Individual freedom and autonomy are integrated into a societal culture, defined as ‘a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres’.<sup>40</sup>

At this point, the concept of freedom of religion reaches a significance for individuals who attempt to practice it. It can be claimed that as Joppkin also argues, there is an allegiance at stake “between multiculturalism and liberalism that Kymlicka claims to have established”.<sup>41</sup> Besides, Kymlicka states “if liberalism can indeed be seen as an extension of the principle of religious tolerance, it is important to recognise

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<sup>37</sup>Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 14.

<sup>38</sup>*Ibid.*, 76.

<sup>39</sup>*Ibid.*, 83.

<sup>40</sup>*Ibid.*, 76.

<sup>41</sup>Christian Joppke, “The Retreat of Multiculturalism in the Liberal State: Theory and Policy,” *The British Journal of Sociology* Volume 55 Issue 2 (2004): 237.

that religious tolerance in the West has taken a very specific form-namely the idea of individual freedom of conscience”.<sup>42</sup>

Moreover, Durante claims that “a liberal theory of multiculturalism is the best means of coping with religious and cultural pluralism in a liberal democracy”, yet he finds Kymlicka’s notion “overly critical toward traditional religious groups”.<sup>43</sup> He also finds Kymlicka’s approach to multiculturalism “overlooking certain salient features of religious life”.<sup>44</sup> In sum, he criticizes Kymlicka on the grounds that he does not give enough attention to religious groups.

[...]Although multiculturalism is the appropriate approach for coping with society’s diversity, Kymlicka’s theory does not adequately address issues concerning religious groups and ultimately falls short in terms of securing a sufficient degree of freedom for religious traditions. Despite Kymlicka’s advocacy of group-differentiated rights, his brand of multiculturalism is not amenable to religious claims for recognition as semiautonomous communities nor is it amenable to the preservation of religio-cultural traditions as communal ways of life.<sup>45</sup>

Further liberal critiques of multiculturalism has also been at stake. At this point, Brian Barry’s assertion and his notion of egalitarian liberalism may stand out. In *Culture and Equality* he asserts that “privatization creates identical ‘choice sets’ or rule of the game to people, within which they can follow their particular inclination as they see fit”.<sup>46</sup> But this might create relativism and end up in conflicting perceptions. Barry further claims that liberal theories have stressed “cultural diversity in democratic societies can be accommodated through classical liberal tools which highlights the extreme individual liberties”.<sup>47</sup> Yet, according to Barry “group rights, conflict with the liberal principle of neutrality because group rights may be dominated and shaped by one individual’s own interests”.<sup>48</sup>

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<sup>42</sup>Op. cit., 156.

<sup>43</sup>Chris Durante, “Religious Liberty in a Multicultural Society,” *Journal of Church and State* Vol. 54, No. 3 (2012): 352.

<sup>44</sup>Ibid.

<sup>45</sup>Ibid., 323.

<sup>46</sup>Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA: Harvard University Press, 2001).

<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

Another important liberal account of multiculturalism can be seen in Jacob Levy's *The Multiculturalism of Fear*.<sup>49</sup> Levy suggests "taking diversity as an inevitable fact of life, not as a goal to be furthered by means of state policy".<sup>50</sup> According to Levy difference-conscious policies is important "to deal with a culturally and ethnically diverse reality" however, their success "depends on the circumstances".<sup>51</sup> One may argue that these circumstances which probably include internal and external dynamics matter the most. Moreover, he also acknowledges the difficulty of recognising and respecting all cultures by stating that

Public affirmation of respect and recognition, though, cannot be available to all cultures simultaneously. Ethnocultural groups develop in contrast to others; all too often a particular trait is valued precisely because it makes members seem better than some neighboring group. To recognise what a group values in its own culture is to accept a standard by which some other groups fail to be worthy of respect. To give recognition and respect based on standards external to the culture similarly sets up a measure by which some will fail, and moreover includes the (hardly respectful) assumption that one's pre-existing culture includes the resources for judging all others in the world.<sup>52</sup>

In its essence, Levy argues that preventing violence against ethnic minorities should be the main concern of liberalism rather than sustaining cultural communities.

Liberalism should not be centrally concerned with either preserving or transcending cultural communities, practices, and identities but rather liberalism should focus on mitigating evils such as inter-ethnic civil wars and state violence against ethnic minorities.<sup>53</sup>

In this respect, it can be claimed that liberalism should free the notion of superiority and eliminate the resources of judgements leading to inter-ethnic, inter-religious conflicts. As Levy argues "in order for this 'multiculturalism of fear' to be grounded in the realities of ethnic politics and conflict, it must take seriously the importance people place on their ethnic identities and cultural practices without falling into a celebration of cultural belonging".<sup>54</sup> In addition to these, there is also the European dimension of multiculturalism debates. In this context, it is argued

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<sup>49</sup>Jacob Levy, *The Multiculturalism of Fear*, (Oxford: Oxford University Press, 2000).

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid., 20.

<sup>53</sup>Ibid.

<sup>54</sup>Ibid.

Infused by a tradition of nationalism, a continent of nation states where virtually every state has claimed to represent a particular nation, and to protect a particular national culture, European societies have been resistant or hesitant to embrace multiculturalism.<sup>55</sup>

Although, with the enlargement waves of the EU, multiculturalism as an idea and philosophy has been tried to be promoted and encouraged, it can be claimed that a pejorative usage of multiculturalism has been wide-spread and a backlash has occurred against multiculturalism. This retreat from multiculturalism may result from the assumptions which depict multiculturalism as a single doctrine; stifling debate; fostering separateness; refusing common values; denying problems; supporting reprehensible practices, and providing a haven for terrorists.<sup>56</sup> Joppkin and Morawska also highlight this backlash against multiculturalism by stating

There is certainly a widespread *de facto* multiculturalism in liberal states, which is grounded in their commitment to the principles of public neutrality, non-discrimination, and protection of individual rights. However, in the few cases where official multiculturalism policies were put in place, these policies have recently come under pressure, and there has been a move away from them.<sup>57</sup>

Benhabib's analogy of the EU and the paper tiger with respect to multiculturalism can also be referred in this context. She claims that Copenhagen Criteria are so broad that by forging these criteria the EU avoids controversial issues such as culture, religion and ethnic identities. Yet, the identity related issues are among the most debated ones in the EU both politically and socially, especially when the Turkey's membership possibility is considered. Turkey's possible accession is the most difficult and tangled identity issue which the EU should face with. In this respect, she questions that whether "European multiculturalism is a paper tiger or not"<sup>58</sup> because of the EU's attitude towards possible Turkish accession. She further claims that a fixed accession date should be given to Turkey. This will distance the EU from being perceived as Eurocentric and it will highlight its multicultural nature. Thus, questioning

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<sup>55</sup>Spyros A. Sofos and Roza Tsagarousianou, "Introduction: Back to the Drawing Board: Rethinking Multiculturalism," *Journal of Contemporary European Studies* Vol.20, No.3 (2012):265.

<sup>56</sup>Vertovec and Wessendorf, "Introduction: assessing the backlash against multiculturalism in Europe".

<sup>57</sup>Christian Joppke and Ewa Morawska, "Integrating Immigrants in Liberal Nation-States: Policies and Practices," in *Toward Assimilation and Citizenship Immigrants in Liberal Nation-State*, ed. Christian Joppke and Ewa Morawska (New York; London: Palgrave Macmillan, 2003), 2.

<sup>58</sup>Seyla Benhabib, "Is European Multiculturalism Paper Tiger," *Philosophia Africana* Vol. 8, No.2 (2005): 111-115.

the EU's attitude towards multiculturalism and implying that European multiculturalism only exists in discourse but not in practice may be added to the debates.

All in all, it can be argued that with relative attempts by the EU and with the increased academic and political debates on the identity matters, multiculturalism has been forged and promoted through various measures. In today's globalized, transnationalized societies which often long for internal and external peace, although criticized, and how societies would manage diversities without multiculturalism is an essential question. Stressing the relevance of the multiculturalism as a tool to manage diversities, Kymlicka advocates "the fact that there are grave obstacles to multiculturalism does not mean that there are viable alternatives to it".<sup>59</sup>

### **1.1.2. Religion as one of the Main Components of Multiculturalism**

Multiculturalism is generally defined on the basis of 'differences' and therefore is used interchangeably with pluralism. The concepts and terms which point out differences simply may include nation, race, ethnicity, religion, and culture. Multiculturalism has been considered as an ideal form of coexistence of diverse societies. However, with the increase in tensions in societies it has been conceived as a negative situation. Moreover, Hartmann and Gerteis claim that negative connotations of multiculturalism are quite common both among scholars and in public.

The most common conception of multiculturalism in both scholarly circles and popular discourse is a negative one, having to do with what multiculturalism is not or what it stands in opposition to; thus, representing heterogeneity as opposed to homogeneity, diversity as a counterpoint to unity.<sup>60</sup>

In this respect diversity and heterogeneity associate with multiculturalism often consists of various measures from public recognition of minorities to the issue of religious accommodation; and even to the issues related with food (halal; kosher;

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<sup>59</sup>Kymlicka, The rise and fall of multiculturalism?: New debates on inclusion and accommodation in diverse societies," 47.

<sup>60</sup>Douglas Hartmann and Joseph Gerteis, "Dealing with Diversity: Mapping Multiculturalism in Sociological Terms," *Sociological Theory* Vol. 23, No. 2 (2005): 219.

vegetation); and media.<sup>61</sup> With regard to the freedom of religion, ‘religious accommodation’ and ‘food’ related aspect of multiculturalism can be underlined here. To illustrate, religious accommodation includes permission and support for the establishment of places of worship, cemeteries and funerary rites; allowance of time off work for worship and food related issues include the religious-specific matters such as the ritual slaughters.

All in all, multiculturalism, is related not only with incorporation but also with participation and can be described as “a broad set of mutually reinforcing approaches or methodologies concerning the incorporation and participation of immigrants and ethnic minorities and their modes of cultural-religious difference”.<sup>62</sup> Thus, naturally, cultural and religious differences take their place in multicultural discourse necessitating to be accommodated and managed in societies. However, Hartmann and Gerteis warn about the common misunderstanding of important concepts and argue

A fuller conception of multiculturalism must begin by breaking down the false opposition between unity and difference, between solidarity and diversity, or, as it is most frequently formulated in social and political theory, between universalism and particularism.<sup>63</sup>

In this backdrop, it can be argued that the EU’s approach to multiculturalism complies with Hartmann and Gerteis’ notions; it does not form a false opposition between unity and difference, rather the EU takes differences as constituents of unity as its motto “United in Diversity” signifies. Moreover, the EU’s approach to multiculturalism is of a pragmatic nature. First of all, EU rejects theories “which attempt to determine the existence of separate human races”.<sup>64</sup> Moreover, the EU uses the terms ‘racial origin’ and ‘ethnic origin’ synonymously in its documents and according to it “the use of the term ‘racial origin’ in this directive does not imply an

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<sup>61</sup>Vertovec and Wessendorf, “Introduction: assessing the backlash against multiculturalism in Europe”.

<sup>62</sup>Ibid., 4.

<sup>63</sup>Hartmann and Gerteis, “Dealing with Diversity: Mapping Multiculturalism in Sociological Terms,” 221.

<sup>64</sup>Council of the European Union, Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. (*Official Journal L 180*, 07/2000), 22–26. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML> (Accessed 13.02.2014).

acceptance of such (racial) theories”.<sup>65</sup> As for the contested concept of ‘culture’ it is possible to make a three-fold classification:

- a) Culture as *art*
- b) Culture as *a set of attitudes, beliefs, customs, values and practices which are commonly shared by a group*
- c) Culture as *a tool to qualify a sector of activity: the cultural sector.*<sup>66</sup>(italics in original).

Among all, the second definition of culture provides the most convenient scope to analyse the place of religion in multiculturalism because it includes “a set of attitudes, beliefs, customs, values and practices which are commonly shared by a group” which can be attributed to religion; as religious beliefs, customs, values and practices as the statement below implies.

The “group” may be defined in terms of politics, geography, religion, ethnicity or some other characteristics. [...] The characteristics which define the group may be substantiated in the form of signs, symbols, texts, languages, artefacts, oral and written traditions as well as by other means.<sup>67</sup>

In its essence culture incorporates ideas, customs, socially constructed behaviours, and practices of a group or a society. According to Bogen and Goldstein religion is a part of culture. They underline the broad scope of culture arguing “culture includes both government and religion because they are aspects of the ways in which a group of humans live”.<sup>68</sup> Brubaker also situates religion within the debates of multiculturalism by arguing that

Language and religion are arguably the two most socially and politically consequential domains of cultural difference in the modern world. The study of the political accommodation of cultural difference – or what might be called the political sociology of multiculturalism – would therefore seem to require sustained attention to both.<sup>69</sup>

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<sup>65</sup>Ibid.

<sup>66</sup>European Commission, *Culture*, [http://ec.europa.eu/culture/documents/chapter-2\\_en.pdf](http://ec.europa.eu/culture/documents/chapter-2_en.pdf) (Accessed 13.02.2014), 44.

<sup>67</sup>Ibid.

<sup>68</sup>David Bogen and Leslie F. Goldstein, “Culture, Religion and Indigenous People,” *Maryland Law Review* Vol. 69, Issue 1 (2009): 48.

<sup>69</sup>Rogers Brubaker, “Language, Religion and The Politics of Difference,” *Nations and Nationalism* Vol. 19, No.1 (2013): 2.



Apart from these definitions and debates regarding the contents of culture, from the 1970s to mid-1990s, there was a clear “trend across Western democracies toward the increased recognition and accommodation of diversity through a range of multiculturalism policies (MCPs) and minority rights”.<sup>70</sup> It can also be claimed that multiculturalism laconically may stand for the idea of cultural heterogeneity or the idea of mutual respect and equality among cultural groups (as in the “politics of recognition”<sup>71</sup>). A great number of multiculturalism definitions are mutually informative and they often include ‘religion’ as an integral part of the concept as the below statement clearly puts forward.

Multiculturalism is a term that refers to the differing ways in which nation-states consolidate their putative homogeneity by simultaneously acknowledging and managing various kinds of differences that include ethnicity, race, religion, languages, cultures, and so on. In other words, the very act of citing the differences implies that there is a homogenous core to the nation against which these differences are measured.<sup>72</sup>

Moreover, it can be asserted that there is a dynamic and intertwined relation between culture and religion. Because, the concept of culture is not a natural but a constructed one. It is constructed within time in line with ongoing activities, practices and customs of individuals and societies. Religion constitutes an integral part of these constructed practices by affecting the way people dress, eat, pray, live and behave. That is why culture and religion is regarded as interwoven concepts for most of the time. The following statement may be considered as the basis and historical background of this claim.

In the Middle Ages, European unity rested on the common religion. In the Modern Era, religion yielded its position to culture (to cultural creation), which came to embody the supreme values by which Europeans recognised themselves, defined and identified themselves. Now in our own time, culture is in turn yielding its position.<sup>73</sup>

As religion takes its part as an integral part of culture; so does the freedom of religion. At this point, Sambur’s claim is important because according to him “alienating the people who have adopted religions and beliefs except than the majority’s religion and belief, eliminating the fundamental rights and discriminating them do not

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<sup>70</sup>Kymlicka, *Multiculturalism: Success, Failure, and the Future*, 3.

<sup>71</sup>Taylor, “The Politics of Recognition”.

<sup>72</sup>Gunew, “Multiculturalism,” 1.

<sup>73</sup>Kastoryano, *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, 69.

comply with the principle of freedom of religion”.<sup>74</sup> Moreover, as Durante argues that religion and culture should be independent from political control.

If religions are not simply cognitive epistemic systems but are also ways of life, and as such bearers of cultural traditions, the establishment of culture comes dangerously close to resembling the establishment of religion. Be it in the name of religion or culture, any form of political control over religio-cultural matters on the basis of their nonconformity to a particular set of cultural patterns practiced by the majority seems to violate the very notion of liberalism as a liberty-based sociopolitical project.<sup>75</sup>

On legal and institutional base, it seems that the EU has been promoting and improving the freedom of religion as a liberty based social, cultural and political entity. Nevertheless, European governments, namely the Member States have been implementing *sui generis* policies regarding the concept of freedom of religion. Sambur advocates that defending the free and plural characteristics of the religion and belief issues against the state and other authorities, leaving the floor to the individual in such matters are the *sine qua nons* of the liberal freedom of religion conception.<sup>76</sup> However, in the contemporary conditions leaving the floor to the individuals, keeping such sensitive issues limited to private sphere does not suffice. Hartman and Gerteis state “privately observed religious or ethnic practices may be overlooked, so long as they go along with public conformity to the codes and practices of the society”.<sup>77</sup> Yet, the codes and practices of the society are not clearly defined and change from society to society from time to time.

At this point, some problematic and violated issues regarding the implementation of the concept of the freedom of religion may emerge. To illustrate, French authorities banned women from wearing a full-cover veil, called burqa in 2011, thus making France the second European country to apply the interdiction, after Belgium.<sup>78</sup> In Holland, during his electoral campaign, Geert Wilders requested that the mosques and the wearing of the burqa shall be forbidden.<sup>79</sup> What is more alarming is that the results of EU Parliament elections of 2014 in which far right parties having

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<sup>74</sup>Bilal Sambur, “Türkiye’de Din Özgürlüğü, Laisizm ve Resmi İdeoloji,” *Liberal Düşünce* Cilt:14, Sayı: 55 (2009): 43.

<sup>75</sup>Durante, “Religious Liberty in a Multicultural Society,” 344.

<sup>76</sup>Op. Cit., 42.

<sup>77</sup>Hartmann and Gerteis, “Dealing with Diversity: Mapping Multiculturalism in Sociological Terms,” 227.

<sup>78</sup>Jura, “Multiculturalism – A Confusing European Approach”, 112.

<sup>79</sup>Ibid.

discriminative and xenophobic discourses have won more than 25% votes. This has brought into minds that the outcome of these parties' discriminative discourses will prevail more and create tremendous impressions for both the EU and the Member States. All the attempts of individual Member States and their national parties with racist, xenophobic programs getting impressive results can be considered within the framework of contested nature of multicultural ideologies and policies as well as the EU's relative reluctance to regulate such a sensitive and fragile issue.

## **1.2. Multiculturalism in the EU**

Historically, it is acknowledged that the continent of Europe has always been a mixture of various nations, religions and languages. In Europe, Latin, Slavic, Germanic, Celtic, Hellenic, Thracian and other cultures are influenced by Hebraic, Christian, Judaic, Muslim and other belief systems<sup>80</sup> through time. One may assert that there has been a perpetual interaction of cultures in Europe. Moreover, it can be advocated that there has been attempts to unify Europe by Christianity, nevertheless geographic, cultural and social differences has achieved to remain and last, thus rendered the issue of multiculturalism to be discussed by various circles. As for the more contemporary times, it may be argued that the concept of multiculturalism can be examined in Europe as it is asserted below.

In Europe, multiculturalism corresponds to various situations according to the structure of the state and its recognition of regional and linguistic particularities and of its minorities. In effect, some countries of the old continent have institutionalized pluralism through the creation of regions granted limited power, as in Italy and Spain; others have built the state upon linguistic pluralism, as in Belgium and Switzerland, where the linguistic and territorial communities each have their own institutions. But in France, Germany, Great Britain, and the Netherlands, the term multiculturalism refers, as in the United States, to the supposedly communitarian form of organization of immigrant populations around a common nationality or religion (or both) and the accompanying demand for their specific voices in the public sphere, as with ethnic minorities or African Americans.<sup>81</sup>

The EU might be considered as a platform in which lively discussions of multiculturalism take place. When six founding fathers of the EU (then ECSC) decided

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<sup>80</sup>Mark Kishlansky, et al. *Societies and Cultures in World History*, (New York: Harper Collins College Publishers, 1995), 379-399.

<sup>81</sup>Kastoryano, *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, 5.

to forge a community, the entity they built was already multicultural in nature. Currently, comprising of 28 Member States, the EU represents above all the importance of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. Moreover, it can be claimed that the EU also represents a multicultural society with its 28 Member States. In that context, it may be reiterated that multiculturalism plays a crucial role for the EU and the Member States and it has been implemented in various ways through integration process as Wolton puts forward

The question of multiculturalism is posed in different terms from the European political project, for it has always existed in history, through wars, conflicts, trade—a *de facto* multiculturalism. But there is no central role that it can play tomorrow as the condition of the success of political democracy in Europe. Culture is not in itself linked to Europe, but to the ensemble of social and cultural changes that have been produced over a century, specifically the dual contradictory movement of the individualist mass society discussed earlier: valorization of the individual, hence of difference, and the constraint of the greatest number, linked to universal suffrage.<sup>82</sup>

It should be noted that although, it highlights the importance of diversity as richness, the EU lacks a clear definition and perspective for the concept of multiculturalism. Nevertheless, it deals with the concept of culture and states that the EU promotes cultural considerations in its entire works:

- a) It ensures the cultural dimension is included in other EU policies – especially international relations, regional development, education and employment;
- b) It promotes cultural activities directly through its various support programmes in all policy fields;
- c) It ensures cultural diversity is considered in all regulatory and financial decisions and proposals.<sup>83</sup>

These considerations are all in line with Article 167 of the Treaty of Lisbon, according to which “the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures”.<sup>84</sup> As it can be understood from this article, cultures and cultural diversities constitute importance for the EU. One reason for this according to Shore, may be “the situation that unlike most nation states, what the EU conspicuously

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<sup>82</sup>Dominique Wolton, “Communication and Europe: From Multiculturalism to Cultural Cohabitation,” in *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, ed. Riva Kastoryano (New York: Palgrave Macmillan, 2009), 55.

<sup>83</sup>European Commission, *Culture in Other EU Policies*, [http://ec.europa.eu/culture/our-policy-development/european-agenda-for-culture/mainstreaming-within-the-commission\\_en.htm](http://ec.europa.eu/culture/our-policy-development/european-agenda-for-culture/mainstreaming-within-the-commission_en.htm) (Accessed 06.02.2014).

<sup>84</sup>Lisbon Treaty, Art. 167.

lacks is a common culture around which Europeans can unite”.<sup>85</sup> Thus, the EU should forge multiculturalism and the idea of “United in diversity” in order to reach and achieve its goals. It should be kept in mind that “cultural elements which give unity and coherence to existing national identities (such as shared language, history, memory, religion) tend to divide rather than unite fellow Europeans”.<sup>86</sup> Officially adopted in 2000, “United in Diversity” motto of the EU signifies by enlarging from six to 28, how Europeans have come together, in the form of a union to work for peace and prosperity, while at the same time being enriched by the continent's many different cultures, traditions, languages, and religions.<sup>87</sup> This may be considered as one of the reasons why the EU forges and should forge multiculturalism by uniting in diversity.

Considering the cultural differences of the six founding fathers of the Union and their attempts to forge and promote common goals, the EU can be claimed to be multicultural in nature since its emergence. Besides, it is certain that enlargements contribute considerably to the cultural diversity of the Union. Under the rubrics of the World War II setting out its journey as an economic union, but then developing and evolving into a economic, political and social entity, the EU has reached 28 Member States within the period of 1951 and 2013. Following their acceptance as a member, the Member States brought their own cultures and values to the Union, thus gradually rendering the Union more diverse in terms of cultural characteristics than it had been.

Six successful rounds of enlargement of the original Community of six Member States have taken place so far. On the first enlargement wave which was in 1973, Denmark, Ireland and the United Kingdom joined the Union. In 1981 Greece; in 1986 Spain and Portugal; in 1995, Austria, Finland and Sweden; in 2004, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia; in 2007, Bulgaria and Romania (completing the fifth wave of enlargement that started in May 2004); in 2013, Croatia joined the Union. With each enlargement round, the Union became richer and more diverse in terms of cultural traits. The same situation is also

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<sup>85</sup>Shore, *Building Europe: Cultural Politics of European Integration*, 18.

<sup>86</sup>Ibid.

<sup>87</sup>European Union, *The EU motto*, [http://europa.eu/about-eu/basic-information/symbols/motto/index\\_en.htm](http://europa.eu/about-eu/basic-information/symbols/motto/index_en.htm) (Accessed 10.07.2014).

applicable for the case of religious diversity. Although, they have all Christian populations in majority, the sects of the societies of the Member States<sup>88</sup>, their practices of religion, and their state-religion affairs<sup>89</sup> may naturally differ and contribute to the diversity.

Although the citizens of EU Member States have been tried to be united under the common term of ‘Europeans’, it is a well known fact that what constitutes of the EU is a well-thread networks and relations of various agreements and interactions. In this backdrop, each enlargement wave has enriched the EU’s already existing diversity and added a layer to the European identity. Besides, it can be claimed that each individual phenomenon which enrich and shape multiculturalism in the EU is mutually inclusive and mutually informative. When one explains the impact of enlargements on multiculturalism, s/he also bears in mind that in each enlargement wave, the new-coming state carries her own migrant population to the Union. In this sense, elaborating the enlargement waves and migration may be helpful especially for understanding the frameworks shaping the multiculturalism in the EU.

From the historical standpoint, it can be argued that migration and multiculturalism are two distinct but interrelated and most of the time intertwined areas of socio-cultural dynamics. As Commission states “migration and multiculturalism are key factors in social change and development, especially in relation to the unique ‘laboratory’ a supranational institution such as the EU represents”.<sup>90</sup> The phenomenon of migration to EU with specific references to multiculturalism and diversity issues gradually has become one of the focal points of the EU. In that context, multiculturalism can be interpreted as “being the process whereby immigrants belong in their host countries (are integrated and permanently settled) and thus policy is centrally

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<sup>88</sup>For example, Greece has an Orthodox Christians majority while Ireland has Catholic Christians.

<sup>89</sup>For a detailed analysis of state-religion affairs of some EU Member States see: Hüdai Şencan, *Bazı Avrupa Devletlerinde Din ve Devlet İlişkileri*, Ankara: Türkiye Büyük Millet Meclisi Araştırma Merkezi, 2011. In this rapport Şencan examines religious freedoms, governments’ approaches to religious communities and groups, religious education, religious symbols, clothes and rituals in public sphere in Germany, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Holland, The United Kingdom, Ireland, Spain, Sweden, Italy, Polonia, Portugal, Romania, Greece as EU Member States.

<sup>90</sup>European Commission, *Evolving Trends in Migration and Multiculturalism*, <http://ec.europa.eu/digital-agenda/futurium/en/content/evolving-trends-migration-and-multiculturalism> (Accessed 06.02.2014).

concerned with constructing new relations of citizenship”.<sup>91</sup> A succinct chronology of the migration waves to the EU countries can be observed at the following statement.

From the 1960s through the 1970s much public discourse in immigrant receiving societies highlighted notions of tolerance, representation, participation, and group/cultural/minority rights – including the freedom to congregate, worship, speak one’s own language, and engage in other cultural institutions and practices[...]By the 1980s, many of these concerns around immigrants (now settled and considered ethnic minorities in many countries) and the growing cultural, linguistic and religious diversity they brought to receiving societies led to public measures that were subsumed under the broad rubric of ‘multiculturalism’.<sup>92</sup>

According to a research project conducted by the European Commission, the Poles, Bulgarians and Romanians have been considered as the most mobile nationalities in the EU emigrating in large numbers in the 1990s and early 2000s; and particularly after Poland’s accession to the EU in 2004 and Romania and Bulgaria’s joining in 2007.<sup>93</sup> Estimates show that there are 9 million Roma in the EU and a special feature of the Roma populations that differentiates them from other native or immigrant minorities is the fact that they have no national homeland, no territory that provides for a point of reference for their ethnic identity.<sup>94</sup> They are among the challenges the EU has to cope with. The other European migrants such as the Poles are also of concern for the EU.<sup>95</sup>

In addition to the Europe’s internal and native migrant problems, there are also migration-related problems of non-European migrants and migrants from various religions. It can be claimed that the religion and religious affairs of the migrants may constitute significance. Since the 1960s immigrants from Muslim countries have started to flow in European countries, such as Germany, France and Belgium as ‘guest workers’. Accordingly, Islam is considered as having the largest population in EU Countries after Christianity, making the Muslims the largest minority in EU Member

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<sup>91</sup>Ibid.

<sup>92</sup>Steven Vertovec and Susanne Wessendorf, *Migration and Cultural, Religious and Linguistic Diversity in Europe: An Overview of Issues and Trends*, Centre on Migration, Policy and Society, 2004, 8-9.

<sup>93</sup>Triandafyllidou, “Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries,” 40.

<sup>94</sup>Ibid., 59.

<sup>95</sup>Ibid., 59.

States. A Pew Research study titled as “The Future of the Global Muslim Population” revealed interesting facts about the future demographics of Europe.

France had an expected net influx of 66,000 Muslim immigrants in 2010, primarily from North Africa. Muslims comprised an estimated two-thirds (68.5%) of all new immigrants to France in the past year. Spain was expected to see a net gain of 70,000 Muslim immigrants in 2010, but they account for a much smaller portion of all new immigrants to Spain (13.1%). The U.K.’s net inflow of Muslim immigrants in the past year (nearly 64,000) was forecast to be nearly as large as France’s. More than a quarter (28.1%) of all new immigrants to the U.K. in 2010 is estimated to be Muslim.<sup>96</sup>

The study estimated that Muslims will account for 8.2 percent of the EU population in 2030, up from approximately 4.6 percent today. And this situation can cause concerns in the EU countries. In addition to this statistical information, there is also a sociological dimension of the issue of migrants and religion as it can be observed from the Schiffhauer’s claim.

The religion of the first generation of migrants is a delocalised religion – a religion re-established in a foreign land. In this situation a complex and often apparently paradoxical attitude to religion develops. On the one hand, religion – and community membership – increasingly becomes an individual affair. Religious belief and the choice of a community are more and more a personal decision. On the other, a new kind of ritualism, dogmatism, and strictness develop that are unknown at home. On one hand, the home becomes the centre of religion and patriarchal rhetoric establishes itself; on the other, the importance of women in the communities grows. On one hand there is a synthesis of homeland and religion, nourished by the hope of redemption; and on the other the rift between everyday world and religion becomes obvious. All these tensions will influence the religious attitudes of the second generation.<sup>97</sup>

Some of the particular dimensions of multiculturalism include, for instance, culturally or religiously based concerns among immigrants and ethnic minorities that have engaged policy makers, such as matters surrounding:

- a) polygamy (multiple marriage partners) practised by some communities;
- b) talaq, a form of Islamic divorce initiated by pronouncing so three times;
- c) a wide range of forms of arranged marriage practised by a variety of immigrant communities;
- d) marriages within various degrees of relationship -- for instance, among first cousins (this is widely practised among Pakistani Muslim families, for example);
- e) accommodating prescribed modes of dress, such as among Sikhs;

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<sup>96</sup>Pew Research, *The Future of the Global Muslim Population*, 2011, <http://www.pewforum.org/2011/01/27/the-future-of-the-global-muslim-population/> (Accessed 06.02.2014).

<sup>97</sup>Werner Schiffhauer, *Migration and Religion: A special Relationship*, Germany: Goethe-Institut, Fikrun wa Fann, 2006, 5.



- f) demands for time-off of work for religious purposes (such as for visiting mosques to participate in Friday prayer) or for appropriate prayer facilities in the workplace;
- g) for Muslims, provision of *halal* (sanctioned) food or *kosher* food for Jews or vegetarian food for Hindus in schools and public institutions such as prisons and hospitals;
- h) ritual slaughter of animals;
- i) matters surrounding burial (such as gaining designated areas of public cemeteries for specific religious communities, obtaining permission for burial in a cloth shroud instead of a coffin, urging speedy issuing of death certificates for burial within twenty-four hours, and immersion in water the ashes of cremated persons);
- j) taking oaths on sacred scriptures (e.g., on the Qur'an for Muslims, on the Bhagavad Gita for Hindus, on the Guru Granth Sahib for Sikhs); and altering work and school uniform codes to allow women to wear particular forms of dress (including headscarves) in the interest of modesty.<sup>98</sup>

It should be kept in mind that there is no EU policy on religion; “nor is there an express legal competence in the treaties on the Union to encroach on religion and religious affairs”.<sup>99</sup> However, as Carrera and Parkin states, since the Amsterdam Treaty “a set of harmonised European laws and common policies have emerged dealing with (or having implications for) religion and religious affairs in different framings and institutional configurations”.<sup>100</sup> The attempts of the EU Institutions and the legal status of the concept of freedom of religion is analysed in the following chapter and it can be postulated that although in theory the concept of freedom of religion is a human right. However in practice, especially when it is considered in socio-cultural framings, it may seem as a part of multicultural and diverse societies. In this direction, it could be argued that “the accommodation of diversity is a necessary, but insufficient, means toward creating a society truly multicultural in practice and identity”.<sup>101</sup>

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<sup>98</sup>Vertovec and Wessendorf, *Migration and Cultural, Religious and Linguistic Diversity in Europe: An Overview of Issues and Trends*, 8-9.

<sup>99</sup>Sergio Carrera and Joanna Parkin, “The Place of Religion in European Union Law and Policy: Competing Approaches and Actors inside the European Commission”, RELIGARE Working Document No. 1 (2010): 4.

<sup>100</sup>Ibid.

<sup>101</sup>Ibid., 10.

### 1.3. The Challenges of Multiculturalism in the EU

Multiculturalism in the EU can be considered as a “critical concept in understanding the new - i.e. post-1989 - Europe, as an ethnographic reality within that Europe, and as a political project adopted by many of Europe’s policy-makers”.<sup>102</sup> According to Kymlicka, “multiculturalism’s successes and failures, as well as its level of public acceptance, have depended on the nature of the issues at stake and the countries involved”.<sup>103</sup> Moreover, the emergence and prevalence of the concept of multiculturalism has led to hot-debated issues both at the Member States’ level and the EU level since the emergence of the concept. These debates regarding the multiculturalism are intensified around the themes of European identity, European citizenship, migration, and human rights issue. In addition to these, perceiving multiculturalism as a threat for the existing national identities has added a new dimension to the discussions as it can be observed below.

Europe as a space of citizenship, engagement, and participation, as a space of belonging that is both regional and national, even ethnic and religious, will add a new element to the individual’s choice of identity: thinking of oneself as European. Multiculturalism as the basis for negotiating multiple identities might solve problems of allegiance by enabling people to think of the EU not as a construct like the nationstate but as the coexistence among the identities that compose it.<sup>104</sup>

Gradual multiculturalization of Europe is at stake with the perpetual migrants, and enlargements. What is more, it can be claimed that after certain events take part in Europe such as the events in Holland, and London bombings a visible Islamophobia and a public retreat has occurred against multiculturalism aggravating the existing problems. This retreat includes the need to deal with renewed politicization of religion and freedom of religion in particular. Thus, it can be argued that regarding the multiculturalism and freedom of religion in Europe and European identity, there may emerge debates and questions related to the subject matter. To illustrate, identity based discussions has taken their part in national agendas of the Member States mostly in pejorative contexts. Most of the Dutch citizens see the multiculturalism, with particular

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<sup>102</sup>Tariq Modood and Pnina Werbner, eds., *The Politics of Multiculturalism in the New Europe: Racism, Identity and Community* (London, New York: Zed Books, 1997).

<sup>103</sup>Kymlicka, *Multiculturalism: Success, Failure, and the Future*, 2.

<sup>104</sup>Kastoryano, “Toward a European Multiculturalism”, *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, 20.

reference to Islam, as “a threat to their national identities”.<sup>105</sup> At the other end of the spectrum there are EU’s demographic concerns which should also be considered pragmatically.

According to the European Commission, the EU is facing “unprecedented demographic changes (an ageing population, low birth rates, changing family structures and migration); and in the light of these challenges it is important, both at EU and national level, to review and adapt existing policies”.<sup>106</sup> In this respect, this communication develops a reference framework at Community level for Member States’ policies. The framework has set out five areas that respond to a common perspective of restored confidence:

- a) Promoting demographic renewal in Europe
- b) Promoting employment in Europe: more jobs and longer working lives of better quality
- c) A more productive and dynamic Europe
- d) Receiving and integrating migrants in Europe
- e) Sustainable public finances in Europe: guaranteeing adequate social security and equity between the generations.<sup>107</sup>

In this framework it can be argued that migration should be encouraged in EU by receiving and integrating migrants in Europe. Thus, the increase in the number of migrants may mean a natural increase in diversity. The Common Basic Principles (CBP) for Immigrant Integration Policy in the EU was adopted by the Justice and Home Affairs Council in November 2004 and it forms the foundations of EU initiatives in the field of integration.<sup>108</sup> With particular reference to the subject matter of the thesis, some of the common basic principles of immigrant integration may be referred. The principles read as following.

CBP 1: “Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States”.

CBP 2: “Integration implies respect for the basic values of the European Union”.

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<sup>105</sup>Gerd Baumann, *Çokkültürlülük Bilmecesi: Ulusal, Etnik ve Dinsel Kimlikleri Yeniden Düşünmek*, Işıl Demirakin, trans., (Ankara: Dost Kitabevi Yayınları, 2006), 21.

<sup>106</sup>European Commission, *Employment, Social Affairs and Inclusion*, <http://ec.europa.eu/social/main.jsp?catId=502&langId=en> (Accessed 09.01.2014).

<sup>107</sup><http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0571:EN:NOT> (Accessed 09.01.2014).

<sup>108</sup>European Commission, *EU Actions to Make Integration Work*, [http://ec.europa.eu/ewsi/en/EU\\_actions\\_integration.cfm](http://ec.europa.eu/ewsi/en/EU_actions_integration.cfm) (Accessed 09.01.2014).

CBP 8: “The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law”.<sup>109</sup>

Considering the integration policies of the EU and the issue of multiculturalism, it can be claimed that they are laced with good intentions and relative actions, yet they are far from the being successful. Vertovec’s and Wessendorf’s recapitulation of the criticisms made for the multiculturalism in the EU may be cited at this point. They recapitulate the challenges of multiculturalism by epitomizing the issue as such

- a) Almost all discourses of multiculturalism entail a kind of ‘ethnisation’, or a process through which cultural values are presumed to imbue all interests among members of ethnic minority communities (that is, that immigrants are always drawing from an imported ‘cultural agenda’ rather than, for instance, basing their interests on the fact that they may be coworkers, neighbours, parents);
- b) Political representation or consultation under multiculturalism may amount to a kind of internal neo-colonialism underpinning undemocratic forms of leadership within presumed bounded ‘communities’;
- c) These same forms of community consultation may lead to the local state freezing a specific kind of relationship with highly institutionalised minority groups and certain representatives, to the disadvantage of newer or less organised groups or other voices within a group;
- d) Well-meaning multiculturalist policies which local government authorities initiated in the 1980s may work to the disadvantage of minorities by creating conditions of dependency among, and rivalry for state largesse between, ethnic minority groups;
- e) Too much attention to cultural identity can divert attention from other issues of inequality surrounding racism, sexism, class, housing, unemployment, the justice system;
- f) Multicultural policies may have the effect of putting ethnic minority populations into virtual cultural conservation areas like endangered species. In the name of a vague relativism and noninterference with tradition, culturally-defined no-go areas have been created among social workers, health care practitioners, police and other workers in the public realm who feel an inability to act because they think it is racist to interfere with “ethnic cultures”.<sup>110</sup>

In addition to these criticisms, one may also claim that although the EU states that “the practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded” it also adds the phrase that “unless practices conflict with other inviolable European rights or with national law”.<sup>111</sup> At this point, there emerges a contradictory situation. To illustrate, the practice of religion is

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<sup>109</sup>Ibid.

<sup>110</sup>Vertovec; Wessendorf, *Migration and Cultural, Religious and Linguistic Diversity in Europe: An Overview of Issues and Trends*, 10.

<sup>111</sup>Ibid.

guaranteed, yet the headscarf is forbidden in some Member States. If the Member States adopt national laws limiting religious freedoms like the above mentioned one, and the national laws supersedes the Charter, then one may ask whether the EU comprehensively guarantee religious practices or not.

Moreover, the cultural matters are in the sphere of ‘supporting competence of the union’ (Article 6 of the TFEU) namely, the EU can only intervene to support, coordinate or complement the action of Member States. Consequently, it has no legislative power in these fields and may not interfere in the exercise of these competences reserved for Member States.<sup>112</sup> In this direction, religion and the freedom of religion is also in the sphere of supporting competence of the Union. Reading the Vertovec’s critical statements regarding the multiculturalism, one may claim that the EU should improve its culture-oriented and multicultural attempts. It can be reiterated that the EU lacks a clear perspective of multiculturalism in its Member States. Yet, when it comes to the candidate countries, the EU has expectations and vague requirements in the Regular Progress Reports, especially in the case of freedom of religion in Turkey. Furthermore, according to Guiraudon, questions related with freedom of religious expression and cultural specificities have also been “the subject of controversies over immigrants and have (re)launched the debate over multiculturalism”.<sup>113</sup>

To sum up, although often criticized and considered as being *de facto* multiculturalist, one may argue that the EU, at least, respects cultures and tries to promote diversity. As stated previously, it ensures the cultural dimension which is included in other EU policies - especially international relations, regional development, education and employment; promotes cultural activities directly through its various support programmes in all policy fields. Moreover, Commission considers cultural

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<sup>112</sup>Europa, *Division of Competences within The European Union*, [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0020\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm) (Accessed 17.02.2014).

<sup>113</sup>Virginie Guiraudon, “Multiculturalism and European Law” in *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, ed. Riva Kastoryano (New York: Palgrave Macmillan, 2009), 142.

diversity in all regulatory and financial decisions and proposals.<sup>114</sup> The EU Member States manage religion-oriented issues by themselves or construct a new culture regarding the religious freedoms by means of the EU.

Although freedom of religion has been dealt with mainly within the context of human rights in theory, it is an integral part of socio-cultural structure in practice. Furthermore, it can be considered within the framework of multiculturalism in the EU when religious symbols, clothes, rituals are considered. When examined, it can be seen that the issue of freedom of religion has been mainly left to the Member States. However, the EU observes and monitors the situation of the freedom of religion in candidate states, and it deals with the concept during the candidature processes. Thus, it can be argued that the concept of freedom of religion plays an important role as a political criterion on the enlargement waves of the EU. Before elaborating its role and impact on enlargements, explaining and analyzing the content and situation of the concept of freedom of religion in the EU may be useful.

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<sup>114</sup>European Commission, [http://ec.europa.eu/culture/our-policy-development/european-agenda-for-culture/mainstreaming-within-the-commission\\_en.htm](http://ec.europa.eu/culture/our-policy-development/european-agenda-for-culture/mainstreaming-within-the-commission_en.htm) (Accessed 06.02.2014).

## 2. FREEDOM OF RELIGION IN THE EUROPEAN UNION

The European Union (EU) touches upon many facets of everyday life. Although it initially focused on an economic and political integration, the EU has increasingly been dealing with the social aspects of the integration. At this point, cultural and religious diversity emerge as a social reality upon which the EU depends.<sup>115</sup> The gradual formation of multicultural societies in Europe has turned some concerns into compulsory issues to analyse the socio-cultural nature of the EU and accordingly, the future of the EU. Besides, freedom of religion in the EU is also one of these issues. When the EU and religious issues –in this context the freedom of religion- are juxtaposed, they often connote the Christian roots and nature of the EU. This chapter aims to analyse the content and evolution of the concept of freedom of religion in the EU within the framework of multiculturalism. However, discussions on whether the EU is a Christian Club or not is beyond the scope of this study. It should be noted that there is no EU policy on religion; nor is there an express legal competence in the treaties of the Union to “encroach on religion and religious affairs”.<sup>116</sup> However, since the Amsterdam Treaty there have been a set of harmonised European laws and common policies dealing with (or having implications for) religion and religious affairs in different framings and institutional configurations.<sup>117</sup> In this context, this chapter also aims to explore the historical social formation of the concept of freedom of religion in the EU and examines the legal and political frameworks regulating it.

### 2.1. Freedom of Religion as a Concept

The concept of freedom of religion has been an evolved and a dynamic term which has gradually become an important part of the political agendas. Over time, the content of the concept has changed and transformed. However, whatever the form and

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<sup>115</sup>EU depends on the very idea of “United in Diversity”, and it officially adopted this phrase as its motto in 2000. The motto means that, via the EU, Europeans are united in working together for peace and prosperity, and that the many different cultures, traditions and languages in Europe are a positive asset for the continent. Namely, the EU sees diversity as an enriching factor for the prosperity of the continent. Thus, while examining the historical background and formation of the freedom of religion in the EU, this chapter also contextualizes freedom of religion within the framework of “United in diversity” claims.

<sup>116</sup>Carrera and Parkin, *The Place of Religion in European Union Law and Policy*, 4.

<sup>117</sup>*Ibid.*

content of the concept has been, it can be asserted that it has achieved to stay on the agenda of states, international organizations and actors. Fostered by different phenomenons under the umbrella of multiculturalism, religious diversity is a social reality in the EU, namely it is highly visible in daily lives; from wedding ceremonies to the burial ceremonies, from the clothes worn to the religious practices performed. Thus, it has been on the agenda of the EU. Before analyzing the history of the concept and its existence in the EU, a detailed conceptual analysis might provide useful insights for examining its evolution in the EU.

Historically, socially and culturally, an understanding of religion and thus the concept of freedom of religion can have idiosyncratic<sup>118</sup> significances and meanings peculiar to nations. On the Member State basis, it can be observed that Germany's understanding and conducting its religious affairs differ from Greece's, and Greece's affairs may be claimed as quiet different from Sweden. The 28 Member States may have their own systems regulating the freedom of religion within pre-constructed and shaped patterns. Moreover, as Caplin argues "the EU has also regulating and standardizing systems and frameworks for the socio-cultural matters of the Member States, yet it is limited".<sup>119</sup> The EU leaves most of the socio-cultural matters and policies to the Member States.

Moreover, in this direction, it can be pointed out that religions also have their own idiosyncratic perception and definitions of the concept of freedom of religion. To illustrate, according to Catholic understanding, freedom of religion means

No one is to be forced – by individuals, social groups or any human authority – to act against his convictions in matters of religions, neither prevented from acting according to them, and that not only in private, but also in public, not only individually, but also in association with others (safe for certain limits imposed by the respects for the rights of others and public peace and morality).<sup>120</sup>

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<sup>118</sup>Ali Köse and Talip Küçükcan, eds., *Avrupa Birliği Ülkelerinde Din-Devlet İlişkisi : Hukuki Yapı, Din eğitimi, Din hizmetleri* (İstanbul: Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi, 2008).

<sup>119</sup>Mark Chaplin, "New eu guidelines on religious freedom welcomed," *Christian Today*, 26, 04, 2013, World. <http://www.christiantoday.com/article/new.eu.guidelines.on.religious.freedom.welcomed/32964.htm> (Accessed 10.11.2013).

<sup>120</sup>Marcel Chappin, "The Development of the Idea of Tolerance Within The Religious Community, The Catholic Church From Tolerance to Freedom of Religion," in *Religions, Cultures and Tolerance Past and Present* (Ankara: Ankara Üniversitesi Rektörlüğü Yayınları, 1990), 35.



This meaning is also highlighted and elaborated in the Declaration on Religious Freedom of 1965 by the Second Vatican Council.<sup>121</sup> The definition in the aforementioned document defines the concept as

The human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.<sup>122</sup>

Moreover, according to the understanding of Islam being a religion which can be considered as the most visible minority religion in the Member States, “the liberty of the religion other than itself is tolerated and acknowledged and Islam decrees to respect the beliefs and all the rights of the members of those religions and to treat them justly.”<sup>123</sup> The list of definitions of the concept can be extended for different religions and even for different sects. However, it should be noted that what this concept means in the EU is the focus of this study. Because, the concept of freedom of religion certainly a dynamic concept taking on “new shape under the influence of forces which impinge on it”.<sup>124</sup> Accordingly, it can be argued that like the term religion, the religious freedom and freedom of religion are contested in their sociological and philosophical natures, namely they can be considered within the context of ‘essentially contested concepts’<sup>125</sup> and in addition, they can be claimed to be shaped and influenced by acts, identities of the states, actors, institutions and individuals. Thus, as it is also stated above, there can be a wide-variety of definitions for the concept.

However, one may well advocate that the concept of freedom of religion can be defined more objectively from the legal perspectives to a certain degree. There are multiple legal frameworks and documents defining the concept including Universal

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<sup>121</sup>Ibid., 40-52.

<sup>122</sup>Ibid.

<sup>123</sup>Süreyya Şahin, “The Attitude of Islam Towards Non-Muslims in the Course”, in *Religions, Cultures and Tolerance Past and Present* (Ankara: Ankara Üniversitesi Rektörlüğü Yayınları, 1990), 63.

<sup>124</sup>Arvind Sharma, *Problematazing Religious Freedom*, (Canada: Springer, 2010), 87.

<sup>125</sup>Gallie (1956) asserts that any particular use of any concept of commonsense or of the natural sciences is liable to be contested for reasons better or worse; but whatever the strength of the reasons they usually carry with them an assumption of agreement, as to the kind of use that is appropriate to the concept in question, between its user and anyone who contests his particular use of it (1956:1). See: W.B Gallie, “Essentially Contested Concepts,” *Proceedings of the Aristotelian Society* Vol.56, (1956): 167-198.

Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). Yet, the definition in Article 9 -10 of the *EU Guidelines on the promotion and protection of freedom of religion or belief* can be adopted for a general sense of the definition of the concept. The relevant Articles of the guideline are

9. Freedom of religion or belief is enshrined in Articles 18 of both the UDHR and of the ICCPR, which should be read in the light of the UN Human Rights Committee's General Comment n°22. Under international law, FoRB has two components:

- (a) the freedom to have or not to have or adopt (which includes the right to change) a religion or belief of one's choice, and
- (b) the freedom to manifest one's religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching.

10. In line with these provisions, the EU has recalled that "*freedom of thought, conscience, religion or belief, applies equally to all persons. It is a fundamental freedom that includes all religions or beliefs, including those that have not been traditionally practised in a particular country, the beliefs of persons belonging to religious minorities, as well as non-theistic and atheistic beliefs. The freedom also covers the right to adopt, change or abandon one's religion or belief, of one's own free will*".<sup>126</sup>(italics in original).

In this framework, it can be easily observed that the term has different contents and definitions for the different religions, and actors. The concept of freedom of religion is defined comprehensively in the guideline which is originally proposed for non-EU countries. As the international, local and EU level treaties and documents in this guideline are referred in the guideline with regard to freedom of religion, this guideline be considered comprehensively. It may be useful to highlight that the EU has no explicit legal competence in the sphere of religion and in the state-religion affairs of the Member States. However, it can be advocated that religious concerns have been increasing within different contexts in the EU; the concept of freedom of religion is examined in the EU within the frameworks of human rights and multiculturalism.

Before examining the history of the concept of freedom of religion it should be noted that it is a difficult concept to define and limit. It should be kept in mind that, when thought within the multiculturalist framework, the absence of a real European system for cultural statistics, or the fact that no harmonized specific data on culture are

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<sup>126</sup>Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, Luxembourg, 2013.

yet produced, means that data produced by Member States are often very difficult to compare due to;

- a) differences in the definition of the cultural field and its boundaries,
- b) the constant evolution of the cultural field, which jeopardizes consensus on its very definition,
- c) the diversity of administration and data generation systems for cultural statistics within the European Union,
- d) the production of data from countries that are heterogeneous in terms of collection methods, periodicity, field covered and sources used, and
- e) the absence of any centralization mechanism at European level.<sup>127</sup>

Thus, from a statistical and comparative standpoint, it can be advocated that the concept of freedom of religion shares the same destiny with culture in the above-mentioned context and it may lack the pure notion of being scientific due to these factors. However, rather than trying to wander around what it means and which elements and factors it contains, the gradual formation and internalization, if it exists, of the concept within a multicultural context in the EU is examined below.

## 2.2. Historical Evolution of Freedom of Religion

Religion and religion oriented issues have been a crucial part of the agendas in both international and national forums. It will not be wrong to claim that hundreds of years have passed from the domination of the principle of *Cujus regio ejus religio*,<sup>128</sup> to the principle of *Everyone has the right to freedom of thought, conscience and religion*.<sup>129</sup> In an ongoing period, as the concept and term religion<sup>130</sup> itself, the meaning inferred from the concept of freedom of religion has also changed and evolved in Europe and consequently in the EU.

Historically, it has been widely acknowledged that freedom of religion refers to the tolerance of different theological systems toward each others. In Europe, the development of a notion on the subject of toleration began in the sixteenth and

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<sup>127</sup>Essnet-Culture, *European Statistical System Network on Culture*, Luxembourg, 2012, 25.

<sup>128</sup>Whose the region is, his the religion.

<sup>129</sup>The European Convention for Protection of Human Rights and Fundamental Freedoms, *Article 9*.

<sup>130</sup>For comprehensive information on Religion in Europe see:

John Fulton and Peter Gee, eds., *Religion in Contemporary Europe* (New York: The Edwin Mellen Press, 1994).

Andrew M. Greeley, *Religion in Europe at the End of the Second Millennium: a sociological profile*. (New Brunswick: Transaction Publishers, 2001).

seventeenth centuries, as a consequence and response to the Protestant Reformation and the Wars of Religion. It began to prevail as a response to conflict among Christians and to the persecution of witchcraft and heresy.

The roots of freedom of religion can be traced back to the Reformation movement and the Enlightenment in Europe where in both of these phenomena a certain degree of freedom of religion was at stake. It can be advocated that before Reformation and Enlightenment religious freedom in Europe was limited by authorities. As the historians claim “prior to the Reformation and the Enlightenment, namely in Medieval time, there were barely signs of religious freedoms in Europe”.<sup>131</sup> The Reformation challenged to religious authority, and the Enlightenment highlighted the notion of individual liberty. And, the key reason of the emergence of religious freedom in Europe is recapitulated by Richardson as

The beginning of the modern concept of religious freedom is usually credited to the tragic religious civil wars that ravaged Europe during the 16th and 17th centuries, following the Reformation, particularly the Thirty Years War in Germany, which brought about the deaths of millions of people. In 1618 the German Empire had 10 million people; in 1648 it only had six million. This decade’s long tragedy led to efforts to find ways for people of different faiths to live together in relative peace.<sup>132</sup>

As the World War II triggered the compulsory reconstruction of Europe, it will not be wrong to claim that ongoing series of religion-oriented wars triggered the notion of the promotion and protection of religious freedoms in Europe. As Richardson emphasized “after the killing of millions, the idea of toleration, the forerunner of the concept of religious freedom, seemed to those in authority to be worth trying, and so it was, bringing a modicum of peace to the war-ravaged European subcontinent”.<sup>133</sup> In other words, it may be pointed out that “in the XVI. century, some intellectuals-called *politiques* are in favour in toleration for another reason: they want to avoid bloodshed, and stress the necessity of freedom of conscience”.<sup>134</sup> In the 16th and 17th centuries,

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<sup>131</sup>For further information on Religion in Medieval Europe see: J.M. Roberts, *A History of Europe* (Oxford: Helicon Publishing, 1996).

<sup>132</sup>James T. Richardson, “The Sociology of Religious Freedom: A Structural and Socio-Legal Analysis”, *Sociology of Religion*, (2006):272.

<sup>133</sup>Ibid.

<sup>134</sup>Chappin, “The Development of the Idea of Tolerance Within The Religious Community, The Catholic Church From Tolerance to Freedom of Religion”, 30.

intellectuals like Michel de Montaigne questioned the morality of religious persecution and offered arguments supporting toleration. Subsequently, the history of the concept can be summarized as

In the 17th century the concept of toleration was taken up by British thinkers such as John Milton and was further developed in the late 17th th century by John Locke in his *Letters concerning Toleration* and in his *Two Treatises on Government*. Enlightenment philosophers such as Voltaire further developed the notion of religious tolerance although these ideas did not prevent intolerance and violence in early modern Europe.<sup>135</sup>

Although, it was quite different from today's freedom of religion concept, emancipation from the domination of churches and religious authorities was possible to a certain degree thanks to Reformation and the Enlightenment. However, it should be noted that "Enlightenment in Western Europe was underpinned not by a promotion of the rights of minority religions, but rather a Lockean<sup>136</sup> notion of individual rights to freedom of belief, even if that belief diverges from the dominant or mainstream religion".<sup>137</sup>

As a legal step, the Declaration of the Rights of Man and of the Citizen (1789)<sup>138</sup> can be considered as another cornerstone paving the way for the freedom of religion by guaranteeing it, as long as religious activities do not harm public order. In its Article 10, it states that "no one should be disturbed for his opinions, even in religion, provided that their manifestation does not trouble public order as established by law".<sup>139</sup> And, from the end of the eighteenth century, throughout Western Europe, the official clergy was challenged by various religious dissenters and minorities. Chapel's confronting church in Britain and Scandinavia; Catholics struggling against Protestants in Germany and

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<sup>135</sup>Triandafyllidou, "Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries."

<sup>136</sup>Originally published in Latin in 1689 by John Locke, and translated into English by William Popple *A Letter Concerning Toleration* proposes religious toleration as an answer and solution to the problematic relations of government and religious authorities. For the full text see: John Locke, "A Letter Concerning Toleration", William Popple, trans., 1689, <http://www.efm.bris.ac.uk/het/locke/toleration.pdf> (Accessed 20.11.2013).

For more information on Locke see: Metin İşçi, *Siyasi Düşünceler Tarihi* (İstanbul: Der Yayınları, 2011).

<sup>137</sup>Kathleen Cavanaugh, "Islam and The European Project". *Muslim World Journal of Human Rights, The Berkeley Electronic Press*, Volume 4, Issue 1, (2007): 2.

<sup>138</sup>Declaration of the Rights of Man and Citizen, 26 August 1789. Many of the reforms favored by Enlightenment writers appeared in this declaration: freedom of religion, freedom of the press, no taxation without representation, elimination of excessive punishments, and various safeguards against arbitrary administration. For the full text see: Liberty, Equality, Fraternity: Exploring the French Revolution, <http://chnm.gmu.edu/revolution/d/295/> (Accessed 20.11.2013).

<sup>139</sup>Ibid.

Ireland and the war between anti-clerical and Catholic in France and Spain reaching its climax in the Spanish bloodbath of 1930s can be used as illustrations to this claim.<sup>140</sup> Europe between 1890 and 1945<sup>141</sup> is generally considered a continent where conflict, communism and fascism prevailed to a certain degree. Once the religion was a unifying factor for rulers and states, it might turn into a divisive one as it was in Europe. Thus, it may be advocated that religion-oriented social unifications or diversions do not proceed in a linear way. Once, religion was one method of unifying disparate and diverse populations and building a public sphere. As McDonough argues “for monarchies, whether Catholic, Orthodox, Lutheran, or Calvinist, it was, centrally, a law and order question in Europe” at those monarchical times.<sup>142</sup> However, in time religion might result in a fashion to discriminate. This situation of discrimination was rendered visible in the World War II against the Jews; this was not the first religious discrimination, yet may be the most visible one after the Medieval times. Through the end of the war, the legacy of the social discriminations was so horrible that the continent struggled to erase its traces by encouraging various human rights initiatives. From the vantage points of public and political spheres, this may be the situation. Moreover, legal standpoints has limited and regulated the issue to a certain degree within the framework of human rights.

From the legal perspective, adopted by the UN General Assembly on 10 December 1948, The Universal Declaration of Human Rights<sup>143</sup> (UDHR) can be considered as the antecedent of all legal documents of Europe incorporating the freedom of religion clause.

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>144</sup>

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<sup>140</sup>Hugh McLeod, *Religion and the People of Western Europe 1789-1989* (Oxford: Oxford University Press, 1997).

<sup>141</sup>Frank McDonough, *Conflict, Communism and Fascism: Europe 1890-1945* (Cambridge: Cambridge University Press, 2001).

<sup>142</sup>Cavanaugh, “Islam and The European Project”, 3.

<sup>143</sup>United Nations, The Universal Declaration of Human Rights, *History*, <http://www.un.org/en/documents/udhr/history.shtml> (Accessed 08. 11. 2013).

<sup>144</sup>United Nations, *The Universal Declaration of Human Rights, Art.18*, <http://www.un.org/en/documents/udhr/index.shtml> (Accessed 08.11.2013).

It can be claimed that this article of UDHR has laid the legal foundations of freedom of religion in the international human rights framework. In 1966 the norms of the UDHR were turned into legally binding provisions by two Covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In this background, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976, the Article 18 of the ICCPR has carried the efforts a step further and has elucidated the case of freedom of religion in a more detailed way stating

#### ICCPR (1966)

##### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right *shall include freedom to have or to adopt a religion* or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his *freedom to have or to adopt a religion* or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>145</sup>(italics in original)

Unlike the UDHR, the ICCPR is legally binding and more detailed. Furthermore, the scope of the concept has changed obviously in time with each step taken against and towards it, and with each binding and non-binding documents including articles with regard to the freedom of religion.<sup>146</sup>

Inspired by Universal Declaration of Human Rights, the European Convention for Protection of Human Rights and Fundamental Freedoms was drafted in 1950 and

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<sup>145</sup>United Nations Human Rights, *International Covenant on Civil and Political Rights, Art. 18*, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (Accessed 08.11.2013).

<sup>146</sup>For inclusion of the term for different organizations and for inclusion it in various legal frameworks see: Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, 2013.

entered into force by the Council of Europe.<sup>147</sup> This international treaty aims to protect human rights and fundamental freedoms in Europe and Article 9 of it is of great importance in that it forms one of the precedents of the EU's perception of the concept of freedom of religion.

#### ARTICLE 9

##### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>148</sup>

Consequently, in today's world the concept has different connotations and usages changing from religion to religion, state to state and actor to actor. However, it can be asserted that Europe has gradually recognised the rights of minority groups and religions. Yet, as Cavanaugh argues "this recognition is very much framed and indeed focused on individual, rather than group notions of rights, that is, the freedom to hold a belief by an individual as opposed to the rights of religious organizations".<sup>149</sup> However, this can be considered as an important step paving the way for more diversified and rich layers of society.

In that direction, considering the EU as an international actor, one may argue that the EU has also taken steps to elucidate the concept. Yet, there is no explicit EU policy on religion; nor is there an expressed and highlighted legal competence in the treaties regulating the Member States' religious affairs. It is acceptable that the concepts of secularization and laicity has not been on the agenda of the EU, however, religion and religion oriented issues in the EU<sup>150</sup> have never lost their priority and importance within different frameworks, and multiculturalism context can be

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<sup>147</sup>Council of Europe is an international organisation in Strasbourg which comprises 47 countries of Europe. It was set up to promote democracy and protect human rights and the rule of law in Europe.

<sup>148</sup>The European Convention for Protection of Human Rights and Fundamental Freedoms, *Article 9*.

<sup>149</sup>Cavanaugh, "Islam and The European Project", 2-3.

<sup>150</sup>For further information on religion in the EU Member States see: Stuart Mews, ed., *Religion in Politics: A World Guide* (Essex: Longman, 1989) and Köse and Küçükcan, eds., *Avrupa Birliği Ülkelerinde Din-Devlet İlişkisi*, 2008.



considered as one of these contexts shaping the evolution of the concept of freedom of religion.

### **2.3. Freedom of Religion in EU Law**

When it comes to the EU dimension of the concept of freedom of religion, it will not be wrong to claim that the concept has gradually become a crucial part of the EU agenda. The concept has gained its place on the agendas mainly by means of three pivotal phenomena including migration and the EU enlargements which have been discussed in the first chapter of the thesis. In this part of the thesis, the legal and official documents regarding the freedom of religion including the EU Treaties, the Charter of Fundamental Rights of the EU is examined and the place of the concept in the EU Institutions is studied.

#### **2.3.1. Freedom of Religion in EU Treaties and Official Documents**

Protection and promotion of the fundamental rights and freedoms has been an important matter for the EU. However, as it is stated earlier “the EU has no expressly recognised competence in the treaties to enact legislation covering the religious domain, and member states retain sovereignty over the status of churches and religious associations or communities”.<sup>151</sup> Nevertheless, since the entry into force of the Amsterdam Treaty in May 1999 and the Treaty of Lisbon in December 2009, the relationship between religion and European law, and the multifaceted linkages of the latter with several EU policies, has been profoundly reconstructed and transformed; besides “these transformations challenge preliminary assumptions about the limited, or supposedly non-existent role that the EU is presumed to have over religion”.<sup>152</sup> Fostered by these challenges, the transformation and the gradual evolution of the concept of freedom of religion become more visible within EU. Treaties and main EU Institutions can be examined in this context.

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<sup>151</sup>Carrera and Parkin, “The Place of Religion in European Union Law and Policy: Competing Approaches and Actors inside the European Commission”, 2010.

<sup>152</sup>Ibid.

As it is widely acknowledged the EU's (then ECSC, EEC, and EC) initial steps did not aimed at social issues such as cultural diversity and freedom of religion in a multicultural Europe. That is mainly because then, the six founding states thought that they were just merging their markets. As it has been widely acknowledged that the legacy of the World War II to the Europe was an economically and socially ruined continent which was in need of urgent help and development. The internal and external context of the Europe in 1940s, 1950s and 1960s necessitated first of all, an economic reconstruction. Social issues were of secondary importance to the Community when compared to the economic ones. From this point, the situation gradually comes the point where the Europeans have entitled with wide spectrum of rights and freedoms which are guaranteed by law. The evolution process of the legal background of the concept alternately follows the below mentioned and briefly examined steps.

First of all, signed in 1951 entered into force in 1952, Treaty establishing the European Coal and Steel Community aimed to create interdependence in coal and steel by pooling them thus preventing signatory countries mobilising their armed forces without others knowing. The Treaty aimed both economic and political cooperation in Europe. However, any important step regarding the fundamental rights and freedoms has not been taken. Thus, it can be claimed that there is no explicit hints of fundamental rights and freedoms in the Treaty establishing the European Coal and Steel Community.<sup>153</sup>

As the second important development, signed in 1957 entered into force in 1958, Treaties of Rome (EEC and EURATOM treaties)<sup>154</sup> aimed to set up the European Economic Community and the European Atomic Energy Community. In addition, Treaties of Rome aimed an economic integration. Thus, the issue of fundamental rights and freedoms was of secondary importance in that time. However, in the Treaties of Rome, free movement of persons, services and capital was regulated, equal payment for equal work principle for the women and the men was regulated and in a general

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<sup>153</sup>Treaty Establishing the European Coal and Steel Community, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11951K:EN:PDF> (Accessed 09.11.2013).

<sup>154</sup>Engin Nomer and Özer Eskiuyurt, *Avrupa Sözleşmeleri* (İstanbul: İstanbul Üniversitesi Hukuk Fakültesi, 1975).

perspective discrimination was tried to be prohibited. Although this discrimination did not have a relation with religious issues, it can be considered as an important step.

Signed in 1986 and entered into force in 1987, the Single European Act<sup>155</sup> can be considered as a further improvement. It has regulative measures for some of the freedoms. The Article 8A defines the objective of the Act, which is to progressively establish the internal market over a period expiring on 31 December 1992. In the same article, the Single Market is defined as an area “without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty”.<sup>156</sup> Moreover, in the Preamble, it has been acknowledged that “the signatories are determined to work together to promote democracy on the basis of fundamental rights recognised in the constitution and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice”.<sup>157</sup> Thus, it may be advocated that the Single European Act is among the first legal documents of the EU on promotion of the fundamental rights and freedoms.

Another improvement for the concept of freedom of religion took place in 1992. Signed in 1992 entered into force in 1993 Treaty on European Union (Maastricht Treaty)<sup>158</sup> aimed to prepare for European Monetary Union and introduce elements of a political union (citizenship, common foreign and internal affairs policy). In the article F(2) of the Treaty it has been stated

The signatories confirmed their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law, and desired to deepen the solidarity between their peoples while respecting their history, their culture and their traditions.<sup>159</sup>

As general principles of Community law, the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4

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<sup>155</sup>The Single European Act, [http://ec.europa.eu/archives/emu\\_history/documents/treaties/singleeuropeanact.pdf](http://ec.europa.eu/archives/emu_history/documents/treaties/singleeuropeanact.pdf) (Accessed 09.11.2013).

<sup>156</sup>Ibid.

<sup>157</sup>Ibid.

<sup>158</sup>Treaty on the European Union, <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> (Accessed 10.11.2013).

<sup>159</sup>Ibid.

November 1950 and the constitutional traditions common to the Member States are stated as the source of the fundamental rights. Although, not making specific references to the freedom of religion, the Treaty highlights the protection and promotion of fundamental rights and freedoms as well as defining European Citizenship in Article 8. European Citizenship is regulated and amended in the TFEU Article 18 (ex Article 12 TEC) as below-cited

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.<sup>160</sup>

Moreover, Article 19 (ex Article 13 TEC) of the TFEU regulates the discrimination issue and it states that

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.<sup>161</sup>

This article of the TFEU, as well as regulating the discrimination issue on the basis of sex, racial or ethnic origin, disability, age or sexual orientation, regulates and states the measures which should be taken by the institutions on the basis of a religion and belief discrimination.

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<sup>160</sup>The Treaty on the Functioning of the European Union came into force on 1 December 2009 following the ratification of the Treaty of Lisbon, which made amendments to the Treaty on European Union and the Treaty establishing the European Community (TEC). The TFEU is an amended and renamed version of the TEC. The TFEU includes enhancements to the social dimension of the European Union. It adds the non-discrimination principle (Article 10 TFEU) and equality between women and men (Article 8 TFEU) to the values of the European Union. <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/treatyonthefunctioningoftheeuropeanunion.htm> and The TFEU, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF#page=10> (Accessed 17.11.2013).

<sup>161</sup>Ibid.

Moreover, established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995, criteria known by the Copenhagen Criteria<sup>162</sup> can also be considered as a development for the concept of freedom of religion. Any country seeking membership of the EU must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union.<sup>163</sup> Accordingly, to join the EU, a new Member State must meet three criteria which follow as

a)political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

b)economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;

c)acceptance of the Community *acquis*: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.<sup>164</sup>

The importance of the Copenhagen Criteria for the concept of freedom of religion lies in the political criteria which necessitates promotion of human rights and respect for and protection of minorities. Although, the emphasis for the concept is on the human rights dimension of it rather than its multicultural dimension, these criteria can be considered as another milestone. All in all, a country with a notorious human rights record in this context especially with respect to freedom of religion cannot be a Member of the Union because of the fact that membership to the Union is conditional.

In addition to the afore-mentioned developments, signed in 1997 and entered into force in 1999, the Treaty of Amsterdam<sup>165</sup> also emphasized human rights, democracy, fundamental freedoms and rule of law. What is of great importance in this Treaty is the articles which state that whereas pursuant to the provisions of Article F(2) of the Treaty on European Union, the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and

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<sup>162</sup>Europa, *Accession Criteria, Copenhagen Criteria*, [http://europa.eu/legislation\\_summaries/glossary/Accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/legislation_summaries/glossary/Accession_criteria_copenhagen_en.htm) (Accessed 27.12.2013).

<sup>163</sup>Ibid.

<sup>164</sup>Ibid.

<sup>165</sup>Treaty of Amsterdam, <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (Accessed 10.11.2013).

Fundamental Freedoms signed in Rome on 4 November 1950; whereas the Court of Justice of the European Communities has jurisdiction to ensure that in the interpretation and application of Article F(2) of the Treaty on European Union, the law is observed by the European Community.<sup>166</sup> With this article, the Union formed a protection mechanism in itself supported by the Court of Justice. Moreover, according to the Treaty, on its declaration on the status of churches and non-confessional organisations (Declaration no.11)<sup>167</sup> the European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organisations. Considering this declaration it can be claimed that the EU is highlighting the presence and dominance of national laws regarding the freedom of religion.

As for the Charter of Fundamental Rights of the European Union,<sup>168</sup> drawn up by a convention bringing together the European institutions, representatives of the national parliaments, lawyers, academics and representatives of civil society, the European Charter was adopted as a recommendation and reference text by the European Council in Nice in December 2000. It is a complementary text<sup>169</sup> to the European Convention on Human Rights, which was an initiative of the Council of Europe. It provides EU citizens and residents with certain political, social, and economic rights by means of the EU law. It was drafted by the European Convention and solemnly proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission. However its then legal status was uncertain and it did not have full legal effect<sup>170</sup> until the Lisbon Treaty. In its Article 10, the Charter regulates the freedom of religion stating

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<sup>166</sup>Ibid.

<sup>167</sup>Ibid.

<sup>168</sup>Charter of Fundamental Rights of the European Union, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (Accessed 10.11.2013).

<sup>169</sup>European Parliament, *EU Charter of Fundamental Rights*, <http://www.europarl.europa.eu/aboutparliament/en/0003fbc4e5/Fundamental-Rights.html> (Accessed 10.11.2013).

<sup>170</sup>Paul Craig and Grainne de Burca, *EU Law: Text, Cases, and Materials*, 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 1998).

4. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
5. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.<sup>171</sup>

This article of the Charter lays the foundation of the promotion and protection of the concept of freedom of religion in the EU. Moreover, regarding the subject matter, the Charter regulates Right to education in Article 14, Non-discrimination in Article 21, Cultural, religious and linguistic diversity in Article 22.<sup>172</sup>

Last but not least, signed in 2007 entered into force in 2009 the Lisbon Treaty can be considered as one of the most crucial legal base for the concept freedom of religion that is because the Treaty incorporates the Charter of Fundamental Rights of the European Union. The Treaty aims to establish and sustain “A Europe of rights and values, freedom, solidarity and security, promoting the Union's values, introducing the Charter of Fundamental Rights into European primary law, providing for new solidarity mechanisms and ensuring better protection of European citizens”.<sup>173</sup> Moreover, Article 167 of the TFEU<sup>174</sup> (ex Article 151 TEC) regulates the culture as below cited.

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
  - improvement of the knowledge and dissemination of the culture and history of the European peoples,
  - conservation and safeguarding of cultural heritage of European significance,
  - non-commercial cultural exchanges,
  - artistic and literary creation, including in the audiovisual sector.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

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<sup>171</sup>Charter of Fundamental Rights of the EU, Art. 10, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF> (Accessed 26.11.2013).

<sup>172</sup>Ibid. Art. 14.21.22.

<sup>173</sup>Lisbon Treaty, Preamble, [http://europa.eu/lisbon\\_treaty/glance/index\\_en.htm](http://europa.eu/lisbon_treaty/glance/index_en.htm) (Accessed 14.11.2013).

<sup>174</sup>The Treaty on the Functioning of the European Union, Art.167, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/treatyonthefunctioningoftheeuropeanunion.htm> (Accessed 17.11.2013).

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.
5. In order to contribute to the achievement of the objectives referred to in this Article:
  - the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
  - the Council, on a proposal from the Commission, shall adopt recommendations.

When all considered and analysed, it can be stated that the concept of freedom of religion in the EU legal frameworks has evolved step by step. In Europe, freedom of religion or belief is notably protected by Article 9 of the European Convention on Human Rights and Article 10 of the EU Charter of Fundamental Rights, besides a list of international norms, standards and principles the EU may invoke or use in contacts with third countries are listed at the end of the *EU Guidelines on the promotion and protection of freedom of religion or belief*.<sup>175</sup>

To conclude, the human rights and cultures which are respected and protected by law by the EU derive from the EU legal frameworks and provisions, European Convention on Human Rights, particularly Article 9 of it, and common constitutional conventions of the Member States. This gift system is also applicable to the concept of freedom of religion.

### **2.3.2. Freedom of Religion and the EU Institutions**

As well as having legal and social dimensions, freedom of religion concept has also a highly debated political dimension and it occupies the agenda of the EU institutions mainly including the Council of the European Union, the European Commission, the European Parliament and the Court of Justice of the European Union which all deal with the concept of freedom of religion in different framings.

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<sup>175</sup>Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, 2013. Also see the annex of the guideline which lists international framework for the adoption of the concept.



In that context, it is important to note that “the Council of the European Union is the institutional heart of decision making in the EU”.<sup>176</sup> It can be considered as the main executive and legislative body of the EU. The Council has been issuing drafts, conclusions and guidelines on the freedom of religion. *Council Conclusions on freedom of religion or belief* issued in 2009, *Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief* issued in 2011 and *Council Conclusions on Conflict Prevention*<sup>177</sup> issued in 2011 are among the steps the Council taken for the protection of freedom of religion. The most recent and remarkable of these documents is the *EU Guidelines on the promotion and protection of freedom of religion or belief* issued in June 2013.<sup>178</sup> The focus of the guideline is on the external policy of the EU regarding the definition and scope of the freedom of religion, monitoring and promoting freedom of religion or belief, and protecting this right in non-EU countries. In the guideline as it is clearly stated “the EU is impartial and is not aligned with any specific religion or belief”.<sup>179</sup> Moreover in purpose and scope section, the guideline explains what the international human rights standards on freedom of religion or belief are. Besides, it gives clear political lines to officials of EU institutions and EU Member States, to be used in contacts with third countries and with international and civil society organizations. In order to promote and protect freedom of religion or belief in the EU's external action they also accommodate officials with “practical guidance on how to seek to prevent violations of freedom of religion or belief, to analyse cases, and to react effectively to violations wherever they occur.”<sup>180</sup>

Accordingly, the guideline covers the legal frameworks antecedent to itself. In this guideline, the Council has defined the reason for action, purpose and scope of the term. It is stated in the guideline that the EU action on freedom of religion or belief will be based on the following overriding principles.

1. *Universal character of freedom of religion or belief*

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<sup>176</sup>Jeffrey Lewis, “The Council,” in *European Union Politics*, ed. Michelle Cini and Nieves Perez-Solorzano Borragan, 3<sup>rd</sup> ed. (Oxford; New York: Oxford University Press, 2010), 142.

<sup>177</sup>Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, 2013.

<sup>178</sup>*Ibid.*

<sup>179</sup>*Ibid.*

<sup>180</sup>*Ibid.*

2. *Freedom of religion or belief is an individual right which can be exercised in community with others*
3. Primary role of States in ensuring freedom of religion or belief
4. Connection with the defence of other human rights and with other EU guidelines on human rights.<sup>181</sup>(italics in original)

It is also stated in the document that when addressing freedom of religion or belief,<sup>182</sup> the EU will pay special attention to the following themes, which are all of equal importance: violence, freedom of expression, promotion of respect for diversity and tolerance, discrimination, changing or leaving one's religion or belief, manifestation of religion or belief, support and protection for human rights defenders including individual cases, support for – and engagement with - civil society. Considering the fact that, the guideline defines the concept and offers tools to protect religious freedoms, Caplin argues “it may also strengthen the EU's capacity to defend religious freedom by addressing the causes of violations and formulating responses”.<sup>183</sup>

As for the European Commission, it is “the EU's executive body and represents the interests of Europe as a whole (as opposed to the interests of individual countries)”.<sup>184</sup> As it is known the Commission is divided into several departments and services known as Directorates-General (DGs) which are classified according to the policy it deals with. In the freedom of religion context, the policies of the DG for Education and Culture (DG EAC)<sup>185</sup> could be examined with relation to multiculturalism. However, the DG neither includes nor excludes religion as a component of culture. Within the Commission's *cultural* policy, religion and religious diversity is addressed primarily through policy initiatives on intercultural dialogue led by the Unit within DG EAC on ‘culture policy, diversity and intercultural dialogue’.<sup>186</sup> The Lisbon Treaty (Article 167, paragraph 4; formerly EU Treaty Article 151) requires the Union to take culture into account in all its actions so as to foster intercultural respect and promote diversity. The Commission works to ensure that the promotion of

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<sup>181</sup>Ibid.

<sup>182</sup>Ibid.

<sup>183</sup>Caplin, “New eu guidelines on religious freedom welcomed,” *Christian Today*, 26, 04, 2013, World. <http://www.christiantoday.com/article/new.eu.guidelines.on.religious.freedom.welcomed/32964.htm> (Accessed 10.11.2013).

<sup>184</sup>European Commission, *About the European Commission*, [http://ec.europa.eu/about/index\\_en.htm](http://ec.europa.eu/about/index_en.htm) (Accessed 14.11.2013).

<sup>185</sup>European Commission, *Education and Culture*, [http://ec.europa.eu/dgs/education\\_culture/index\\_en.htm](http://ec.europa.eu/dgs/education_culture/index_en.htm) (Accessed 14.11.2013).

<sup>186</sup>Carrera and Parkin, *The Place of Religion in European Union Law and Policy*, 27.

culture and cultural diversity is given due consideration when all regulatory and financial decisions or proposals are made. Supported and guaranteed by the Article 167 (ex article 151) of the TFEU, Intercultural Dialogue has been a priority for the Commission. The Directorate General Education and Culture and other services of the Commission has been supporting cooperation on intercultural dialogue with various initiatives, communications and projects since 2007 under the initiative of European Agenda for Culture. Moreover, under the European Year of Intercultural Dialogue program, the Commission rendered some debates possible with speakers from the European Commission and Parliament, academia and civil-society networks and associations. Debates conducted under the title of diversity, has included “migration and culture, culture and the arts, the workplace, multilingualism, media, and the religion and convictions”.<sup>187</sup> Under religion and convictions debate below mentioned issues are discussed.

- a) Dialogue on religious beliefs, philosophies and convictions enriches individuals and societies,
- b) Overcoming misconceptions and fears through dialogue based on respect and openness,
- c) Role of education in promoting knowledge, respect and openness.<sup>188</sup>

Moreover, in the religion and convictions concept paper<sup>189</sup> it has been stated that EU policy-makers, including European Commission President José Manuel Barroso, hold yearly meetings with European religious leaders. Contacts with Islamic countries have also been intensified, including through the process of Asia Europe Meetings (ASEM) inaugurated in 1995 and the Euro-Mediterranean partnership launched in Barcelona in 1996 and further initiatives<sup>190</sup> has been taken. Since 2007, under the “European Agenda for Culture” initiative, the Commission has been encouraging the national authorities, the cultural sector and EU institutions to jointly promote cultural diversity and dialogue, culture as a catalyst for creativity and innovation, culture as part of the EU's international relations. Furthermore, the Commission funds research

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<sup>187</sup>European Commission, *Culture, Talking about Diversity*, [http://ec.europa.eu/culture/our-programmes-and-actions/talking-about-diversity\\_en.htm](http://ec.europa.eu/culture/our-programmes-and-actions/talking-about-diversity_en.htm) (Accessed 01.12.2013).

<sup>188</sup>Ibid.

<sup>189</sup>European Policy Centre, *Inter-Religious Dialogue*, [http://ec.europa.eu/culture/documents/concept\\_paper\\_bd3.pdf](http://ec.europa.eu/culture/documents/concept_paper_bd3.pdf) (Accessed 03.12.2013).

<sup>190</sup>Ibid.

projects to foster religious freedom. Religare Project is one of these projects.<sup>191</sup> Last but not least, with regard to the religion, through Copenhagen political criteria, the European Commission evaluates and monitors the democratisation process in candidate states to the Union such as Turkey. Thus, it indirectly confronts the current members with questions and problems that had previously fallen outside ‘normal’ European political discourse and public debate<sup>192</sup> by carrying the issues related to the candidate states’ to the EU agenda.

As a directly elected body of the EU, the European Parliament represent itself as a key actor in the fight for democracy, freedom of speech, fair elections and the rights of the oppressed. Moreover, human rights are among the main priorities of the European Parliament.<sup>193</sup> In the context of freedom of religion, the Parliament also has taken initiatives. In this context, we should note that the European Parliament maintains an all-party Working Group in which freedom of religion is considered. Separation of Religion and Politics (WGSRP) whose aim is stated below is one of these working groups.

1. Identify issues pertaining to the intersection of religion and politics in which the political values and principles of the European Union are at stake;
2. Identify ways MEPs and civil society can work together to raise awareness of these issues;
3. Promote knowledge, understanding and acceptance of freedom of religion and non-religion, and the impartiality of the EU regarding organizations of faith and conviction;
4. Take action, where appropriate, to counter any attempts to undermine democracy, human rights and in particular women’s rights and minority rights, sexual and reproductive health and rights, pluralism and the rule of law.<sup>194</sup>

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<sup>191</sup>The projects conducted on Pluralism and religions in multicultural European societies include ACCEPT PLURALISM, EUROETHOS, REDCO, RELIGARE, REMC, REVACERN, and SAL. For Further information on projects See: [ftp://ftp.cordis.europa.eu/pub/fp7/ssh/docs/pluralism-and-religious-diversity\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/ssh/docs/pluralism-and-religious-diversity_en.pdf) (Accessed 06.07.2014).

<sup>192</sup>WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam*, 29.

<sup>193</sup>European Parliament, *Human Rights and Democracy*, <http://www.europarl.europa.eu/aboutparliament/en/0039c6d1f9/Human-rights.html> (Accessed 14.11.2013).

<sup>194</sup>Martin Steven, “Religious Lobbies in the European Union: from Dominant Church to Faith-Based Organisation?,” *Religion, State and Society* Vol. 37, Nos. 1/2 (2009): 185.

Although aiming to promote and protect freedom of religion or belief in EU's external actions, European Parliament Working Group (EPWG) on Freedom of Religion or Belief<sup>195</sup> is also one of these groups. Maintaining that freedom of religion is a universal human right, the group aims to ensure that the EU, in its external actions, promotes and protects the right of individuals to freely manifest their beliefs (theistic, non-theistic and atheistic). The EPWG on Freedom of Religion or Belief does not consider "the merits of the different religions or beliefs, or the lack thereof, but ensures that the right to believe or not to believe is upheld".<sup>196</sup> Moreover, the Parliament issues a form<sup>197</sup> in its website to promote and protect the freedom of religion or belief in the EU and prevent the violations. This may be considered as an ineffective –considering the possibility of Internet access by the possible victims or their possible lack of knowledge of this form- but a promising initiative. However, in recent years, it can be claimed that the results of the European Parliament elections of 2014 in which far right parties having discriminative and xenophobic discourses have won more than 25% votes<sup>198</sup> does not seem promising for the freedom of religion. Although the EU respects, protects and guarantees freedom of religion these turnouts can be considered as alarming for both multicultural nature of the EU and the freedom of religion in the EU.

Last but not least, the Court of Justice of the EU, since its establishment in 1952, has been reviewing the legality of the acts of the institutions of the European Union, ensuring that "the Member States comply with obligations under the Treaties, and interpreting European Union law at the request of the national courts and tribunals".<sup>199</sup> When a freedom of religion oriented case emerges, to solve the problem, the Court of Justice examines the issue in the framework of human rights. The reason for this is the fact that the EU legal system does not deal with the religious issues comprehensively. It can be claimed that, while the EU law regulates work, customs, education, it indirectly regulates religious issues. Moreover, while the individual religious freedom are

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<sup>195</sup>European Parliament Working Group on Freedom of Religion or Belief, <http://www.religiousfreedom.eu/about-us/#sthash.C5rRXGCK.dpuf> (Accessed 14.11.2013).

<sup>196</sup>Ibid.

<sup>197</sup>See: Annex 1.

<sup>198</sup>European Parliament, Results of the 2014 European elections, <http://www.results-elections2014.eu/en/country-introduction-2014.html> (Accessed 13.06.2014).

<sup>199</sup>Court of Justice of the European Union, *General Presentation*, [http://curia.europa.eu/jcms/jcms/Jo2\\_6999/](http://curia.europa.eu/jcms/jcms/Jo2_6999/) (Accessed 17.11.2013).

protected and guaranteed by the EU as it is framed above, the religious freedom of groups are left to the Member States. The cases regarding the freedom of religions are generally held in the Member States national courts or they are held in the European Court of Human Rights.

However, there are a few cases which can be examined in the EU context. As early as 1975, in the *Prais v. Council*<sup>200</sup> case the Court ruled that religious discrimination was prohibited in EU law as contrary to the fundamental rights of the individual. In this case, there was a translation competition at stake and Vivienne Prais, a candidate in open competition ‘Council/LA/108’, with a view to recruiting a translator informed the Council that, being of Jewish religion, and Friday, 16 May 1975 the date fixed by the defendant for the written test in the said competition, which should take place simultaneously in Brussels and London being the first day of the Jewish feast of Shavuot (Pentecost), during which it is not permitted to travel or to write, she would be unable to undergo the test on that day, and asked the Council to fix another day for the test. Nevertheless, Council replied that it could not fix another date, since it was essential that all candidates should be examined on tests passed on the same date. It can be asserted that the Court did not privileged any one; it provided all candidates with equal treatment on the basis of their religious orientations.

Another important case is the *Udo Steymann v Staatssecretaris van Justitie*<sup>201</sup> case which was held in 1988. It was about the economic activities carried out by members of religious communities and freedom to provide services. In that case, the Court ruled as such

*It must be observed in limine that, in view of the objectives of the European Economic Community, participation in a community based on religion or another form of philosophy falls within the field of application of Community law only in so far as it can be regarded as an economic activity within the meaning of Article 2 of the ECC Treaty.*<sup>202</sup>(italics in original).

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<sup>200</sup>Case 130/75 Vivien Prais v. Council of the European Communities[1976] ECR 1589 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61975CJ0130:EN:PDF> (Accessed 20.11.2013).

<sup>201</sup>Case 196/87 Udo Steymann v Staatssecretaris van Justitie. [1987] ECR. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61987CJ0196:EN:HTML> (Accessed 20.11.2013).

<sup>202</sup>Ibid.

Although the EU's competences and policy areas expanded, the situation of the religion in the EU Courts can be considered same as it was in the Steyermann case to a certain degree. Namely, the freedom of religion related cases are mainly dealt with if they are also related with economic activities. With the gradual visibility of the religion – in case of the EU, what is meant by the visibility and manifestation of religion is generally the Islam and the Muslim population- in the public sphere, debates over freedom of religion also increases politically and socially. However, the repercussions of the freedom of religion in the EU Courts can be claimed as relatively slight, mainly because of the fact that religion-oriented cases are mainly held in the national courts if not in the European Court of Human Rights. Namely, people<sup>203</sup> who claim violation of freedom of religion resort to the national courts first, and if they do not get a result from national courts, they may resort to the European Court of Human Rights to seek for their rights.

#### **2.4. Freedom of Religion Debates in the EU: Conflict or Compromise?**

The freedom of religion is both protected and guaranteed at the EU level and protected by the national laws of the Member States. However, the case of freedom of religion is a highly debated one legally, socially, and politically in the EU. The main reason lay behind these debates arises from the essentially contested nature of the concept and its different interpretation by diverse groups and parts of the societies certainly complicate the implementation of the freedom of religion. Another factor contributing to the debates over the concept may be the gap between the theory and practice. At this point a couple of questions may emerge; Treaties and conventions regulate the concept of freedom of religion in the EU. In theory, when compared to the other societies or states the EU's dealing with the human rights postulate a well-functioning system. However, the question to be answered here is whether it is successfully implemented in practice leading to compromise or conflict. The answer may be the both.

Since the concept first emerged in Europe and consequently in the EU, it has been debated in various circles and within various context. As well as being considered

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<sup>203</sup>Citizens of the countries which are member to the Council of Europe.

as a fundamental right, it has also been accepted as a part of multiculturalist nature of the EU. From this standpoint, it can be claimed that culture may give individuals and communities a sense of belonging and a set of shared values and practices. As a matter of fact, cultural values relate to the attitudes, traditions and other habits distinguishing one person from another and one social group from another. Groups can be classified and identified with respect to region, religion, ethnicity, political approaches or generation. As it is often stated “a group may differ in terms of signs, symbols, texts, languages, objects and references to different types of traditions”.<sup>204</sup> Within the framework of multiculturalism some of these signs, symbols, texts, languages, and objects are tolerated. However, in today’s world, toleration does not suffice and citizens demand recognition and equal treatments socially, economically and politically. To illustrate, migrants can experience their faiths and religious practices when they are limited to the private sphere; nonetheless, they are encouraged not to construct a group identity. Thus, it is not possible to mention about a complete tolerance on the subject of the expression of the religious identity collectively or individually.<sup>205</sup>

As Donders point “culture is not an abstract or neutral concept; it is shaped by when it is instrumentalised, a process in which power structures play an important role when shaping it”.<sup>206</sup> Thus, culture turns out as a constructed concept, which is also affected by the acts and interests of its practitioners in the process of mainstreaming. Donders further adds that “culture is not necessarily intrinsically of positive value, it may also harm people or constrains their development and there exist cultural practices”.<sup>207</sup> The concept gets politicized and become an indispensable component of Eurocrats’ agenda as well as the EU citizens’. Through the lenses of multiculturalism the concept of freedom of religion itself seems within a vicious circle and consequently is open to debates. As examined above, legally, namely in theory the concept can be claimed as protected and guaranteed by international instruments and the EU. However,

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<sup>204</sup>Essnet-Culture, *European Statistical System Network on Culture*, Luxembourg, 2012, 42.

<sup>205</sup>Grace Davie , “Religion and Society: Is the European Experience a Exception?,” in *Avrupa Birliđi Ülkelerinde Din-Devlet İlişkisi: hukuki yapı / din eğitimi / din hizmetleri*, ed. Ali Köse and Talip Küçükcan ( İstanbul: Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi, 2008).

<sup>206</sup>Yvonne Donders, “Do Cultural Diversity and Human Rights make a Good Match?,” *International Social Science Journal* 199, UNESCO, Blackwell Publishing (2010): 15.

<sup>207</sup>Ibid.



in practice, in governments or in the public sphere, the concept may have flaws while functioning. Religious symbols may not be tolerated. Religious issues may be over-politicized and cause social and political turmoil as it was in the Theo Van Gogh<sup>208</sup> case or the Danish cartoon affair.<sup>209</sup> Thus, again the question to be answered is whether multiculturalism is successfully implemented in practice leading to compromise or conflict among the EU citizens.

A few cases or situations can be examined in the above mentioned context under two main themes; problems arising from the intersection of freedoms such as freedom of expression and freedom of religion; and problems arising from the right to manifest religion and religious symbols. The common feature of the cases - Theo Van Gogh Case and the Danish cartoon affair- was the clashing freedoms. When considered as elements of conflict in the EU Member States, clashing freedoms may be the most debated and the politicized one.

As for the right and freedom to manifest one's religion a few situations can be examined including the situation of Islamic symbols such as headscarves and religious rituals. The cases of Leyla Şahin v. Turkey, El Morsli v. France, Doğru v. France and Kervancı v. France, Ahmet Arslan and Others v. Turkey, and Lautsi and Others v. Italy<sup>210</sup> can be referred here.

When it comes to the compromise of different religions and religious freedom in Europe, it can be asserted that fostered by the motto "United in Diversity", religious differences thus, the different religious practices and freedoms can be considered as a richness for the EU. The EU, in all its documents mentions that it respects the the

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<sup>208</sup>Theo Van Gogh Case; Van Gogh worked with the Somalian writer Ayaan Hirsi Ali to produce the film *Submission* (2004), which criticized the treatment of women in Islam and aroused controversy among Muslims all over the world. On 2 November 2004 Gogh was assassinated by Mohammed Bouyeri, a Dutch-Moroccan Muslim. On July 26, 2005, a three judge panel in an Amsterdam court found Mohammed Bouyeri guilty and sentenced him to life in prison for the murder.

<sup>209</sup>Danish cartoon affair or controversy began after 12 editorial cartoons were published in the Danish newspaper *Jyllands-Posten* on 30 September 2005. Depicting the Prophet Muhammad (Muslim), the cartoons lead to turmoil in the public and political circles. The issue eventually led to protests around the world, including violent demonstrations and riots in some Muslim countries.

<sup>210</sup>For the summary of the cases see: European Court of Human Rights, Freedom of religion, [http://www.echr.coe.int/Documents/FS\\_Freedom\\_religion\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Freedom_religion_ENG.pdf) (Accessed 12.07.2014).

legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage. Article 13 of the TFEU regulates this situation as such

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

It has been widely acknowledged that the EU guarantees and promotes respect for religious, cultural and linguistic diversity and heritages of Member States. The EU Treaties and legislation systems prohibit discrimination on grounds of religion or belief as well as all other discriminations. As it can be observed in the above cited article, by doing this, the EU also provides a space, a room for maneuver for the Member States, thus it compromises with them. And in the concept paper, issued by the Commission it is emphasized that

A society marked by strain and tension between people of different faiths cannot function efficiently. Inter-religious conversation among Europeans of different faiths is therefore vital in order to contribute to social peace and cohesion, prevent conflict and ensure that the talents of all citizens are used to the full to achieve the common goal of building a better community.<sup>211</sup>

Thus, it can be asserted that the way leading to a peaceful society which can coexist without visible tensions can be reached with active citizenship promoted by the EU. Moreover, considering the Pew's Global Restrictions on Religion Report,<sup>212</sup> it might be argued that the EU Member States might claim that they have constructed and have developed a culture based on a common hierarchy of values. The Member States have achieved this by protecting these values with laws and also encouraging the interaction between communities. When compared to the other parts of the world, the EU boundaries may serve as a highly tolerant global village. In the mentioned Report, 198 countries are evaluated and Government Restriction Index is divided into 4

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<sup>211</sup>European Commission, *Culture*, [http://ec.europa.eu/culture/documents/concept\\_paper\\_bd3.pdf](http://ec.europa.eu/culture/documents/concept_paper_bd3.pdf) (Accessed 03.12.2013).

<sup>212</sup>Pew Research, *Global Restrictions on Religion*, 2009.

subcategories which are very high, high, moderate and low. The range of scores among the 43 countries in the Very High (top 5%) and High (next 15%) categories is greater than the range of scores among the 119 countries in the Low (bottom 60%) category.<sup>213</sup> According to this index and categories, only the Greece is placed in the high category which means that government restrictions on religion is more visible than the other EU Member States in Greece; Romania, Belgium, France, Germany, Denmark, Slovakia are in the moderate group, and the other EU Member States are in the low restriction group.<sup>214</sup>

Restrictions on religion can result not only from the actions of governments but also from acts of violence and intimidation by private individuals, organizations or social groups; the PewForum's Social Hostilities Index is a measure of concrete, hostile actions that effectively hinder the religious activities of the targeted individuals or groups.<sup>215</sup> The range of scores among the 11 countries in the Very High (top 5%) category is greater than the range of scores among the 117 countries in the Low (bottom 60%) category. According to this index and categories, again only the Greece is placed in the high category which means that social hostilities on religion is more visible than the other EU Member States in Greece; Australia, France, Denmark, Italy, Croatia, Germany, United Kingdom and Bulgaria are in the moderate group, and the other EU Member States are in the low social hostility group.<sup>216</sup> It can be asserted that according to these scores, the EU's situation may be considered as promising.

The religious affairs in the EU have multiple dimensions and the case of religious liberties fostered by multiculturalism has been one of these multifaceted dimensions. However, the case of freedom of religion also has ramifications in itself. It may be put forward that the concept of freedom is improbable to measure fully and comprehensively; yet it may be observed and analysed as in the previous chapters. In that direction, it may be asserted that the concept of freedom of religion has been reconstructed in the EU. Besides, by rendering the Member States national laws more

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<sup>213</sup>Ibid.

<sup>214</sup>Ibid.

<sup>215</sup>Ibid.

<sup>216</sup>Ibid.

hybrid and dependent on the EU norms and creating common standards the EU has contributed this (re)construction process. Moreover, respecting to cultural diversity has become a core value for the EU in this process. The change in the form of religious consciousness is a two fold issue; on one hand there are responses of the individuals to the challenges of modernity, on the other there is the issue of living in post-secular societies with an awareness of secular notions. There is a complicated relation between this two fold situation. And according to Jürgen Habermas states cannot influence the attitudes of the individuals only through its law and politics but with a complementary learning process that is a difficult matter for states. In Habermas's words

There is one side, the change in the form of religious consciousness that can be understood as a response to the challenges of modernity. On the other side it is a kind of post-metaphysical thought in which the secular awareness of living in a post-secular society gains a sophisticated articulation. Yet, the liberal state faces in both regards the problem that religious and secular citizens can only acquire these self-reflective attitudes through a complementary learning process which the state cannot influence by its own means of law and politics.<sup>217</sup>

In that framework, it can be asserted that not by themselves but with the help and means of the EU, the states may acquire and practice complementary learning process. Under the EU, the Member States have constructed a culture based on values and tolerance. The concept of freedom of religion is one of the concepts which is flourished and evolved in that context. From the vantage point of multiculturalist approaches to the EU, this concept may be considered as an integral part of the policies governing the idea and the philosophy of multiculturalism. The recent EU parliament elections have showed that Member States having tendency to discriminate on the religious basis are on the rise risking the 'unity' of the Union. The EU manages the concept of freedom of religion in a pluralist vision and practice, thus paving the way toward a compromised community rather than a conflictual one and forms a standard for its member states as well as its candidate states such as Turkey. However, this does not suffice. The political conditionality of the EU for the concept of freedom of religion is low and the EU does not give due importance to the concept. Thus, it risks the "United in Diversity" claims.

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<sup>217</sup>Jürgen Habermas, "Religion in The Public Sphere," *European Journal of Philosophy* Vol 14, No. 1 (2006): 4-5.

### **3. FREEDOM OF RELIGION AND THE FUTURE OF THE EUROPEAN UNION**

The European Union has defined itself as a system of values and actions based on the basic principles of freedom and democracy, as well as recognition of human rights, fundamental liberties and the rule of law. The freedom of thought, conscience and religion forms an integral part of these basic rights, as does the respect given by the Union to cultural and religious diversity. These freedoms give rise to socio-cultural changes and result in certain challenges for the public policies, political philosophies governing the existing systems. Multiculturalism can be considered as one of these consequences. Moreover, enlargements of the Union contribute to these changes and challenges. As the Union enlarges, it becomes more multicultural. Within this ever multicultural union, the freedom of religion takes its part as an important factor. When freedom of religion is guaranteed, the societies reflect their religion and belief oriented culture as a richness to the society in which they live. It is widely acknowledged that, the EU, as a rights and value based union, aims to guarantee and protect freedom of religion. Furthermore, it incorporates the concept of freedom of religion in its enlargement policy. However, it is also claimed that its conditionality in this issue is not high, thus the implementation of freedom of religion has not been a successful in the candidate states as much as it is desired in so far. One may further claim that the relative failure of the political conditionality of the concept of freedom of religion results in unenthusiastic acts of the parties to take the necessary steps. That is not to say implementation of freedom of religion is efficiently implemented in the Member States. Therefore, there is a danger that idea of multiculturalism and “United in Diversity” claims may not be strong enough to create concrete foundations for the future of Europe.

### 3.1. EU Enlargement, Political Conditionality, and Freedom of Religion

EU enlargement is “a process that can take a number of years, as the candidate states attempt to align their economy and regulatory structures to those agreed to by the existing members”.<sup>218</sup> The EU has had six rounds of enlargement<sup>219</sup> between the years 1973 and 2013, and its enlargement process continues. In addition to six enlargement rounds, with Croatia’s becoming a Member in 2013, the EU has reached 28 Member States. Furthermore, Turkey, the former Yugoslav Republic of Macedonia, Iceland, Montenegro and Serbia have the status of candidate countries.

In its essence, the EU Enlargement can be considered as “the process whereby the *external* becomes *internal*”.<sup>220</sup> It is also about “how non-member countries become members and shape the development of the EU itself”.<sup>221</sup> Besides, Schimmelfenning and Scholtz emphasize the importance of enhanced political conditionality in candidate states as “the attractiveness of membership and the strict political conditionality attached to it (enlargement policy of the EU) have vested the EU with considerable transformative power in the applicant countries”.<sup>222</sup> In this respect transformative power of the EU refers to the EU’s ability to change both its Member States’ and candidate states’ policies and practices. In other words the EU has the power to shape the political choices of its candidates. Grabbe suggests that the EU achieves this with “specific routes of influence through which it could shape political choices: models, money, benchmarking, advice and gate-keeping”.<sup>223</sup>

Schimmelfenning and Scholtz also underline the fact that enlargement was usually associated with overall recovery and democratisation in Eastern Europe. In their own words “after the breakdown of Soviet communism and its hegemony in Eastern

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<sup>218</sup>Ian Barnes and Pamela Barnes, “Enlargement”, in *European Union Politics*, 3<sup>rd</sup>ed. edited by Michelle Cini and Nieves Perez-Solorzano Borrigan (Oxford; New York: Oxford University Press, 2010), 419.

<sup>219</sup>See Annex 3 for the Chronology of Enlargements of the EU.

<sup>220</sup>Graham Avery, “EU Expansion and Wider Europe,” in *The European Union: How does it work?*, 3<sup>rd</sup> ed., ed. Elizabeth Bomberg, John Peterson, and Richard Corbett (Oxford; New York: Oxford University Press, 2012), 162.

<sup>221</sup>*Ibid.*

<sup>222</sup>Frank Schimmelfenning and Hanno Scholtz, “Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective,” *Europe-Asia Studies* Vol. 62, No. 3 (2010): 443.

<sup>223</sup>Heather Grabbe, *The EU’s Transformative Power Europeanization Through Conditionality in Central and Eastern Europe*, (New York: Palgrave Macmillan, 2006), 96.

Europe, enlargement has been credited with making a significant contribution to economic recovery, peace and stability as well as democratisation in the region”.<sup>224</sup> As it has been credited with often positive characteristics, most of the time, the enlargement from the perspectives of the applicants is considered as desirable. However, the EU sets certain steps and conditions for the enlargements; or the acceptance of a new country to be able to become a Member. For the applicant country, the first step is to meet the key criteria for accession. These were mainly defined at the European Council in Copenhagen in 1993 and are referred to as Copenhagen criteria. Countries wishing to join need to have

- a) stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- b) a functioning market economy and the capacity to cope with competition and market forces in the EU;
- c) the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union.
- d) the EU also needs to be able to integrate new members.<sup>225</sup>

These criteria are prerequisites for the accession but they are not enough for the accession *per se* because as it is claimed they are “extensive, and what constitutes meeting them is open to interpretation, giving the EU considerable discretion in deciding what has to be done before compliance is achieved.”<sup>226</sup> The EU states that it treats all applicant countries on their merits, namely the path to membership depends on individual progress in meeting the criteria, with no linkage between applicants. This principle is called ‘differentiation’.<sup>227</sup> Moreover, all enlargement rounds are also *sui generis*. Nugent explains why they are so, most obviously, in terms of the number of applicants, the characteristics of applicants, the level of development of the EC/EU, the number and nature of policy issues creating difficulties, and the length of the accession process.<sup>228</sup> Moreover, Grabbe underlines the differences between candidates by claiming that they result from political dynamics more than from candidates distance

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<sup>224</sup>Ibid.

<sup>225</sup>European Commission, *Enlargement*, [http://ec.europa.eu/enlargement/policy/conditions-membership/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm) (Accessed 03.06.2014).

<sup>226</sup>Heather Grabbe, “How does Europeanization affect CEE governance? Conditionality, diffusion and diversity,” *Journal of European Public Policy* 8: 6 (2011): 1015.

<sup>227</sup>Avery, “EU Expansion and Wider Europe,” 171.

<sup>228</sup>Neill Nugent, “Distinctive and Recurring Features of Enlargement Rounds,” in *European Union Enlargement*, ed. Neill Nugent (New York; London: Palgrave Macmillan, 2004), 56-58.

from the EU, “although there is a two-way causal link between domestic politics and closeness to accession”.<sup>229</sup>

As for the conditionality, it refers to the fact that “accession is conditional on a country fulfilling the criteria for membership”.<sup>230</sup> During the process, the EU conditionality mainly follows “a strategy of reinforcement by reward”.<sup>231</sup> It is also regarded as “a tool to encourage and persuade candidate states to reform in line with the model laid down by the EU”.<sup>232</sup> Böhmelt and Freyburg underlines that the aim of the conditionality is “to induce formal and practical compliance with the EU accession criteria as an instrumentally and strategically calculated reaction by the target countries’ governments”.<sup>233</sup> As stated previously, the EU’s membership conditionality holds EU candidates to three formal criteria listed above. Accordingly, candidates are expected to meet these criteria and fulfill the obligations of membership known as the EU’s *acquis communautaire*. As Schimmelfenning and Scholtz stress “countries that fail to meet the criteria are simply denied assistance, association or membership and left behind in the competition for EU funds and for accession”.<sup>234</sup>

Schimmelfenning and Scholtz further underline the significance of rewards and adoption costs by claiming “a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs; thus this cost–benefit balance depends on; the determinacy of conditions, the size and speed of rewards, the credibility of threats and promises, the size of adoption costs”.<sup>235</sup> In this context, they also argue that enlargement necessitates costly, long-term negotiations and preparations and a restructuring of EU

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<sup>229</sup>Grabbe, “How does Europeanization affect CEE governance? Conditionality, diffusion and diversity,” 1015.

<sup>230</sup>Avery, “EU Expansion and Wider Europe,” 163.

<sup>231</sup>Frank Schimmelfenning and Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,” *Journal of European Public Policy* 11: 4 (2004): 671-672

They explain this by reward stating that “Under this strategy, the EU pays the reward if the target government complies with the conditions and withholds the reward if it fails to comply. It does not, however, intervene either coercively or supportively to change the cost–benefit assessment and subsequent behaviour of the target government by inflicting extra costs (‘reinforcement by punishment’) or offering extra benefits (‘reinforcement by support’)”.

<sup>232</sup>Ian Barnes and Pamela Barnes, “Enlargement,” 427.

<sup>233</sup>Tobias Böhmelt and Tina Freyburg, “The temporal dimension of the credibility of EU conditionality and candidate states’ compliance with the *acquis communautaire*, 1998-2009,” *European Union Politics* 14(2) (2013): 251.

<sup>234</sup>Schimmelfenning and Scholtz, “Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective,” 445.

<sup>235</sup>Schimmelfenning and Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,” 672.



institutions and policies. And they strongly argue that the possibility of adopting the EU's rule by the candidates increases if the conditional threats and promises are credible.<sup>236</sup> In Turkey's situation, it will not be wrong to argue that the enlargement costs for both Turkey and the EU are high. Moreover, there are warnings and recommendations by the EU to Turkey regarding the Copenhagen Criteria, but there is no promise of membership. Turkey's protracted vacation with the EU rendered her unenthusiastic attitude toward implementing the EU's rules.

Studies generally argue "conditionality ultimately reflects EU concerns about candidates' democratization and other reforms rather than candidates' differential treatment based on their potential EU admission costs".<sup>237</sup> Saatçioğlu underlines the fact that the EU considers the enlargement –thus integration- costs more than the fulfilment of ambiguous Copenhagen Criteria by stating

Low formal conditionality in the costliest case (Turkey) suggests that the Union is less concerned about candidates' fulfilment of the official Copenhagen criteria than their EU integration costs. This does not mean that EU applicants' democratic and market reforms are unimportant for the EU. Indeed, the fact that the Commission has stepped up its reforming pressures on Turkey as well as Romania and Bulgaria after they joined the EU in 2007.<sup>238</sup>

Thus it may be argued that, this low conditionality which can be observed in the freedom of religion can result in a relative failure for the concept to be implemented and practiced properly in candidate states, especially in Turkey. Besides, according to Schimmelfenning and Scholtz the most general political conditionality hypothesis can be stated as follows: "the level of democracy in the neighbouring countries of the EU increases with the size and the credibility of the EU's conditional incentives".<sup>239</sup> Thus, it may be argued that without incentives, which may be granting candidacy status, opening the accession negotiations or membership to the Union at best, the EU Reports would lose their significance to the applicant or candidate countries. So, with incentives

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<sup>236</sup>Ibid., 673,674.

<sup>237</sup>Beken Saatçioğlu, "How Closely Does the European Union's Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey," *Turkish Studies* Vol. 10, No. 4(2009): 560.

<sup>238</sup>Ibid., 571.

<sup>239</sup>Op. cit.

conditionality reaches a significance for the applicant countries. Moreover, Schimmelfenning and Holtz claim that Protestant and Catholic communities are better at adopting to democratisation than the Muslims.

Our claim that EU political conditionality has a robust effect on democracy in the European neighbourhood survives the legacies challenge and of the four cultural and institutional legacies we test, only the cultural legacy of (religious) civilisation shows a consistent correlation with levels of democracy.<sup>240</sup>

Their cultural legacy argument is based on the assumption which asserts “religious and other cultural traditions and beliefs are differentially conducive to democracy”.<sup>241</sup> They argue that some countries, (protestant countries and those with a strong enlightenment tradition) are believed to show more democratization than the Muslim countries. Yet, they conclude that “the use and effectiveness of EU political conditionality are far from being determined or made redundant by historical legacies”.<sup>242</sup> The EU tries to protect and guarantee freedom of religion. Moreover, it incorporates the concept in its Regular Progress Reports (under the main title of Political Criteria, Human Rights) issued for their candidate states and the EU tries to examine the situation of the freedom of religion concept in those countries.

A closer look to the freedom of religion in Bulgaria and Romania (pre and post-accession processes) reveals the fact that freedom of religion as a political conditionality for the accession emerges as relative failure for both the EU and the applicant state. This situation is also relevant for Turkey, but also creates another problem. Since there is not much progress in the field of promotion of freedom of religion in Turkey according to the EU, it creates another challenge for fulfilling the membership criteria. One reason for this may be counted as the fact that “the effectiveness of the conditionality depends on the degree of clarity about what is required of those who wish to join”.<sup>243</sup> However, the EU rarely clarifies what is required; as well as the Copenhagen Criteria, conditionality may be considered as vague

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<sup>240</sup>Schimmelfenning and Scholtz, “Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective,” 444.

<sup>241</sup>Ibid., 447.

<sup>242</sup>Ibid. 444.

<sup>243</sup>Ian Barnes and Pamela Barnes, “Enlargement,” 427. (Referring to Pridham, 2007)

at certain aspects. Moreover, through the case of Turkey, Saatçioğlu argues that “the EU does not apply proper *formal* conditionality to its candidates; low formal conditionality in the costliest case (Turkey) suggests that the Union is less concerned about candidates’ fulfillment of the official Copenhagen criteria than their EU integration costs”.<sup>244</sup> She further claims

Among all EU candidates competing for membership, Turkey is the strongest test case for the EU’s ability to influence domestic reforms when the credibility of the link between these and membership is questionable. In general, political conditionality is least credible in Turkey since the EU’s concerns about absorption capacity and member-state reservations about membership are most intense regarding Turkey.<sup>245</sup>

According to Saatçioğlu, this hinges on two factors including consistency in the EU’s official application of conditionality and a credible membership perspective.<sup>246</sup> In line with the above cited statement, it can be argued that there is discrimination among candidates. Moreover, there is no standard regarding the candidature processes. Instead, as Hughes and Sasse argues “the EU’s main instrument for accession and convergence, the Regular Reports, have been characterized by ad hocism, inconsistency”.<sup>247</sup> Moreover, these Reports through which the EU transforms the candidate states’ problematic practices and shape their improvements in the related field are from clarity. Namely, they identify the problems but do not provide the candidate with a clear standard according to which they can make amendments. Hughes and Sasse reiterate this underlining the weak definition of EU conditionality.

The EU conditionality as set out in the ‘Copenhagen criteria’ is inherently strong on the normative intent and drive for compliance and convergence but substantively it is weakly defined and poorly elaborated. This creates dilemmas for both the EU and the candidates in determining how and when conditions have been satisfied.<sup>248</sup>

Besides, in the case of freedom of religion when the freedom of religion concept is considered, it can be claimed that the EU did not apply ‘proper *formal* conditionality’ to Romania and Bulgaria, thus even if there were problems, they became members. This

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<sup>244</sup>Saatçioğlu, “How Closely Does the European Union’s Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey,” 571.

<sup>245</sup>Beken Saatçioğlu, “Revisiting the Role of Credible EU Membership Conditionality for EU Compliance: The Turkish Case,” *Uluslararası İlişkiler* Volume 8 No 31 (2011): 24-25.

<sup>246</sup>*Ibid.*

<sup>247</sup>James Hughes and Gwendolyn Sasse, “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs,” *Journal on Ethnopolitics and Minority issues in Europe* Issue 1 (2003): 1-36

<sup>248</sup>*Ibid.*, 12.

has resulted in the fact that after their integration the problems related to the freedom of religion have continued in Bulgaria and Romania. At this point, the future of the EU in terms of multiculturalism and diversity become questionable.

### **3.1.1. Freedom of Religion and Experiences from Bulgaria and Romania**

Each year the Commission adopts its 'Enlargement package' - a set of documents explaining its policy on EU enlargement and it issues reports on progress achieved in each country. Most importantly, this package involves the annual Enlargement Strategy Paper which sets out the way forward for the coming year and keeps record of the progress made over the last year by each candidate country and potential candidate.<sup>249</sup> In addition to this strategy paper, the package contains the so-called Progress Reports in which the Commission services present their assessment of what each candidate and potential candidate has achieved over the last year.<sup>250</sup>

The concept of freedom of religion in these reports takes its place as an important factor to be analysed. First of all, it can be argued that Bulgaria's aim to join the EU have resulted in improvement in the protection of minority rights. Bulgaria's desire to join the Union has also affected multiculturalism there positively as it is claimed "the process of recognition of diversity and multiculturalism in Bulgarian society and of protection of minority rights truly started only after 1989 as an inseparable part of the democratisation of Bulgaria and its aspiration to join the EU".<sup>251</sup> From a wider perspective, it may also be claimed that having a multicultural nature dating back to its Ottoman Empire times, Bulgaria needed to face its cultural and religious diversity. Bulgaria aspired to build a homogeneous nation-state but it may be claimed that after its accession to the EU, Bulgaria has continued to have a multicultural nature.

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<sup>249</sup>European Commission, *Enlargement*, [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm) (Accessed 06.05. 2014).

<sup>250</sup>Ibid.

<sup>251</sup>Anna Triandafyllidou, "Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries," Italy: European University Institute, Robert Schuman Centre for Advanced Studies, 2012, 79.

Bulgarians have been accustomed to living in a multi-cultural environment since the times of the Ottoman Empire. When the modern Bulgarian state was formed in 1878, Bulgarian society and state institutions had to face the problem of finding a balance between the accommodation of ethnic, religious and cultural diversity in the country and the aspiration to build a mono-national Orthodox-Christian nation-state.<sup>252</sup>

U.S. Department of State International Religious Freedom Report of 2012, states the Bulgaria's (religious) demographics and religious diversity as following

The population in Bulgaria is estimated as 7.4 million. According to the census, 76 percent of the population identifies itself as Orthodox Christian. Orthodox Christianity, Hanafi Sunni Islam, Judaism, and Roman Catholicism all hold a historic place in the country's culture and Muslims are the second largest religious group, estimated at 10 percent of the population. Groups together constituting about 2 percent of the population include Catholics, Armenian Christians, Jews, evangelical Protestants, and others. There are 115 registered religious groups in addition to the Bulgarian Orthodox Church (BOC).<sup>253</sup>

The country has applied for membership to the Union in 1995 and became a member in 2007. Before becoming a member, Bulgaria's situation regarding the freedom of religion was stated in the Commission Opinion of 1997 on Bulgaria's Application for Membership of the European Union as

Freedom of education and religion are guaranteed in Bulgaria. The Constitution recognises the Eastern Orthodox confession as the country's "traditional" religion, but there is separation between Church and State (Article 13 of the Constitution). The State grants financial assistance to Bulgaria's main confessional groups, in particular Muslims, Catholics and Jews.<sup>254</sup>

Regular Progress Reports were issued between the years 1998 and 2004 for Bulgaria and in the first one of these reports it is stated that freedom of religion is guaranteed in Bulgaria and for the slight problems practical solutions are found. The Report puts this forward by stating "As regards the registration of 'nontraditional' religions and their registration, the climate seems to be more relaxed and practical

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<sup>252</sup>Ibid.

<sup>253</sup>U.S. Department of State, *International Religious Freedom Report 2012*, <http://www.state.gov/documents/organization/208510.pdf> (Accessed 07.06. 2014).

<sup>254</sup>European Commission, *Commission Opinion on Bulgaria's Application for Membership of the European Union*, [http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/bulgaria/bu-op\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/bulgaria/bu-op_en.pdf) (Accessed 05.06.2014).

solutions are usually found”.<sup>255</sup> In the 2002 and 2003 Reports concerning the religious freedom, progress was noted. However, the problems regarding the freedom of religion was also stated by underlining

A new Act on Denominations has still not been adopted. The last report raised concerns that not all interested parties had been consulted; it is positive that the debate has recently been broadened and will be important to ensure that the Act adopted fully respects international human rights standards.<sup>256</sup>

When it comes to the 2004 Report, as regards freedom of religion, there are two important concerns. The first one is about the “lack of clear procedural guidelines in the Law on Denominations has resulted in some difficulties related to implementation of registration requirements at the local level”.<sup>257</sup> The same report points out the second concern as

In July 2004, the executive intervened through police raids in more than 200 Orthodox churches, on the grounds of a conflict on the restitution of properties within the Bulgarian Orthodox Church, which split in 1992. Some clergymen were temporarily detained. The property rights of local churches will need to be clarified.<sup>258</sup>

In addition to these problems, according to the International Freedom of Religion Report of 2010 which was issued three years after the Bulgaria’s membership, there were increasing reports of societal abuses or discrimination based on religious affiliation, belief, or practice.

The Muslim community continued to report numerous cases of mosque desecration. On April 21, 2010, the walls of the mosque in Blagoevgrad were painted with swastikas after its windows were broken several days earlier. The same mosque was set on fire on October 5, 2009, and was renovated with financial support from the government. The mosque in Karlovo was set on fire on April 17, 2010, and the mosque in Nikopol burned to the ground on October 7, 2009. On April 4, 2010, six youths desecrated the mosque in Varna. The mosque in Kazanlak had its windows broken on November 3, 2009, and the mosque in Haskovo on July 12, 2009. Three mosques in Plovdiv were painted with swastikas in November and December 2009. There were no reports of prosecutions in these incidents. In May 2010 the Ministry of Interior promised the community a detailed report on all anti-Muslim incidents in the last three years and guidelines for better cooperation between the police and the community at the local level.<sup>259</sup>

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<sup>255</sup>European Commission, *Enlargement*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/bulgaria\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/bulgaria_en.pdf) (Accessed 05.06.2014).

<sup>256</sup>Ibid. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/bu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/bu_en.pdf) (Accessed 05.06.2014).

<sup>257</sup>Ibid. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_bg\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_bg_2004_en.pdf) (Accessed 05.06.2014).

<sup>258</sup>Ibid.

<sup>259</sup>U.S. Department of State, *International Religious Freedom Report 2010*, <http://www.state.gov/j/drl/rls/irf/2010/148922.htm> (Accessed 07.06. 2014).

In the same report, the emergence of collaborative attitude of religious groups is also underlined; “the relations between religious groups generally remained tolerant and collaborative, especially within the Religious Communities Council, which discussed and defended common positions with the government.”<sup>260</sup> The BOC did not participate in the council. Besides, discrimination, harassment, and public intolerance of some religious groups remained as persistent problems. These problems can be mainly listed as such

a) Jehovah’s Witnesses continued to complain that media reports misrepresented their activities and beliefs. Mormons continued to report harassment and denigration in the media, in particular from ultranationalist SKAT TV in Burgas and Varna.

b) On August 30, the prosecution service in Sofia filed an indictment against six persons, both Muslims and protesters, charging them with hooliganism for their actions during the May 2011 assault on Muslims attending Friday prayer in front of the Sofia mosque. At year’s end, the court had not scheduled a hearing.

c) Jewish groups and the chief mufti’s office continued to report desecration incidents. In January vandals threw Molotov cocktails at the windows of the regional mufti’s office in Varna. In September hooligans spray-painted graffiti on a Jewish monument in Pleven, the third time the monument had been desecrated in 18 months. Jewish community leaders privately expressed concern over reports of increasing and unrestricted incidents of anti-Semitism in social media.<sup>261</sup>

These relatively recent events in Bulgaria have shown that a culture of protecting freedom of religion has not constructed and accomplished, yet. And the situation in Bulgaria can be summarized as in the following statements.

Despite living in a multi-cultural environment since the times of the Ottoman Empire, the majority population of Bulgaria has still not come completely to terms with accepting the diversity and otherness. The cohabitation of different ethnic and religious communities in the country is largely based on parallel existence – the Turkish, Pomak and Roma minorities are tolerated but not accepted. They live in segregated settlements at the edges of cities and towns (Roma), or in separated rural regions (majority of Turks and Pomaks).<sup>262</sup>

As for Romania, in the U.S. Department of State, *International Religious Freedom Report of 2012*, the demographics of the country is stated as

According to the 2011 census, population is 19 million; Orthodox adherents constitute 86 percent of the population, Roman Catholics 4 to 6 percent, and Greek Catholics less than

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<sup>260</sup>Ibid.

<sup>261</sup>U.S. Department of State, *International Religious Freedom Report 2012*, <http://www.state.gov/documents/organization/208510.pdf> (Accessed 07.06. 2014).

<sup>262</sup>Triandafyllidou, “Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries,” 85.

1 percent. According to the Greek Catholic Church and media reports, irregularities by census takers artificially increased the number of Orthodox believers to the detriment of other religious groups.<sup>263</sup> Other religious groups include Protestants, Jews, Muslims, Jehovah's Witnesses, Bahais, The Church of Jesus Christ of Latter-day Saints (Mormons), Zen Buddhists, and members of the Family (God's Children), the Unification Church, and the Society for Krishna Consciousness.<sup>264</sup>

The rights to education and freedom of religion are guaranteed in Romania.<sup>265</sup> Having applied for membership in 1995, Romania became a member in 2007. In the first Progress Report for Romania it is stated that "further efforts need to be maintained to foster religious freedom. A draft Law on Cults submitted to Parliament in 1997 would, if adopted, considerably restrict the rights of religious associations and foundations which do not have the status of recognised cults".<sup>266</sup> In the Report of 1999, it is stated that "The Constitution of Romania guarantees freedom of religion. However, the existing law, dating back from 1948, should be modified to reflect this principle since it contains notions such as 'non-recognised cults and sects'".<sup>267</sup> Freedom of religion in the Reports of 2000 and 2001 is same with the Report of 1999; however in the Report of 2001 declares that there are 15 recognised religions in Romania and "other congregations are obliged to register as either religious foundations or as cultural associations and are not permitted to build churches or houses of worship".<sup>268</sup> And another issue is that "legislation on conscientious objection to military service differentiates between members of "recognised religions" and other religious groupings".<sup>269</sup> In the Progress Report of 2002, it is stated that

The Government does not restrict the observance of religious belief, although human rights organisations have reported cases of Orthodox clergy, sometimes working with local officials, restricting the religious activities of other churches. Non-recognised faiths are able to operate without restriction but do not benefit from the same legal advantages as recognised religions. The 1948 Decree on Religious Denominations is in need of reform, but there has been no progress in this regard over the reporting period.<sup>270</sup>

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<sup>263</sup>U.S. Department of State, *International Religious Freedom Report 2012*, <http://www.state.gov/documents/organization/208570.pdf> (Accessed 07.06. 2014).

<sup>264</sup>U.S. Department of State, *International Religious Freedom Report 2012*, <http://www.state.gov/documents/organization/208570.pdf> (Accessed 07.06. 2014).

<sup>265</sup>European Commission, *Enlargement*, [http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/romania/ro-op\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/romania/ro-op_en.pdf) (Accessed 05.06.2014).

<sup>266</sup>European Commission, *Enlargement*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/romania\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/romania_en.pdf) (Accessed 05.06.2014).

<sup>267</sup>Ibid. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/romania\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/romania_en.pdf) (Accessed 05.06.2014).

<sup>268</sup>Ibid. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/ro\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/ro_en.pdf) (Accessed 05.06.2014).

<sup>269</sup>Ibid.

<sup>270</sup>Ibid. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/ro\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf) (Accessed 05.06.2014).



Progress Report of 2003 states the same issue which claims that the 1948 Decree on Religious Denominations is in need of reform. Last but not least, 2004 Progress Report repeats the same issues with the previous ones. Yet, in this report the number of recognised religions increases to 16.<sup>271</sup>

After Romania has become member to the Union, the problems originating from the freedom of religion have continued. In International Religious Freedom Report of 2012, it is mentioned that some religious groups stated that

- Authorities generally allowed only the Orthodox Church an active role in annual opening ceremonies at schools and other community events;
- Greek Catholic priests from Transylvania stated they were never invited to official local events;
- Non-Orthodox religious groups faced difficulty in accessing cemeteries and in obtaining land to establish cemeteries;
- In Bucharest the local Islamic community did not receive land promised by the government for the establishment of an Islamic cemetery and construction of a mosque.<sup>272</sup>

Through these cases, it may be argued that political conditionality of the EU is quite low in certain fields and when the conditions are ripe enough politically to integrate a new member, the EU may ignore such kind of problematic issues. However, after the country's becoming member, the problems continue to threaten the "United in Diversity" in the EU. As well as Bulgaria, the necessities for Romania is summarized as following.

- There is a need for a new law separating Church and State and eliminating the role played by the Church in education matters.
- Romanian policy and political discourse on minorities is highly discriminatory and even racist.
- The whole Romanian policy towards the Romanian citizens begging and stealing in Western European capitals is to portray them as Roma, a group culturally unrelated to Romania.
- Hungarians from Transylvania have always been seen as equals, despite not allowing them to call Hungarian the second official language (it is legal to use it in Courts and administration though).
- Intolerance towards native minorities in Romania should be addressed through
  - a) Change in history curricula that acknowledge the role of these minorities in Romanian history

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<sup>271</sup>Ibid.[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_ro\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_ro_2004_en.pdf) (Accessed 05.06.2014).

<sup>272</sup>U.S. Department of State, *International Religious Freedom Report 2012*, <http://www.state.gov/documents/organization/208570.pdf> (Accessed 07.06. 2014).

b) Civic education courses that promote the principle of 'united and equality in diversity' within Romania in relation to its two major native minorities.<sup>273</sup>

Although Bulgaria and Romania have had different accession processes stemming from their different internal and institutional dynamics, they have also common characteristics regarding the multicultural discourse. As a lively debated concept, multiculturalism appears within almost same parameters and debates across the national discourses. Prins and Slijper conducted a discourse analysis of these debates. They have identified five key themes appearing regardless of national context. In this respect, much discussed issues include; The Clash Between Cultures, Ethnic Diversity and National Identity, The Socioeconomic Position of Immigrants, Policies of Immigration and Asylum, Debates on the Debate (controversies about the terminology) arguments. Regarding the subject matter of the thesis, two main debates is of concern here. The debate of 'the clash between cultures' (particularly Islam versus Western values) which highlights toleration and unassimilability as basic issues under scrutiny; and the debate of 'ethnic diversity and national identity', which underlines the separateness in the societies and see diversity as threats to social cohesion.<sup>274</sup> These multicultural themes and debates are observed in Bulgaria and Romania and debates regarding multiculturalism and freedom of religion is often included under these recurring debates.

In sum, despite their diversity and freedom of religion-oriented problems, Bulgaria and Romania achieved to become members to the EU. Although they have had problems, the EU has neglected these problems to a certain degree mainly because they have at least overcome the recognition problems and ameliorated the legal status of the concept. However, in Turkey's situation, in its candidature, the EU seems to examine the freedom of religion concept more comprehensively than the other candidates. The *sui generis* candidature process and status of Turkey may be interpreted as what the EU understands from diversity is the diversity of alike-ones, not a diversity of a different religions and cultures. This does not mean that the situation of freedom of religion is

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<sup>273</sup>Triandafyllidou, "Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries," 149.

<sup>274</sup>Baukje Pirins and Boris Slijper, "Multicultural Society Under Attack: Introduction," *Journal of International Migration and Integration* 3(3/4) (2002): 313-328.

favourable in Turkey. Yet, as the conditionality of the EU is not high or credible enough,<sup>275</sup> Turkey seems not giving utmost importance to the freedom of religion in its relations with the EU. One may claim that the relative failure of the political conditionality of the concept of freedom of religion results in unenthusiastic attitude for Turkey to implement the EU rules. Besides, the multiculturalism and “United in Diversity” claims of the Union may not have solid foundations. The case of Turkey can be considered as of importance in this context.

### **3.1.2. Freedom of Religion in Turkey**

Taking its roots and legacy from the Ottoman Empire, since its emergence Turkey has become a rich country in that both cultural and religious diversity. Most of the time the country has been regarded as a mosaic of diverse communities and peoples. Nevertheless, when rights and freedoms taken into account, this mosaic-like nature of Turkey has posed problems for some stanzas of the society. In this regard, freedom of religion and rights arising from this concept has been and become problematic for different religious groups. However, being a candidate state to the EU, Turkey has improved the freedom of religion to a certain degree. It has been known for long that the EU describes and presents itself as a union of values and objectives.<sup>276</sup> Thus, it is essential that “(future) members subscribe to the fundamental principles, standards, rules and procedures of the Union (the union of values) and are also willing and able to pursue the concrete objectives of the Union (the union of objectives)”.<sup>277</sup> In the treatment of candidate members this translates into “a system of rights and obligations, in which the political- civic principles and values of the Union form the pre-essential conditions for membership”.<sup>278</sup>

In this respect, two interdependent and interactive situation emerges. First, the notions which depict the cultural and religious dimensions of the European debate upon

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<sup>275</sup>On the credibility of the conditionality see: Beken Saatçioğlu, “How Closely Does the European Union’s Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey,” *Turkish Studies* Vol. 10, No. 4(2009): 559-576.

<sup>276</sup>Treaty of Amsterdam, <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (Accessed 10.11.2013).

<sup>277</sup>WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam*, Amsterdam: Amsterdam University Press, 2004, 26.

<sup>278</sup>Ibid.

Turkish accession emerge as disagreement between those who see Europe as a Christian ‘club’ and those open to a more religiously pluralistic European identity. Hurd explains this by claiming that

Cultural and religious opposition to Turkey is not simply about defending the idea of a Christian Europe from an outside threat. This opposition is the cultural and political manifestation of the unsettled nature of the relation between religion, politics and European identity. It attests to the presence of unresolved issues concerning the politics of religion *within* Europe itself.<sup>279</sup>

Secondly, the idiosyncratic situation of freedom of religion in Turkey within her own conditions and merits regarding multiculturalism and her capability and inclination to adopt European way of multiculturalism is of concern. As many politicians and scholars claim, Hurd also argues that Turkey is inherently different from Europe due to “the existence of an exclusive European identity based on geography, culture and religion”.<sup>280</sup> The EU does not have a clear-cut discourse on the requirements which should be done to improve the freedom of religion in Turkey. It observes the situation and implementation of the concept in Turkey and it lists the problematic situations. Yet, the EU does this without considering the Turkey’s own historical and internal dynamics and often in a vague and non-specific discourse. Thus, although there have been improvements, the situation of freedom of religion in Turkey remains under the EU standards. Moreover, because of the first factor, namely the EU’s own nature on problems regarding the religion, freedom of religion and multiculturalism, the Turkish case become more complicated and tangled. Because of this, it can be further argued that Turkish compliance with the Copenhagen criteria does not mean guaranteeing a smooth incorporation of Turkey into Europe.<sup>281</sup>

Within this backdrop, one may claim that the concept of freedom of religion has improved to a certain degree in Turkey in line with the EU harmonization processes and packages. First of all, Constitutional Amendments have been conducted. In 2002, in an

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<sup>279</sup>Elizabeth Shakman Hurd, “Negotiating Europe: the politics of religion and the prospects for Turkish accession,” *Review of International Studies* Vol. 32 Issue 03 (2006): 407.

<sup>280</sup>*Ibid.*, 410.

<sup>281</sup>*Ibid.*, 414.

effort to meet EU norms, the Turkish government passed constitutional amendments, to illustrate;

- The sixth harmonization package introduced significant legal changes expanding the freedom of expression, safeguard provisions on the rights of prisoners, religious freedom. The package also included amendments in the area of religious freedom and community foundations. An amendment Supplementary Article 2 of the Law on Construction took into consideration the needs for places of worship of different religions and faiths.
- The new Law on Population Services stipulates that a written application addressed to the Administration will be sufficient in order to change a religion or to avoid indicating any religion in the registry and ID cards. This law entered into force in 2006. Articles 82 and 96 regulate the registration, modification and deletion of the information regarding religion or leaving the religion section blank.<sup>282</sup>

Furthermore, Yıldız argues that constitutional amendments, increase in minority rights, law on associations, improvement in property rights of the religious groups, respect for religious doctrines, amendment of the act on construction<sup>283</sup> are among the steps Turkey has taken to comply with EU membership requirements and these are all affected religious freedom in Turkey in a positive way. However, there are still deficiencies regarding the full implementation of the concept of freedom of religion mainly because of the fact that Turkey has an idiosyncratic perception and interpretation of secularism and the low political conditionality of the freedom of religion. For example, “due to the continuing state monopoly in this sphere religious or belief groups are still not allowed to establish religious educational institutions – which are an important way of manifesting belief in teaching”.<sup>284</sup>

In addition, it should also be noted that Turkey’s possible EU membership raises cultural controversies within the EU. Saatçioğlu claims that “although Christianity is not a formal condition for EU accession, it is commonly shared by the existing EU member states, and the argument has often been made by Europeans themselves that Turkey does not belong to the EU because it is Muslim”.<sup>285</sup> In this context, some may

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<sup>282</sup>Republic of Turkey, Ministry of Foreign Affairs, Secretariat General for EU Affairs, “Political Reforms in Turkey,” Ankara, 2007.

<sup>283</sup>İlhan Yıldız, “Minority Rights in Turkey,” *BYU Law Rev.* 791 (2007): 791-812.

<sup>284</sup>Mine Yıldız, “The Right to Freedom of Religion or Belief in Turkey – *Monitoring Report January–June 2013*” Norwegian Helsinki Committee: Freedom of Belief Initiative, İstanbul, 2014, 9.

<sup>285</sup>Saatçioğlu, “How Closely Does the European Union’s Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey,” 566.

argue that “just as religion is not a reason to say ‘No’ to Turkey, it is not a reason to say ‘Yes’”.<sup>286</sup> But it has an important role in the process. It can be argued

Ultimately, the failure of objective conditionality in Turkey indicates that the EU may be prone to prioritizing political convenience over the Copenhagen norms. The fact that the EU diverged from officially defined conditionality in the costliest case suggests that it is more concerned about enlargement costs than anything else.<sup>287</sup>

The EU, as a rights and value based union, guarantees and protects freedom of religion. However, it may be claimed that as its conditionality is not high, the concept has not been dealt in a successful way when dealing with the candidate states. Thus, this situation may cause problems after the membership of the candidate state to the Union as in the cases of Bulgaria and Romania. Yet, although having problems, they have become members. In the case of Turkey, the situation and the handling of the concept is more different in that it is scrutinized more mainly because of the issues and debates mentioned above. But this does not change the claim that the political conditionality and incentives for the concept of freedom of religion still remains low. Thus, the EU’s regarding diversity as a richness becomes questionable.

### **3.1.2.1. Legal Framework for Freedom of Religion in Turkey**

Before discussing the legislative framework regulating the concept of freedom of religion in Turkey, contextualizing the religious demographics in the country may be deemed useful.

It can be argued that Turkey inherited its religiously diverse population mainly from the Ottoman Empire. Küçükcan states “first implemented when the Ottomans took over Istanbul in 1453, ‘millet’ system was adopted and implemented successfully

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<sup>286</sup>Avery, “EU Expansion and Wider Europe,” 175.

<sup>287</sup>Saatçioğlu, “How Closely Does the European Union’s Membership Conditionality Reflect the Copenhagen Criteria? Insights from Turkey,” 571.

according to which the State categorized each religious communities as a separate nation”.<sup>288</sup> To mention briefly, in this system

Whereas non-Muslims were organized according to their religious affiliations in *millet*s, the Muslims in the Empire belonged to the *umma*, the community of Muslims. The millet system lasted until the Tanzimat Reforms in 1839 which introduced common Ottoman citizenship, the secularization of public education and most important, legal equality before the law.<sup>289</sup>

In this framework, it can be argued that even if the *millet* system was not based on the equality idea between the communities of different religion, they were living in harmony practicing their religious rights to a certain degree. The Lausanne Treaty of July 24, 1923, which recognised the establishment of Turkey, had an important effect on the recognition, rights, and liberty of religious minority communities in modern Turkey.<sup>290</sup> However it can be claimed that there are some constraints arising from the Treaty as cited in the following statements.

The Government interpreted the 1923 Lausanne Treaty as granting special legal minority status exclusively to three specific groups, although the treaty text refers broadly to “non-Muslim minorities” without listing specific groups. However, this recognition does not extend to the religious leadership organs; for example, the Ecumenical (Greek Orthodox) and Armenian Patriarchates continues to seek legal recognition of their status, the absence of which prevents them from having the right to own and transfer property and religious clergy.<sup>291</sup>

As for the contemporary dynamics, according to recent government sources Turkey’s population is estimated as 76.667.864 (2013 est.).<sup>292</sup> More than 99 percent of the population is Muslim, mostly Sunni. Christianity (Greek Orthodox and Armenian Apostolic) and Judaism are the other religions in practice.<sup>293</sup> At the table, the number of minorities, their origins and their main problems are listed as such

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<sup>288</sup>Talip Küçükcan, “State, Islam, and Religious Liberty in Modern Turkey: Reconfiguration of Religion in the Public Sphere”, *BYU L. REV.* (2003): 480.

<sup>289</sup>Burcu Gültekin-Punsmann, “Religious Freedom in Turkey: The Situation of Religious Minorities,” Brussels: Directorate-General for External Policies of the Union, 2008, 1.

<sup>290</sup>Op.cit.

<sup>291</sup>Gültekin-Punsmann, “Religious Freedom in Turkey: The Situation of Religious Minorities,” 1.

<sup>292</sup>Turkish Statistical Institute, <http://www.turkstat.gov.tr/UstMenu.do?metod=kategorist> (Accessed 28.03.2014).

<sup>293</sup>Op.cit.

Ethnic group	Religion	Stream	Problems	Size
Armenians	Christian	Mainly Orthodox, about 4,000 Catholics, 3,000-4,000 Protestants	1. Legal status of Patriarchate 2. Religious training institutions 3. Properties 4. Educational establishments 5. Election of the Patriarch	50,000-93,000
Greeks	Christians	Orthodox	1. Legal status of Patriarchate 2. Religious training institutions 3. Properties 4. Educational establishments 5. Election of the Patriarch	3,500
Assyrians	Christians	Assyro-Chaldean	1. Not recognised as minority under the Lausanne Treaty 2. Have no legal status as a community 3. Denied the right to their own social and charitable institutions	25,000
Balkan immigrants (Pomaks)	Moslem	Sunni/ Alevi (minority)		750,000
Sunni Arabs	Moslem	Shaji'j tradition (close to sunni Kurds)	To use Arabic outside of private sphere, e.g. in schools	
Alevi Arabs or Nusayri	Moslem	Alevis (Alawi or Alawite)	Turkicization	200,000
Christian Arabs	Christians	Orthodox and Melkite	Turkicization	10,000
Georgians	Christian	Orthodox		10,000
Georgians	Moslem	Sunni		80,000
Azeri Turks	Moslem	Ithna'ashria Shi'i		75,000

Table 1<sup>294</sup>: Minorities in Turkey.

According to this table, minorities in Turkey were listed as more than a million, which did not list the numbers of the Jews. When compared to the numbers of more

<sup>294</sup>Nigar Karimova, and Edward Deverell, "Minorities in Turkey," Stockholm: The Swedish Institutet of International Affairs, 2001, 22-24.



recent sources, this figure seems pretty slight when compared to the recent numbers. As this figure dates back to 2001; the numbers of the religious minorities are increased, especially the number of the Alevi. In a report published by the European Parliament, the religious demographic figures are mentioned as the following.

According to the Government sources, 99 % of the population is Muslim, the majority of which is Sunni. The Christian and Jewish minorities are less than 1% of the population. In addition to the country's Sunni Muslim majority, academics estimated there are 15 to 20 million Alevi. While exact membership figures are not available-only during 1927-1965 population census registered the mother tongue and religion- these religious groups include approximately 65,000 Armenian Orthodox Christians, 23,000 Jews, and up to 4,000 Greek Orthodox Christians.<sup>295</sup>

However, the Turkish Foreign Ministry summarizes its official interpretation as “the status of minorities in Turkey has been internationally certified by the 1923 Treaty of Lausanne, according to which there are only non- Muslim minorities in Turkey”.<sup>296</sup> In a sense, Turkey does not recognise other non- Muslim minorities such as the Syriacs, in fact, it does not recognise any except the ones mentioned at the Treaty of Lausanne. Beyond that, there are also problems regarding the demands of Muslim minorities in Turkey according to the EU. In its Progress Reports, the Commission also states the problems of Alevi as a Muslim minority.

All in all, Turkey has a diverse population. As it can be observed from the Table above, there are at least ten different ethnic groups in Turkey with different religions and streams. In WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam* is stressed that secularism is prerequisite in democratic constitutional states for the freedom of religion, it states “the *formal* (italics in original) requirement for a democratic constitutional state assumes, in the current European context, that church and state are autonomous (this is also referred to as secularism), and that the state guarantees religious freedoms and rights”.<sup>297</sup> In Turkey, freedom is guaranteed by law, yet according to the EU this is not the situation for the rights of some groups, religions, and believers. Like other European constitutions, the Turkish constitution lists

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<sup>295</sup>Gültekin-Punsmann, “Religious Freedom in Turkey: The Situation of Religious Minorities.”

<sup>296</sup>Republic of Turkey’s Ministry of Foreign Affairs, <http://www.mfa.gov.tr/grupa/ac/acl/faq.htm#bml>. (Accessed 28.03.2014).

<sup>297</sup>WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam*, 17.

the country's main fundamental rights as the right to physical integrity, freedom of opinion and the press, freedom of association, freedom of assembly, freedom for workers to set up trade unions, freedom of religion, freedom to move and travel in Turkey and abroad. In this context, "religious minorities recognised by Turkey are free to exercise their religion, but practice of religion other than (Sunni) Islam is subject to many practical bureaucratic restrictions affecting, for example, the ownership of premises and expansion of activities".<sup>298</sup> Before, examining these problems in the Progress Reports issued between the years 1998 and 2013, framing the legal situation of the concept of freedom of religion in Turkey may be useful.

There are a number of legal documents dealing with freedom of religion in Turkey. These documents are Turkish Constitution, the United Nations International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and Lausanne Treaty. The current Turkish Constitution, adopted in 1982, establishes Turkey as a secular state<sup>299</sup> and provides Turkish citizens freedom of religion and belief, subject to the integrity of the state and its secular nature.<sup>300</sup> Regarding the freedom of religion the Constitution states that

ARTICLE 24- Everyone has the freedom of conscience, religious belief and conviction. Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14.<sup>301</sup>

No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

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<sup>298</sup>Republic of Turkey Ministry of EU Affairs, *1999 Regular Progress Report for Turkey*, [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_1999.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf) (Accessed 30.03.2014).

<sup>299</sup>Secularism requires that sacred religious feelings shall absolutely not be involved in state affairs and politics. Articles 2, 68, and 174 make direct references to the "secularism" principle. See Constitution of Republic of Turkey, *Preamble*, [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf) (Accessed 31.03.2014). However, it can be claimed that in Turkish contexts, secularism does not mean that the State assumes a neutral position toward religious doctrine and the issue of separation of religion and state. Instead, it implies State control of religious life and a governmental policy of modernizing society by means of secular legislation and practice. Mustafa Erdoğan, "Religious Freedom in Turkish Constitution," *The Muslim World* Vol. LXXXIX, No. 3-4 (1999): 382.

<sup>300</sup>Constitution of Republic of Turkey, *Preamble*, [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf) (Accessed 31.03.2014).

<sup>301</sup>*Ibid. Art. 14* states that (As amended on October 3, 2001; Act No. 4709) None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognised by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate activities contrary to these provisions shall be determined by law.

Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.<sup>302</sup>

Article 90 of the Constitution regulating the status of international treaties in national law states that the international agreements Turkey signed are superior to national law, namely when there are contradictions between international agreements and national laws concerning human rights the provisions of the international conventions prevail.<sup>303</sup> This article shows that the freedom of religion is protected and guaranteed in Turkish Constitution as it is in the Constitutions of the EU Member States; yet the problem is that the Republic of Turkey does not recognise minorities as aforementioned and the religious minorities' claim that they cannot benefit from the rights as the Sunni-Muslim majority.

Another document having utmost importance for the freedom of religion in Turkey is the Lausanne Treaty signed in 24 July 1923. The related Articles of the Treaty are cited as

Article 38

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

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<sup>302</sup>Ibid. Art. 24.

<sup>303</sup>Ibid, Art 90.

#### Article 40

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

#### Article 45

The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.<sup>304</sup>

It is explicit that the Treaty of Lausanne mentions the non-Muslim minorities and Turkey's obligation to protect them. Although the Treaty guarantees the protection of minorities, from the last article, it can be understood that protection mechanism of Turkey with regard to minorities performs in a reciprocal way. Moreover, as aforementioned Turkey interpreted the 1923 Lausanne Treaty as "granting special legal minority status exclusively to three specific groups, although the treaty text refers broadly to "non-Muslim minorities" without listing specific groups".<sup>305</sup> The below-cited statement may highlight the concern point at this context.

Despite the formal separation of state and religion and the constitutionally guaranteed religious freedoms, the Turkish state, in practice, still exercises a strong control over religion. This is a legacy of the Ottoman period, although it reached its zenith in the heyday of Kemalism. Restrictions and state intervention in the content of religion go further than what is customary in EU member states. This explains why the EU is critically monitoring freedom of religion in Turkey.<sup>306</sup>

In this backdrop, in the Progress Reports the Commission has been issuing since 1998, the EU observes the freedom of religion in Turkey under the Copenhagen Political Criteria chapter. In these chapters, the EU lists the problems of the religious minorities in Turkey. It can be pointed out that the content of the concept has evolved; some problems are solved, but the new ones added to the list between the years 1998 and 2013. When there are improvements by Turkey, they are also stated in the Reports. However the overall point the EU reaches regarding the subject matter has been almost

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<sup>304</sup>Treaty of Lausanne, [http://sam.baskent.edu.tr/belge/Lausanne\\_ENG.pdf](http://sam.baskent.edu.tr/belge/Lausanne_ENG.pdf) (Accessed 31.03.2014).

<sup>305</sup>Gültekin-Punsmann, "Religious Freedom in Turkey: The Situation of Religious Minorities".

<sup>306</sup>WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam*, 52.

the same for 16 years: Turkey falls short of the European standards regarding the freedom of religion. The reasons of this claims according to the EU, namely why Turkey falls short of the European standards, is tried to be elaborated in the following chapter by analysing the Regular Progress Reports between the years 1998 and 2013.

### **3.1.2.2. Freedom of Religion in Turkey via the EU Conditionality**

Turkey's Westernization process dates back to the Ottoman Era, and its EU vocation began on 31 July 1959 with Turkey's application for association to the European Economic Community. From then on, the relations between Turkey and the EU fluctuated and inched along with certain steps taken in the relations such as the signing of the Ankara Agreement in 1963 (The Association Agreement) which would yield Turkey and European Economic Community to the Customs Union and provide full membership, signing the Additional Protocol including the regulations on Customs Union. Turkey completed the process of Customs Union Period in 1996. The 1998 is of importance in that the document titled 'European Strategy for Turkey' relating to improve relations between Turkey and European Union was announced by European Commission. Besides, the first Progress Report including the opinions of Commission was recorded in the light of criteria prepared by European Commission, for European Union membership was published in that year. Afterwards, they have been published annually in regular periods. Turkey's candidacy status was recognised in European Council Summit Meeting in Helsinki in 1999 and following a negotiation process, European Union started full membership negotiations with Turkey in 2005.<sup>307</sup>

It is evident that present and future member states must have "a democratic constitutional system that acknowledges and guarantees the autonomy of church and state and freedom of religion and conscience".<sup>308</sup> Turkey as a future member states also must acknowledge and guarantee the freedom of religion and conscience in practice. Turkish Constitution protects and guarantees freedom of religion as well as the EU

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<sup>307</sup>Republic of Turkey Ministry of EU Affairs, <http://ab.gov.tr/index.php?p=112&l=2> (Accessed 01.04.2014). For the chronological information regarding the Turkey-EU Relations this site is referred.

<sup>308</sup>Op.cit., 29.

Member States. Yet, as it is examined in the previous chapter protecting and guaranteeing the concept in the Constitutions may not provide a guarantee of the implementation of religious freedoms in practice. In this context, implementation and practice of freedom of religion in Turkey as a candidate state to the EU may emerge as problematic. It should be remembered that the freedom of religion oriented issues emerge as one of the most important issue in Turkey's full membership negotiations. Yet, Sambur argues that different religion or belief groups face with various kinds of freedom of religion violations in Turkey.<sup>309</sup>

In this framework, the concept of freedom of religion in Turkey has been stated at the Progress Reports since 1998. In these reports Turkey has been criticized for most of the time because of its practices and laws regarding the concept, and the points the Commission seen as problematic has been listed in these reports. And over time, it can be observed that the content of the concept of freedom of religion has expanded in Turkey. Moreover, although there have been improvements with regard to the concept, the Commission does not find these sufficient.

At this juncture, it can be advocated that freedom of religion as being a multifaceted concept has improved in Turkey to a certain degree. However, there are also some deficiencies with regard to the implementation of the freedom of religion in Turkey, thus the following analysis of the relevant reports aims to shed light upon the changing content of the concept in Turkey *vis a vis* the EU.

The Commission stated in its first Regular Progress Reports that Turkey had legal framework for the rights of religious minorities "like other European constitutions, the Turkish constitution lists the country's main fundamental rights and the freedom of religion is among these rights".<sup>310</sup> Yet, the concept has still some limitations and there

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<sup>309</sup>Bilal Sambur, "Türkiye'de Din Özgürlüğü, Laisizm ve Resmi İdeoloji," *Liberal Düşünce* Cilt:14, Sayı: 55 (2009): 42.

<sup>310</sup>Republic of Turkey Ministry of EU Affairs, *1998 Regular Progress Report for Turkey*, [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_1998.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1998.pdf) (Accessed 30.04.2014).

are some problems with it. These problems and constraints can be epitomized and framed as following

- a) Obligation to swear a religious oath
- b) Mandatory indication of one's religious affiliation on official documents
- c) Conscientious objection
- d) State recognition of religious communities or their leaders
- e) Taxation and state funding of religious communities
- f) Proselytism
- g) Right to wear religious dress and display religious symbols
- h) Freedom of religion and right to education
- i) Freedom of religion and parental rights
- j) Employment by churches and other religious groups
- k) Religious conviction and employment
- l) Religious holidays and public services.<sup>311</sup>

The freedom of religion in the Progress Reports also includes these constraints, but the concept has not been divided into subtitles like the above-cited ones, however it can be argued that all these components of religious freedom are intertwined to a certain degree as it can be observed below. To start with, the Commission issued the first Regular Progress Report for Turkey<sup>312</sup> in 1998. In this Report the freedom of religion problems are listed as

- Religious education (Sunni) in state primary schools is obligatory.
- Upon verification of their non-Muslim background, Lausanne Treaty minorities are exempted by law from Muslim religious instruction.
- Religious minorities recognised by Turkey are free to exercise their religion, but practice of religion other than (Sunni) Islam is subject to many practical bureaucratic restrictions affecting, for example, the ownership of premises and expansion of activities.
- The Assyrian Orthodox religion is not recognised as a religious minority and is subject to pressures in the exercise of its religious education.
- Turkey's Alawi Muslims are estimated to number at least 12 million. There are no government-salaried Alawi religious leaders, in contrast to Sunni religious leaders.<sup>313</sup>

Since its first mention in the Progress Report of 1998, the status of the religious minorities –Muslim or non-Muslim- as well as the Alevis' socio-political situation in Turkey has been mentioned in all the other Progress Reports. Moreover, both in Reports

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<sup>311</sup>European Court of Human Rights, *Freedom of Religion*, [http://www.echr.coe.int/Documents/FS\\_Freedom\\_religion\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Freedom_religion_ENG.pdf) (Accessed 30.05.2014).

<sup>312</sup>Op.cit.

<sup>313</sup>Ibid.

of 1998<sup>314</sup> and 1999<sup>315</sup> certain problems such as “among cultural rights, freedom of religion is circumscribed by the difference of treatment accorded to recognised religious minorities (Lausanne Treaty) and other religious minorities, which suffer impediments to their ministry” were clearly stated.

As for the Regular Progress Report of 2000, it is stated that as far as freedom of religion is concerned; there have been “a few signs of increased tolerance towards certain non-Muslim religious communities, notably the Greek Orthodox, Armenian, Catholic and Syrian Orthodox Churches, as well as the Jewish Community”.<sup>316</sup> In the Reports of 2000, 2001, and the following ones it is stated that

The official approach towards the Alevis seems to remain unchanged. Alevi complaints notably concern compulsory religious instruction in schools and school books, which would not reflect the Alevi identity, as well as the fact that financial support is only available for the building of Sunni mosques and religious foundations. These issues are highly sensitive; however, it should be possible to have an open debate on them.<sup>317</sup>

General evaluation in the Progress Report of 2000 can be summarized as “a positive approach seems to be adopted towards non-Muslim communities with regard to freedom of religion, but this should be developed for all religious communities, including non-Sunni Muslims”.<sup>318</sup> In the Report of 2001, it was also stated that there had been some improvements in the religion-oriented relations. For example,

During the year 2000, partly in commemoration of the Christian jubilee, the Turkish authorities sponsored several ecumenical events among major religious groups including a meeting in Tarsus. In December, President Sezer issued a message to Turkey's minority religious groups on the occasion of Christmas and Hanukah. On 12 June 2001, the Prime Minister issued a circular to local authorities reaffirming the rights of Syrian Orthodox Turkish citizens, who had emigrated, to return to their villages in regions covered by the state of emergency and in adjacent provinces. With the support of President Sezer, the government gave permission for the opening of another Syrian Orthodox church in Istanbul.<sup>319</sup>

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<sup>314</sup>Ibid.

<sup>315</sup>Republic of Turkey Ministry of EU Affairs, *1999 Regular Progress Report for Turkey*, [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_1999.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_1999.pdf) (Accessed 30.04.2014).

<sup>316</sup>Republic of Turkey Ministry of EU Affairs, *2000 Regular Progress Report for Turkey*, [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2000.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2000.pdf) (Accessed 03.04.2014).

<sup>317</sup>Ibid.

<sup>318</sup>Ibid.

<sup>319</sup>Ibid.



In the Report, it was stated that official permission was no longer required to carry out restoration of churches and other buildings belonging to minority foundations.<sup>320</sup> However, it was also highlighted that Christian churches continue to face difficulties; in particular with respect to ownership of property.<sup>321</sup> No progress can be reported in the case of the closure since 1971 of the Orthodox Seminary of Halki. The lack of recognition of the legal status of various churches creates a number of constraints, including access to Turkey by ecclesiastic personnel; in the same Report, it is also stated that

With respect to the political criteria, some of the initiatives foreseen in the Turkish NPAA<sup>322</sup> have already been overtaken by more recent developments, such as the adopted constitutional amendments.[...]The document should specify how Turkey intends to guarantee freedom of religion, in particular with respect to minority religions not covered by the Lausanne Treaty (Muslim and non-Muslim communities).<sup>323</sup>

With the 2002 Progress Report, it can be claimed that a new kind of a problem is introduced. It is again stated that freedom of religion is guaranteed but non-Moslem religious communities face legal obstacles.<sup>324</sup> Non-Moslem religious communities, whether recognised by the 1923 Lausanne Peace Treaty (Greeks, Armenians and Jews) or not have encountered problems with regard to their lack of legal personality and property rights, and a ban on the training of clergy in Turkey. In this report, mainly property and cadastral problems of religious minorities were mentioned as well as the problems regarding the training of clergy for religious minorities. Yet as the Report stated there was some progress

Despite these difficulties, there are signs of increasing *de facto* recognition of non-Moslem communities. The Turkish State is becoming more involved in the inter-religious dialogue at international level, and is adopting a more inclusive approach in religious education. In October 2001 the Ministry of Interior invited the leaders of the

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<sup>320</sup>Ibid.

<sup>321</sup>Ibid.

<sup>322</sup>The Turkish National Programme for the Adoption of the Acquis is a wide-ranging document, which addresses many of the priorities set out in the Accession Partnership. It presents a broad agenda of political and economic reforms. It contains a useful inventory of measures, which are to be taken. It is an impressive piece of work that was adopted very soon after the adoption of the Accession Partnership by the European Union; see: Republic of Turkey Ministry of EU Affairs, National Programmes for the Adoption of the Acquis, <http://www.abgs.gov.tr/?p=194&l=2> (Accessed 03.04.2014).

<sup>323</sup>Op.cit.

<sup>324</sup>Republic of Turkey Ministry of EU Affairs, *2002 Regular Progress Report for Turkey*, [http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2002.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2002.pdf) (Accessed 03.04.2014).

different religious communities to voice their concerns and requests. As yet, however, there has been no adequate follow-up to this initiative: requests have either remained unanswered, or have been rejected.<sup>325</sup>

And the Report concludes stating nevertheless Turkey does not fully meet the ‘political criteria’ for the reasons that “the reforms contain a number of significant limitations, on the full enjoyment of fundamental rights and freedoms” and although the respect for the principle of freedom of religion has been enhanced through the amendment of the Law on Foundations, “religious minorities continue to face difficulties on the issues of legal personality, property rights, training of clergy and education”.<sup>326</sup> Almost the same points are stated and highlighted in the Reports. The EU stated in beginning of the Report of 2013 that

As regards freedom of thought, conscience and religion, there were efforts to intensify dialogue with non-Muslim religious communities, with positive results. New religious education textbooks were more inclusive. In practice, though, citizens professing a faith other than that of the majority, or with no faith, continued to experience discrimination. A ECHR compatible legal framework has yet to be established on matters of faith and conscientious objection.<sup>327</sup>

However, in the following lines of the same Report below cited statements take place. These statements also clearly put forward that the EU’s approach to the situation of the freedom of religion in Turkey has not changed at all between the years 2002 and 2013<sup>328</sup>; following a few positive remarks, the same problematic issues has been reworded between those years as such

a) Non-Muslim communities — as organised structures of religious groups — continued to face problems as a result of being unable to acquire legal personality, with adverse effects on property rights, access to justice, fundraising and the ability of foreign clergy to obtain residence and work permits.

b) Restrictions on the training of clergy remained.

c) As regards participation in religious elections, the authorities in the past have granted citizenship to 15 Metropolitans of the Ecumenical Patriarchate. A formal legal solution, however, has yet to be adopted that would ensure equal treatment of Turkish and foreign nationals in terms of exercising the right to freedom of religion by participating in the life of organised religious communities according to European standards.

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<sup>325</sup>Ibid.

<sup>326</sup>Ibid.

<sup>327</sup>Republic of Turkey Ministry of EU Affairs, 2013 Regular Progress Report for Turkey, [http://www.abgs.gov.tr/files/2013%20ilerleme%20raporu/tr\\_rapport\\_2013\\_en.pdf](http://www.abgs.gov.tr/files/2013%20ilerleme%20raporu/tr_rapport_2013_en.pdf) (Accessed 01.06.2014).

<sup>328</sup>Republic of Turkey Ministry of EU Affairs, *Regular Progress Reports for Turkey*, <http://www.abgs.gov.tr/index.php?p=46224&l=2> (Accessed 01.06.2014).

d) Personal documents such as identity cards continued to include information on religion, leading to instances of discrimination or harassment by local officials of persons who converted from Islam to another religion and thereafter sought to amend their ID cards.

e) No concrete steps have been taken to follow up the opening in relations with the Alevi community in 2009. *Cem* houses were not officially recognised as places of worship and Alevis experienced difficulties in establishing new places of worship

f) Non-Muslim religious communities reported frequent discrimination, administrative uncertainty and numerous obstacles to establishing or continuing to use their places of worship.<sup>329</sup>

Constitutional amendments, improved religious freedoms and improvement on certain laws are among the improvements Turkey has achieved for the freedom of religion with the help and initiatives of the EU. Yet, when the last Progress Report is considered even these improvements are under the ‘EU standards’. In this backdrop, Schimmelfenning and Scholtz’s notions can be referred. They claim that “the conditional offer of EU membership still remains as a significant factor of democratisation—albeit with reduced strength on the religion oriented cultural legacies condiered”.<sup>330</sup> Schimmelfenning and Scholtz conclude that,

Whereas fundamental cultural dispositions play an important role in the democratisation prospects of EU neighbouring countries, either as an independent facilitator of democratic consolidation or as a moderating factor for EU democracy promotion, the use and effectiveness of EU political conditionality are far from being determined or made redundant by historical legacies.<sup>331</sup>

All in all, as Minkenber *et al.* claim, “ever since the presentation of the Turkish candidacy to the EU, but especially since its official recognition as a candidate state, the issue has been highly contentious in both EU politics and member states’ domestic politics”.<sup>332</sup> European citizens, political parties, civil society actors, institutional actors and the mass media have shown (sometimes sharply) differing views (also between themselves) concerning the issue of Turkish EU membership, and thus the issue has become an important object of political conflict.<sup>333</sup>

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<sup>329</sup>Ibid.

<sup>330</sup>Schimmelfenning and Scholtz, “Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective,” 444.

<sup>331</sup>Ibid.

<sup>332</sup>Michael Minkenber and et al. “Turkish membership in the European Union – The role of religion,” *Comparative European Politics* (2012), 10: 134.

<sup>333</sup>Ibid.

As Hughes and Sasse argues the EU conditionality as set out in the ‘Copenhagen criteria’ is “inherently strong on the normative intent and drive for compliance and convergence”<sup>334</sup> it is far from clear and fixed. Besides, this vagueness of the political conditionality creates dilemmas for both the EU and the candidates in determining how and when conditions have been satisfied.<sup>335</sup>

Moreover, when Turkey is of concern, this situation also brings the debates of the limits of “United in Diversity” to the fore because of the debates over the compatibility of its different ‘culture’ with the EU and furthermore, the EU’s readiness to the Turkey’s integration. As Hurd argues Turkey’s possible candidacy reveals the fact that European approaches to religion and to religious minorities within its own borders “are not set in stone but must be constantly renegotiated, and that expanding Europe to include Turkey will force another renegotiation of those standards by introducing new forms of secularism on the European horizon”<sup>336</sup> and this renders the limits of this renegotiations questionable.

### **3.2. The Limits of “United in Diversity”**

In current debates on Europe, there is no clear sense on the limits of Europe neither geographically nor politically. There is also no conceptual clarity what is Europe; it can be considered negatively- on the basis of its opposites like the ‘other’ cultures- , or it can be considered positively- on the basis of values it constructs and represents like freedom, human rights, democracy-.<sup>337</sup> The EU can be considered as having the characteristics of a nation state and trying to construct an identity based on this notion. Although, it does not have a precedent, it can also be considered within the context of a *sui generis* international organization. So, basically, it can be argued that the ontological assumptions regarding the EU, renders the limits of the EU always open

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<sup>334</sup>James Hughes and Gwendolyn Sasse, “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs,” *Journal on Ethnopolitics and Minority issues in Europe* Issue 1 (2003): 12.

<sup>335</sup>Ibid.

<sup>336</sup>Hurd, “Negotiating Europe: the politics of religion and the prospects for Turkish accession,” 403.

<sup>337</sup>Kevin Wilson and Jan van der Dussen ed., *The History of the Idea of Europe*, (London;New York: Routledge, 1996).

to endless discussions. But, the question of what are the limits of the EU's diversity may be answered by considering its current status as well as its relations with candidate states.

Although, initially emerged as an economic community with economic goals, in due course the EU has evolved into a political, social and cultural entity with a wide range of interest areas. The EU has been accommodating diverse languages, cultures and religions. This diversity and pluralism stems from the Union's enlargements and migration waves as well as its own 28 Member States's own peculiarities. Since 2000, the EU states that it is united in diversity and it highlights that its motto signifies how Europeans have come together, in the form of the EU, to work for peace and prosperity, while at the same time being enriched by the Continent's many different cultures, traditions and languages.<sup>338</sup> However, it barely defines what this diversity is and what kind of limitations it have, thus it renders the question open-ended and debatable within different contexts.

From the vantage point of history it can easily be argued that "Europe is Christian because of its spiritual inheritance, which in addition to Greek reason and Roman justice, consists of Christian faith."<sup>339</sup> The traces of Christianity have been immanent and remarkable in the history of Europe and thus it has influenced and formed an intrinsic part of the European culture, values and identity. Furthermore, it is claimed the Christian creed of Europe is often referred as the roots of the European values as such; "by and large, the basic values promoted in Europe arise from its cultural heritage and are marked by the Christian ethos, at least in a broad sense."<sup>340</sup> Yet, Christianity varies in itself including different branches, sects; it is not uniform but diverse. Moreover, in due course, as it is claimed "it is no longer appropriate to talk about European religion in the singular, meaning Christianity, but instead one should refer to religions in Europe, thereby acknowledging that Europe has become a multi-

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<sup>338</sup>European Union, *The EU Motto*, [http://europa.eu/about-eu/basic-information/symbols/motto/index\\_en.htm](http://europa.eu/about-eu/basic-information/symbols/motto/index_en.htm) (Accessed 08.06.2014).

<sup>339</sup>Tuula Sakaranaho, *Religious Freedom, Multiculturalism, Islam: Cross-reading Finland And Ireland*, (Koninklijke Brill NV: Leiden, 2006), 20.

<sup>340</sup>*Ibid.*

faith and hence multicultural continent”.<sup>341</sup> Europe has a wide spectrum of religions and beliefs. Besides, it has sustained its multicultural fabric in a successful way for most of the time. The role and attempts of the EU in this multicultural situation are remarkable.

As the Union enlarged, the diversity prevailing in the Union has also increased; including the religious diversity in cultural terms. It is often stated that Europe is built on lasting diversity and the EU is a multicultural project. In this perspective, one can consider the idea of diversity as a fundamental principle of the European integration process. In its essence, this cultural diversity may refer to numerous dimensions and criteria including ethnicity, religion, language, nation, gender, social class, region, aesthetics, and media forms. The increasing diversity in the Union has also brought along the question of what are the limits of diversity in the EU. Such kind of questions have entered in the agenda of the EU mainly because Europe has witnessed certain problems originating from this diverse multicultural texture of itself.

Recently, Europe has witnessed increasing tensions between national majorities and ethnic or religious minorities. The issue of Roma people, and migrants from Poland can be considered within this context. Yet, the tensions between marginalised Muslim communities and Europeans is of particular importance. Such conflicts have included violence acts such as the one occurred in northern England between native British and Asian Muslim youth in 2001; civil unrests amongst France’s Muslim Maghreb communities in 2005; and the Danish cartoon crisis in 2006 following the publication of pictures of the prophet Muhammad.<sup>342</sup> And more recently, National Assembly of French has passed a bill on wearing burqa, hicab and alike face covering veils in 2010. This also created fierce discussions regarding both multiculturalism and violation of freedom of religion.

All these issues and more rendered the “United in diversity” debatable and questionable both at the agenda of the EU and the Member States as well as the

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<sup>341</sup>Sakaranaho, *Religious Freedom, Multiculturalism, Islam: Cross-reading Finland And Ireland*, 19.

<sup>342</sup>Triandafyllidou, “Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries,” 21.

candidate states. Limits of this diversity has been questioned. At this point, Turkey as a candidate and culturally more ‘different’ state emerges as a case through which the EU’s diversity limitations are often questioned and opened to ongoing debates. Namely, being vague in ontology, the limits of diversity of the EU are often discussed on the basis of the new comers to the Union when trying to integrate them such as Romania and Bulgaria and on the basis of culturally different ‘others’, as it is in the case of Turkey.

Turkey’s situation at this point needs to be taken into consideration. After accepting her as a candidate in 1999, there has been growing scepticism amongst European governments with regard to the “possible accession of Turkey into the EU, a country which is socio-culturally and religiously different from the present EU-28.”<sup>343</sup> The situation of Turkey can be epitomized as

Indeed Turkey is by definition a multi-ethnic and multi-religious country that bears within it both the multicultural tolerance tradition of the Ottoman Empire and its *millet* arrangements as well as modern nationalist intolerance towards minorities.<sup>344</sup>

It may be true that Turkey has a record of intolerance towards minorities, yet as it is stated previously in line with the EU conditionality, she has improved this situation to an extent. However, since the Helsinki Summit of the European Union in December 1999, Turkey has been surrounded with ethno-cultural and religious identity debates both in the EU and national level. The issue has also lively debated both in academic and political frameworks and the process has been going on with fluctuation and often with procrastination “putting to the test the consolidation of Turkish democracy”.<sup>345</sup> And it also affect Turkey’s approach towards the EU negatively. As well as to the individuals, identities and self-definitions also matter to the countries. Besides, “self-definition does not occur in vacuum, but in a world already defined”.<sup>346</sup> Thus, the

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<sup>343</sup>Ibid.

<sup>344</sup>Ibid.

<sup>345</sup>Ibid.,18.

<sup>346</sup>Jonathan Friedman, “The Past in the Future: History and the Politics of Identity,” *American Anthropologist* 94, No.4. (1992): 683.

debates which regards Turkey's identity as well as its democratization, improvement and candidature should also be considered within her internal dynamics.

When it comes to the specific issue of freedom of religion, although there are certain improvements in Turkey, the EU finds the implementation of the concept under the 'EU standards'. Yet, in this respect, it can be claimed

Although these 'European standards' can be seen as referring to the principles of the freedom of religion embodied in the ECHR, there is no conformity among member states over how, in practice, this freedom and autonomy from the state should be effectuated. This situation stems from the great diversity in national arrangements and, *de facto*, from the favouring of traditional religious communities within the member states. Moreover, the relationships between church and state, and religion and society remain highly sensitive in many member states. Hence, in its assessment, the European Commission limits itself to applying only the minimum conditions.<sup>347</sup>

The European Commission's limiting itself to apply only the minimum conditions may seem relevant in the other enlargement processes or at the evaluating of other candidate states. Yet, in Turkey's situation this may not be the case. Because of the Turkey's more 'different' cultural texture and its relatively bad human rights record, the EU stigmatizes the freedom of religion in the country and examines it more comprehensively than the countries the EU felt a 'kin-ship based' affinity towards.

It should again be noted that there is no EU policy on religion; nor is there an express legal competence in the treaties of the Union to encroach on religion and religious affairs.<sup>348</sup> However, since the Amsterdam Treaty a set of harmonised European laws and common policies have emerged dealing with (or having implications for) religion and religious affairs in different framings and institutional configurations<sup>349</sup> as examined in the previous chapter. The concept of freedom of religion in the EU has gradually been an important part of the EU agenda and gradually legal and political frameworks regulating it have emerged. And the EU, since 1998, has incorporated the concept in its Progress Reports issued for candidate states. Problems originating from

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<sup>347</sup>WRR, Scientific Council for Government Policy, *The European Union, Turkey and Islam*, 30

<sup>348</sup>Carrera and Parkin, *The Place of Religion in European Union Law and Policy*, 4.

<sup>349</sup>*Ibid.*



freedom of religion in Bulgaria and Romania after their integration to the Union, have shown that before their accession, the EU has not attached utmost importance to the concept of freedom of religion. Problems originating from this situation has shown that all kinds of diversity is not desirable for all the time. Because it threatens the Unions's societal peace, if there is. In the case of Turkey, one may claim that the relative failure of the political conditionality –Turkey's ever lasting candidacy- results in unenthusiastic attempts by Turkey for further improvements.

It should again be stressed that due to a wide variety of factors, Turkey's situation *vis-a-vis* the EU is controversial and after its acceptance as a candidate, the debates regarding her identity and her compatibility considerably increased and some reservations emerged. Yet, Turkey's admission to the Union is favourable because of the reason that

The recent Eastern enlargements have already decided the debate between federalists and inter-governmentalists in favour of the latter, Europe has more to gain than to lose from Turkey's membership which would strengthen the country's ties to the West, and provide a chance of proving to the world that the motto of the European Union "united in diversity" is a better model for the future of international relations than the scenario of a "clash of civilizations".<sup>350</sup>

Hartmann and Gerteis underline the notion that "privately observed religious or ethnic practices may be overlooked, so long as they go along with public conformity to the codes and practices of the society".<sup>351</sup> However, setting and preserving the social boundaries between public and private is difficult. Besides, the question of what forms of difference worth respect, acceptance and equal rights are of importance for the policy-makers because of their high relativity and sensitivity.

All in all, why religious liberty matters; "when religious freedom increase, inter-religious conflict declines, grievances lessen, and persecution wanes. On the other hand, as government restrictions increase –often at the behest of dominant religious groups-

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<sup>350</sup>Jens Alber, "Where Turkey stands in Europe and why it should be admitted to the EU," Discussion papers // Wissenschaftszentrum Berlin für Sozialforschung (WZB), Forschungsschwerpunkt Arbeit, Sozialstruktur und Sozialstaat, Abteilung Ungleichheit und soziale Integration, No. SP I 2007-205.

<sup>351</sup>Hartmann and Gerteis, "Dealing with Diversity: Mapping Multiculturalism in Sociological Terms," 227.

so does violent persecution, inter religious hostilities and regional strife”.<sup>352</sup> Thus, instead of conflicts and challenges peace and respect for differences prevails rendering the initial aim of the EU possible. It can be argued that prosperity of freedom of religion is more possible in an entity whose limits of diversity are credible but not biased. Namely, if the EU adopts a more positive language and solution-oriented attitude towards Turkey, and accepts Turkey’s diversity as richness, it may move a step further towards achieving its initial peace-oriented aims.

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<sup>352</sup>Allen D. Hertzke, “Religious Freedom in the World Today: Paradox and Promise,” in *Universal Rights in a World of Diversity. The Case of Religious Freedom*, ed. M.A. Glendon and H. Zacher (Vatican City: Acta, 2012), 115. (Referencing from Grim and Finke, 2008).

## CONCLUSION

Belief is a state of mind, a system and a way through which human beings can define and realize themselves. As a system of belief, the religion, conscience, and thoughts are all means and ways of self-definition for humans. In this respect, it can easily be argued that belief and will to believe are inherent in human nature, and they are integral parts of identity; they play crucial roles constructing identities. The concept of religion is as old as human history and it is prevalent in most societies showing itself in different forms of worship, education and even ceremonies. Acts and responsibilities resulting from the right to freedom of religion including people's perception and accordingly their practice of this right can also be considered from wide vantage points. In its essence, freedom of religion is a contested and complex concept; all over the world there have been various debates on it. Since the sixteenth century, tolerance toward different religions and freedom of religion has been tried to be guaranteed in Europe. Gradually, this fundamental and inalienable right has been legally protected; and Europe has become one of the important platforms where this freedom has flourished.

Europe can be claimed as representing all kinds of beliefs and religions in its diverse societies. Having roots dating back to 1951; the EU has turned into an entity which holds these diversities under a single roof by uniting them in diversity. Besides, Catholics, Protestants, Evangelists, Muslims, Buddhists, Atheists, and all other belief systems existing in the EU have turned it into a multifaith and multicultural entity respecting national characteristics of Member States. Nevertheless, the issue of freedom of religion in the EU is both a sensitive and complicated issue. It is sensitive because the way it is managed may trigger both conflict and compromise according to different parts of society. It is quite complicated because although respecting cultures, the EU does not have a competence over neither cultural nor religious affairs of the Member States. However, as a fundamental human right, freedom of religion issues can be carried to the EU Courts, can be discussed in the Parliament, and actions might be taken accordingly. Unquestionably, diversity brings along multidimensional and multifaceted measures to the fore. For this reason, this study has attempted to frame and understand

the key points in the freedom of religion debates in the EU with references to multicultural nature of the EU and to understand the EU's adoption of the term in its enlargement process.

Religion and religion oriented issues such as freedom of religion have been a crucial part of both international and national agendas often as a part of multiculturalism debates. It will not be wrong to claim that hundreds of years have passed from the domination of the principle of *Cujus regio ejus religio*, to the principle of *Everyone has the right to freedom of thought, conscience and religion*. In Europe, the development of a notion on the subject of toleration began in the sixteenth and seventeenth centuries and from then on it has been protected with international and national laws in Europe. Both the concept of religion and the meaning inferred from the concept of freedom of religion have gradually been changed and evolved in Europe. To illustrate, the Europe was once synonymous with Christendom mainly because Papacy was –and still is– located there, and has played a crucial role shaping the Europe. In addition to the role of Papacy, the Muslim ‘other’ also played a unifying role for Europe against Muslims at those times. Yet, as the decades pass, the Christianity has no longer been the core of Europe and diversity across the continent has prevailed more.

Steadily, visibility of different religions in public sphere in Europe has increased considerably in recent decades. Accordingly, individuals and groups having religious and belief-oriented concerns as well as different religious and ritual practices have been increasingly involved in debates on a wide range of political issues, ranging from legal debates about hate speeches, xenophobia, discrimination, freedom of religion, to social policy and cohesion debates. Multiculturalism has therefore emerged as one of the frames of reference shaping freedom of religion discussions.

First of all, multiculturalism can be regarded simply as the pluralistic nature of a society in terms of traditions, nationality, culture and religion; it may be viewed as the conglomeration of different cultural traits. It was a trend to define across a wide variety of states including USA, Canada, Australia between the years 1970s and 1990s. It was endorsed as public policy on these states, but later on it has also been adopted and

encouraged as a way of managing diversity as it has been in the EU. Multiculturalism has evolved in the EU gradually with successive enlargement waves, continuous migrations between the EU Member States and between the EU and non-EU states.

It should be noted that multiculturalism and multicultural societies should not be conflated. They have common grounds but indicate different situations. Moreover, how these wide ranges of diversities are perceived and responded shape multiculturalism. Recently, Member States has witnessed social tensions regarding the clashes between different religious and belief groups. With the increase in the conflicts between culturally diverse layers of the European societies, there has been fierce criticisms on multiculturalism. Some circles at nation state levels even claimed that homogeneity of a society in terms of culture and values is more desirable than the multicultural fabric. Because multiculturalism is thought to be threatening their way of life, as the many Dutch claim. Nonetheless, the EU always states that this multicultural nature of the EU is intrinsic to the EU, and it respects cultural diversities of its constituent Member States. Within, this commitment, the EU also aims to protect and guarantee freedom of religion in Member States and attempts to protect this freedom in candidate states.

Religion constitutes and plays an important role in the current debates of multiculturalism. As religion is often taken for granted as an integral part of culture, the freedom of religion pursuing it is also considered within the wide scope of culture. A liberal framework may be the relevant theoretical base for multiculturalism and freedom of religion because at the roots of the concept of freedom of religion liberal notions which emphasize individualism, toleration, equality, and freedom lie. And these are the key concepts which pave the way for religious freedom and multiculturalism. Theoretical framework of the freedom of religion in a multicultural context has been examined through the lenses of liberalism in this thesis.

Secondly, in its essence, freedom can be considered as the root of all other human rights; and freedom of religion is the right which supports the notion that individuals and communities are free to choose the religion (or not to choose), or belief in which they want to believe and live in that way. Thus, in the thesis, not just the

history of the concepts and processes but the changing contents of the concepts have also been examined with a special focus on the question of to “what extent the religious freedoms granted by Treaties are internalized in the EU”. Depending on the recent incidents, it may be concluded that although protected by law, in practice, there are certain problems with regard to the right of the freedom of religion. The well-known and often referred headscarf issue is one of these problems. Thus it may be claimed that there is a gap between law and practice in the EU. Equal worth, dignity, reason, conscience, and community- these traits of common humanity provide the clues to the right, and scope, of religious liberty. Moreover, one may claim that the religious freedom is not completely practiced and implemented in the Member States in line with multiculturalism since the EU leaves the subject matter to the Member States. The EU, as a supranational entity, may be demanding on the implementation of the freedom of religion, yet Member States and their citizens may not and do not accept diversity of different religious practices as valuable components of their lives paving the way for a peaceful coexistence but threatening factors resulting in turmoils and unrest. Nonetheless, the EU still continues to enlargement processes evaluating the applicants and candidates also taking freedom of religion into consideration in its reports.

Thirdly, the EU takes the concept of freedom of religion into consideration in its enlargement policy. Thus, in the third chapter of the thesis the political conditionality of the freedom of religion concept in EU enlargement as a part of the Copenhagen Political Criteria has been outlined and examined. This chapter has claimed that although the EU respects cultural diversities and is a *de facto* multicultural entity, it fails to handle the concept of freedom of religion, which is a part of multiculturalism in practice. Consequently, recent Member States such as Romania and Bulgaria have still freedom of religion problems after their accession to the EU. This might be mainly because of the reason that the EU have failed to consider the importance of the concept which is an integral part of societal diversity.

The concept of freedom of religion is also monitored and evaluated in Turkey who is a *sui generis* candidate. In this respect the EU’s transformative power emerges as a harbinger of possible peaceful coexistence. It functions as a guardian which holds so

many differences together. Within this backdrop, it can be claimed that the EU uses and realizes its transformative power via its conditionality which simply necessitates that membership to the Union is based on the accomplishment and practice of certain criteria. Namely, the conditionality is among the best means shaping candidate countries' policies in line with the EU's agenda. Yet, in the case of Turkey, the EU fails to transform Turkey's approach to religious pluralism in the country significantly. Stemming from its historical experiences, Turkey's perception of religious minorities as threats to its sovereignty and unitary nature prevents it adopting and implementing all the EU recommendations.

The EU's agenda has also included some salient issues such as the question of to what extent Europe is multicultural has taken its place on the agendas and has resulted in new debates including the absorption capacity of the Union. Having a transformative power, to what extent the EU is able to reinforce multiculturalism in candidate states is also questionable. Turkey's protracted candidature and credibility of the political conditionality for the freedom of religion in this respect give a clue on the limits of "United in Diversity" discourse of the EU. Thus one might argue that the EU perceives diversity as a limited and reduced one, having also tendency to exclude the 'different' ones. Yet, Turkey's position toward diversity should be also examined carefully. Turkey may not be ready to accept diversity that the EU aims to obtain; having a Muslim population in majority; Turkey still deals with issues such as headscarf debates. It could not resolve its own culture and religion oriented problems comprehensively. Consequently it might be claimed that that EU-Turkey relations also affect the freedom of religion debates both in Turkey and the EU.

All in all, it should be borne in mind that freedom of religion evolves in time both as a concept and practice, having a dynamic facet reconstructed and reshaped within time. Religious freedom in the EU has been evolving due to various factors including migration, enlargements, and daily life practices, recently emerging religious fundamentalisms, pluralist structures and new identities nurtured by the phenomenon of migration. And all these elements, renders the freedom of religion both more complex, delicate, and sensitive. In practice, the freedom of religion brings along the issues of

allocation of funds for religious communities, recognition by states, toleration for the individuals and groups by the societies. Evidently, freedom of religion is a right which bears consequences for societies. When practiced properly, it leads to prosperity and a comprehensive “Unity in Diversity”. Yet, when it is not or limited, it results in social conflicts.

This thesis has argued that although freedom of religion seems in line with “United in Diversity” claims of the EU as both an essential human right and a part of multiculturalism, problems might emerge at the Member State level. It is mainly because the EU leaves the matters such as culture and religion to the Member States. Each Member State’s approach to cultural and religious diversity may differ which in the end results in a lack of standard at the EU level. Beyond that, as the political conditionality for the concept of freedom of religion is low, the EU fails to incorporate and reinforce freedom of religion in some candidate and new member states. This is particularly important for the case of Turkey. As a candidate state, in the case of Turkey, weak conditionality and conflicting views on multiculturalism leads more ‘controversy’ in the EU on the grounds of religious diversity and freedom of religion. This may render the “United in Diversity” claims questionable since the EU seems not only procrastinating the relations with Turkey but also it does not impose an effective conditionality for the complications it has seen in Turkey. Diversity, pluralism, culture, religion, and value are all contested and multifaceted concepts and they are open to different perceptions and interpretations. This study has, therefore, attempted to sketch out important aspects of the issue in order to provide useful insights for the discussions on the future of EU as well as on EU-Turkey relations. Furthermore, it seems that these issues will continue to dominate multiculturalism and socio-political religion studies in the coming decades.



## **ANNEX 1: Report of Freedom of Religion or Belief Violation**

### **1. GENERAL INFORMATION about the FoRB violation**

Does the incident involve an individual or a group?

If it involves a religious or belief group please state the number of people involved and the denomination of the group:

Country(ies) in which the incident took place:

### **2. IDENTITY OF THE PERSONS CONCERNED**

Family name:

First name:

His/her religion or belief:

Place of residence or origin:

Age:

Sex:

Nationality(ies):

### **3. INFORMATION REGARDING THE ALLEGED VIOLATION**

Description of the violation:

Date and time (approximate, if exact date is not known):

Location:

Bias motivation indicators because of his/her religion or belief?

Identification of the alleged perpetrator(s), name(s) if known and/or function, suspected motive:

Are the perpetrator(s) known to the victim?

Was the violation as a result of state agents or non-state-actors?

**4. STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANYONE ELSE ON HIS/HER BEHALF?**

Please indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e. police, prosecutor, court):

**5. IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM**

Family name:

First name:

Contact number or address (please indicate country and area code):

Fax:

Telephone:

Email:

Please state whether you want your identity to be kept confidential:

Date you are submitting this form:

Signature:

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\*Source: European Parliament Working Group on Freedom of Religion or Belief, <http://www.religiousfreedom.eu/forb-violation/> (Accessed 24.11.2013).

## ANNEX 2: Chronology of Enlargement

	<b>Application for Membership</b>	<b>Opening of Negotiations</b>	<b>Accession</b>
United Kingdom	1967	1970	1973
Denmark	1967	1970	1973
Ireland	1967	1970	1973
Greece	1975	1976	1981
Portugal	1977	1978	1986
Spain	1977	1979	1986
Austria	1989	1993	1995
Sweden	1991	1993	1995
Finland	1992	1993	1995
Hungary	1994	1998	2004
Poland	1994	1998	2004
Slovakia	1995	2000	2004
Latvia	1995	2000	2004
Estonia	1995	1998	2004
Lithuania	1995	2000	2004
Czech Republic	1996	1998	2004
Slovenia	1996	1998	2004
Cyprus	1990	1998	2004
Malta	1990	2000	2004
Romania	1995	2000	2007
Bulgaria	1995	2000	2007
Croatia	2003	2004	2005

## Candidate States

	<b>Application for Membership</b>	<b>Candidate Status</b>	<b>Opening of Negotiations</b>
Turkey	1987	1999	2005
Macedonia (FYROM)	2004	2005	
Montenegro	2008	2010	
Iceland	2009	2010	2010

Source: Avery, "EU Expansion and Wider Europe," 168-170.

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