THE PROBLEM OF THE "MINORITY QUESTION" IN EUROPEAN UNION-TURKEY RELATIONS

NAZ ÇAVUŞOĞLU[1]

Only Turkey, as an applicant State to the European Union (EU), does not, as yet satisfy the Copenhagen political criteria, which require the stability of institutions guaranteeing democracy, the rule of law and respect for and protection of minorities. In this respect, one of the controversial issues of Turkey's accession to the EU is the "minority" question. This article considers this issue with reference to the Commission's Regular Reports on Turkey, the Accession Partnership and the Turkish National Programme. It is argued that a compromise formula that would recognise the cultural identity of persons who display distinctive ethnic characteristics differing from those of the majority, based on individual human rights, without referring to the concept of minority, could be developed. However as it is stated in the decisions of the Turkish Constitutional Court, what is feared is that the demands to recognize cultural rights may subsequently instigate "a tendency to break off from the whole" and undermine the national unity.

1. Introduction

The European Council, which met in Helsinki on 10 and 11 December 1999, concluded that Turkey is a candidate State whose application will be judged on the basis of the same criteria as applied to other candidate States. Subsequent to the Helsinki Summit conclusions, the first *Accession Partnership for Turkey*, the

[1] This article represents an expanded version of a paper delivered to the international symposium "Copenhagen Criteria" ["Criteres de Copenhague: Denominateurs Communs de l'Union Europeenne et du Conseil de l'Europe?"] held in Istanbul on 24-25 June 2000.

centrepiece of the pre-accession strategy[2] was adopted by the Council of the European Union on 8 March 2001[3]. In the Annex to the Council Decision, the principles, short and medium term priorities, intermediate objectives and conditions contained in the Accession Partnership were laid down[4]. Soon afterwards on 19 March 2001, Turkey adopted its *National Programme for the Adoption of the Community Acquis*, which addresses many of the priorities set out in the Accession Partnership.

Although the term "minority" is not used, one of the short-term priorities and one of the medium-term objectives which have been identified for Turkey in the Accession Partnership have some relevance to the "minority rights". Among the short-term priorities it was held that Turkey would need to "remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/ radio broadcasting"; and as a medium-term objective, measures would be adopted "to ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provisions preventing the enjoyment of these rights should be abolished, including in the field of education".

Both of these were reflected in Turkey's National Programme under the sub-heading "2.9. Cultural Life and Individual Freedoms" which states: "The official language and the formal education of the Republic of Turkey is Turkish. This, however, does not prohibit the free usage of different languages, dialects and tongues by Turkish citizens in their daily lives. This freedom may not be abused for the purposes of separatism and division". In fact, this formula summarises Turkey's position in respect to the "minority" question. However, it was pointed out in the Annex to the Council Decision that National Programmes should be compatible with the priorities contained in the Accession Partnership. Considering this statement, it seems some problems exist on the subject matter.

---

[2] The Commission of the European Communities explains the Accession Partnership as follows: *"The Accession Partnership identifies short and medium term priorities, intermediate objectives and conditions on which accession preparations must concentrate in the light of the political and economic criteria and the obligations of a Member State to adopt, to implement and enforce the Community acquis"* (ELARG/ 234/00) at http://europa.eu.int

[3] See Council Decision No. 235/2001 of 8 March 2001, O.J. L 85/13 of 24.3.2001.

[4] This Annex is an integral part of the Council Decision.

2. Cultural Identity: A "minority" question?

In the documents adopted by the Conference on Security and Cooperation in Europe (CSCE/OSCE), the United Nations (UN) and the Council of Europe[5] since the beginning of the 1990's, although a general definition of the concept of "minority" is not given, the demands aiming to preserve the cultural identity of persons who display distinctive ethnic, linguistic or religious characteristics differing from those of the majority are regarded in the context of the "*minority question*", for which the solution requires the granting of specific rights to minorities. In the background of this approach lies the effort of finding a solution to the destabilising effects of the "ethnic factor" (Klebes, 1995: 92). In this respect, *minority rights*, to a certain extent, aim *to suppress and pacify* ethnic conflicts.

The various international instruments on minority protection all include two types of measures to this effect (Çavuşoğlu, 2001: 161-163; Benoit-Rohmer, 1996: 19-20):

a. Expression of minority rights as individual rights of "*persons belonging to minorities*": This formula is used as a measure against "*collective rights*" that could be associated with *the right of self-determination* or would enable the minority rights to acquire a 'political rights' dimension other than that of a 'cultural rights' dimension, such as, provision of group representation in decision-making processes. This is due to a fear that collective rights might bring along other demands ranging from local autonomy to secession.

b. The condition of "*the territorial integrity of States*": The obligation to respect the States' territorial integrity, included in every international document relating to minority rights, is the clearest imprint of the policies aiming at stability. Designed to counterbalance the granting of specific rights to minorities (persons belonging to minorities), this is what shapes the fundamental philosophy of minority rights and prevents them from developing into secessionist demands.

---

[5] CSCE Copenhagen Document (1990), UN Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities (1992), Framework Convention for the Protection of National Minorities (1995; 1998).

At this point it seems necessary to clarify the distinction between the *right of self-determination* of "peoples" recognised in international documents on the one hand, and minority rights on the other. The qualitative difference between the two is that while the right of self-determination, covering all the rights in the cultural, economic and political spheres, in essence, is the right *"to determine the political status freely"*, minority rights, on the other hand, depend on the right of "cultural identity" (Thornberry, 1989: 880).

However, this distinction rather makes sense with respect to *the external aspect of self-determination*, which includes *"the right of secession"*. The emphasis on "territorial integrity of States" in international instruments dealing with minority rights clearly manifests that minority rights do not include self-determination in the sense of the right to secede.

On the other hand, presently, *the internal aspect of self-determination* is on the agenda. The General Comment on self-determination issued by the Human Rights Committee, regarding Article 1 of the UN International Covenant on Civil and Political Rights, acknowledges that the "realisation" of "the right of self-determination is an essential condition for the effective guarantee and observance of individual human rights" and adds that "States Parties" in their reports "confine themselves to a reference to election laws", but they "should describe the constitutional and political process which in practice allows the exercise of self-determination" (Thornberry, 1989: 879, 883-884).

Although not expressly stated in the General Comment, it is claimed that this approach which emphasizes the internal aspect of self-determination has relevance to the minorities question as well.

The OSCE High Commissioner on National Minorities, Max van der Stoel, during the OSCE Summit (1999) held in Istanbul, stated that the concepts of *"internal self-determination"* and *"non-territorial autonomy"* considered together related to ensuring a more effective participation of minorities in public life without prejudice to the territorial integrity of the States.

In this context, possibly the following might be said: When the right of internal self-determination is associated with minority rights, beyond the right of equal political participation, development of methods that would empower the minorities to be in a decision-making position in the areas of protecting their own cultural identities becomes crucial.

Whereas the international instruments on minority rights are not exactly clear on this issue, Article 15 of the Council of Europe's Framework Convention for the Protection of National Minorities[6] states that: "The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them".

In the Explanatory Report on the Framework Convention, some of the measures that the States could take within the framework of their constitutional systems in respect to this article are mentioned:

(1) "consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
(2) involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
(3) undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
(4) effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;
(5) decentralised or local forms of government".

When Article 15 of the Framework Convention is read in conjunction with the Explanatory Report, these provisions designed to ensure the effective participation of minorities in public life and in public affairs, even though they are expressed on an individual level, are, in essence, provisions that recognise and protect the collective existence of minorities (cf. Wheatley, 1996: 590).

Furthermore, when the Framework Convention is taken as a whole, the consequence of considering the recognition of rights to protect the cultural identities of persons belonging to minorities

---

[6] The Council of Europe's Framework Convention for the Protection of National Minorities entered into force on February 1, 1998. Of the member States of the Council of Europe, only *Andorra, France* and *Turkey* have not signed or acceded to the Framework Convention. For the text of the Convention and the Explanatory Report see *Human Rights Law Journal,* Vol. 16 (1995), pp. 98 ff.

together with the positive obligations of States and the prohibition of assimilation, is the protection of "group identity", and in all international instruments on minority rights, even though the subject is the individual, the rights carry a collective dimension.

That is where the problem emerges.

3. The French and Turkish examples: Similar but different

The *French Constitutional Council* stated in its Decision No 99-412 of 15 June 1999 on *"The European Charter for Regional or Minority Languages"*[7] that granting collective rights to any group on the basis of origin, culture, language or religion was in conflict with the fundamental principles of French Constitution.

The Council decided that granting specific rights to "groups" speaking regional or minority languages in those regions where these languages are spoken was contrary to the indivisible integrity of the Republic, to the equality of all citizens before the law without distinction of origin, race or religion and to the principle of the unity of French people to which the Council ascribed constitutional value.

The Constitutional Council also decided that some of the provisions of the Charter were in conflict with Article 2 of the Constitution which stipulates that "The language of the Republic shall be French": The European Charter provides for the facilitation and/or encouragement of the use of regional or minority languages, in speech and in writing, in public and private life by States parties. According to the Council, provisions of this kind are contrary to Article 2 of the Constitution since they acknowledge the right to make use of a language other than French not only in the sphere of "private life", but also in the sphere of "public life", in relations with judicial authorities, administrative authorities and public services.

However, the Constitutional Council, mentioning that Article 2 of the Constitution should be read in conjunction with Article 11 of the 1789 French Declaration of Human and Citizen's Rights which

---

[7] The European Charter for Regional or Minority Languages was aimed at preserving historical regional or minority languages in Europe. It came into force on March 1, 1998. For the text of the Charter see *Human Rights Law Journal* Vol.14 (1993), pp. 148 ff.

enshrines the right to freedom of expression, did not decide that the other provisions that France had undertaken to implement in spheres of education, media (printed media, radio, television) and cultural activities by signing the Charter, ran counter to the Constitution. Therefore, according to the Council, most of these provisions did not go beyond the already existing practices regarding the use of *regional languages*.

The *Turkish Constitutional Court* acting on similar grounds is more rigid on this issue. The Court states that the use of *local languages* in "all private premises, in workplaces, in the press and in works of art and literature" is not prohibited, but their recognition as "a means of common communication and contemporary education" runs counter to the Constitution[8].

The Constitutional Court upheld that the purpose of the provisions to protect the indivisible integrity of the State with its territory and nation is "not to prohibit the differences existing in the country and their languages and cultures"; "what is prohibited is not the expression of cultural differences and richness, but their utilisation to create minorities on the territory of the Republic of Turkey for the purpose of undermining national unity and founding a new State order on that basis". Consequently, what is feared is that the demands of the recognition of cultural rights may subsequently instigate "a tendency to break off from the whole"[9].

4. The EU's Copenhagen Criteria and the protection of minorities

The conditions of accession to the EU for the applicant States, known as the *Copenhagen Criteria* were established by the

---

[8] Article 3/1 of the Constitution of the Republic of Turkey states that *"The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish"* and according to Article 42: *" No language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education".*

[9] The Turkish Constitutional Court, stating *"the principle of 'indivisible integrity' of the State requires the integration of sovereignty with a single State structure composed of the unity of the nation and the territory"*, claims that the Constitution is closed to a federal system where the sovereignty is exercised by constituent units as much as it is closed to forms of autonomy and self-government for regions (See Decision No. 1994/2, in: *Official Gazette*, 30 June 1994).

Copenhagen European Council Summit Meeting in June 1993. These criteria, stated in a paragraph of the Conclusions of Presidency, have three components (Bull. EC 6-1993: 13):

a. *Political criteria*: The stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and *protection of minorities*;
b. *Economic criteria*: The existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
c. *Ability to fulfil the obligations arising from the membership*: To be able to fulfill the obligations of membership including adherence to the aims of political, economic and monetary union.

In the 1997 EU Luxembourg Summit, it was decided that compliance with the *Copenhagen political criteria* is a *prerequisite* for the opening of any accession negotiations (Bull. EU 12-1997: 10). In this regard, "protection of minorities" becomes to be one of the important issues of Turkey's application for EU membership.

It is possible to observe the significance of minority rights with respect to the Copenhagen Criteria in the EU Commission's regular reports on Turkey. The Commission, in *1999 Regular Report on Turkey's Progress Towards Accession,* quotes the following from the January 1999 report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe: "The essential point is that any such group [Turkish citizens of Kurdish origin] should have the opportunity and material resources to use and sustain its natural languages and cultural traditions in circumstances and under conditions now clearly and reasonably defined by two important Council of Europe Conventions: *the Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages*".

This implies that the standards of the Council of Europe on minority rights are the standards accepted by the EU. In its *1998 Regular Report*, the Commission stated that "a civil solution could include recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity, provided it does not advocate separatism or terrorism" and highlighted that the use of Kurdish is not allowed in spheres of 'political communication', education and radio/television broadcasting.

The principle of "territorial integrity of states"[10], which comprises the fundamental philosophy of all the international instruments on minority rights, including *The Framework Convention for the Protection of National Minorities, the first legally binding multilateral instrument devoted to the protection of national minorities in general*, is a principle, also not challenged/contested by the EU. Nevertheless, as mentioned earlier, the problem revolves around the collective dimension of rights conferred on minorities. In the examples of France and Turkey, the protection of cultural differences by means of "minority rights" is regarded to be in conflict with the constitutional fundamental principles.

Maybe at this point, a change of perspective could help: The Framework Convention, on the basis of principles of equality and non-discrimination, to which there are no objections, promotes the protection of cultural diversity as a source and a factor, not of division, but of enrichment for each society; so the proposed principle of positive discrimination, in this respect, is not an alien concept with regard to human rights law. It pursues a main objective, namely that the cultural differences benefit from a full and effective equality in a pluralistic and democratic society.

In the context of the protection of cultural identity, provisions on linguistic freedoms are again based on a right: the right to freedom of expression[11]. Additionally, the provisions of the Framework Convention are mostly programmatic provisions that leave the States a measure of discretionary power in the implementation of its objectives by enabling such States to consider the particular circumstances of every case respectively.

---

[10] See Article 21 of *the Framework Convention.*

[11] Article 9 of *the Framework Convention*: *"The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media (par.1); The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media (par. 3)".*

An example of this is the use of minority languages in relations with the *administrative authorities.* This provision has been worded very flexibly; only in the condition of the existence of a "real need", which is to be assessed by the State, the States Parties *shall endeavour* to ensure, *as far as possible*, the conditions which would make it possible to use the minority language in relations between the persons belonging to minorities and the administrative authorities[12].

There is a similar statement in the article referring to *the teaching of and instruction in a minority language*: If there is *"sufficient demand"*, the States Parties *shall endeavour* to ensure, *as far as possible*, the teaching of or the instruction in the minority language. This provision is at the same time conditioned to be implemented without prejudice to the learning of the official language or the teaching in this language[13]. However the Framework Convention recognises the rights of persons belonging to minorities to introduce and manage their own private educational and training establishments and institutions; but the exercise of this right does not entail any financial obligation for the States[14].

These examples reflect what is understood when the term "minority rights" is used. As a solution, a compromising formula that would recognise the principles covered by the Framework Convention, *based on individual human rights, without referring to the concept of "minority"*, is being proposed here under and could be developed.

Such a formula can be found in the Bulgarian Constitution (1991)[15]: *Article 54 / 1 of the Constitution of the Republic of Bulgaria* reads:

> *"Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognised and guaranteed by the law"*;

---

[12] Article 10/2 of *the Framework Convention.*

[13] Article 14 of *the Framework Convention.*

[14] Article 13 of *the Framework Convention.*

[15] "Constitution of the Republic of Bulgaria", in: *The rebirth of democracy; 12 constitutions of central and eastern Europe,* Council of Europe Press, 1995, pp. 9 ff.

and *Article 36/1-2:*

> *"The study and use of the Bulgarian language shall be a right and an obligation of every Bulgarian citizen. Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language".*

Article 2 of the Bulgarian Constitution protects "the territorial integrity of the Republic of Bulgaria"; Article 3 accepts Bulgarian as the official language; Article 6 contains the classical principle of non-discrimination; Article 11/4 prohibits political parties that are founded on ethnic, racial or religious lines or which seek the violent usurpation of state power; and according to Article 44/2 "No organisation shall act to the detriment of the country's sovereignty and national integrity, or the unity of nation, nor shall it incite racial, national, ethnic or religious enmity". Moreover, it is pertinent to add that Bulgaria accepts the ethnic elements on its territory as part of the Bulgarian nation, and just like Turkey[16], reserves the term of "minority" only to groups of persons defined and recognised as minorities on the basis of multilateral or bilateral legal instruments to which Bulgaria is a party.

5. Conclusion

Currently Turkey is more distant than France that acknowledges the use of *"regional languages"* in education and radio/television broadcasting, limited to the sphere of private life, with respect to the right of freedom of expression. In its *2001 Regular Report on Turkey's Progress Towards Accession*, the Commission points out that the Turkish National Programme "makes it insufficiently clear how Turkey will address a number of priorities in the Accession Partnership such as those on cultural rights" and "falls considerably short of the Accession Partnership priority of guaranteeing cultural rights for all citizens irrespective of origin". In this context, the Commission stresses: "the priority on the removal of all legal

---

[16] Turkey does not recognise "minorities" other than those defined by the 1923 Lausanne Peace Treaty.

provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting is to be included" in the National Programme.

As for the recent package of constitutional amendments[17] adopted by the Turkish Grand National Assembly on 3 October 2001, on the other hand, the amendment of Articles 26 and 28 of the Constitution, in which the provision forbidding the use of languages prohibited by law has been abolished[18], was assessed to be a positive development by the Commission. However, it has been emphasised that legislative changes are required, particularly in the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts, which stipulates that radio and television broadcasts will be Turkish with an exception for languages that will contribute to the development of a universal culture and science, for this amendment to become fully effective. Furthermore, the Commission has underlined "no amendment under the constitutional reform provides for education in languages other than Turkish"[19].

Therefore, in these circumstances, it seems it is quite difficult to envisage a process of accession devoid of problems in the relations between Turkey and the EU, taking into account that compliance with the Copenhagen political criteria is its prerequisite.

---

[17] These amendments had been prepared in line with the National Programme priorities.

[18] The heading of Article 26 of the Constitution is *"Freedom of Expression and Dissemination of Thought"*. The provision that reads *"No language prohibited by law shall be used in the expression and dissemination of thought"* has been abolished and the third paragraph beginning with this clause has been entirely deleted from the text. The provision that *"Publications shall not be made in any language prohibited by law"* has also been removed from the text of the Article 28, which guarantee the "freedom of the press". With regard to these amendments, it should be highlighted that the law which had been passed in 1983, prohibiting the use of languages other than the *"official languages of a State internationally acknowledged by Turkey"*, had been lifted by the Anti-Terror Law of 1991.

[19] See *supra* note 7, and Law on Foreign Language Education and Training (1983), Article 2/a and c, in: *Official Gazette*, 19 October 1983, no.18196.

Bibliography

Benoit-Rohmer, Florence (1996), *The minority question in Europe: Texts and commentary,* Council of Europe Press.

Commission of the European Communities (1998, 1999, 2001), Regular Reports on Turkey's Progress Towards Accession, at http://europa.eu.int/comm/enlargement/turkey/docs.htm

Council of Europe (1995), *The rebirth of democracy: 12 constitutions of central and Eastern Europe,* Council of Europe Press.

Council of Europe's Framework Convention for the Protection of National Minorities and Explanatory Report, (1995), *Human Rights Law Journal*, Vol.16. No.1-3., pp.98-108.

Council of Europe's European Charter for Regional or Minority Languages, (1993), *Human Rights Law Journal*, Vol.14. No.3-4., pp.148-152.

Council of the European Union, (2001), Accession Partnership for Turkey (O.J. L 85/13, 24.3.2001), at http://europa.eu.int/comm/enlargement/turkey/docs.htm

Çavuşoğlu, Naz (2001), *Uluslararası _nsàn Hakları Hukuku'nda Azınlık Hakları [Minority Rights in International Human Rights Law]*, Second edition, Istanbul: Su Press.

European Communities, (1993), Conclusions of the Copenhagen European Council, *Bulletin of the European Communities* 6.

European Union, (1997), Conclusions of the Luxembourg European Council, *Bulletin of the European Union 12.*

The Council of Europe's Framework Convention for the Protection of National Minorities", *Human Rights Law Journal*, Vol. 16. No.1-3., pp. 92-98.

Thornberry, Patrick, (1989), "Self-Determination, Minorities, Human Rights: A Review of International Instruments", *International and Comparative Law Quarterly,* Vol. 38., pp.867-889.

Turkish National Programme for the Adoption of the Community Acquis (2001), at http://www.abgs.gov.tr

Wheatley, Steven, (1996), "Current Topic: The Framework Convention for the Protection of National Minorities", *European Human Rights Law Review*, Vol. 6., pp.583-590.