to my family,

THE MINORITY ISSUE IN THE CONTEXT OF TURKEY-EU RELATIONS

The Institute of Economics and Social Sciences
Of
Bilkent University

By

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In Partial Fulfillment for the Degree of
MASTER OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

in

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September 2002

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Political Science and Public Administration.

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ABSTRACT

THE MINORITY ISSUE IN THE CONTEXT OF TURKISH-EU RELATIONS

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Master's Thesis, Department of Political Science and Public Administration

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September 2002

For 200 years, Turkey has moved towards the West. Membership in the European Union (EU) forms the apogee of this endeavor. The European Helsinki Summit can be considered as the institutionalization of this process and Turkey-EU relations. As a natural consequence of this, the EU started to closely monitor the political and economic life in Turkey. In other words, there are economic and political criteria for Turkey to fulfill. However, there are problems regarding these criteria and these problematic areas are various on the way to accession. This thesis considers the issue of minority protection under the heading of political criteria, which is one of the above-mentioned problematic areas. In other words, this thesis examines the perceptions and the gap between the perceptions of Turkey and the EU towards the issue of minority rights, an issue which continues to threaten Turkey's accession to full EU membership.

ÖZET

TURKİYE-AB İLİŞKİLERİ BAĞLAMINDA AZINLIK KONUSU

Ercan Laçin

Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü

Tez Yöneticisi: Dr. Aylin Güney

Eylül 2002

Türkiye 200 yıldır Batı doğrultusunda ilerlemektedir. Bu gayretin doruk noktasını da Avrupa Birliği (AB) üyeliği oluşturmaktadır.1999 Helsinki Zirvesi bu sürecin ve Türkiye-AB ilişkilerinin kurumsallaşması olarak algılanabilir. Bu gelişmenin doğal bir sonucu olarak AB Türkiye'nin ekonomik ve siyasi hayatını yakından gözetim altına almaya başlamıştır. Diğer bir deyişle, Türkiye'nin yerine getirmek durumunda olduğu ekonomik ve siyasi ölçütler mevcuttur. Diğer taraftan, bu ölçütler göz önüne alındığında çeşitli problemler baş göstermektedir ve günümüzde katılım sürecinde de bu sıkıntılı ve sorunlu alanlar çeşitlilik arz etmektedir. Bu tez, yukarıda belirtilen problemli alanlardan biri olan azınlıkların korunması konusunu ele almaktadır. Başka bir deyişle, bu tez, Türkiye'nin AB adaylığına tehdit oluşturan azınlık hakları konusuna Türkiye'nin ve AB'nin bakış açılarını ve bu bakış açılarının arasındaki farkı nedenleriyle incelemektedir.

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INTRODUCTION

Turkey-European Union (EU) relations go back to the period when the Ottoman Empire started to lose its superiority in Europe and to the period when modernization or westernization movements started. Therefore, the modernization attempts in the Ottoman period such as the Tanzimat reforms and the reforms made by Atatürk in the Republican period can be considered as pioneers of the spirit of modernization or westernization. In this regard, since the beginning, Turkey's European orientation has been a strategic objective of both Ottoman and Turkish foreign policy and must be seen as an integral part of the modernization process Turkey has been following. This objective became one step closer by Turkey's becoming a candidate state for the Union. After a tortuous process, Turkey was finally acknowledged as an official candidate country by the European Union at the Helsinki Summit in December 1999. Centuries of relations with Europe became more and more institutionalized with the Helsinki Summit. However, it is a fact that the relations between Turkey and the EU have always been in constant fluctuation. In other words, Turkey-EU relations have always been rough and problematic. The relations between the two have been characterized as problematic because the problems show up in different spheres and they are hard to solve. This study takes the minority issue as one of the major areas of difficulty and aims at getting to the core of the problem by showing the differentiation of perceptions as well as the reasons for this differentiation.

It is obvious that in the process of Turkey's integration into the EU, the Union has made demands of Turkey with respect to its history, understanding, application and perceptions. On the other side, the responses of Turkey towards these demands have

always been limited because of her own perceptions and realities. In order to present this problematique, in the first part of this work, the understanding of minority in the West will be evaluated. This evaluation in the first part is in a legal sense. The aim of the first part to is reveal what the definition and understanding of minority in fundamental documents and declarations in Western history is. In this regard, the effect of the French Revolution is mentioned as the starting point of the debate on minority and minority rights. The French Revolution brought the "ancien regime" to an end and helped the proliferation of Liberal thought, which later provided the basis for the concept of minority rights. It will be argued in this part that these developments proliferated the ideas of nationalism and the nation-state and the issue of human rights and particularly minority rights gained importance in the 20th century after the First World War and especially after the Second World War. In this respect, in the first part of this work, the legal bases for the concept of a minority, minority rights and the protection of minorities will be dealt with having reference to the League of Nations, the Council of Europe, the United Nations and the OSCE.

The second part of the work also focuses on the evolution of the concept of minority in Europe. However, this part focuses on the theoretical framework of the minority issue. The second part will aim to demonstrate that the current Liberal thought in Europe is in compliance with the minority discourse. Liberal thought, on the one hand favors freedom, individualism and individual rights, but on the other hand it shows a shift towards the protection of group rights acting in conformity with the necessities of the changing world. In this regard, the 17th and 18th century philosophies, which basically focused on individual liberty and freedom, and later

the development of the nation-state and the shift in Liberal thought, in which not only individual rights but also the rights of the communities are recognized, will be focused on as two basic points in shaping the understanding of the Western world on the issue of the protection of minorities.

In the third part, the focus turns to the Turkish perception of the concept of minority. In order to give the application of minority protection in Turkey, two important legal documents will be analyzed, the Treaty of Lausanne and the Turkish constitution. These two documents are taken as the basis for today's application in minority protection and also as the basis to for the monolithic understanding of citizenship in Turkey. Additionally, in the third chapter, it will be argued that this kind of an understanding also has an historical explanation and in this regard, the Ottoman heritage, the strong state tradition and Atatürk's vision will be taken as the historical facts leading to an understanding of citizenship.

In the final chapter, in order to have a clear understanding of the differentiation of perceptions towards the minority issue between Turkey and the European Union, citizenship application in the Union is examined with reference to basic agreements of the Union, namely the Maastricht, Amsterdam and the Shengen Agreements. In the second part of the final chapter, the expectations of the Union from Turkey will be examined and it will be mentioned that in the integration process, the expectations of the EU that are in compliance with its historical realities and traditions and the multicultural tradition are at odds with Turkish perceptions and traditions. The aim of the final chapter is to show the gap between Turkey and the European Union as

regards protection of minority rights by comparing the expectations of the Union and the capacity of Turkey to assume the obligations for membership.

CHAPTER I

"MINORITY" AND "MINORITY RIGHTS" IN INTERNATIONAL RELATIONS

1.1 The Concept of Minority

The term "minority", as a concept, is a very broad term, which is used in order to define a group that is not dominant and that has some particular features in a specific society. According to Claude (1969: 1), the rise of the term minority "was the logical consequence of the doctrinal ascendancy of nationalism in Western Europe, which was produced largely by the upheavals associated with the French Revolution". With the emergence of the nation-state and nationalism, the ideas such as the "state should be nationally homogeneous", and "the nation should be politically united" emerged. Therefore, as Claude (1969) states, the problem of national minorities appeared from the conflict between the idea of the homogeneous national state and the reality of ethnic heterogeneity. It is this distinction or division which makes national minorities more visible in the international arena. In other words, we cannot talk about national minorities before the formation of the nation-state. There were only religious minorities before the emergence of nation-states and the protection of these minorities was not a debatable issue then.

In the 18th and 19th centuries, when the nation-state emerged and developed was not a favorable time for the protection of minorities. It is true that the concept of minority became visible with the emergence of the nation-state, but one cannot talk about a successful protection of minority rights. The concept of minority developed and minorities became visible, but they were not really deemed as national minorities. In order to witness a real protection and supervision of the concept of minority rights, one must wait until the First World War. Some agreements and treaties were signed about minorities; however, these did not have any supervision or sanction. Therefore, as Claude states (1969: 8) "There was a fatal lack of machinery for the supervision of the treatment of minorities" in the 19th century. The recognition of national minorities coincides both with the emergence and strengthening of the ideas of nation-state and nationalism, however, this does not mean that they are protected. The protection of minorities and "the problem of how to deal with minorities…became one of the primary political concerns after the war of 1914-18" (Miall, 1994: 23). Therefore, it can be argued that the very concept of minority goes hand in hand with their protection. Protection requires granting of specific rights to minorities, and the power to implement them, since, "rights do not exist where the power to enforce those rights is absent" (Watson, 1990: 168).

1.1.1 Historical Background of the Concept of Minority

In the Middle Ages, there were no minorities and minority rights because the Church was extremely dominant and there was a great religious unity in many societies. Therefore, we cannot even talk about religious minorities in the Middle Ages. The term religious minority emerged with the Reformation period and later developed

and took its shape as we understand it today. And later, "religious minorities" or the concept of the minority changed with the emergence of nation-state and "national minorities" emerged.

When we make a brief historical study of minorities starting from the 16th century, one can realize that the 16th and 17th centuries were the centuries when religion and religious differentiations were dominant. Therefore, the term "religious minorities" coincides with this era. Though the term "religious minority" was used in this era, the actual practice of these rights was poor. That is to say, the members of these religious minorities did not have a say in the public arena. The members of religious minorities did not have any power to express their rights and to make their voices heard.

In the 18th and 19th centuries, the Church started to lose its strength. The Church and powerful monarchies, which were able to satisfy the needs of the people in the 16th and 17th centuries, could not fulfill these needs and expectations in 18th and 19th centuries. In order to fill this gap, "during the 19th century, there appears to have been a general shift towards the recognition of peoples and classes as primary political and social entities to which the individual belonged" (Miall, 1994: 22-23). In addition, as Hadden states, during these days new science and sociology focused their attention on concepts related to group psychology[1]. Therefore people started to be interested in differentiated groups in societies and the intention was to explore

[1] See in Miall, Hugh. 1994. *Minority Rights in Europe*.

their needs and aspirations. Consequently, "the first minority protection treaties were negotiated towards the end of the nineteenth century" (Miall, 1994: 23).

This transformation or shift regarding the notion of minority is the result of the emergence of the nation-state. The driving forces of the emergence of nationalism and the nation-state should not be underestimated. This transformation had been vastly affected by the French Revolution, which proliferated the notions of nationalism, the nation and the individual. These notions focused attention on the nation and the elements of the nation. Therefore, national minorities as we understand them today started to be recognized.

After the French Revolution, the French National Assembly promulgated a document stating the rights of the citizen. This was *The Declaration of the Rights of Men and the Citizen*. It is considered a fundamental document of French constitutional history[2]. It cannot be denied that the framers of this declaration were much influenced by the American Declaration of Independence[3]. The French declaration listed the "inalienable rights" of the individual. The rights to "liberty, property, security, and resistance to oppression" [4] and the rights to freedom of speech and of

[2] This declaration was drafted by Emmanuel Sieyès, adopted by the Constituent Assembly on August 26, 1789, and embodied in the French constitution of 1791 as a Preamble.

[3] With this Declaration, 13 colonies in the Northern America declared their independence from Britain and also declared that they established United States of America on July 4, 1776. The nature of the declaration is that all people are born and live free, and the state exists in order to protect these freedoms and to ensure that each person has the ability to use them equally.

[4] The second article of the Declaration states that : The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

the press were guaranteed [5]. The document asserted the equality of men and the sovereignty of the people, on whom the law should rest, to whom officials should be responsible, and by whom finances should be controlled. Many of its provisions were aimed at eliminating specific abuses of the "ancien régime". So, it can be considered as the end of the "ancien régime" and the declaration had an immense effect on the proliferation of liberal thought in the 19th century.

This effect of liberal thought in the 19th century also extended to the 20th century. This reflection and the heritage of the 19th century brought some significant developments in the consolidation of the notion of human rights and also the notion of minority rights. Therefore it would not be wrong to claim that 17th and 18th century philosophies which basically focused on individual liberty and freedom, and the French Revolution, which proliferated the ideas of nationalism and the nation-state had a great impact on 20th century philosophy and developments regarding human rights in general and minority rights in particular.

The issue of human rights, particularly minority rights gained great importance in the 20th century after the First World War and especially after the Second World War. That is to say, "the story of the international treatment of the problem of national minorities effectively begins with the creation of the League of Nations" (Claude, 1969: 4), and more importantly, "the Second World War prompted the

[5] The article 11 potects the freedom of speech and the freedom of press: The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may,accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

universalization and therewith the – in historical context- radicalization of the legal subject of human rights" (Fottrell and Bowring, 1999: 27).

1.1.2 The Minority Issue After the First World War

Hadden believes that it is after the First World War that the protection of minorities and the minority problem became a hot issue in the agenda of international relations[6]. After the War, in order not to face the same disasters and losses on the European Continent, a new system was created under the League of Nations. The League of Nations system established after the War was based on specific treaties dealing with specific situations. Thornberry (1991: 41-42) lists the specific cases that the League of Nations system regulated such as: "minorities in Poland, minorities in Austria, in Serb-Croat-Slovene State, in Czechoslovakia, in Bulgaria, in Romania, in Hungary, in Greece, minorities in Albania, Lithuania, Latvia, Estonia, Iraq, minorities in Turkey and Greece and minorities in the territory of Memel". Therefore, "the whole concept of minority rights was originally established by treaty: that is to say, by the treaties signed between the Allied and associated Powers and the new national states of Eastern Europe after the First World War"(Whitaker, 1984: 7).

These treaties were made in order to redraw the map of Europe. Thornberry (1991) believes that, European Powers aimed to apply the principle of self-determination, to dismember the Austro-Hungarian Empire, to create new states and to include additional territory to others. In the above-mentioned cases and in the treaties regarding them, in other words in the framework of the League of Nations, we can

[6] See in Miall, Hugh. 1994. *Minority Rights in Europe*.

recognize that the borders of the nations were changed by the Allied Forces, and attempts were made to solve issues regarding minority problems either by changing borders or by exchanging populations.

The main success of the system of the League of Nations was its acknowledgement that minorities do exist. They were considered as real and visible components of societies in this system. As John Packer[7] stresses, there were bilateral treaties providing rules determining the belongings of some specific individuals. Moreover, he believes that these measures were taken in order to protect certain communities whose members shared an "identity" and a "sentiment of solidarity". Some positive rights were given to these groups of people regarding language, education and cultural activities in these treaties. For example, freedom of education is given to the religious minorities in Turkey with the Treaty of Laussanne[8]. The education in minority schools is held in their mother language as well as Turkish. Claude (1969: 19) argues that, "these positive privileges constituted the *raison d'etre* of the system".

Although one of the major aims of the League of Nation system was to solve the problems of minorities in some specific problematic areas, "the system established under the League of Nations was far from perfect" (Brölman, 1993: 82), and it later failed to cope with the existing problems. The League system "coped with everyday

[7] See in Fortrell, Diedre and Browring Bill. 1999. *Minority And Group Rights In The New Millenium*.

[8] See in Treaty of Lausanne, Article 41.

frictions, but failed to solve wider problems (Thornberry: 1991: 46). First of all, the treaties made between the loser nations were bilateral agreements and they were imposed on a limited number of nations. In this regard, one cannot talk about an internationally and universally applied system of minority protection. The scope of the treaties was very limited and specific. Secondly, the impact of the great powers in the League cannot be underestimated over the treaties. Thornberry (1991) believes that this system denies the principle of sovereign equality between the nations and it constitutes a threat to the international stability. Parallel to this argument, Claude (1969: 32) states that, the League system "imposed restraints upon a limited number of states" and these states considered it as a discriminatory and unjust plan and an insult to the dignity of sovereign states.

Therefore, on the one hand, the importance of minorities under the League of Nations cannot be denied, on the other, the failure of the system of the League of Nations is another fact that cannot be underestimated. This system was not able to avoid the eruption of the Second World War.

1.1.3 The Minority Issue After the Second World War

After the Second World War, the international arena attached more importance to the issue of minority rights, and their direction was different. The main focus was on the concept of human rights. In the protection of minority rights, human rights were chosen as a strategy. After the Second World War "the attention shifted back again to the identification of individual human rights" (Miall, 1994: 23). Similarly, Oliver states that, "international recognition of human rights owe much to the situation

following to Second World War"[9]. He adds that, after the War, the Soviet block and the new nations became unenthusiastic about the enforcement of human rights in general and minority rights in particular. It was the intention of the developed countries, however, to have advancement in this field.

There were several major supranational organizations established after the war, such as the United Nations (UN), the Council of Europe (COE), the European Union (EU) and the Organization of Security and Co-operation in Europe (OSCE), and they all attached great importance to the protection of human rights. They attached importance to the protection of minority rights especially under the heading of human rights. Several problems in the world could be the reason for this special focus to the concept of human rights. For instance, "certain American Negro groups, Jews in Germany and elsewhere, Algerian Muslims in France, and Catholics in Northern Ireland" (Whitaker, 1984: 14) are some of the problems that world politics had to deal with. Moreover, they were problems which could be solved neither by domestic law nor by bilateral treaties. New protections were needed in order to cope with the existing problems, and most importantly, these protections should be universal and internationally accepted. "The UN Declaration, for instance, is universal and put forward as a common standard of achievement for all peoples and all nations" (Watson, 1990: 169-170). That is to say, after the Second World War, international actors decided to take more visible steps in the name of human rights in order to achieve a solution to existing problems.

[9] See in Whitaker, Ben. 1984. *Minorities A Question of Human Rights?*p:8.

1.1.3.1 Minorities Under the UN

The Second World War put an end to the system established by the League of Nations. A new system was created under the United Nations (UN). The establishment of the UN brought a different approach to the minority issue. "The United Nations system is completely different, emphasizing respect for individual human rights (including especially the principle of non-discrimination) in all states" (Fottrell and Bowring, 1999: 233). The *United Nations Charter,* which is the founding document of the organization, does not contain any mention of minority and minority rights. Individual human rights and the notion of non-discrimination are emphasized in the Charter. Therefore, as Miall (1994) states, non-discrimination on racial, ethnic, religious and other grounds was considered sufficient for human rights and for the protection of minorities. The First Article of the Charter states that one of the aims of the UN is to be non-discriminative in nature "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[10]. In addition, a number of articles protect minority rights with reference to preventing discrimination against the differentiated groups[11].

After the UN Charter, the *Universal Declaration of Human Rights* (UDHR) is the most significant document in the field of human rights. Similar to the United Nations

[10] The United Nations Charter, Chapter 1, Article 1, Paragraph 3.

[11] For example in Article 55.c. it is stated that there should be universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Charter, the UDHR (1950) "does not make any reference to minorities, though it does refer to the principles of non-discrimination and non-distinction" (Thornberry, 1991: 133). Articles 1 and 55 of the UN Charter and the Article 2 of the UDHR contain similar provisions about the protection of minorities against discrimination [12]. The focus is on the elimination of discrimination. There should not be any discrimination on the basis of race, sex, language or religion. The protection of the rights of minorities can be achieved by adopting these kinds of provisions under the UN.

It is apparent that the UN attaches great importance to non-discrimination in the field of the protection of minorities. The UN Convention of Genocide (1948), The Covenant on Civil and Political Rights (1966) and the International Covenant on Economic and Social Rights are other documents which address the minority issue and "which are still individualistic in their nature" (Fottrell and Bowring, 1999: 29).

In 1990's, the UN started to stress specific minority rights. This stress or emphasis occurred because of the changing environment in the world. The end of the Cold War, and following this development the collapse of the communist block and the dissolution of the Soviet Union and the emergence of new states were the major developments of the era. These developments consequently, brought additional minority problems on to the agenda. The collapse of the Soviet empire "forced the

[12]The Second Article of the Universal Declaration of Human Rights states that; "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

issue of minority rights back into the forefront of the international political and human rights agenda" (Miall, 1994: 24). Correspondingly, Smith (1992: 1) states that, there are "growing convergence in two fields: the study of ethnicity and ethnic community, and the analysis of national identity and nationalism". Movements for language revival developed in the 1960s and 1970s in Catalonia, the Basque Country, Wales, Brittany and Languedoc" (Watson, 1990: 186) and also, the ethnic revival in the West such as in Basque, Catalan, Breton, Flemish, Scots and Welsh ethnic groups led to a reassessment of both ethnicity and nationalism (Smith, 1992). Under these circumstances, a more effective regulation of minority problem came on to the agenda.

Parallel to these developments, in December 1992, the UN ratified the Declaration on the Rights of the People Belonging to National, Ethnic, Religious and Linguistic Minorities. This declaration stresses the need for the protection and the development of religious, ethnic and linguistic minorities. It also stresses that this kind of protection leads to international peace as well as political and social stability of a given state. The first article of this declaration states that, "The States are going to protect the ethnic, religious and linguistic identities of the minorities" and also "are going to provide the necessary conditions and hold the legal regulations for this aim". In the same declaration, the minorities are given the rights to develop their own culture, to use their language in both public and private, to participate in the economic, political and social life without any discrimination, and to form associations. Besides the rights given to minorities, the states are given some obligations about the protection of these rights. States are to provide the legal bases

for the protection of minority rights (Article 2). They have to make people equal before the law without any discrimination (Article 4). The same article also states that, the states are to provide the conditions in order for minorities to learn and to improve their mother languages and to have further education in this language. Article 6 of the Declaration points to the desire for states to cooperate regarding minorities. Most importantly, Article 8 says that the above-mentioned articles and provisions must not be understood as permission for any act against the territorial integrity or the sovereignty of any state.

Therefore, the aim of the Declaration is to construct a mutual understanding between states and minority groups and to find solutions for the problems that they are facing. "The text can be regarded as a new international minimum standard for minority rights" (Miall, 1994: 16). However, the Declaration does not define what constitutes a minority similar to the previously mentioned declarations and documents.

1.1.3.2 Minorities Under the Council of Europe

In the post-War system, the Council of Europe (COE) is another pioneer organization which addresses the protection of minorities. The COE, of which Turkey is among the founding members, created the *European Convention of Human Rights* (ECHR) in 1954. This convention has similarities with the Universal Declaration of Human Rights (UDHR). Both documents are individualistic in their nature and both put the stress on preventing discrimination rather than protecting minority rights. Minority rights or group rights are protected on the basis of individual rights in the ECHR. The core is the individual and the prevention of discrimination in the Convention.

Therefore, in this Convention there is prevention of discrimination, but not protection of minorities, as in the UDHR. The aim of the Convention is to "secure all persons within their jurisdictions strong guarantees of respect for fundamental rights and freedoms" (Haller, Krüger and Petzold, 2000: 171).

Prohibition of discrimination is regulated in Article 14 of the Convention. The Article states that, "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Therefore, the Convention lists several rights of human beings and protects these rights and freedoms, and at the same time prohibits discrimination on the usage of these rights and freedoms. Everybody should benefit from these rights and freedoms and any discrimination or inequality regarding the implementation of these rights is conceived of as a violation of human rights.

As mentioned above, the developments in the 1990s have had a great impact on the minority issue. "European developments since 1989 have shown that the protection of national minorities has become a matter of extreme urgency" (Miall, 1994: 91). As we observe in the UN documents in the 1990s, the COE documents also emphasize specific positive protections for minorities in this decade. Regarding this trend, one of the significant documents of the COE is the *European Charter for Regional or Minority Languages*. It is an important document for people who speak minority languages. The languages that are protected in this Charter are the languages which

exist in a specific nation and are spoken by a group of citizens but which are not the official language. This charter aims to ensure the use of regional minority languages in education and the media, and to permit their use in judicial and administrative settings, economic and social life and cultural activities.

In the Charter, it is stated that the contracting parties should recognize and support the usage of regional or minority languages and should respect the regions in which there are regional languages. The Charter states the right to determine which language is going to be considered as a minority language. In this respect the aim of the Charter is cultural. The Charter is designed to protect and promote regional or minority languages as a threatened aspect of Europe's cultural heritage. For this reason it not only contains a non-discrimination clause concerning the use of these languages but also provides for measures offering active support for them. "Only in this way can such languages be compensated, where necessary, for unfavorable conditions in the past and preserved and developed as a living facet of Europe's cultural identity" [13].

Apart from this Charter, the most comprehensive document of the Council of Europe about the minority issue is the *Framework Convention on the Protection of National Minorities*. It is the first multilateral document in the field of the protection of minority rights. The first article of the Convention states that, "The protection of national minorities and of the rights and freedoms of persons belonging to those minorities form an integral part of the international protection of human rights, and

[13] Article 10 of the Charter for Regional or Minority Languages.

thus, this issue falls within the scope of international co-operation". That is to say, this document puts the concept of protection of national minorities clearly under the heading of human rights. The subject of minority rights had become a legitimate international subject.

This convention mainly deals with the, prevention of discrimination against national minorities[14]; support for the full equality between the national minorities and the majority[15]; development of the conditions necessary in order to protect the languages, religions, traditions, cultures and identities of national minorities[16]; guarantees for the freedom of religion, belief, expression and peaceful assembly of the people belonging to national minorities; guarantees for the right to reach the organs of media and to benefit from these organs[17]; permission for the usage of the

[14] Article 4, paragraph 1: The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

[15] Article 4, paragraph 2: The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

[16] Article 5, paragraph 1: The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

[17] Article 9 paragraph 3: 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,, that persons belonging to national minorities are granted the possibility of creating and using their own media.

mother language in public as well as private[18]; and the opportunity to learn the minority language and to have education in this language[19].

Besides these documents, there are also some important institutions of the Council of Europe which protect the human rights and also minority rights. These important institutions are the Human Rights Commission and the European Court of Human Rights (ECHR). States have the right to consult to the ECHR on human rights issues and also individuals have the right to petition this court[20].

1.1.3.3. Minority Under the Organization of Security and Cooperation in Europe (OSCE)

Though they lack a specific definition like the UN and COE documents, basic OSCE documents demand that states contribute to protection of the different features of people living in the same nation. In the Helsinki Final Act, there is an article regarding national minorities stating the necessity of respecting the right of the national minorities to be equal before the law and calls for states to permit these people to benefit from basic human rights and fundamental freedoms. In addition, the article 3 (2) of the *Copenhagen Document* ratified in June 1990 states that, "the right to fully protect and development of their cultures without facing with any

[18] Article 10, paragraph 1:The Parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

[19] Article 13, paragraph 1: Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

[20]Turkey recognized the right of individual petition in 1987 and the authority of the court to compulsory jurisdiction in 1989.

movements of assimilation, despite the will of freely expressing, protecting and developing their own ethnic, cultural, linguistic or religious identities"; the right to use their mother language both in public and private (3.2.1); the protection of their own educational, cultural and religious institutions (3.2.2); the right to reach, communicate and spread information in their mother language (3.2.5). In addition they should be given a possibility to form their own "local or autonomous administrations" (3.5). The rights given in the Copenhagen Document were repeated in the Paris Charter in November 1990 and at the OSCE summit in Helsinki in July 1992.

The UN, the COE and the OSCE have been the primary supranational organizations dealing with the problem of minority rights after the Second World War. These organizations brought the concept of minority rights onto the agenda of international relations. These organizations brought a different dimension than the League system to the protection of minorities. These organizations aim at solving problems not with bilateral treaties for specific situations, but with universal conventions or charters. The minority issue gained a universal character after the Second World War with these organizations.

1.2 Problems of Definition

> "Any examination of international minority protection is immediately confronted with the problem of conceptual clarity stemming from the lack of a universally agreed upon definition of the term minority" (J.Preece,1998:14).

"The lack of clarity regarding the concept of minorities is common among all international organizations" (Fottrell and Bowring, 1999: 232). Thus, it would not be

wrong to say that there is not an internationally accepted definition of the term minority. Many definitions have been proposed by scholars, officials appointed by international bodies, and in documents issued by international institutions.

The UN's special reporter F. Capotorti in the *Covenant on the Civil and Political Rights* in 1966 makes the most important definition. According to Capotorti;

> "a minority is a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members posses ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language"[21].

Secondly, a Canadian reporter, Jules Deschénes, made another definition in 1985, which has some similarities with the definition of Capotorti. According to his definition minority is;

> "a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law"[22].

The examples of such definitions can easily be broadened. However, no generally accepted definition of minorities has been formulated in any international instruments or doctrine to date (Council of Europe Press:45). It is very interesting not to have a clear-cut definition of minority, since it has been a vital issue over many

[21] Un Doc. E/CN.4/Sub.2/384 Add.1

[22] UN Doc. E/cn.4/Sub.2/1985/31,para.181.s

years in international relations. What should be stressed is the overall picture and the collective outcome that we encounter with examining the different definitions of minority. All of the definitions are based on several basic principles. The first is being different from the majority population. The minority must be different from the rest of the population in several ways, such as religiously, linguistically, racially or culturally. The second one is being numerically inferior. So, compared to the total population, these groups are less in number. This principle implies that the number of the minority group cannot be close to the majority of the population. The third one is not being dominant in the society. The numerical majority does not always mean that they are dominant. For example, in South Africa, the whites, constituting 20% of the population, were dominant over the black population, which forms 80% of the population. The fourth principle is that these minorities must be citizens of a given State, but having less rights and freedoms compared to the dominant population. This means that they should be loyal to the State. The people who are not loyal to the state are not considered as a minority. The final principle is that there must be solidarity and they must have the notion of being a minority. There must be a demand to protect their characteristics and traditions.

1.3 Individual Versus Collective Rights Debate

The difficulty faced in defining “minority” arises from the anxiety especially of unitary states about the fragmentation of minority groups and the disadvantages that could result when these fragmented groups are classified. One outcome could be the evolution of territorial demands from these groups if such a clear definition is made.

In addition, multinational states fear the consequences of secessionist trends. According to Williams[23],

> "the nationalist tries to establish the minority's right through the creation of separate nation. Despairing of achieving true recognition for his/her culture in the majority community he/she concludes that the only proper solution is for the minority to have its own state".

Recognizing the minority as a group may also lead to self-determination and may lead to the demands of separation. In addition "even in good faith, a government, particularly of a multicultural State (and few states do not contain some multicultural element today), may fear that, when full or partial autonomy is granted to one group, others will raise claims of their own" (Fotrell and Bowring, 1999: 31-32).

All minorities are groups, but when it comes to recognition, the stress must be put on the individual. In this way, minority rights are accepted as individual rights but not as collective rights. For example, Article 27 of the *Covenant on Civil and Political Rights* states that:

> "In those states in which ethnic, linguistic or religious minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language".

"It must at once be noted that the right extends to persons belonging to such minorities and not the minority as a group" (Fotrell and Bowring, 1999: 4). When a reference to minorities is needed, the term "rights of the persons belonging to national minorities" is used" not "rights of minorities". This means states avoid

[23] See in Watson, Michael. 1990. *Contemporary Minority Nationalism*.p: 171.

making a clear and accepted definition of minority and they also avoid clearly defining the rights of these minorities. As a matter of fact, in almost all international documents minority rights are recognized in an individualistic way, and the concept of a collective rights is not accepted by the majority of states in the international arena, because it is widely accepted that there is no right above the individual. Similarly, as Thornberry (1991: 173) states, "minorities are not subjects of the law, whereas persons belonging to minorities could be defined in legal terms".

1.3.1 Individual Rights Having Collective Dimension

When we examine the given rights of minorities in specific major documents of supranational organizations, mainly during the 1990's, we recognize that some rights are granted to some groups of people. This brings the issue of the confrontation between individual and collective rights. Collective rights, as can be understood from its name, is considered to be the collectivity of the rights of some amount of people. Most of the supporters of collective rights consider these rights as the rights of the ethnic, religious or linguistic minorities. These rights are generally conceived as the rights of the people who share the same cultural characteristics, in addition, they are seen as necessary in order for this group to protect their cultural characteristics. In this respect, "the objective of collective rights is to protect the different identities and physical maintenance of the groups, which have a specific identity and existence" (Çavuşoğlu, 1999: 56). Although in the above mentioned documents, the rights are granted to "the persons belonging to national minorities", there are some references that these can also be used collectively. For instance, the Framework Convention on the Protection of National Minorities enables individuals to use the rights stated in

the Convention collectively[24]. Furthermore, in the Copenhagen Document, there is also reference to the collective usage of given rights [25]. These references to the usage of the rights of "persons belonging to national minorities" means the rights of these persons can be considered as collective rights, although they are given to the individual and they belong to individuals.

On the other hand, some writers still believe that in international relations the emphasis is on the "individual". In none of the documents of major supranational organizations is there a reference to "minority rights" as a group. The real aim is the prevention of discrimination, not the protection of minorities. "States could not afford to bear the cost of providing special facilities for minority groups, and finally, positive action in favor of minority groups constitutes discrimination against the remainder of the population" (Fottrell and Bowring, 1999: 93).

Therefore, it is a fact that international documents emphasize the individual dimension of minority rights. Each document stresses that the rights of "persons belonging to national minorities". These people have the right to protect their own culture, language and religion. They also have the right to not to be exposed to cultural assimilation and furthermore, the states are obliged to eliminate any possible assimilation attempts. These kinds of references create the protection of group

[24] Article 3, paragraph 2 : Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

[25] Article 32, paragraph 6: Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group.

identity. In this respect, people have the right to choose whether to include themselves in a minority or not, and they also have the right of protection of the identity of the person and the group against state authority. On the other hand, the stress on individualism in international documents is a precaution to eliminate people belonging to a specific group having self-government or self-determination. In this framework, minority rights are considered as "individual rights having collective dimension" rather than collective rights (Çavuşoğlu, 1999: 64). In other words, "the rights may, therefore, be described as benefiting individuals but requiring collective exercise" (Thornberry, 1991: 173).

CHAPTER II

EVOLUTION OF MINORITY RIGHTS AND SHIFT IN THE LIBERAL PERCEPTION ON INDIVIDUAL RIGHTS AND LIBERTIES

2.1 The Evolution Process of National Minorities

"Liberal democracy emerged as a reaction to the way that feudalism defined individuals' political rights and economic opportunities by their group membership" (Kymlicka, 1995a: 34). That is to say, Liberalism introduced new ideas such as individualism and individual rights and freedoms against group rights and membership. In the "period between the Reformation and the French Revolution a new social class established its title to a full share in the control of the state" (Laski, 1936: 11). These people were those who had mobile capital. The emergence of this kind of a new class in society led to the creation of new conditions in society and consequently led to new social relationships (1936). It is not unexpected that, these newly emerged conditions and relationships created a new philosophy, namely Liberalism. Actually, it would not be wrong to say that discoveries, innovations and as well as new forms of living also contributed to the formation and the development of this philosophy.[26]

[26] One of the most important discoveries is printing, as Harold Laski mentions in his book *The Rise of European Liberalism*, which enabled the spread of literacy and also the new ideas and philosophies.

When we talk about Liberalism, we generally talk about freedom and the absence of any kind of privilege exercised by men over others. Other main aspects of this philosophy are the limits imposed on political authority and the foundation of a system in which the state does not have the right to intervene. As society developed and as the centuries passed, the terminology of Liberal thought starts to change and new concepts like tolerance, universal suffrage, freedom of expression, freedom of thought, freedom of association, self-government and self-determination came to the fare. Therefore, the development in this regard created a ground for the development of minority rights under the heading of human rights.

According to Kymlicka, the intention of the early liberal philosophers was to explore the relationship between the individual and the state (1995b). It is a fact that the later developments on the minority issue were affected by these philosophies and thoughts. Individualism and individual rights, in the meanwhile, developed into human rights. Development of society and the transformation of it on the basis of nation-states, prepared the grounds for the transformation at the level of minority issue. For example,

> "the French revolutionaries, though also concerned with the nation, proclaimed the rights of man and of the citizen. The tradition is carried on in contemporary international declarations and covenants on human rights, for –with certain exceptions- the rights enumerated are the rights of individuals in relation to the state" (Kymlicka, 1995b: 31).

In addition, these philosophies regarding individual rights vis-a-vis the state over a period of time turned into minority rights. This transformation started in 19th century Europe. The legal recognition of national minorities as national groups rather than

religious communities coincides with the 1815 Vienna Congress. At later stages, developments such as nation-state building brought impetus to the discussions about minority issues, and in early 1900's we encounter new trends towards ethnic and national minorities. This trend at the same time coincides with the shift in the Liberal thought and ideology.

2.1.1Religious Minorities in the 17th and Early 18th Century

Although the concept of national minorities and the rights of minorities came into existence in the 19th century, the background of this evolution dates further back. Therefore, in order to understand the evolution of minorities and minority rights, one should start from examining issues in the 17th century.

> "Far from being a post-Cold War development, international relations that have to do with the position of European minorities possess an identifiable history not only in the twentieth century but from the 1640s onwards"(Preece, 1998: 55).

According to Preece, the Congress of Westphalia can be considered as the dividing line between the medieval and modern periods (1998). It can be considered as the beginning of the modern age, since it can be seen as the starting point of international system, which is composed of separate parts (states) and moves in accordance with specific rules born with the Peace of Westphalia in 1648. That is to say, this peace process resulted in both the beginning of the modern age and also in the emergence of a modern society. In addition, the later development of sovereign territorial states is the natural outcome of this process.

"All modern societies are marked by diversity and difference- differences of ethnicity, culture, and religion in addition to the many individual differences, which characterize the members of such societies" (Horton, 1993: 1). This is because diversity and heterogeneity of the society are the genuine and indispensable components of modernization. As societies modernize, they become more complex and diversities in the society become inevitable. In modernized societies, there is a need for the creation of a community and this results by emergence of new types of belongings (John Rex, 1996). These types of belongings can occur in the way of ethnicity, language or religion. If this is the situation, it is inevitable to have tensions and some conflicts in that society among these differentiated groups. In this kind of differentiation, specific demands of groups become inevitable. These demands result in the creation of minority rights in order to reduce the tension in the society.

However, during the 17th century, there was not a concept of minority as we understand it today. By saying the Peace of Westphalia can be considered as the beginning of the modern age and modern society, we do not mean that there was a recognition of ethnically, linguistically or culturally different people. On the contrary, the differentiation was based on religion during these times. The Peace of Westphalia was made in order to cease the on going Thirty Years War. At the end of the War, people identified themselves by their religion but nothing else. In other words, there was not an understanding of minority rights, but religion "was the focus of minority rights during this period because religious affiliation was the most important dividing line between communities in Europe at this time" (Preece, 1998: 56). People used their religious similarity or difference in their social relations. They

identified themselves with religious identities such as Catholic, Protestant, Lutheran, or Calvinist rather than being an Englishman, a German or a French (1998).

Starting from this period, in the treaties and peace agreements, we generally encounter some protections regarding religious beliefs. Some guarantees were granted to religious communities in the Treaty of Utrecht in 1713 and also in the Treaty of Paris in 1763 regarding free exercise of religion[27]. These rights or protections were between the kings and the people belonged to a different religion then other parts of society. These protections can be interpreted as a special relationship between the king and the religious group, and this relationship resembles the relation between the states and its national minorities. The king had to protect the religious minorities in order to guarantee their maintenance and survival as the nation-states had to protect the minorities in order to keep them alive.

Thus, we can argue that the root of minority rights goes to the 17th century and early 18th century. The above mentioned treaties and peace documents had a great importance in such a way that religious minorities in Europe were recognized as minorities, though they cannot be considered as national minorities that we have today.

[27] Article 4 of the Treaty of Paris: His Britannick Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit.

2.1.2 Individual Freedom and Equality in the American Declaration of Independence and Popularization of Lockean Ideas

Another event having significant consequences regarding the evolution of minority rights is the American Declaration of Independence in 1776. This was a document which declared the independence of the 13 colonies from England and also declared the establishment of the United States. The basis of the Declaration is that people are born free and live free[28]; the state exists in order to protect the freedoms of the individual and to provide equality of these freedoms, since it is instituted by men[29]; any state that violates the freedoms of individuals loses its state of purpose, and therefore it is the basic right of the people to get rid of the current government and constitute a new one[30].

In this framework, we recognize that the above-mentioned criteria of the American Declaration of Independence shows similarities with the ideas and philosophies of John Locke, who is one of the founding fathers of Liberal thought. One of the basic arguments of his writings is that;

> "Men being all the workmanship of one omnipotent, and infinitely wise Maker; all the servants of one Sovereign Master, set into the world by his order and about his business, they are his property, whose workmanship they are, made to

[28] It is stated in the first pharagraph of the Declaration that; We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

[29] The continuation of the sentence above from the Declaration; "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed".

[30] Same sentence continues as; "That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness".

> last during his, not one another's pleasure" (Ashcraft,1987:101).

That is to say, people are all the creations of God and they are all equal. And, "the premise of natural equality is identical to the premise of natural freedom" (Grant, 1987: 200). According to Locke, all people are the "creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination and subjection" (Locke, originally published in 1690: 9). Moreover, according to Locke, the agreement among these equals creates the government. In other words, the government must be based on consent among free and equal individuals. Since the people are the creations of God, they are all equal. God has the supreme authority and consequently, one cannot use one's power or authority over the other, because we are all equals. There cannot be any subordination among men.

Since, men have natural rights and freedoms, political authority has the duty to preserve these premises. Any government, which ignores the preservation of these rights and freedoms[31], is considered as illegitimate and tyrannical, according to Locke. Moreover, according to him, the agreement among these equals creates the government. In other words, the government must be based on consent among free and equal individuals.

What one understands from Locke's writings is that, he looks at freedom from the individualistic point of view and tries to explain freedom and equality from an

[31] These premises are freedom and equality, which are the natural rights of human beings.

individualistic understanding. On the other hand, he accepts that there are obligations of the people as well as rights. The government is the creation of the people by consent and the rules of the government must be obeyed. "In any form of legitimate government it must be understood that political power is a trust from the community as a whole and that all members of the community, including those in authority, are subject to its laws" (Grant, 1987: 200). In addition, the revolution against the government is not described as a step towards realizing an ideal of justice, but as a resistance to political deterioration (1987).

2.1.3 Towards National Minorities, the late 1700's and 1800's

The first milestone regarding the minority issue is the French Revolution of 1789. This Revolution had a significant effect in the emergence of the concepts of cultural, linguistic and ethnic groups. J. Preece mentions in his book that there were no cultural, linguistic and ethnic groups within the European states before the French Revolution (1998)[32]. It is the French Revolution which proliferated the notions of nationalism, nation and also the individual. These notions focused on the nation and the elements of the nation. Therefore, national minorities that we understand them today started to be recognized.

After the Revolution, as is mentioned before, the French National Assembly promulgated a document stating the rights of the citizen (*The Declaration of the Rights of Man and the Citizen*). The French declaration listed the "inalienable rights" of the individual. The rights to "liberty, property, security, and resistance to

[32] J. Preece refers here to B. Anderson, Imagined Communities (London: Verso, 1983).

oppression" and the rights to freedom of speech and of the press were also guaranteed. Furthermore, the document affirms the equality of men. Thus, the Revolution had an immense effect on the evolution of the "human rights", as well as on the proliferation of the ideas of nationalism and the nation-state.

"The American Revolution did much to popularize the Lockean ideas of toleration, natural rights and political representation and to link these to the concept of legitimate power. The French Revolution went on to make the rights of nations a corollary to the rights of man" (Preece, 1998: 58).

When we come to the 19th century, we encounter the second milestone. This is the recognition of minorities as national groups. Starting from the Vienna Congress in 1815, minorities started to be recognized, not in the form of religious minorities, but in the form of national minorities. And respectively, the concept of minority rights evolved in this era. Before the Congress, what used to be mentioned were religious minorities and the preservation of the rights to religious activities and individual rights and preservation of these rights. However, in the *Final Act of the Congress of Vienna*[33] the formulation of the concept of minority rights has changed with the effect of the existence of nation-states(Preece,1998). This means that, the concepts of civil and political rights started to occur in addition to religious freedom and rights.

[33] It is the Congress in which some discussions were made regarding the problems that occurred in Europe after the French Revolution between October 1814 and July 1815. The leader of the Austrian Empire, Franz Von Metternich, aimed at a collective action plan among European powers against possible nationalist movements and against the possible problems that may occur because of nationalist tendencies.

Furthermore, these developments brought the idea of equality of people as well as equal treatment of them.

The ideas of minority and minority rights gained an increased momentum after the Congress of Berlin in 1878[34]. With this congress these ideas spread outside of Western Europe(1998). Especially, in the Balkan Peninsula, these ideas spread rapidly and this spread resulted in border changes and the formation of new states in accordance with the principle of self-determination.

It is to say, nationalism appeared in the late 18th century, gained strength and started to be effective in Europe in the early 19th century. This process had an immense effect on the concept of minorities. The focus on religion moved to a focus on national aspects. In other words, nationalism replaced religion throughout this process as the primary means of differentiations. Minorities were defined in the Vienna Congress in 1815 and the above-mentioned change was completed at the end of the 19th century. After 1878, the concept of national minorities started to be seen in the light of the concepts of civil and political liberties and freedoms. This 19th century philosophy was also reflected in the 20th century and these developments brought some significant developments in the consolidation of the notion of human rights and also of minority rights. Therefore, it would not be wrong to claim that 17th and 18th century philosophies, which basically focused on individual liberty and freedom, and later the French Revolution, which proliferated the ideas of nationalism

[34] It is the congress participated in by the Ottoman Empire, Russia, Germany, Britain, the Austria-Hungarian Empire and France. It made some regulations on the territory of the Ottoman Empire with regard to the Bulgarian Princedom.

and the nation-state, had a great impact on 20th century philosophy and on the developments in this century on the issues of human rights and respectively on minority rights.

2.2 Shift in the Liberal Understanding

2.2.1 Effect of Nation-State Building (Reconstruction process)

> "During the first half of the nineteenth century there was almost universal agreement among the educated middle class in Europe that the nation-state was the only viable political organization worthy of an age of liberalism and enlightened politics"(Mann, 1990: 211).

The 19th century was the century of the nation-state and these years were the years of reconstruction of Europe in accordance with the creation of nation-states. This reconstruction brought new perceptions about the minority issue and minority rights.

This reconstruction process coincides with the shift, or rethinking of liberal perspective. It is generally believed that liberal ideas are opposed to ethnicity and nationality and consequently to group rights (Kymlicka, 1995b). On the contrary, minority rights have an important part in Liberal understanding. In early liberal thinking, or in the philosophies of the founders of Liberalism, individuals were seen as the possessors of rights. Individual freedom and individual equality were the major points of these philosophers. Contemporary Liberals, in contrast, deal also with ethnic or national diversity. This is because, with the strengthening of the nation-states in the 19th century, the ideas of the French Revolution like nationalism and differentiations in nations became heated issues in Europe.

"A nation-state is commonly defined as a polity of homogeneous people who share the same culture and the same language and who are governed by some of their own members, who serve their interests" (Tivey, 1981: 13). These features of the nation-state were attacked in the 19th century. These were the years of the nation-state, but also these years were the years of the emergence of cultural distinctive groups in nations. According to Orrdige[35], "from the beginning of the nineteenth century, culturally distinctive groups within larger states responded to these aspects of the nation-states…and they demanded some degree of self-government". Additionally, as Macartney[36] believes, these desires of the culturally distinctive groups for freedom enjoyed considerable sympathy among Liberal opinion in Western Europe. "For example, it was a common tenet of nineteenth-century liberalism that national minorities were treated unjustly by the multinational empires of Europe…"(Kymlicka, 1995a: 50). This shows the importance given by the Liberal philosophers of the time to national minorities. Therefore, we can say that Liberal thought has not only focused solely on the individual, but also the rights of groups in a given nation, namely group or communal rights.

This new trend or shift in Liberal philosophy is the result of the ideas of the French Revolution and the nation-state building and new concepts resulting from these developments. It is the French revolution, which "especially challenged the traditional foundations of authority that underpinned the European 'Old Order' and

[35] A. W. Orridge, *"Varieties of Nationalism"*, in Tivey, Leonard ed. "*The Nation-State The Formation of Modern Politics"*, p. 45.

ensured that states would increasingly need to invest themselves with the aura of popular consent" (Jenkins and Sofos, 1996: 13). In addition, nation-state building necessitated giving the different people living in the nation their rights and freedoms.

As was mentioned before, different people have different identities in the nation-state (Rex,1996). "There is no people in the world that shares such homogeneity, where there are no regional on cultural differences, where all speak the same language or share the same linguistic usages…" (Tivey, 1981: 13). New identities bring new demands from these people. Therefore, the satisfaction of these demands and needs becomes the core issue.

> "…human needs exist at various levels (for example, at the level of the individual and at the level of the community), and that the existence of needs implies a right to meet them…that the good can be sought for units at various levels, and that there is a right to promote the good. This principle justifies individual rights, and it also justifies the rights of communities, including the communities that constitute the state"(Kymlicka, 1995b: 37).

2.2.2 New Demands and Movable Identities

These communities start to occur in Western Europe and also their democratic needs and demands. Their demands were generally about language rights and political representation. These demands needed to be accepted, because the society was not homogeneous any more, and it was acceptable to have different demands coming from different parts of the society having different identities. In this respect, minority rights started to take shape with these demands and the need to satisfy them.

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[36] C. A. Macartney, *"National States and National Minorities"*, in Woolf, Stuard ed. *"Nationalism in Europe 1815 to Present*", p. 103.

That is to say, people did not have fixed identities any more (Kymlicka, 1997). Modernization and nation-state building foster an ideal type of autonomous individual and that individual is free to prefer choice and mobility over identities. The identities are not fixed any more, since modernization and nation-state building encourage individuals to choose their own identities without reservation. This side of modernization fosters ethnic and cultural groups (1997). It is clean that each nation has undergone a nation building process and this requires some unification around several values. Some identities may have no difficulty in assuming these values; on the other hand, some may have. If these people are forced to be assimilated into the dominant culture, the identities of these people will be stronger and would create more problems. Because individuals hold strongly their autonomy, they also give importance to their culture and identities. This is because they have freedom of choice. They can choose what is good for them and the state should be neutral towards these choices. In this respect, Liberalism is also included in this change and it also changes with it. It changes its shape with the effects of these developments. Liberal thought cannot be indifferent to these demands and needs of people. Therefore, Liberal thought and Liberal states accept that people have different identities and they have their societal cultures. Moreover, Liberal thought supports the social, educational, religious and ethnic activities of individuals both in the forms of public and private expression (1997).

This stress on identity and communal rights can clearly be seen in the 20th century. Especially in the second part of the 20th century, the concept of minority rights gained considerable importance. After the Second World War, several supranational

organizations and their multinational documents stressed human rights and minority rights respectively. But more importantly, "…with the end of the Cold War and the collapse of communism the protection of minority rights has risen to the top of the political agenda of the first time since 1945"(Miall, 1994: 7).

2.2.3 Rise of Societal Cultures

The emergence of the minority concept as we understand it today, coincides with the emergence of nation-states. The American and the French Revolutions had a significant impact on the creation of nation-states. In addition, the impact of early Liberal understanding on these revolutions should not be underestimated. The ideas of Liberalism and the ideas of early Liberal philosophers such as freedom and equality of individuals had a great impact on the American and French Revolutions. The result of these revolutions, mainly the French Revolution was the proliferation of the ideas of nationalism and the nation-state throughout the world. The construction of nation-states brought a new type of society to nations. These were the modern nations and these were the nations of differentiated identities. Identity was not based on religion any more. New ethnic or linguistic identities occurred in these newly established nation-states. The 19th century was the century of the nation-state and also the century of the development of these new identities. Therefore, the concept of minority rights, on the grounds of national minorities, occurred basically in this century. As new demands evolved coming from different segments of the society, the need to satisfy these demands became the core issue. The satisfaction of these demands emerged in the form of protection of minority rights.

As these developments happened, what also occurred was the transformation of Liberal understanding. These developments affected the whole world as well as Liberal thought. As individual freedom was the fundamental principle of Reformation Liberalism, Enlightenment Liberalism accepted the new identities and new groups in society and also accepted group identities (Gilbert, 2000). In other words, Liberal thought accepted that there are societal cultures in liberal states. But, there can be more than one societal culture in a nation. This is because, in the nation building process, some groups may be integrated into the dominant culture and others may not or some groups may not want to be integrated (Kymlicka, 1997). They have the right not to be integrated because people have freedom of choice. In this framework, while Liberalism supported individual freedom and individual rights in the early days, it later shifted and also started to support some collective rights of some groups in society having distinct societal cultures. In other words;

> "liberal commitment to individual freedom can be extended to generate a deep liberal commitment to the ongoing viability and flourishing of societal cultures…this leads to the rise of minority nationalisms, i.e., to the demand for language rights, and self-government powers. These rights and powers ensure that national minorities are able to sustain and develop their societal cultures into the indefinite future" (Kymlicka, 1997: 35).

2.3 The Problem of Self-Determination

2.3.1 Definition of Self-Determination

"The idea of self-determination was championed by European Liberals from the French Revolution onwards" (Miall, 1994: 8), and it started to be conceived as a "right" starting from the Revolution (Kymlicka, 1995a). Similarly, Clark and

Williamson (1996) believe that self-determination is generally conceived as universal human right. Although, there is no mention of self-determination in the European Convention of Human Rights, the concept is considered as a "right". In the UN Charter and in the later Resolutions and Covenants of the UN, there are references that "people have the right to self-determination"[37].

In the 1960's, there were tremendous developments regarding self-determination. In 1960, the UN General Assembly published the Resolution 1514 (XV) and the UN also promulgated the Declaration on the Granting of Independence to Colonial Countries and Peoples. These Resolutions and the Declaration, in simple language, proclaim the right of self-determination of "all peoples". This Declaration states that;

> "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development".

This paragraph is also repeated in the UN General Assembly Resolution 1514 (XV) and also repeated in the first articles of the two Human Rights Covenants; the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. In this respect, there is no doubt that self-determination is considered as a right in international relations and it is a right of "all people".

According to above-mentioned definition, basically, all peoples have the right to determine their future. In other words, self-determination is a right of all people in determining their future and their social, economic and cultural activities. On the

[37] It is stated in Article 1.2 in the UN Charter Chapter One titled as Purposes and Principles that; "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

other hand, this kind of a claim is directed against the political and territorial integrity of an existing state if it involves the people living under a specific state (Tomuschat,1993). In this respect, it is normal for states to be very concerned about considering a given ethnic, religious, or linguistic group as "people"(1993).

2.3.2 Problematic Concept: "Self-Determination"

With the recognition of new societal cultures and new identities in nations, it is inevitable to have new demands from these people. As new demands from the society and the groups in the nations evolved, new rights also evolved in order to satisfy these demands. This was handled with the consolidation of human rights after the Second World War, as mentioned before. On the other hand, all this new recognition of societal cultures and the new demand coming from these cultures are the sources of differentiation and complexity. In this complexity, there are also some complex issues regarding human rights, such as self-determination.

It is obvious that, self-determination is considered as a right, but the problem is defining who is able to or entitled to use this right. It is a general perception in international relations that "every people has a right to choose the sovereignty under which they shall live" (Kymlicka,1995b:43)[38]. On the other hand, it is not mentioned who these people are. Does the term "all people" refer to all kinds of people living in a state having different language, ethnicity or religion? Or shall we use the term "all people" as the composition of a group of people having the capability of forming a state?

[38] V.Van Dyke refers here to Woodrow Wilson, American Journal of International Law, Vol.70 (January 1976)

There are two understandings of self-determination; external self-determination and internal self-determination. “External self-determination defined as the right to freedom from a former colonial power and internal self-determination, defined as independence of the whole state’s population from foreign influence”(Hannum, 1990: 49). In this respect, external self-determination is related with foreign domination and it is the right of a people to be free from foreign domination. That is to say, the right of self-determination is only applicable to people who are under the domination of a colonial state. The people living under the colonial power have the right to form their own state and determine their own future. Therefore, non-colonial people do not have the right of self-determination under international law. “According to many writers, only colonial peoples, who have never been able to create a state of their own, can have the right to self-determination” (Tomuschat, 1993: 16). In addition, specific groups cannot have this right and they are denied that right regardless of their differentiation from the rest of the population (1993).

On the other hand, internal self-determination “may imply a collective human right enjoyed by the population of a state against the sovereign State” (Tomuschat, 1993: 227). Internal self-determination involves a right of people to choose their legislators and political leaders free from any influence (Cassese,1995). That is to say, internal self-determination is related to the people living in a given state and according to which, people can freely determine their status without outside interference.

As one can see, one problem with self-determination is defining it. Some writers believe that only the people who are under the domination of colonial powers have the right to self-determination. These writers do not favor internal self-determination, since "it implies the break-up of existing states, and a process which is widely perceived as threatening to international peace and stability"(Clark, Robertson, 1996: 3). Moreover, some others favor internal self-determination, claiming that some groups in the State have the right to determine their future, since they have different features compared to the rest of the population.

This differentiation of interpretation of self-determination occurs because of a lack of definition of the "self". "…drafters of the UN human rights instruments never attempted to define the 'peoples' who are the bearers of the right to self-determination"(Clark, Robertson, 1996: 6). This lack of definition creates problems today and leads to different interpretations of self-determination. The right of self-determination is clearly established in international law; on the other hand, those who are entitled to use this right is not clear and determined yet. It is unanswered whether the "self" of the "people" is a group in the society or the state. If it is the state, then there is no need to discuss the concept, because if the "self" includes states under colonies, most of them have become independent and for that reason, the time for self-determination has passed (1996).

2.3.3 Contemporary Application of the Principle of Self-Determination

Although self-determination "emerges from the UN and exists for peoples under colonial and alien domination, that is to say, who are not living under the legal form

of a state"(1996), it is certain that it is not any more related to people living under colonial powers (Tomuschat,1993). The concept has more ingredients than this perception.

In this respect, one cannot underestimate that in all the UN human rights instrument about self-determination, there is always a reference to territorial integrity and inviolability of frontiers. The international community always supported and followed the principle of national unity (Hannum,1990). This means the non-recognition of the right to secede. In addition, all UN instruments regarding the issue "condemn any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country" (Hannum, 1990: 48)[39].

Therefore, external self-determination is not valid any more. What is applicable is internal self-determination. In this regard, what is accepted in international relations is that,

> "the right to have a representative and democratic government; the rights of racial or religious groups living in states which grossly discriminate against them; the rights of ethnic groups, linguistic minorities, indigenous populations and national peoples living in Federal States"(Cassese,1995:102).

This statement involves international human rights. Internal self-determination is in favor of human rights (Tomuschat,1993). Regarding this, it is accepted that States have some responsibilities. There needs to be a government representing the whole

[39] For example, the UN General Assemble Resolution 2625 (XXV) after stating the rights of all peoples to self-determination, states that; nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States…

people and this government should not discriminate on the bases of race, creed, sex and religion. There is a need to participate freely in the decision making process. These are the parts of internal self-determination. If these conditions are not satisfied, those people who are exposed to such discrimination have the right of self-determination (1993). If there are constitutional safeguards, there is no need to talk about the right of self-determination.

In this framework, it is generally accepted that not all differentiated groups in a state can claim self-determination. There should be discrimination and the rights of a group should be violated in order to talk about any claim regarding self-determination. In addition,

> "self-determination need not mean full sovereignty, and hence to recognize a right of self-determination does not itself commit us to affirming that every group to which the principle of self determination applies has a right to secede" (Kymlicka, 1995b: 352).

CHAPTER III

THE TURKISH PERCEPTION OF MINORITY

3.1 Minorities Under Turkish Juridical System

Minorities under the Turkish juridical system can be legally examined by having reference to the Treaty of Lausanne, which is the basic treaty in the construction of the Turkish Republic, and the current Turkish Constitution.

3.1.1 Minorities Under the Treaty of Lausanne

In the Turkish juridical system, there is no reference to minority rights as a rule. The concept of minority, whether internal or external, is not first in importance in Turkey. The rights of religious minorities that are guaranteed in the Treaty of Lausanne constitute the only exception. Therefore, in this perspective, in order to understand the legal status of minorities in Turkey "one should look at the Treaty of Lausanne, signed on July 24 1924, which is a basic law of the Turkish Republic" (Türkiye'de İnsan Hakları, 2000: 258). It was signed by Turkey, the Allied Forces and other related nations at the end of the Turkish War of Independence. It is considered as the basic law of the Turkish Republic because,

> "the Treaty of Lausanne was not only a treaty arranged the end of a war, but it also radically changed the principles and applications that had constituted the core of the international relations with other nations. With respect to areas that it regulates, it is not only functional in international relations and territorial aspects, but also it manifests its impact on the issues regarding the judiciary, administration,

> economy and other issues regulating daily lives of the people" (Türkiye Dış Politikasında 50 Yıl, 1973: V).

In this respect, Sander (1994) also agrees that it is a mistake to consider the Treaty as only a single treaty regulating the end results of a war[40]. According to him, Turkey's membership in several international European organizations owes much to this Treaty. In sum,

> "Lausanne is not only a long lived treaty signed after a national independence war. Lausanne is a treaty that changed a 1000 years of world history, …for the first time enabled a nation-state in the Middle East to enter the European system and which seized the spirit of the Renaissance" (Sander, 1994: 14).

In this basic law of the Turkish Republic, "the Kemalist state was affected by the Ottoman legacy with respect to internal and external minorities", and it regards only non-Muslims as a minority, and again similar to the Ottoman Empire, "does not consider the Muslim citizens as minorities, although they have some differences in several respects" (Oran, 2000: 122). Under these conditions, the only minorities in Turkey are the religious minorities: namely the Armenians, Jews and Orthodox Greeks whose status are regulated under articles of 37-45 of the Treaty of Lausanne. These articles of the Treaty guarantee the freedom of religion and conscience and also regard these people, those who are non-Muslim Turkish citizens, as equal before the law. This is the reason why "the spokesmen of the Turkish state claim that there is no minority problem and declare that everything about the minority issue was solved with the Treaty of Lausanne" (Türkiye'de İnsan Hakları, 2000: 259).

[40] This idea of Oral Sander and the following citation was taken from the speach of him in the international seminar entitled The Treaty of Lausanne in Its 70th Anniversary (70. Yılında Lozan Barış Antlaşması). All speaches in this seminar were edited by the Inönü Foundation and published as a book in 1994 with the same name.

When the Treaty is examined, it can be seen that the basic theme in the part regarding the minority issue is non-discrimination. Zürcher mentions that (1994: 170), " as far as the minorities were concerned, a clause was inserted, in which Turkey bound itself to protect its citizens, regardless of creed, nationality or language…".[41] Turkish citizens belonging to non-Muslim minorities will benefit from the same civil and legal rights that the Muslim population benefits from. According to the Treaty, "the whole people of Turkey will be equal before the law without any religious discrimination"[42]. The agreement also grants some specific rights and freedoms, like freedom of education in their mother tongue to the non-Muslim population that is regarded as minorities. This right is guaranteed in Article 41 of the Treaty of Lausanne. Education in minority schools can be held in their mother tongue as well as Turkish. The students belonging to minorities can take their education both in their own schools or in Turkish schools; it is left to their own choice.

Therefore, it is clear that the minority issue in Turkey was first legally regulated by the Treaty of Lausanne. The constant usage of the term "Turkish citizens belonging to non-Muslim minorities" in the Treaty shows the generally accepted perception towards the minority issue. It is obvious that the importance is given to the concept of "equality before the law"; non-Muslims benefited from the same political and civil rights as the majority Muslims, namely the stress is on citizenship. This stresses the

[41] Article 38 of the Treaty states that, "Turkish government reaffirms that it will provide a great protection for the lives and freedoms of all its citizens without any discrimination of religion, race, birth, nation and language".

[42] Article 39 of the Treaty of Lausanne

non-discriminative nature of the Republic. Since the Treaty of Lausanne is the fundamental document regarding minorities in Turkey, it reflects the attitude of the state toward minorities, which attaches importance to citizenship together with non-discrimination.

3.1.2 The Constitution and the Minorities

Other than the agreements and the treaties, some articles of the Turkish Constitution also refer to the non-discriminative nature of the Turkish Republic. Article 10 of the Constitution states that:

> "All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. No privilege shall be granted to any individual, family, group or class".

In addition, according to the Article 24, "everyone has the right to freedom of conscience, religious belief and conviction. Acts of worship, religious services, and ceremonies shall be conducted freely…". In the framework of these articles of the constitution, all citizens benefit from the same rules and laws and have the same obligations without any discrimination or privilege regardless of any difference.

On the basis of above-mentioned information, "the Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble" (Article 2). What underlies a democratic country is the notion that everybody who is bound to the state by citizenship is considered equal irrespective of

religion, language and ethnicity, which was the ultimate aim of Atatürk and his friends in the process of the establishment of the Turkish Republic. And it is obvious that there is no space for any notion of minority in this kind of understanding, since, in such a state all citizens from all religious or ethnic backgrounds are first class citizens[43]. There is no class of citizenship. Additionally, all citizens are treated equally before the law and this is guaranteed by several articles in the Constitution. Therefore, constitutional citizenship is one of the main principles upon which the Turkish state was founded. And as İçduygu and Soyarık mention, in the issues of ethnic, religious and minority rights, "constitutioal citizenship is repeatedly pronounced" (1999:188). The Turkish Constitution stipulates that the State and the Nation are indivisible, and that all citizens irrespective of their ethnic, racial or religious origin, are equal before the law. As Özbudun states (1998), this is the principle of "one state, one nation"[44], in which a nation, as the citizens of the state, unite for the sake of the state and any kind of secessionist trend that may endanger the unity of both the nation and the state is forbidden.

In the light of the above, it can be understood that the official policy of the Turkish state towards the discussion of minority is as follows: it is the ultimate right of people to have and preserve their ethnic identity, but these people are in an equal degree obliged to be loyal to the state, which was also the basic priority in the Ottoman Empire. If some groups having different ethnic or cultural differences act as if they are not citizens of a given state, the state will not be able to free itself from

[43] The term "first class citizens" is used by Emre Kongar in one of his articles published in Cumhuriyet on July 24, 2000, p: 3

[44] which is more a fiction rather than a reality according to İçduygu and Soyarık.

chaos and anarchy. It is claimed to be an indisputable reality that all Turkish citizens are free to equally exercise their rights guaranteed by the Constitution and by relevant laws. There is no discrimination on the basis of ethnic origin, race, creed, gender, language or religion. Indeed, discrimination on these bases are very much alien to Turkish culture and it is prohibited under applicable laws. Therefore, the perception is that there is no need to stress ethnic or other differences, since the equality of all citizens is constitutionally guaranteed.

3.1.3 Constitutional Citizenship

This kind of an understanding has its implications in the theory of citizenship. In the theory of citizenship, as Stolcke (1997: 61)[45] states, "there are analytically three distinct dimensions to membership in a nation-state". These three dimensions or components of citizenship are citizenship as a legal status, citizenship as an identity and citizenship as a civic virtue. In the legal status part, the acquisition of citizenship rights became conditioned by specific legal rules and there are "legally ordered qualifications which make the individuals members of a nation state" (Stolcke, 1997: 62)[46]. However, according to Kymlicka and Norman "citizenship is not just a certain status, defined by a set of rights and responsibilities. It is also an identity, an expression of one's membership in a political community" (1994: 369). In addition, they also state that it requires an emphasis given to the virtues. Therefore, it would not be wrong to claim that, the concept of citizenship is a combination of all these three dimensions or components.

[45] See in Bader, V.1997. *Citizenship and Exclusion*.

[46] See in Bader, V.1997. *Citizenship and Exclusion*.

It is obvious that the Turkish state's perception is to conceive citizenship as a legal status, showing similarities with the French system or perception. As Üstel claims (1999), citizenship in France focuses more on the constitutional values, not on historical, cultural or political ones. Therefore, it is claimed that the French people are equal according to the Constitution without any discrimination and regardless of any difference based on culture, ethnicity or language. In this respect it is a fact that this kind of a system is egalitarian in the way that it considers individual rights and freedoms of the citizens.

The Turkish view of citizenship is similar to this notion, that is, it has a constitutional value. In this notion, in which citizenship has a legal-status, citizenship is essentially a matter ensuring that everyone has specific citizenship rights and is treated as a full and equal member of the society. According to Marshall (1992), the membership to the nation is ensured by a number of citizenship rights. He divides citizenship rights into three categories: civil rights, political rights and social rights. As mentioned before, this kind of an understanding attaches importance to the non-discriminatory nature of the system, as it is experienced in the Turkish system, which pays immense importance to the legal status of citizenship and in which all citizens are given the same formal and legal rights regardless of gender, race, ethnicity, religion or class.

The above-mentioned understanding is called "legal citizenship" by Üstel (1999: 147) and it is basically rooted in the understanding of citizenship as a legal status, which is not very different than the concept of "constitutional citizenship" in the Turkish understanding, as she claims. She mentions that Süleyman Demirel first

brought the notion of constitutional citizenship to Turkey in 1992 and he defines it as follows;

> "Constitutional citizenship is a notion combining all the citizens of the nation in terms of rights and duties on the grounds of equality. All the citizens of the nation, owing to the principle of constitutional citizenship, experience the right to be volunteers to all duties and able to undertake these duties regardless of differences on religion, language, ethnicity and gender.
> …the constitutional citizenship is the enjoyment of these rights and duties on the ground of equality and being ensured about not being deprived of the right to be employed in the state apparatus, the right to elect and to be elected because of specific reasons" (Üstel, 1999: 151).

This notion of constitutional citizenship has its traces in the understanding of "constitutional patriotism", which was first formulated by Habermas in 1992[47]. He gives the examples of Switzerland and United States as multicultural societies and according to him these states;

> "demonstrate that a political culture in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather, the political culture must serve as the common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life which coexists in a multicultural society". (Turner and Hamilton, 1994: 347).

In addition as İçduygu and Keyman state, "the reference point in constitutionality is not only a common identity, but also is a subject bringing the demands of differences into the public realm" (1998-9: 147). Therefore, the role of constitutional citizenship is more the acceptance of differentiations. In this respect, the "constitutional patriotism" of Habermas, which was founded on differences, had been changed into "constitutional citizenship" in its Turkish understanding. Therefore, the current

[47] See in Turner and Hamilton, *Citizenship Critical Concepts*, volume 2, page 347-7.

understanding of constitutional citizenship is not something different from the understanding of citizenship in the beginning of the Republic. Articles of the Constitution stating some basic rights and obligations of the citizens and their non-discriminative nature clearly show the tendency in the Turkish Republic. On the other hand, the founders of the Republic have chosen constitutional citizenship, but this was a choice in accordance with the necessities, conditions, realities and the legacies of the time. This choice of the understanding of citizenship has historical reasons and can be explained by the Ottoman heritage, the strong state tradition, and the vision of Atatürk combined with the effect of some important secessionist movements, which will be dealt further below.

3.2 Historical Facts Leading to the Choice of Constitutional Citizenship

It is obvious that the application of citizenship is a constructed one. In other words, citizenship in Turkey is a choice of the decision-makers. In this respect, there should be some reasons for this decision and one can give the reasons for this choice by referring to the Ottoman heritage, the strong state tradition and the vision and thoughts of Atatürk.

3.2.1 The Ottoman Heritage and Minorities

"In the late 18th century…the Ottoman Empire roughly consisted of: the Balkans, Anatolia, and most of the Arab world" (Zürcher, 1994: 11). As Koçoğlu mentions

(2001)[48], since it ruled a very large territory over a very large period of time, it was very normal to have different types of people in the Ottoman society. Having very large territories as such gave the Empire a feature of a collectivity of cultural, religious and ethnic differences. Although the dominant feature was Islam, Ottoman society was composed of different people having different features. In addition, "these different people lived together for centuries under the Ottoman rule protecting their own cultures" (Bozkurt, 1989: 1).

In this complexity and differentiation, the Ottoman society was based on religious differences instead of ethnic, linguistic or cultural ones. Ethnicity has never had an application in the Ottoman rule. The society was classified as Muslims and non-Muslim populations. The subjects of the Ottoman Empire "were classified by being a Muslim, Orthodox, Orthodox Greek, Catholic, Protestant or a Jew instead of being a Turk, Bulgarian or Arab" (Bozkurt, 1989: 1). There was not a differentiation or classification based on nationality, race or ethnicity. The only criterion was religion. All the population was considered as subjects of the Empire. Also in Europe, people identified themselves with their religions. As Preece states, "religion was the essence of the minority issue, since the religious relations were the most important element in the 17th and 18th century Europe" (2001: 70). People did not identify themselves with their national identities and nationalities but with their religions. This tradition was the same in the Ottoman society.

[48] Also see in Vakkasoğlu, Vehbi, *Osmanlı İnsanı,* p: 11; Soykan, Tankut, *Osmanlı İmpsratorluğunda Gayrımüslimler,* p: 2; Bozkurt, Gülnihal, *Gayrimüslim Osmanlı Vatandaşlarının Hukuki Durumu*, p: 1.

Despite the differences in the Ottoman society, people lived in harmony. Vakkasoğlu (1999) believes that, although the basic difference was religion, none of the features of the people were considered as important and all the people living under the rule of the Ottoman Empire were considered as Ottoman subjects. And according to Azmi Süslü, all these subjects, regardless of their religious, ethnic or cultural differences, lived in peace, welfare and harmony for hundreds of years[49].

The reason for this harmony and peace in the Ottoman society was Ottoman toleration. The Ottoman Empire has always been tolerant of different features of different people. "Ottoman Turks, like other Turkish states in history have always been tolerant to the religious beliefs of others throughout history. In no part of the Ottoman history, did religion become a problem in the Ottoman society" (Parmaksızoğlu, 1982: 56). Similarly, İnalcık (1982) also agrees that tolerance marked the Ottoman policy towards its non-Muslim population, and the Ottoman Empire was a paradise for these people. All religious societies in the Empire were set free to hold their religious beliefs. Ottoman rulers never forced the people living in the territories that they occupied to change their religions. There was never a politics of assimilation by the Ottoman rulers towards the people living in the occupied territories. For example, as Parmaksızoğlu states (1982), after the conquest of Constantinople, Fatih Sultan Mehmed called the people that were hiding and declared that they could travel peacefully and freely and called the people back who left their houses because of the occupation and let them live in accordance with their own traditions and cultures. This shows us that the Ottoman rulers did not engage in Islamization politics. "There is not any Islamization evidence in history by the

[49] See in III. Osmanlı Sempozyumu, p: 62.

Ottoman rulers since it is not permitted in Islam" (Akyüz, 1999: 99). In addition to this, according to Cyrus Hamlin, if the Ottoman Empire had forced the people that it ruled to be Muslims, today probably there would not be Armenian, Cyprus or Eastern questions[50]. The rulers set people free in their daily lives and set them free in their religious lives and beliefs. In addition, even in Shariat, no one, even a slave, can be forced to be a Muslim. Ottomans only encouraged people to be Muslims, but force was never used force in order to convert someone from his or her religion to Islam. That is to say, non-Muslim subjects could protect their existences and those characteristics which set them apart by the help of Islam.

According to Vakkasoğlu (1999), in the same period, when the Ottoman Empire showed the best example of tolerance in its society, Europeans could not even imagine that different people having different beliefs could live together. Regarding the European perception, İnalcık (1982: 2) gives the example of Jews stating that, "the Ottoman Empire was a paradise for the Jews, who were cruelly oppressed in Western Europe". Because of this, the West experienced hundreds of years of religious wars between the different sects of the same religion in Europe. While Europe was experiencing these bloody religious wars, we see that the Ottoman Empire "gave non-Muslims their right and freedom of religion and conscience and we also see that these rights were put into practice" (Akyüz, 1999: 229).

This unique toleration of the Ottoman Empire made the Ottoman territories a heaven for those with different religious, ethnic and cultural differences. All these different people lived peacefully under the Ottoman rule. The Empire opened its territories to

[50] Vakkasoğlu, Vehbi, *Osmanlı İnsanı*, p: 227.

all people who suffered under other empires and similarly these people wanted to be ruled by the Ottoman Empire. For instance;

> "When Catholic Spain expelled her citizens of the Jewish faith and gave her Muslim inhabitants the choice of conversion or death, it was the Ottoman Empire, which opened its doors to tens of thousands of persecuted refugees[51]…In the following centuries, the Ottoman doors were thrown open to a wide variety of groups including Russian Old Believers, who refused to conform to the orthodoxy imposed by Peter the Great, and Polish refugees fleeing their homeland following the 1848 Revolution. In short, throughout its history, the Ottoman empire remained a heaven for religious and political refugees" (İzgi, 2001: 1)[52].

"Since the Ottoman State put into practice the feature of tolerance starting from its establishment, lots of people wanted to be ruled by it and accepted the dominance of the Empire" (Vakkasoğlu, 1999: 71). Vakkasoğlu adds that Protestant Christians, those who were oppressed under the dominance of the Catholic Papacy and Habsburg Empire, chose Ottoman rule and saw the Ottoman Empire as a survivor. Additionally, a Jewish migration to the Ottoman territories occurred after 1492. According to Yetkin (1992), the settlement of the Jewish communities was not a coincidence but a conscious event. The reason for this migration basically was to secure life and the freedom of religion and conscience in the Ottoman territories. İnalcık's explanation regarding this is that " Jewish emigrants from Germany were overjoyed at the favored position of the Jews in the Ottoman Empire. They were free to live and trade as they pleased. …their enterprise found rich sources of profit" (1982: 2). In other words, Ottoman territories were the places of peace and presence.

[51] Also see in Vakkasoğlu, Vehbi, *Osmanlı İnsanı,* p: 78 and Koçoğlu, Yahya, *Azınlık Gençleri Anlatıyor*, p: 36.

[52] See in Ataöv, Türkkaya, *Armenians in the Late Ottoman Period,* p: 1.

It is obvious that these freedoms were not only applicable to the Jewish community but also to all other religious communities living under Ottoman rule. Apart form these freedoms; these communities were also included in the state apparatus. These people were in harmony within the power cadres. That's why the Empire was able to rule a very large territory for hundreds of years. In this kind of a society, in which people fuse regardless of differences, subjects realize that they all belong to the same existence. That is one of the reasons for the longevity of the Empire. These realities show that, the Ottoman Empire supplied a better life than the Christian states did during the same period of time.

The non-Muslim population in the Empire starting from the conquest of Constantinople to 1839 Hatt-I Sherif of Gülhane (Gülhane Hatt-u Hümayunu) was subject to the same regime. In the Muslim- non-Muslim division, the non-Muslim population was referred to as "millets" and the system as the "millet system".

> "This system gives the non-Muslim population the right to use their own institutions and laws in regulating their behaviors under the supervision of their religious leaders…people generally have a contact with the ruling class through this millet leader and the millet leader was responsible to the sultan with respect to the behaviors, tax and other obligations of the millet" (Shaw: 1982: 214).

That is to say, in the Ottoman society, different people of different religions constituted different millets. The members of the different millets had equal rights and obligations with respect to each other and also with respect to the Muslim population. These millets were not discriminated against and did not suffer any disadvantaged position because of their religious differences. The only obligation of these millets, as well as the other Ottoman subjects, was to behave properly and to be

loyal to the state. “Loyalty to the Muslim state was the essential condition” (İnalcık, 1982: 1).

The Empire started to lose its power and strength and started to lose territories starting from the 18th century. Besides, “the nationalism movements after the American Declaration that ‘everybody is created equally’ and ‘The Rights of Men and Citizen’ in France had major effects on the non-Muslim population” (Bozkurt, 1989: 2). That is to say, in the 18th century, world affairs started to change. New nationalist ideas and trends started to occur and proliferated very fast throughout the world. It would not be wrong to say that there were few places in the world that were not affected by 18th century developments and ideas. In this situation, being a part of the European territory, Ottoman Empire was also affected by these nationalism movements and,

> “as a result of a privileged position that they gained with immunities in the Ottoman law and as a result of benefits coming from being a member of a millet, the foreign subjects became a ‘millet within the millet’ and became able to do what they want to do without any interference of the Ottoman authority. The effect of this situation was clearly seen in the period of the collapse of the Empire” (Shaw, 1982: 230).

Therefore, in the beginning of the 19th century, in order to prevent the demands of separation in the non-Muslim groups living on the Ottoman territory because of the effect of the French Revolution, and “in order to administer the state and nation, adoption of some new laws were deemed necessary” (İnalcık, 1993: 350). In addition, “the laws and regulations aiming at institutionalizing the status of citizenship in the Turkish Republic had close links with Ottoman modernization” (İçduygu, Çolak and Soyarık, 1999:193).

Starting from the 1839 Hatt-I Sherif of Gülhane, "there were fundamental changes in the juridical status of the non-Muslim population and it was declared that they have exactly the same rights with other Ottoman subjects" (Koçoğlu, 2001: 14). Basically, according to the 1839 Hatt-İ Sherif of Gülhane:

> "there is nothing more saintly than life, chastity and honor in the world…security of the property must be protected…a full guarantee of life, chastity, honor and property is granted to the whole people of the nation including both Muslims and other millets…" (İnalcık, 1993: 350-352).

Therefore, the Hatt-İ Sherif of Gülhane, guaranteed to all Ottoman subjects without distinction of race or religion, individual rights and equality before the law. "The principle of equality before the law is strictly emphasized and this is not only between the state and the subjects, but also it is understood that it is the equality before the law among both Muslim and non-Muslim subjects" (İnalcık, 1993: 357).

"The reform provisions regarding equality for non-Muslims were carried out by developing the new doctrine of Ottomanism, which provided that all subjects were equal before the law" (Shaw, 1997: 127). İnalcık mentions that, (1993: 358) "this politics of the state based on the equality of the subjects of the Empire is the most important part of the Tanzimat reforms". This is Ottoman unification based on legal equality. Therefore, one can argue that the current understanding of citizenship in the Turkish Republic has its traces in this tradition.

> "This polity of the Empire found its certain expression in the 1876 Kanun-I Esasi stating that 'each and every person which is a subject of the Ottoman State regardless of religion or creed is considered as Ottoman'… Later these traditions and principles were

> totally developed and became a basic progress line of Turkish history. In Turkey, one can relate the trends like the constitutional regime easily to the Gülhane Hatt-I Serif" (İnalcık, 1993: 358-359)[53].

"Besides these developments, the Ottoman Turkish bureaucracy, which adopted political approaches in the west, started to consider the non-Muslim population as minorities in accordance with the notion of nation-state" (Soykan, 1999: 251). The recognition of these groups as national minorities goes to the foundation of the Turkish Republic in 1923. Starting from this date, there exists a general juridical arrangement regarding these minorities. As Soykan states (1999), these groups took the status of minorities in accordance with western laws and they started to be recognized as equal and free citizens regardless of religion, ethnicity and culture.

3.2.2 The Strong State Tradition In Turkey

As Kadıoğlu mentions (1996: 177), "a study trying to come to grips with the official Turkish identity…makes references to the strong state tradition in this country which evolved in such a way as to stifle the civil society"[54]. The state tradition, which is also an Ottoman heritage, in the Turkish Republic, is also important to understand the Turkish perception towards minority and citizenship issues. As is known, "one of the most striking features of the Ottoman Empire was the virtual identity of the state authority and military power" (Finkel and Sırman, 1990: 55). In this respect, Turkey has experienced a strong state tradition unlike Western nations such as the nations

[53] In addition, İnalcık in his other work entitled *What is Tanzimat* gives specific articles from the Kanun-I Esasi. For instanceArticle 8 stating that "belonging to any religion or sect, all people those who are subjects of Ottoman State are called Ottoman and Article 17 stating that all Ottomans, regardless of religion and sect are equal before the law" (p.258).

[54] See in Kedourie, Sylvia, Turkey: Identity, Democracy, Politics.

who are the members of the European Union. This tradition can be considered as one of the factors affecting the problems about human rights that are being faced today in the process of western integration.

"Despite the changed world of 1923, the Republic of Turkey could not disassociate itself from the Ottoman heritage…. The essence of the new state can only be understood by thorough study of the six centuries of Ottoman history" (Mayall, 1997: 21-25). "The Turkish Republic inherited from the Ottoman Empire a strong and centralized, highly bureaucratic state"(Özbudun, 1999: 7), also a weak civil society. In this type of tradition, the state was the core in holding the society together. This tradition occurred because; the Ottoman Empire had to rule a very heterogeneous society in a very large territory. It was situated at the crossroads of civilizations, religions, and trade. The Empire had innumerable identities, religious and ethnic. Under these circumstances, the Ottoman rulers tended towards personal rule or extremely state-oriented policies. "In the face of internal and external dangers and rising social conflict, the trend of Ottoman government …was autocratic" (Shaw, 2000: 412). Bringing all these people together and creating a unity was a very hard task. It is not surprising that a strong administration and central state was needed. Therefore, the external environment and external dynamics had an immense effect on the creation of the state tradition.

That is to say, Ottoman rulers had to apply a patrimonial authority over the Empire. According to Heper (1998: 119), this " patrimonial authority of the state did not allow for the development of a civil society and the emergence of an autonomous

class…" which could constitute a force against the state power and which could put pressure via demands on the state. The lack of civil society resulted in the bureaucracy and military playing a significant role in politics.

In this regard, this lack of civil society justifies the top-down reform attempts both in the Ottoman Empire and in the newly established Turkish Republic. On the other hand, all reformation attempts in the Ottoman period was in the name of strengthening the central authority, strengthening the state itself (Heper, 1985). Attempts like the Charter of Alliance (Sened-I İttifak), Hatt-İ Sherif of Gülhane (1839) and the Reform Decree (Hatt-I Sherif of 1856) were the attempts to strengthen the central power. Therefore, "Tanzimat-I Hayriye…contributed to the further centralization of administration" (Shaw and Shaw, 1977: 55). According to İnalcık (1973), these attempts at first seem to be made for the protection of subjects against any abuse, but the fundamental aim of this policy was to maintain and strengthen the power and the authority of the sovereign. In other words, these attempts did not aim at creating or strengthening the civil society; on the contrary, they were the attempts from the state to increase its central power over the people and over the periphery.

Given long centuries of personal and patrimonial authority exercised over the citizens, the underdevelopment of the civil society is not unexpected. People were uneducated and they had lost their capacity to take initiative (Heper, 1985). In this kind of an environment, the role and the power of the state elite grew and political initiative was held by these elites. For that reason "Atatürk entrusted his national

mission to elites in the military and civil service establishment…" (Mayall, 1997: 3). The necessary reforms had to come from the top in the republican period, because of lack of education and lack of capacity to initiative of the people. In this tradition, state elites considered themselves as the guardians of the state, and they continued to have this attitude also in the post-Atatürk period.

To be precise, the Turkish Republic today has this kind of state tradition, which is still strong. One of the primary aims of the state elite is to safeguard the indivisible integrity of the nation and the sovereignty of the nation (Heper, 1988). So that one of the basic duties of the state is to guarantee that:

> None of the rights and freedoms in the Constitution shall be exercised with the aim of …destroying fundamental rights and freedoms, of placing the government of the state under the control of an individual or a group of people, or establishing the hegemony of one social class over the others, or creating discrimination on the basis of language, race, religion, or sect, or of establishing by any other means a system of government based on these concepts and ideals (Constitution, Article 14).

In this understanding, "there is an emphasis on solidarity around the idea of mainland" and emphasis on eliminating any discrimination on the basis of language, race, religion and sect. (Heper, 1988: 9). Peters (1959: 182) mentions the similar argument that "the new Turkish democracy…is mainly a defense of national sovereignty and territorial integrity". In this regard, any idea circling around different language, race, religion or sect is considered to be against the indivisible integrity of the nation. Turkish citizens are only required to be the "citizens" of the nation. They should be united around the motherland. The focus is on citizenship. Therefore, any emphasis other than citizenship is considered as dangerous by the state elite. On the

other hand, one can argue that this kind of a tradition neglects different features of the people. There may be some people who have different or additional defining features such as other languages, religions or cultures. This is very normal for Turkey since it is located at the crossroads of civilizations and religions. Therefore, it is natural that there are some cultural and linguistic differences. Moreover, the recognition of these differences is expected not considering them as threats to the integrity of the nation. When the strong state in Turkey, comprised of political and military elite, resists fulfilling these demands, problems start to occur in the integration process with the West. It is believed that this understanding is at odds with the Western tradition and creates conflicts in the process of integration.

Regarding the indivisible integrity of the state and the preservation of sovereignty the impact of the military cannot be underestimated. It would not be wrong to say that military in Turkey for over 60 or 70 years have always represented progressive and democratic power. In addition, in Turkey "the military is conceived as the pioneer institution, which gives way for progress. The image of guarantee of the regime and the image of being a leader of the society legitimizes its actions for the people"(Şen, 1996: 170). This is because starting from the Ottoman period, people and the bureaucratic elite always relied on the military. During the times of recession inthe Ottoman Empire, during the First World War and during the War of National Independence, the military forces always played the role of savior of the nation. As Mayall claims (1997:27), "the army had gained heroic status as defender of the nation".

Although the military has been seen in Turkey as progressive, Turkey has had three military interventions, which have not has been healthy for the consolidation of democracy. But it is obvious that the military has not intervened in politics in order to hold power. It has intervened in order to overcome the negative situations that existed both in the Ottoman Empire and in the Turkish Republic (Cornell, 1998). Although military interventions are not conceived of as healthy for the consolidation of democracy, it is accepted that "the role and understanding of the military in Turkey is unique in the world"(Cornell, 1998: 82). It does not have the aim of holding power. Whenever necessary, the military did not hesitate to transfer power to civilians, the real holders. Therefore, one can conclude that it is not the intention of military to rule the society and to hold the political power. The military only intervenes in order to re-establish social order and security.

In the Republican period, as is mentioned before, the reforms had to be exposed to the society and this was also achieved with the help of military. This support of the military for the reforms continued after the death of Atatürk. Cornell (1998) believes that the military considered itself as the protector of the Atatürk's heritage and the guarantor of Kemalist ideas. This is not a strange vision when we consider Atatürk's declaration, stating that:

> Turkish nation…has always looked to the military…as the leader of movements to achieve lofty national ideals…when speaking of the army I am speaking of the intelligentsia of the Turkish nation who are the true owners of this country…The Turkish nation considers its army to be the guardian of its ideals (Heper, 1985: 53).[55]

[55] Also see in Mayall, 1997: 28.

Atatürk considered the military as the guardian of the ideals of the Turkish nation, which are embodied in Kemalist thoughts. In this respect, the military can justify its intervention when there is an interruption of or a threat to any of the national ideals. The military considers itself obliged rid the state of any danger against state ideals.

When one combines these issues of the role of the military, a strong state tradition and minorities, it can be realized that the military and the strong state tradition, have had a negative impact on minority, linguistic, or cultural rights in the integration process. The military is very sensitive about issues of linguistic and cultural rights.[56] There is a constant fear of secession and the military considers the demand regarding linguistic and cultural rights as discriminative actions aiming at dividing the nation. In other words, these claims are considered as threats to the sovereignty and the indivisible integrity of the nation. For instance, the phrase in the press declaration of the National Security Council on January 2002, the wording which was "separatist movements in the issue of education in another language other than the legal language" clearly shows that such claims coming from the society are considered as demands against the integrity of the nation and also against the indivisible integrity of the nation. This sort of a perception also creates obstacles in the process of Western integration.

[56] It was stated in the press declaration of the National Security Council on January 2002 in paragraph 3 that "in the light of the security and intelligence reports including the last one year period, the precautions were scrutinized against the separatist movements in the issue of education on another language other than the legal language, which is directed by the terrorist organization and the other dangerous actions against the security of the nation based on internal or external forces" (January 30, 2002, Cumhuriyet).

It is generally accepted that the military is the guarantor of the maintenance of the nation that is surrounded by "enemy" nations (Cornell, 1998). Therefore, one thing should not be underestimated that the relations of Turkey with Southern Cyprus, Greece, Armenia, problems related to the Gulf Crisis, the Kurdish issue, problems with Syria and others, make the intervention of the military in daily domestic and foreign politics natural. All these problems retain the importance of the military in Turkey. Secondly, tens of years of PKK terrorism aiming at creating a different nation within the territories of the Turkish Republic increased the importance given to the military in the nation and this terrorism created sensitivity on the question of linguistic and cultural rights.

> "The Kurdish issue, initially viewed by the army as a straightforward domestic security matter, became the focus of all Turkey's internal and external concerns. It challenged the roots of Turkish identity and security, the role of the state in society, the nature of its democracy, the economic health and development of Turkey, its relations with the West from a human rights angle and the rest of the region from a security perspective" (Mayall, 1997: 84).

The fear of secession becomes superior to the cultural and linguistic rights both at the state level and in the eyes of the military. The loss of 30.000 people in the fight against terrorism created a very sensitive state, military, as well as society, regarding these issues.

3.2.3 Atatürk's Vision

In the light of above-mentioned criteria, it can be argued that both the political and the military elite consider themselves as the guardians of the national ideals. These ideals are basically the ideals of Atatürk, the founder of the Turkish Republic. In order to understand the emergence of the vision of Atatürk towards the issue of

citizenship, one should focus on some basic events during the period and the Young Turk[57] understanding.

"Sustainable territories were lost, both at national revolutions and foreign occupations" in the beginning of the 20th century (Shaw, 2000: 411). There were rising violent nationalist movements in the territories of the Sultan. It is obvious that these created tensions and stress within the Empire. "In the first week of October 1908, Bulgaria declared her independence, Austria annexed Bosnia and Herzegovina, and Crete proclaimed her union with Greece" (Lewis, 1974: 55). In addition, "the Armenian Dashnaks launched a new wave of terrorism in eastern Anatolia and intensified their European propaganda campaign accusing the Ottomans of massacre, and the Greek terrorists in Macedonia were equally active" (Shaw, 1977: 287). As Shaw states, there were also other problematic issues like the Albanian revolt. These events and the Young Turk movement were experienced at the same time and it is inevitable that these secessionist movements shaped the views of the Young Turks. Ottomanism, aiming at cooperation in a united empire, was developed in the Young Turk period, and again, according to Shaw, the Albanian revolt was very effective with respect to national interests and it is with this revolt that the Committee of Union and Progress (CUP)[58] turned strongly towards Turkish nationalism (1977). So, with the emergence of the Albanian revolt, there is a change towards Turkish

[57] Coalition of various reform groups (including Jews) that led a revolutionary movement against the authoritarian regime of Ottoman sultan Abdülhamid II, which culminated in the establishment of a constitutional government.

[58] It was the influential Young Turk organization which advocated a program of orderly reform under a strong central government and the exclusion of all foreign influence.

nationalism. However, the understanding did not change, which is the unification under the state as citizens, regardless of ethnic or religious differences.

In this respect, the "Young Turk formula advocated the idea of constitutionality and the equality of all Turkish or Ottoman citizens regardless of religion, language or race (Peters, 1959: 181). Since "Atatürk grew up within the climate of those Young Turkish Revolutionaries", their understanding and perceptions affected his perceptions and ideas about the future of the country (Peters, 1959: 181). As Shaw claims, the circumstances of Atatürks's life, his experiences and education determined his attitudes and direction, which is the "achievement of the rebirth of the Turkish nation out of the ashes of the Ottoman Empire" (1977: 373). The new Turkish Republic, parallel with the Young Turk ideology, finds its basis on equality of the citizens, defense of national sovereignty and territorial integrity.

The Turkish National War for Independence was fought and in turn, it led to the rise of the Turkish Republic, which was the ultimate aim.

> "The Turkish War for Independence came to a successful conclusion, and the Turks finally were able to join the other peoples of the Ottoman Empire in creating their own independent state following the First World War…and Turkey was made a secular state, and all citizens, regardless of religion, were accepted Turks with equal rights" (Shaw, 2000: 423-425).

After the foundation of the Republic, Atatürk went far beyond the Young Turk understanding and put in place more radical reforms in order to create a nation based on the union of language, culture and ideals. Hence, Atatürk's notion of citizenship is constructive. It is based on the notion of a nation and living together in the same territory without focusing on differences but on the accomplishments of the past.

According to him, "each and every individual of the Turkish nation resembles themselves, apart from some differences. Some differences coming from birth should be conceived as natural" (Tezcan, 1994: 14)[59]. Today's understanding of citizenship in the Turkish Republic finds its traces in this tendency. In this regard, one can realize that the understanding of constitutional citizenship resembles the above-mentioned understanding of nation and citizenship.

In the light of the above-mentioned criteria one can basically claim that constitutional citizenship is one of the basic principles in the Turkish understanding of citizenship. This claim comes from the emphasis on the non-discriminatory nature of the system. However, one important thing is underestimated that this understanding of constitutional citizenship is far from its original Western understanding. The Turkish perception neglects differences, and on that point, problems regarding minority rights in Turkey create problems in European integration. It is obvious that this monolithic understanding of citizenship has historical reasons. However, current necessities should not be underestimated. It is obvious that Turkish and European perceptions of the minority issue are different from each other and the major component of this differentiation is the differentiation in perceptions of citizenship. The Turkish perception of citizenship does not fit the European one and this stands as the major question in the solution of the minority issue in the integration process. Therefore, as regards European integration, it could be argued that Turkey should reshape its understanding of citizenship keeping in mind that "multicultural politics are not a threat to the existence of a unitary system,

[59] Nuran Tezcan collected the handwritings of Atatürk and published them as a book, Atatürk'ün Yazdığı Yurttaşlık Bilgileri (Citizenship Information Written by Atatürk).

on the contrary, it is an element that helps the reproduction of social richness" (İçduygu, 1995: 125).

CHAPTER IV

TURKEY AND THE EU:TWO DANCERS STEPPING ON EACH OTHER'S TOES?

4.1 Citizenship in the European Union

In the previous chapter, the Turkish perception of citizenship was discussed and it was stated that the understanding of Turkey and the European Union conflict with each other. The former has a monolithic and the latter has a multicultural and plural understanding of citizenship. In order to have a better insight of this difference, one should also focus on the perception of the European Union. The Union's perception towards the issue is also important since, in order to be a member of the Union, the candidate states "must share the values and objectives of the European Union as set out in the EU treaties" (Hanlı, 2001: 29). In this respect, not only in the concept of citizenship, but also in other areas, the objectives and values given by the Union should be accorded great importance because any possible or existing contradictions must be focused on and eliminated in order to be a full member of the Union. Therefore, in terms of citizenship, in order to better understand the gap between Turkey and the Union, it is worth mentioning the notion of European Citizenship, which shows the general tendency in the Union in terms of citizenship, although "it is an ambivalent development" (Delanty, 1997: 298), and although it is problematic in some respects.

4.1.1 Treaties of Maastricht, Amsterdam, Shengen and the Issue of European Citizenship

European Citizenship takes its basis from the Treaty of Maastricht. As Lemke states (1998: 212), "with the signing of the Treaty of Maastricht in 1992, European integration reached a new level". The signing of the Treaty clearly shows the beginning of a new era for the Union both in political and economic terms. As Article A of the Treaty mentions:

> "By this Treaty, the High Contracting Parties establish among themselves a European Union…This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen. The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples".

As it is clearly stated, the aim is to create a closer union with its members and its people. This togetherness is created by cooperation and solidarity between the member states and their peoples. What one can imply from the treaty is that the ultimate aim is to create a union with the member states and their people. Moreover, these people are going to be citizens of this Union, in other words, European citizens. When Article B of the Treaty is examined, it is realized that this Article openly enumerates the objectives and targets of the Union. According to this Article,

> "the aim of the Union is to promote economic and social progress…to create an area without internal frontiers…to create a single currency…to have a common foreign and security policy and a common defence policy…and to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union".

That is to say, if the Union is considered as a unified state, the European citizens are the nationals of this state of the EU, which is the fundamental aim. This treaty, in this respect, "establishes a political-legal base of 'European Citizenship' " (Borja, 2000: 47).

In addition, "the introduction of a European citizenship in the Treaty was one of the most remarkable steps in the restructuring of relations between member states and the emerging polity of the European Union" (Lemke, 1998: 212). It can be considered as a legal base for the construction of European citizenship in such a way that, "the Article 8 of the treaty establishes a citizenship of the Union" (La Torre, 1998: 367). In this respect, each person holding the nationality of a Member States is considered a citizen of the Union[60].

Furthermore, the Treaty enumerates several rights of "European Citizens". In this regard, Articles 8a to 8e grants certain rights derived from citizenship of the Union. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States (8a.1), every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State (8b.1), every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that

[60] Article 8.1 of the Treaty of Maastricht states that; Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.

State (8c), and every citizen of the Union shall have the right to petition the European Parliament (8d).

Thus, when this is combined with the citizenship theory in the previous chapter, we see that "European Citizenship is a citizenship in the 'classical' sense" (La Torre, 1998: 438). In other words, the Treaty of Maastricht, which constructs European citizenship, only deals with the rights of the citizens. Therefore, it is only related with the legal side of citizenship. In this respect, the Treaty regards citizenship as a legal status, which is one of the existing problems regarding European citizenship.

As set out in the Treaty of Maastricht, any national of a Member State is a citizen of the Union. The aim of European citizenship is to strengthen and consolidate European identity by greater involvement of the citizens in the Community integration process. In other words, as Delgada-Mareire states, "the ultimate goal of cultural policy…is the strengthening of the citizens' feelings of belonging to the European Union" (2000: 194).

In this framework, apart from Maastricht, the Treaty of Amsterdam is also crucial. It completes the list of civic rights of Union citizens and clarifies the link between national citizenship and European citizenship. In other words, it is a revision of the Treaty of Maastricht (Lemke, 1998). Most importantly, the Treaty of Amsterdam clarifies the link between European and national citizenship. It states explicitly that "citizenship of the Union shall complement and not replace national citizenship". Two practical conclusions follow from this; one is that it is first necessary to be a

national of a Member State in order to enjoy citizenship of the Union and secondly, European citizenship will supplement and complement the rights conferred by national citizenship. The new Treaty adds provisions to the Maastricht Treaty which states explicitly for the first time that the Union is founded on certain principles: liberty, democracy, human rights and fundamental freedoms and the rule of law. Therefore, this development meant the extension of European-ness and revision of the "acquis communitaire" with the principles of liberal democracy, multicultural policies and human rights protection. These are principles held in common by all the Member States and respect for them will now be required of applicants for membership as a condition for admission to the Union.

In addition to these developments, " a further remarkable step was the decision to include provisions loosening border controls among member countries, the so-called Schengen Agreement, in the Treaty on European Union as an integral part of the legal institutional arrangements" (Lemke, 1998: 215)[61].

The above mentioned treaties constitute the legal side of the ultimate aim of the Union, which is to create a European state with its internal frontiers, single currency, common foreign, security and defense policies, and most importantly, with its citizenship. And with these discussions, the concept of European citizenship became a focal point in the debate about democracy in the European Union.

[61] The Schengen Agreement, worked out in 1985 in the town of Schengen, Luxembourg, formally began the process of developing a coordinated policy on immigration. France, the Federal Republic of Germany and the Benelux countries were the first to agree to remove the border controls; subsequently, after 1990, the other EU countries joined.

4.1.2 Necessity to Move Beyond the National State

In the original theory of citizenship it is agreed that citizenship is the combination of its legal status, identity and the civic virtues. However, with regard to above-mentioned discussion of European citizenship, one must theorize this mode in such a way that it goes beyond the nation state (Delanty, 1997). In this sense, in the original understanding, citizenship is considered as an existence within the space of the nation-state. On the other hand, in the concept of European citizenship, the citizen is out of the space of the nation-state. Therefore, there is a new model of citizenship, which is post-national citizenship including European citizenship. In the light of these explanations, it can be argued that "the status of European citizen is different from citizenship as we know it" (La Torre, 1998: 317). The idea of European citizenship is different from the citizenship of the Member States. It is more than that and it is beyond the nation-state.

That is to say, the European perception of citizenship is post-national, it is beyond the state level. Additionally, as Delanty states (1997: 295), "multi-identification as the substantive content of citizenship expresses the core of the idea of post-national citizenship". In this framework, it would not be wrong to claim that the concept of European citizenship is multicultural in nature, and in a way challenges the traditional model of nationality. It challenges nationality in such a way that it undermines the sovereignty of national citizenship, which is grounded on legal status, as is seen in the Turkish case. Therefore, it is obvious that the candidate states in which this kind of an understanding of citizenship is applicable faces as regards integration. In other words, "there is no doubt that European integration has involved

a shift way from national citizenship", and the candidates who are unable to do the same thing, will be out of the process of integration (Delanty, 1997: 299).

Similarly, as Elizabeth Meehan mentions (1993: 1), a new kind of citizenship has emerged "that is neither national nor cosmopolitan but that is multiple in the sense that the identities, rights and obligations associated…with citizenship, are expressed through an increasingly complex configuration of common Community institutions". Accordingly, "identities, rights and political participation are the key features in the process of conceptualizing European citizenship" (Lemke, 1998: 213). In this regard, the European understanding of citizenship is multiethnic and multicultural in nature. This understanding does not eliminate differences. On the contrary, "every person holding the nationality of a Member State shall also be a citizen of the Union"; therefore, the " individual no longer has to give up his language, religion, cultural heritage or the like in order to be accepted as a legal person" in the Union (La Torre, 1998: 369-370).

If this discussion is combined with the constitutional citizenship of Habermas, which was discussed earlier, one can realize some parallel points. The Treaty of Maastricht has a constitutional character (La Torre, 1998). Based on this constitutional framework, an understanding of citizenship is constructed on a multiethnic and multicultural understanding in which the citizens do not have to eliminate their different features and identities such as language, religion and cultural heritage. When constitutional citizenship is concerned, it is defined as "the realization of social and political guarantee of acceptance of different ethnic, religious and belief

groups in a nation state and the protection and development of their groups, based on a social contract such as concretized in a constitution" (İçduygu and Keyman, 1998-9: 153-4). Therefore, both understandings have a constitutional character and both understandings are based on a pluralism and multiculturalism. In both understandings, the concept of citizenship is something above the nation-state permitting different identities.

By saying that the European Union has a multicultural understanding of citizenship and "recognizing its own multicultural policies", the problems in creating European citizenship cannot be underestimated (Delgado-Moreira, 2000: 195). First of all, as is mentioned before, European citizenship takes into account only the rights of the citizens. Citizens are seen as the right holders and this focuses on the legal status of citizenship. Secondly, "whether the acceptance of plural conceptions of citizenship within the Union is a solution to this complex issue is debatable" (Lemke, 1998: 213). In this respect, German and French understandings of citizenship are problematic. "In both the German and French models, multiculturalism appears unacceptable: in the German because it contradicts the principle of ethnic homogeneity, in France because it contradicts the link between political integration and acceptance of French culture" (Holmes, 1999: 69). The German case is important because it is one of the key actors in the Union. "The legal regulations in Germany are ethnically based" (Lemke, 1998: 214). The "Germaneness" is important. In other words, in the understanding of citizenship of Germany, being a German is important. In this respect, the German notion of citizenship is inclusive for Germans living abroad and exclusive for non-Germans living in the country. As

Üstel claims (1999), the citizenship in France focuses more on the constitutional values, not on historical, cultural or political ones. Moreover, in relations among the state and the citizens, there is no intermediary institution based on either ethnicity or territory. These intermediary institutions have no place in the French constitution.

4.1.3 Multicultural Understanding in Nature

Despite these discussions on the problematic side of European citizenship, the stress here is on the actual aim of the Union and the multicultural nature of the western understanding of citizenship. Although there are some problems regarding European citizenship, it is a reality that the Union has "multifaceted citizenship, in which national and nationalist citizenship live together with cultural citizenship (of the minorities and of the majority)" (Delgado-Moreira, 2000: 31). Therefore, in the attempt to build a common European citizenship, there is this celebration of plurality. The issue may be a bit problematic but "there is no doubt that the Maastricht and Amsterdam, are unlikely to be the last words on the subject" (Holmes, 1999: 35).

4.2 Expectations of the Union from Turkey

The European Union made a historical decision in 1993 in the Copenhagen European Council that "the countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions"[62]. Within the framework of this decision, the Union put forward some principles and values in accordance with the historical legacies, which were dealt

[62] European Comission Strategy Paper 2000

with in the previous chapters, and also in accordance with the citizenship discourse. These general principles are liberal democracy, multicultural policies and human rights. Additionally, "the transformation of these principles such as democracy and human rights into criteria necessary to be a member state of the Union became possible in the Copenhagen Summit in 1993" (Usul, 2002: 9). According to this, if the candidate states obey the Copenhagen Criteria, they will likely be accepted as a member state of the Union.

In this perspective, the Union has an accession strategy. The first expectation of the Union is compliance with the Copenhagen Criteria. Accession Partnership documents are the second step towards the integration. In response to the Accession Partnership, candidate countries prepare their national program for the adoption of the acquis. Apart from these, the European Commission publishes Regular Reports and each Regular Report underlines achievements as well as shortcomings of the candidate nations. Regarding these regulations, "on 10-11 December 1999, the European Council Helsinki Summit welcomed the positive developments in Turkey as noted in the Commission's Progress Report on Turkey and in turn Turkey announced its intention to continue with reforms towards complying with the Copenhagen Criteria" (Hanlı, 2001: 28).

4.2.1 The Copenhagen Criteria

As is mentioned above, the first priority is the Copenhagen Criteria for Turkey, as it is for other candidate states. "In June 1993, the European Council in Copenhagen concluded that candidate countries must be able to satisfy a number of important

economic and political conditions known as the Copenhagen Criteria" (Hanlı, 2001: 27).

As stated in the Copenhagen Document, membership requires that the candidate country has achieved:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

has created :

- the conditions for its integration through the adjustment of its administrative structures, so that European Community legislation transposed into national legislations implemented effectively through appropriate administrative and judicial structures.

As it can be realized, the Criteria is based on two grounds; economic and political. In terms of Turkish integration, the political criteria become much more important than the economic ones, since most of the problems occur in that field. Verheugen also states "political reforms are nevertheless a sticking point for the Commission and the member states" (2001: 62). The political criteria are not just limited by the Copenhagen Document but further developments are also important in that field. Countries wishing to become members of the EU are expected not just to subscribe to the principles of democracy and the rule of law, but actually to put them into practice in daily life. Respect for fundamental rights is a prerequisite of membership, and is enshrined in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocol allowing citizens to take cases to the European Court of Human Rights. Freedom of expression and association and

the independence of the media must also be ensured. The integration of minority populations into society is a condition of democratic stability. A number of texts governing the protection of national minorities have been adopted by the Council of Europe, in particular the Framework Convention for the Protection of National Minorities which safeguards the individual rights of persons belonging to minority groups.

As it was mentioned above, Turkey has displayed a sensitive attitude towards the issue of human rights with respect to its constitution and international agreements. In this respect, the most important obstacle for Turkey in the process of integration is democracy and minority protection. The claims and criticisms against Turkey about human rights are not basically on legal or constitutional grounds but rather on some shortcomings of them in practice. On the other hand, it is not the issue of whether there are criticisms or whether they are right or wrong, the realization of the Copenhagen Criteria is the first and basic expectation of the Union from the candidate nations. This document constitutes the seed of integration. Verheugen also stresses the importance of the Criteria by saying that "the Copenhagen political criteria …have to be met before the accession negotiations properly can start" (2001: 62). Besides this, the fulfillment of this seed later becomes possible with the Accession Partnership document and with the regular reports.

4.2.2 The Accession Partnership Document

The Accession Partnerships are the central pre-accession strategy instrument[63]. As it is stated in the Objectives part of the Annex of the Document for Turkey, "the purpose of the Accession Partnership is set out in a single framework the priority areas for further work…towards membership of the European Union". The purpose of this is to specify the priority areas and achieve progress in these fields in order to reach to the standards of the Union. These areas and the progress on them determine the future relations of that given country with the Union.

"The Accession Partnership document for Turkey was declared on November 8, 2000 by the European Commission... and ratified on March 8, 2001" (Usul, 2002: 15). This document includes short term and medium term priorities for Turkey to realize in order to begin accession negotiations. In this way, as Verheugen declares, this document plays the role of a "road map" for Turkey and also it includes " the expectations from Turkey and priorities in the way of full membership"[64].

When the Document is closely examined, it can be seen that in the Accession Partnership demands, Turkey is obliged to permit TV and radio broadcasts in the short term and in the medium term, that contains cultural variation, that it must guarantee cultural rights for all its citizens, and that it must abolish all kinds of obstacles including in the field of education. Moreover, as Usul mentions, "Kurdish becomes first in the above mentioned required implications" (2002: 17).

[63] The European Commission Strategy paper 2000, II,1.

For example, in the Part 4.1 (political Criteria) of the Document, it is stated that:

- Strengthen legal and constitutional guarantees for the right to freedom of expression in line with article 10 of the European Convention of Human Rights.
- Strengthen opportunities for legal redress against all violations of human rights
- Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue and TV/radio broadcasting

And the Document adds in the medium term criteria that:

- Guarantee full enjoyment by all individuals without any discrimination and irrespective of their language, race, colour, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms. Further develop conditions for the enjoyment of freedom of thought, conscience and religion.
- Review of the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights; ensure the implementation of such legal reforms and conformity with practices in EU Member States.
- 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.

It is clear from the document that the political criteria are important and in this framework, cultural rights are emphasized. The Union specifies the priority area in the Document as political criteria and specifically, importance is attached to human rights and cultural rights. The Commission strongly encourages Turkey to bring about substantial improvements, not only in the constitutional provisions and the laws concerning the protection of human rights, but above all in the human rights situation in practice. This requires reform of many existing structures and practices.

The document has some features with respect to political change in Turkey. First of all, it underlines a social model. It is obvious that the Document takes a multicultural society as a model by addressing the aim of opportunities in broadcasting and education of different cultures. As a matter of fact, in the medium term, the demand is to strengthen the cultural differences of the people irrespective of the origins of people and guarantee the cultural rights and the abolishment of the acquis creating obstacles in doing so. Secondly, the Union indicates its sensitivity on the issues of freedom based on democratic regulations. And finally, the Union stresses the necessity of application on these matters.

From the Turkish perspective, these demands on broadcasting and educational rights under the heading of cultural rights are alien to the Turkish perception of the minority issue and citizenship. Therefore, the fulfillment of these demands would "bring about radical changes in Turkey about the minority concept. These changes, to a great extent question the nation-state characteristic of Turkey" (Usul, 2002: 9). Oppositions were raised both from the military and state elites after the ratification of

[64] These declarations were taken from ntvmsnbc.com on March 9, 2001.

the Accession Partnership document. For example Brigadier General Halil Şimşek declared in his speech (on January 11, 2001) in the Armed Forces Academy that;

> "our nation in under danger of separation under the name of cultural rights, broadcast in the mother tongue and educational rights for our Kurdish origin citizens, who are the parts of the establishment and the integral components of the state, in the Accession Partnership document in the scope of individual rights and freedoms"[65].

This statement echoes the press declaration of the National Security Council on January 2002 stating that the demands on cultural rights, educational rights and broadcast rights are separatist movements in nature and "they are the initiatives of the PKK"[66].

Similarly, Prime Minister Ecevit, in a statement, declared that he conveyed to Mr. Veheugen, the member of the European Union Commission responsible for enlargement, that "the inclusion of Kurdish into the education program is unacceptable. People if they wish can freely talk Kurdish. They also can be seen on TV. However, it is impossible to take Kurdish into the program of foreign language courses"[67]. In addition to this, in another declaration of the Prime Minister, he stated, "everybody should freely explain and publish their thoughts. If there are shortcomings in this field, they will be corrected. However, I do not find it suitable if it is transformed into an element of education"[68].

[65] The full version of his speech is available at ntvmsnbc.com/news/56105.asp

[66] January30, 2002, Hürriyet.

[67] February 6, 2002, Radikal.

[68] February 22, 2002, Hürriyet.

Other than international documents, some statements by high ranking European Union officials also reflect the perceptions and demands of the Union. In this respect, the most important official for Turkey is Günher Verheugen,. He is one of the most influential figures in the Turkish integration process since he is responsible for the enlargement process. His declarations are as important as the documents ratified. In other words, his declarations can be considered as the verbal demands coming from the Union.

4.2.3 Demands on Cultural Rights

Therefore, the demands coming from the Union are not limited to documents. Other than the Copenhagen Criteria and the Accession Partnership document, the statements and declarations of Verheugen also state the necessity to satisfy cultural rights, educational rights and broadcast rights. He also mentions that "the beginning of membership negotiations depends on Turkey's capability of fulfilling the European Union Criteria" and adds that " the next step for Turkey should be the necessary constitutional amendments on the death penalty and education in the mother tongue"[69]. Since these issues are included in the Accession Partnership and also are part of the EU Criteria, Turkey needs to take necessary steps in order to begin membership negotiations. Furthermore, in his special declaration given to NTV representative Murat Akgün mentions that all these "regulations and necessities are preset and these are the rules of the game"[70]. And he adds that some

[69] February 15, 2002, Cumhuriyet.

[70] For full text of the declaration: ntvmsnbc.com/news/136085.asp

areas were not touched upon. As to areas of shortcoming, he again gives the example of cultural rights, and specifically education and broadcast rights.

These further statements on cultural rights have created unrest both in the state and military elite. These statements basically refer to the Kurds, which is a very sensitive topic for both the elite and also for the society as a whole. "The Kurdish question is certainly one of the most difficult tasks that the Turkish state has to handle, particularly since it involves concerns of security against separatism" (Duner and Deverell, 2001: 5). Other than this separatism concern, when the concern is the minority issue "there is no domestic debate on giving the Kurds special status as minority. The main argument against this is that they are regular Turkish citizens" (Duner and Deverell, 2001: 5).

Overall, political criteria are primary in terms of the integration of Turkey into the Union. In this perspective, the Copenhagen Criteria, the Accession Partnership document and some statements of high ranking officials of the Union set the "rules of the game". The result of this game depends on the ability of Turkey to respond to the rules. Nonetheless, "by nature, a significant share of responsibility is taken by Turkey; on the other hand we think that it is natural for us to expect a careful evaluation of our sensitivities and visions from the European Union" (Loloğlu, 2001: 181).

4.3 Capacity of Turkey to Assume the Obligations for Membership

4.3.1 The National Program

In line with the demands and expectations of the European Union, "Turkey was requested to swiftly submit its National Program for adoption of the community acquis based on the Accession Partnership Agreement…" (Hanlı, 2001: 30). It is obvious that Turkey has some responsibilities in this integration process and the National Program is the most important road map that is going to determine the direction of Turkey in this process. In other words, "in fact this document is a response to the Accession Partnership, which was prepared by the European Union and which underlines the policies of change that Turkey has to implement and the spirit of change that it has to adopt"[71].

The Program reflects the intention of the state to be a full member of the Union and in this direction, Turkey affirms that she is going to take all necessary measures in the process of integration. In the introduction part of the Program, it is stated that:

> "The Turkish Government regards EU membership as a new step forward, a milestone confirming the founding philosophy of, and Atatürk's vision for the Republic.
> Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation in order to align further with the universal norms manifest in the EU acquis and practices in EU Member States, particularly in the areas of democracy and human rights".

Basically, the Program has two parts; political criteria and economic criteria. Although the latter is much longer than the former, the most important part of the program is the political criteria, since most of the crucial problems occur in that field. In the political criteria, it is stated that:

"The Turkish Government will closely monitor progress in the country in the areas of human rights, democracy and the rule of law, regularly evaluate the work

[71] March 20, 2001, Radikal.

underway for harmonization with the EU acquis, and will take all necessary measures to speed up the ongoing work.
In addition, legal and administrative measures will be introduced in the short or medium term regarding individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the Judiciary, pre-trial detention and detention conditions in prisons, the fight against torture, human rights violations, training of law-enforcement personnel and other civil servants on human rights issues, regional disparities".

Although, the program asserts that "The modern Turkish Republic is founded on the principles of peaceful foreign policy, secularism, the rule of law, a pluralistic and participatory democratic system, and fundamental human rights and freedoms" and "although, there are some important reform initiatives based on democracy, rule of law and human rights in the National Program, there is not any single important project about cultural rights and minority rights that the Union expects Turkey to handle"(Usul, 2002: 20). As is mentioned before, the National Program is a response to the Accession Partnership Document and in the Accession Partnership Document, cultural rights and multiculturalism were given great importance. Because of this reason, the 2001 Progress Report considers the Turkish National Program falling short of the Accession Partnership and demands a revised version of the National Program. It is stated in the Report that:

> "Turkey's NPAA is part of an evolving process under the pre-accession strategy. A revised document to be prepared as soon as the Turkish authorities have has the opportunity to complete their initial review of the acquis should function more as a planning tool for future work…the present NPAA makes it insufficiently clear how Turkey will address a number of priorities in the Accession Partnership such as those on cultural rights. The NPAA falls considerably short of the Accession partnership priority of guaranteeing cultural rights for all citizens irrespective of origin. Furthermore, the priority on the removal of all legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting is to be included" (Commission of the European Communities, "2001 Regular Report on Turkey's Progress Towards Accession", (p: 103).

Therefore, the Union considers the National Program as falling short of expectations and in this respect considers Turkey unable to adopt the political criteria[72]. Furthermore, not only the Union, but also some state officials in Turkey are uncomfortable with the National Program. For instance, Mesut Yılmaz, one of the coalition leaders, admitted that the National Program has some shortcomings in this respect, he states that TV and radio broadcasts in the mother tongue should not be restricted and cultural rights should be given more importance[73].

At first sight, the Program is a comprehensive one. It includes a variety of spheres from political criteria to the economic. It suggests a total reform of the juridical subjects under discussion. It puts forth a series of fundamental reforms. However, when one carefully examines the document, one realizes that the state does not offer concrete solutions for the existing problems or demands. At the end, there are serious contradictions between a logic that limits the political and social pluralism and considers it is as a threat, and the stand of the European Union, which adopts pluralism and multiculturalism as a basic philosophy of the European model. And this contradiction clearly damages the persuasiveness of the Turkish National Program.

4.3.2 Constitutional Amendments

[72] November 14, 2001, Hürriyet.

[73] March 25, 2001, Cumhuriyet.

Turkey, in order to show its seriousness and intention towards accession to the Union adopted a major constitutional amendment. This amendment of 33 articles "was ratified by the Grand National Assembly (GNAT) on October 3, 2001 and this amendment is the most comprehensive amendment that has been done" (Eroğul, 2002: 273). These amendments are related to the Copenhagen political criteria and the Accession Partnership. That is to say, with these amendments the necessary constitutional changes were made that are to be done on the road of accession.

"Several of the amendments are intended to prepare the ground to meet some of Turkey's Accession Partnership priorities…" (Commission of the European Communities, "2001 Regular Report on Turkey's Progress Towards Accession", p:15). Especially, the articles were reformulated in a way that emphasizes individual rights and freedoms, necessities of the society, modern democratic standards, universal norms, human rights and the rule of law. As the 2001 Report mentions, "the recent constitutional amendments are a significant step towards strengthening guarantees in the field of human rights and fundamental freedoms…" (p: 19).

The major fields of change regarding the political criteria are the abolishment of the restrictions on the freedom of thought, the limit on the limitation of the basic rights and freedoms and the abolishment of the language prohibition. In this respect, in the first amendment in the Preamble of the Constitution, the mentioning of "no protection shall be afforded to thoughts or opinions contrary to Turkish National interests…" has changed into "no protection shall be afforded to actions contrary to…". The reason for this change is to abolish the restriction on freedom of thought

and to make it a rule that not the thought but the action can be restricted. The second important amendments is in the field of basic rights and freedoms. In this regard there is an enlargement of these rights and freedoms with the new amendment. In this amendment, it is stated that the limitation on the basic rights and freedoms cannot be against the letter and the spirit of the constitution, the necessities of a secular republic and democratic social order and also cannot be against the principle of moderation. "In other words, the limitation can only be made if it is related to an article in the constitution and if any limitation is necessary in accordance with an article in the constitution" (Eroğul, 2002: 274). . In addition, these limitations can only be made by laws. The third major change is on the restriction on the use of language.

> As regards cultural rights, progress can be reported with the amendment of Articles 26 and 28 of the Constitution, in which the provisions forbidding the use of languages prohibited by law have now been abolished. This could pave the way for the use of languages other than Turkish and is therefore a positive development" (Commission of the European Communities, "2001 Regular Report on Turkey's Progress Towards Accession", p:28).

Although this is a major development, in accordance with the Accession Partnership, it is not enough. Actually, with this regulation, the ban on language is not totally abolished in that Article 42 of the Constitution is not abolished; it states; "no language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education…" . In this respect, as is stated in the 2001 Report, "the actual situation has not improved, notably in relation to broadcasting and education…no amendment under the constitutional reform provides for education in languages other than Turkish" (p: 28).

The amendments are not limited to these fields. There are other areas of change like the reduction of the period of pre-trial detention, the freedom of association, the limit on capital punishment, the limit on the closure of political parties, the protection of private life and the increase in the civilian members in the National Security Council.

These reforms have been positively welcomed by the Union. In major documents like the 2001 Regular Report and by statements of high ranking officials of the union like Verheugen, it is understood that the reforms are considered as positive steps for the accession, but they are insufficient. The constitutional amendment is a major step but steps in the field of political criteria are positive but not enough. These developments should be reflected in implementation of them[74].

> "the constitutional amendments adopted by the Turkish Parliament on 3 October 2001 are a significant step towards strengthening guarantees in the field of human rights and fundamental freedoms and limiting capital punishment. The amendments narrow the grounds for limiting such fundamental freedoms as the freedom of expression and dissemination of thought, freedom of press and freedom of association. Attention was now turned to the effective implementation of these important changes" (Commission of the European Communities, "2001 Regular Report on Turkey's Progress Towards Accession", p:96).

Additionally, Verheugen mentions;

> "we are definitely satisfied and are happy about the reforms that Turkey has introduced. Turkey showed slow steps but the progress functions step by step. This is a positive development. If we are to evaluate the developments; Turkey is on the right dimension and the nation is in a progress. On the other hand, some areas were not touched upon in the progress. These areas

[74] November 14 2001, Hürriyet

are certain. Because of this, our prior aim should be to deal with these untouched areas"[75].

4.3.3 The European Commission's Regular Progress Reports on Turkey (1998, 1999, 2000, 2001)

As is mentioned before, "the Progress Reports analyze to what degree the 1993 Copenhagen Criteria are fulfilled by the candidate states" (Usul, 2002: 14). In order to measure the ability of the candidate states in fulfilling the Copenhagen Criteria, the European Commission prepares annually reports and in these reports, the positive developments and shortcomings are enumerated in the fields of politics and the economy. Therefore, the candidate states are informed of their shortcomings and the necessity of dealing with shortcoming is expected by the Union in order to be a full member. In other words, these reports examine the candidate states' ability to take on the obligations of membership and in the end, the reports give the annual general evaluation of the candidate's prospects on the way to accession with particular reference to European enlargement strategy. When all the reports (1998,1999,2000,and 2001) are carefully examined, the expectation of the Union especially on the political criteria and the response of Turkey to these expectations and the gap between them clearly show themselves.

[75] A special statement from Verheugen to NTV. The member of the European Commission responsible for enlargement, Gunter Verheugen, answers the questions of Murat Akgün, Ankara representative of NTV. The full text of this statement can be found at ntvmsnbc.com/news/136085.asp.

4.3.3.1 1998 Regular Report from the Commission on Turkey's Progress Towards Accession

The first regular report of the Commission was submitted in 1998. "The Cardiff European Council, which took place in June 1998, welcomed the Commission's confirmation that it will submit at the end of 1998 its first regular reports on each candidate's progress towards accession" (Regular Report from the Commission on Turkey's Progress Towards Accession -1998-, p: 4).

"The Progress Report on Turkey in 1998 is the first significant work on Turkey by the Union that evaluates the political regime of Turkey" (Usul, 2002, p: 14). This document analyzes the relations between Turkey and the Union and analyzes the situation both with regard to both the political and economic conditions. The significant part for Turkey is the political one, in which democracy, rule of law, human rights and protection of minorities are dealt with.

It is stated in the report that;

"Turkey has a government and Parliament resulting from multi-party, democratic elections and the administration capable of framing and applying legislation compatible with the acquis communautaire. Despite political recognition of the need for improvement…Turkey's record of upholding the rights on the individual and the freedom of expression falls well short of standards in the EU" (p:9).

Therefore, although Turkey has a multi-party system and democratic elections, there are also some problematic areas as is stated in the chapter on *Civic and Political Rights*. It is stated that ,"the actual upholding of civil and political rights enshrined in the Turkish Constitution and law remains problematic" (p:14). These problematic

areas are enumerated as torture, disappearances, freedom of expression, freedom of press, freedom of association, freedom of assembly, and capital punishment.

Other than these issues, there is one more important shortcoming mentioned in the document, which also remains problematic today. This issue shows itself under the heading of *Minority Rights and Protection of Minorities*.

According to the Report;

"the Constitution does not recognize Kurds as a national, racial or ethnic minority. There are no legal barriers to ethnic Kurds' participation in political and economic affairs but Kurds who publicly or politically assert their Kurdish ethnic identity risk harassment or prosecution…the Turkish authorities do not recognize the existence of a Kurdish minority, considering them to be simply Turks of Kurdish origin" (p: 20).

This remains as the basic problem and the solution is the "recognition of certain forms of Kurdish cultural identity and the greater tolerance of the ways of expressing that identity, provided it does not advocate separatism or terrorism" (p:20).

4.3.3.2 1999 Regular Report from the Commission on Turkey's Progress Towards Accession

According to the 1999 report, there are still problems in Turkey that give cause for concern in the political criteria. "The situation described in the last Regular Report has not substantially changed. Nevertheless, Turkey has taken some steps which clearly go in the right direction"(p:11). For instance, there were some developments in detention procedures, the measures against the practice of torture and extra judicial executions.

Despite the positive gestures made by Turkish authorities, the situation regarding the "Kurdish question" remains worrying for the Report. There was no development on the cultural rights of these people. "For instance, TV broadcasting in Kurdish, while apparently tolerated for non-political programs, is still officially not allowed" (p:14). As said by the document;

"the essential point is that any such group [Turkish citizens of Kurdish origin] should have the opportunity and material resource 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 Protection of National minorities and the European Charter for Regional or Minority Languages…" (p: 14).

As a general evaluation of the Report, it is stated that "…although the basic features of a democratic system exist in Turkey, it still does not meet the Copenhagen political criteria. There are serious shortcomings in terms of human rights and protection of minorities" (p:15).

4.3.3.3 2000 Regular Report from the Commission on Turkey's Progress Towards Accession

This report refers to some positive developments in Turkey, such as in the area of torture. It also praises Turkey for signing of two major international instruments in the field of human rights, namely the International Covenant on Civil and Political rights and the International Covenant on Economic, Social and Cultural Rights. "The European Commission welcomes these various initiatives, which will bring forward Turkey's accession to the EU. It encourages Turkey to make concrete progress as soon as possible…" (p:11).

On the other hand, "the problems in the area of civil and political rights identified in last year's regular report remain largely unchanged, and only limited progress can be made" (p:15). Additional to the language problem, more specifically the broadcast issue in a language other than Turkish and an education issue were introduced in this report. According to the report,

"as far as the use of languages other than Turkish is concerned, no particular problems have been reported for citizens belonging to minorities covered by the 1923 Lausanne Treaty. However, for those belonging to groups that are outside the scope of the Lausanne Treaty the situation has not improved, notably concerning TV/radio-broadcasting and education. …In practice, some broadcasting in Kurdish is sometimes tolerated. In the field of education, no language other than Turkish is allowed for teaching purposes, except where explicitly authorized by the Ministry of National Education. Neither legislation nor practice should prevent the enjoyment of cultural rights for all Turks irrespective of their ethnic origin" (p: 18).

Therefore, the Report criticizes Turkey for not granting cultural rights of the "Turkish citizens with Kurdish origin". These people are presented as different people with different features such as culture and language. And therefore, these differences should be respected and not only the broadcasting rights but also the education rights should be given in Kurdish.

These cultural rights are considered as primary criteria for the improvement of the situation in Turkey and also for the improvement on the road of accession.

"compared to last year, the economic, social and cultural rights situation has not improved, particularly when it comes to the enjoyment of cultural rights for all Turks irrespective of ethnic origin. The situation in the Southeast, where the population is predominantly Kurdish, has not substantially changed" (p:21).

Therefore, the political situation has hardly improved and thus, Turkey still does not meet the Copenhagen political criteria, which is a core condition in the accession strategy of the Union.

4.3.3.4 2001 Regular Report from the Commission on Turkey's Progress Towards Accession

In this report, similar to the previous ones, some positive remarks have been made such as the National Program and the constitutional amendments. It is stated that the National Program is a welcomed situation and additionally, "the recent constitutional amendments are a significant step towards strengthening guarantees in the field of human rights and fundamental freedoms and limiting capital punishment" (p:19).

As in the previous reports, the fields of civil and political rights and human rights and protection of minorities remain as the core issues. The recent developments were welcomed but on the other hand, the implementation of these developments and changes are important. In this regard, civil and political rights in Turkey need improvement. Therefore, according to the report,

> "for persons belonging to groups that are outside the scope of the 1923 Lausanne treaty, the actual situation has not improved, notably in relation to broadcasting and education…in the field of education no language other than Turkish is allowed…and no amendments under the constitutional reform provides for education in languages other than Turkish" (p: 28).

As a general evaluation, the constitutional amendments are considered as a significant step towards accession. However, attention turned into the effective implementation of these important changes. Despite these changes, a number of restrictions on the exercise of fundamental freedoms have remained. That is to say, there has been no improvement in the real enjoyment of cultural rights for all Turks, irrespective of their ethnic origin, according to the report.

As a short conclusion of these reports, in order for Turkey to satisfy the political accession criteria, it has to first allow education and TV/radio-broadcasting in the mother tongue of all its ethnic, religious, language and cultural groups and especially Kurds, and secondly, it has to find a political solution for the "Southeastern question" and this solution seems to be the recognition of the "Kurdish identity".

In the course of writing this thesis, regarding above-mentioned political necessities, Turkish Parliament passed a reform package on Saturday, August 3, 2002, which abolishes the death penalty in peacetime and which allows broadcasting and education in mother tongue. In the framework of political criteria in the integration process, according to the reform package:

- The death penalty has been scrapped and the heaviest penalty has become life imprisonment without parole. The death penalty has been maintained only for war crimes.
- The minorities established by the Treaty of Lausanne will be allowed to purchase real estate to satisfy their cultural, religious, educational, social and health needs through their foundations.
- Turkish citizens will be allowed to make broadcasts in their own mother tongue. This means language broadcasts will be allowed in such languages as Kurdis, Laz and Cherkez.

- Citizens will be allowed to open courses in the mother tongues being used in Turkey, under the supervision of the Ministry of Education. Special Kurdish courses will be allowed.[76]

The motivation for this reform package was that "the EU will publish a review on Turkish progress toward membership negotiations in October and continuously update it until the Dec 12-13 Summit in Copenhagen, Denmark" (TDN, August 7, 2002. p: 4). At this summit, it will be certain that whether membership negotiations with Turkey will start or not. Because of this, the Turkish Parliament passed this package with all possible speed. In this perspective, Turkish officials expect "EU to set a date for starting its membership talks at summit" and expect these reforms to be positively reflected in the next progress report by the Union (TDN, August 5, 2002. p:1).

It is a fact that the Union is happy about the reforms. "Gunter Verheugen congratulated the Turkish Parliament for the 'brave decision'" (TDN, August 5, 2002. p:1). This is seen by the Union as the sign of determination of Turkey towards further alignment with the values and standards of the European Union. It is the first general impression that this package as a whole constitutes an important step in the direction of fulfilling the Copenhagen Criteria.

On the other hand, the EU officials state that "Turkey had made big progress with reforms but this is not enough to reach the Copenhagen Political Criteria" (TDN,

[76] Turkish Daily News, August 6, 2002. p:3

August 6, 2002. p:3). “European Union officials said Turkey still has a long road ahead before it can join their club” (TDN, August 7, 2002. p:14). This means that the Union wants to see the practice of the reforms. As Verheugen states, “much will depend on its practical implementation that will be closely monitored in the months to come” (TDN, August 5, 2002. p:16). What can be inferred is that, although Turkey demonstrates its determination to negotiate EU membership, the reform package will not automatically bring negotiations. In this regard, a quick implementation of these reforms is required in order to be positively reflected in the Copenhagen Summit.

CONCLUSION

It is clear that the European Union attaches great importance to the concepts of human rights and democratic principles. In other words, the Union, at least at the formal and legal level, has concerns about democracy, human rights and the rule of law in both its domestic and external affairs. In this regard, in the Treaty on European Union (TEC), Title 1 Common Provisions, Article 6, it is laid down that; "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law…". Secondly, coupled with the TEC, the Treaty establishing the European Community sets out the provision in respect to human rights within Title XX. Article 177 spells out that the "Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms".

Apart from these priorities in the internal level, in the enlargement process, in other words, in the relations with third parties, the Union continues this tendency by putting the Copenhagen Criteria as a *sine qua non* condition for full membership. Basically, the candidate nations for full membership must satisfy stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The Union expects these principles first to be accepted and second put into practice in daily life. The Copenhagen Criteria is the first and basic expectation of the Union from the candidate nations. This document constitutes

the seed of integration, and this shows how much the Union attaches importance to these principles.

When Turkey's responses with regard to putting these principles into practice is examined, there are clearly problematic findings. Some expectations, specifically the expectations on cultural rights are seen as dangerous and are considered as threats for the maintenance of the territorial unity and indivisible integrity of the nation. In this regard, for Turkey the West is both the source of salvation and threat. This paradox has not been solved yet and basically it will not be able to be solved until the fear of dissolution or separation is eliminated in Turkey. The continuation of a monolithic understanding of citizenship, the strong state tradition in Turkey and the fear of separation seems to be the most important problems in this integration process. Without overcoming the problem of continuation of the state tradition, the needs of the people cannot be realized.

Additionally, in terms of cultural rights, Turkey has some fears and reservations on this regard. The original understanding of Constitutional citizenship, which protects different identities in the nation, is not applicable in Turkey. In this sense, Turkey is not included in the multicultural tradition of the Western world. Therefore, Turkey's monolithic understanding of citizenship is seen as another main obstacle in the solution of the minority issue in the European integration process.

Regarding the above-mentioned fear, it is worth mentioning that the claims and demands on human rights and especially on cultural rights, such as education in the

mother tongue, are conceived as threats for the existence of the state and the unity of the nation. The demands on these issues are considered as a conspiracy supported by the West and because of this characteristic, they are perceived as threats for the integrity and the security of the nation. However, tens of years of terrorism have politicized the issue of human rights and also the demands on human rights.

Looked at from another angle, human rights is a mechanism of constructing and protecting the social peace. It is a mechanism that prevents social disorder and clash, not one that causes social clashes. For that reason, there is a need to redefine human rights as a core value by both political and social spheres in Turkey to approach EU standards.

Future Prospects

This reconsideration of human rights must be in conformity with the understanding that the models hindering freedom of thought, excluding different styles of lives and identities are not the way to protect the integrity and security of the nation. The security of the nation requires accepting the freedom of different styles of thought within the nation. Today, security is possible with more freedoms and more welfare. Unnecessary fears and lack of confidence are not appropriate given the necessities of the 21st century. In this perspective, the latest reform package passed by the Turkish Parliament is the clear sign that Turkey has realized these necessities and also is a sign of ability of Turkey to make necessary changes in compliance with European norms and standards. On the other hand, although this reform package is a very

positive and brave decision, it is not enough for further integration, in such a way that the Union wants to see quick implementation of them.

That is to say, these new laws are extremely important for Turkey, not only because they will bring it closer to the European Union, but also because they will enable Turkey to live in peace, all together, under the guidance of liberal democratic principles, the most developed rules of coexistence mankind has realized thus far in history. The recognition of different identities and cultures does not and should not bring separation. On the contrary, from the perspective of Turkey, the "recognized" people feel more integrated into the country to which they already belonged.

In this respect, the demands coming from the European Union are in conformity with the necessities of the 21st century. The demands basically can be conceived as ways of providing a healthy sphere for different ethnic, religious, linguistic and cultural groups to live together compliant with the necessities of multiculturalism. Therefore, Turkey should respond to this demand accepting that the notion of "one state, one nation" is more a fiction than a reality. There are always differentiations of ideas and beliefs. What is important is to accept such realities and search for a new social contract in which the cultural mosaic of Turkey can flourish.

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