

New Frontiers in European Studies

Guildford, 30 June - 1 July 2011

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

Zelal Kizilkan-Kisacik
University of Cologne
zkizilkan@yahoo.com

**New Frontiers in European Studies:
UACES Student Forum 12th Annual Conference
University of Surrey, 30 June – 1 July 2011**

Is there any Adaptation Pressure? The Approach of the EU Institutions to Minority Protection in Turkey.

ABSTRACT

The EU has played an important role in the Europeanization of minority rights in the candidate countries. Minority protection has become one of the core elements of enlargement. Yet, attributing particular importance to minority protection in the course of the enlargement process has not culminated amplification of clear and coherent internal and external standards. The lack of precise catalogue of minority rights that candidate countries can download has resulted in the imposition of distinct benchmarks for different countries. Accordingly, the impact of the EU's adaptation pressure could not be measured with respect to compliance level of candidate countries with a single catalogue of minority rights uniformly applied to all candidate countries, but the standards particularly applied for different candidate countries. This article analyses the pressure and standards imposed by the EU on Turkey with respect to minority protection. The focus is only on demand side of minority protection, leaving the degree of domestic change due to EU's involvement in Turkey outside the scope of analysis. The paper has three main objectives. Firstly, it attempts to determine the degree and content of material and normative pressure of the EU on the policy area of minority protection in Turkey. Secondly, it endeavors to identify the framework of minority standards required by the EU for Turkey. The objective is to outline a catalogue of minority rights particularly claimed by the EU from Turkey. Thirdly, by using Turkey as a case study, this article aims to determine main factors through which the EU itself has weakened its impact in this policy area. In order to so, regular reports of the Commission and parliamentary resolutions pertaining to minority protection are analyzed with respect to several criteria. These criteria are content, naming, frequency-strength,

categories, overlapping and compatibility. Basic argument of this paper is that the EU's impact on minority protection in Turkey has not only been shaped by the domestic parameters but also shortcomings of the EU's approach in minority rights protection in Turkey. Hence, the requirements of the EU are not only produce discontents on the part of Turkish state but also for minority groups as they fall short for fulfilling their claims.

INTRODUCTION

The EU has played an important role in the Europeanization of minority norms in the candidate countries, even though the EU does not have a strong competence in this field. Most of the Central Eastern and Balkan countries have transformed their political and legal structures. Those countries have involved in large scale reform process in highly politicized issue areas with an aim to fulfill Copenhagen criteria, including "respect for and protection of minorities." Yet, attributing particular importance to minority protection in the course of the enlargement process has not culminated amplification of clear and coherent internal and external standards. The lack of precise catalogue of minority rights that candidate countries can download has resulted in the imposition of distinct benchmarks for different countries.

Accordingly, the impact of the EU's adaptation pressure could not be measured with respect to compliance level of candidate countries with a single catalogue of minority rights uniformly applied to all candidate countries. The level of domestic change due to the EU's pressure can only be measured by the benchmarks that the EU imposes on different candidate countries. This article analyses the pressure and standards imposed by the EU on Turkey with respect to minority protection. The focus is only on demand side of minority protection, leaving the degree of domestic change due to EU's involvement in Turkey outside the scope of analysis.

This paper has three main objectives. Firstly, it identifies general approach of the Commission to the minority rights protection in the accession process of candidate countries by analyzing Turkey's case. Secondly, it attempts to determine the degree and content of material and normative pressure of the EU on Turkey in the policy area of minority protection. In this way, it endeavors to identify the framework of minority standards required by the EU from Turkey. The objective is to outline a catalogue of minority rights particularly claimed by the EU from Turkey. Thirdly, by using Turkey as a case study, this article aims to determine main factors through which the Commission itself has weakened its impact in this policy area. Basic argument of this paper is that the EU's impact on minority protection in Turkey has not only been shaped by the domestic parameters but also shortcomings of the EU's approach in minority rights protection in Turkey. Hence, the requirements of the EU are not only produce discontents on the part of Turkish state but also for minority groups as they fall short for fulfilling their claims. In this paper, expert

interviews are employed as methodology. The progress reports of the candidate countries towards accession to the EU and Opinions on Turkey's applications for the membership of the European Union released in the course of the preparation of the enlargement are explored with respect to several criteria are also analyzed. These criteria are recognition, content, category, positive or negative rights, overlapping, compatibility and frequency/strength.

Recognition is defined as the articulation of particular ethnic, religious and cultural groups as minority by the Commission. This gives important clues concerning the definition of the term "minority" employed by the EU institutions and groups recognized by the Commission as "minority" in Turkey. Content is the substance of the Commission claims with respect to minority protection. This is the rights enumerated in international and regional instruments, but referred by the Commission as pre-accession standards for candidate countries. The objective is to find out which provision of covenants and declarations does the EU's claims correspond and draw a catalogue of minority rights demanded by the Commission from Turkey. Category determines whether the EU's approach to minority protection is based on group or individual rights approach in candidate countries. As stated in the previous chapter, individual rights are those rights granted members of minority groups and group rights are conferred to minority group as such. Determination of the types of rights demanded by the EU is important in terms of positioning the EU's demands in hierarchy of minority protection.

Positive/ Negative: A useful way of mapping the EU's contribution to minority protection is to evaluate its protection according to whether it respects, protects and promotes the minority rights in question. According to this framework, the obligation to respect human rights requires that states parties refrain from interfering directly or indirectly with the enjoyment of a right. The obligation to protect human rights requires states parties to prevent third parties from interfering in any way the enjoyment of the right, as well as having a system of remedies for breaches. The obligation to fulfill human rights requires authorities to adopt appropriate legislative, administrative and budgetary, judicial promotional and other measures towards the full realization of the right. Specially, it involves a duty to facilitate a right by taking positive measures towards its enjoyment, a duty to promote through appropriate education and a duty to fulfill through providing the right when individuals are unable to provide it for their own communities. In general sense, the question is to find out whether the EU imposes positive or negative obligations on states is also discussed.

Compatibility: it is the conformity between the EU standards and official minority policy of Turkey. It is the degree of fit between the standards of the EU and official stance on minority protection in Turkey. Compatibility includes not only agreement

between domestic formal rules and required minority protection standards of the EU, but also conformity between domestic and European collective understanding concerning minority protection.

Frequency-strength: they are the incidence and powerfulness of the EU's claims for fulfillment of certain requirements. The basic question is that does the EU only express a concern about policy and suggest certain recommendation for the course of the policy or creates a linkage between fulfillments of certain conditions with admission to membership.

This paper consists of three parts. In order to identify minority norms consolidated at the EU level, primary and secondary legislations of the EU which might have implication on minority protection are analyzed. In the second part, the EU's adaption pressure on Turkey is measured by examining content of the Commission's the Regular Reports on Turkey with respect to minority protection. In this respect, Turkey's minority regime drawn by the Lausanne Treaty signed with Allied powers in 1923 is analyzed and then what kind of the recommendation and concerns that the Commission expresses with respect to existing minority protection regime of Turkey is determined. Lastly, the shortcomings of the EU's approach to minority protection in Turkey are evaluated. As stated above, my focus is just on the EU level of factors limiting the EU's influence and leaving domestic factors filtering the EU's impact outside the scope of analysis. In the last part, some conclusions are provided with respect to Europeanization of minority norms in Turkey.

A. MINORITY NORMS AT THE EU LEVEL

Europeanization is "the process of a) construction, b) diffusion c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and then consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures and public policies."¹ Given that norms are defined "a broad class of prescriptive statements—rules, standards, principles and so forth—both procedural and substantive," which are "prescriptions for action in situations of choice carrying a sense of obligation, a sense that they ought to be followed,"² minority protection is an important European norm.

¹Claudio Radelli, "The Europeanization of Public Policy," in *The Politics of Europeanization* ed. Kevin Featherstone and Claudio Radelli (Oxford: Oxford University Press, 2003). (p:30)

²Abram Chayes and Antonia Handler Chayes, "Regime Architecture: Elements and Principles," in *Global Engagement. Cooperation and Security in the 21th Century*, ed. Janne Nolan (Washington: Brookings Institution 1995), Andrew Hurrell, "Norms and Ethics in International Relations," in *Handbook of International Relations* ed. Thomas Risse and Beth Simmons Walter Carlsnaes (London Sage, 2002). (p: 143)

However, what kind of minority norms are consolidated at the EU level is ambiguous. According to Wiener and Schwelnuß (2003), minority rights are contested norms.³

Three kinds of uncertainty dominate the discussion of minority protection international and EU level. Firstly, there is an uncertainty in determining who minorities are. No consolidated definition of the concept of minorities exists at the EU, CoE, UN and OSCE level. Despite the fact that important attempts were made in order to define the notion of minorities,⁴ the question of which groups are recognized as minorities unanswered. Secondly, there is an uncertainty with respect to content, types and degree of minority protection. Minority protection granted to minorities can be basic human rights supported by non discrimination as the lowest level of protection, individual minority right as moderate level of protection and collective minority rights such as self government and autonomy forming the highest level of protection.⁵ The level of protection that can be granted to minorities is uncertain at the EU level. It can range from total ignorance to absolute protection in different member states. Thirdly, there is an uncertainty with respect to the standards the EU imposes on candidate countries. There are no common standards or catalogue of minority rights consolidated at the EU level. The EU has not given a place to minority rights within the *acquis communautaire*. It is just recently with the adoption of the Lisbon Treaty minority protection become a foundational value of the EU. That is why it makes references to the standards developed by other international organizations such as Framework Convention for the Protection of

³ See the discussion concerning minority rights as contested norm in Antje Wiener and Guido Schwelnuß, "Contested Norms in the Process of Eu Enlargement: Non-Discrimination and Minority Rights," *Constitutionalism Web-Papers 2* (2004). (p: 2)

⁴ Two important attempts in this regards were made. Firstly, Francesco Capotorti, Special Rapporteur of UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1979 defined minority as "[a] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State– possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." Secondly, Jules Deschenes, a Canadian Member of the UN Sub-commission on the Prevention of Discrimination and Protection proposed a definition of minority as "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 population, having 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." Albeit, not legally binding, these definitions have been widely referred in theory and practice of international and European law.

⁵ See these three approaches to minority protection in Guido Schwelnuß, "The Domestic Contestation of International Norms an Argumentation Analysis of the Polish Debate Regarding a Minority Law," *Journal of International Law and International Relations 5*, no. 1 (2009). (p:133).

National Minorities and European Charter for Regional Minorities. However, those standards have not been adopted by all member states.

Two incoherencies accompany to these three uncertainties in minority protection. Firstly, there is incoherence between the EU's internal and external minority protection policies.⁶ On the one hand, the EU has strong engagement on minority rights protection and their implementation in its external relations. It sets minority protection as entry criteria and puts strong pressures on the member states to take affirmative measures. On the other hand, it shows considerable unwillingness to address minority issue in its internal affairs. It doesn't explicitly mention minority rights protection in its primary legislation. And minority protection is traditionally left to the member state and international level constitutional guarantees. For this reason, there is a lack of common standards for minority protection among member state. The gap between external and internal nexus gives rise to the process of setting unconsolidated norms which are not homogenously observed by all member states for candidate countries. Secondly, there is incoherence in the EU's approach to minority protection in different candidate countries. The EU does not impose single minority protection standards to all candidate countries. It has employed different definitions of minorities and uses different and sometimes contradictory approaches to minority protection in different candidate countries. According to Kochenow (2007), while the Commission has made strong pressure on certain countries such as Bulgaria, Romania and Slovakia to adopt minority norms strictly, it was relatively much tolerant to other countries such as Latvia and Estonia applying assimilation policies.⁷ In general, these incoherencies create significant normative disarray in the EU's approach to minority protection in different candidate countries. However, it is still not possible to argue that the EU has no minority protection legislation in its internal affairs.

As it is stated above, there are three levels of minority protection. The first level of minority protection is guaranteeing fundamental rights and freedoms of members

⁶ See this discussion in Dimitry Kochenow, "A Summary of Contradictions: An Outline of the Eu's Main Internal and External Approaches to Ethnic Minority Protection " *Boston College International and Comparative Law Review* 31, no. 1 (2007). Mario Amor Martin Estebanez, "The Protection of National or Ethnic, Religious Ad Linguistic Minorities," in *The European Union and Human Rights*, ed. Neuwahl Nanette and Rosas Allan (The Hague: Kluwer 1995), Bruno De Witte, "Politics Versus Law in the Eu's Approach to Minorities " in *Europe Unbound* ed. Zielonka Jan (New York Routledge 2002), von Gabriel Toggenburg, "The Eu : A Rough Orientation through a Delikate Relationship: The European Union's Endeavors for Its Minorities," in *European Minorities and Language Rights*, ed. Snezana Trifunouska (Hague: TMC: Asser Press 2001), von Gabriel Toggenburg, "The Eu's Evolving Policies Vis-a-Vis Minorities: A Play in Four Parts and an Open End," in *Human and Minority Rights in the Life Cycle of Ethnic Conflicts* (Bozen: European Academy of Bozen/Bolzano, 2008).

⁷ Dimitry Kochenow, "Commission's Approach to Minority Protection During the Preperation of the European Union's Eastern Enlargement: Is 2 Better Than the Promised 1?," *European Diversity and Autonomy Papers (EDAP)* 02 (2007).

of minority groups. This is the core of a minority protection regime. Without guaranteeing fundamental rights and freedoms as minimum standards, efficient minority protection regime cannot be established. Those rights include the right to existence, freedom of association, freedom of expression, freedom of press, freedom to peaceful assembly. These rights are universal human rights granted to all individuals but they are particularly relevant in preserving the articulation of minority identity. These freedoms can be considered as a means minority identities are preserved, expressed, shared and taught and practiced.⁸ The second level of protection is the prohibition of non discrimination. Non discrimination is a general human rights provision which is attributed to all individuals. It is not a measure whose sole objective is to prevent discrimination against minorities. It encompasses the prohibition of broader grounds of discrimination, including race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status. Nonetheless, minorities are frequently subjected to discrimination on these prohibitive grounds. The third level of protection is minority specific rights. This level of protection grants particular rights to member of minority groups or groups as such. It necessitates taking special measures to enable minorities to preserve and promote their own distinct features. This is because non discrimination and equal rights are not sufficient enough to promote distinctive culture of minorities. The peculiarities of minority identity can be threatened by the surrounding majority, as majority may exert certain pressure for assimilation and this situation necessitates a certain claims for counter protection against majority culture on the part of minorities.⁹ The EU has its disposal certain legislations which might correspond to these three pillars of minority protection. Despite the fact that the EU does not have fully-fledged legislation or consolidated norms in each level and at the some degree, those norms provide important protection to members of minority groups within the EU. They address the issues which have direct consequences on the status of minorities like non discrimination, equality, cultural and linguistic rights.

With respect to human rights dimension of minority protection, when the European Community was first established, neither there is a "bill of rights," nor any direct mention of human rights in the founding treaties of the EU. When the treaty mentions provision to be related to the human rights, they were very narrow.¹⁰

⁸ Tawhida Ahmet, *The Impact of Eu Law on Minority Rights* (Oxford Hart Publishing, 2011).

⁹ See the discussion concerning why minority groups needs special protection in: Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1996). It is also possible to find a short overview of the arguments of the Kymlicka in: Will Kymlicka, *Contemporary Political Philosophy* (New York: Oxford University Press, 2002).

¹⁰ The Treaty by its Article 48(2) and Article 119 prohibits the discrimination basing on nationality and gender. Article 48 of the Treaty states that "freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the

Integration at that time was understood as a functionalist process especially in economics and technical matters. Thus, the protection of fundamental rights was under the protection of member states' national courts and international courts of human rights. However, in time, as the EU has evolved from purely an economic community to a political union, its scope of activities has increased. It becomes more likely that the Community institutions can violate human rights. On this basis, some of the national courts of the member states appeared to invalidate community legislation due to the lack of a bill of human rights in the EU law.¹¹ The reaction of the European Court of Justice led to the process of institutionalization of human rights at the EU level. In general, human rights regime of the EU has two important sources. The first one is the common constitutional traditions of member states and international human rights instruments like European Convention of Human Rights (ECHR). The second one is the Charter of Fundamental Rights and Freedoms. It functions as "bill of rights" for EU institutions and member states implementing Union legislations. These sources are considered as general principles of Union law.

The EU gives particular significance to non discrimination aspect of the protection without making explicit reference to the concept of minority in its primary legislation.¹² Article 13 of the Treaty Establishing European Community¹³ provides

Member States as regards employment, remuneration, and other conditions of work and employment." The discrimination based on gender is also prohibited by the Article 119 of the Treaty of Rome by stating "each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work." These rights can not be considered as human rights. But they are actually Community rights. They are not universal rights granted to everyone but granted merely to the citizens of the Community. See the discussion concerning the differences between "fundamental community rights" and "universal human rights" in Andrew Clapham, "Where Is the European Union's Human Rights Common Foreign Policy and How It Is Manifested in Multilateral Fore?," in *The Eu and Human Rights*, ed. Alston Philip, Bustelo Mara R., and Heenan James (Oxford: Oxford University Press, 1999).

¹¹For the discussion on human rights in the Union legal orders see: Joseph Weiler, "Fundamental Rights and Fundamental Boundaries: On Standards and Values in the Protection of Human Rights," in *The European Union and Human Rights* ed. Nanette Neuwahl and Rosas Alkan (Boston: Nijhoff Publishers, 1995).

¹²Primary legislation of the EU is the Treaties on which the EC, the EURATOM and the EU are established. It comprises of amending Treaties and the Accession Treaties. Secondary law of the EU is the regulations, directives, decisions, recommendations and opinions.

¹³Consolidated Version of the Treaty Establishing the European Community, Official Journal of the European Communities C 325/43 (2002). Article 13 (ex Article 6a) states that: Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

the Council of the EU with legal basis to take measures to combat discrimination on racial or ethnic origin, together with other grounds of discrimination.¹⁴ It is nevertheless not very clear that the article can be applied to the discrimination against minorities. The provision has list of discrimination grounds, including sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. But it does not even mention minorities as separate category, in contrast to similar Article 14¹⁵ of European Convention of Human Rights prohibiting discrimination "association with a national minority." It also does not state language like Article 26¹⁶ of International Covenant on Civil and Political Rights as important source of discrimination which relates directly with minorities.

But due to the reference of discrimination on the grounds of racial or ethnic origin, the provision and related secondary legislations are considered many scholars as a legal source of minority protection across the EU. This is due to the fact that racial and ethnic discrimination are the primary forms of discrimination, as minorities generally carry those features, differentiating them from majorities. Moreover, two directive implementing Article 13 of the Treaty is relevant with respect to minority protection. These are Race Equality Directive and Employment Directive. The Race directive implements the principle of non discrimination set out in Article 13 between persons irrespective of racial or ethnic origin. It sets out comprehensive legal protection from discrimination particularly on the grounds of racial or ethnic origin. It prohibits direct discrimination, indirect discrimination, harassment and instruction to discriminate. Remarkable development concerning minority rights protection within the framework of discrimination comes from the Charter of Fundamental Rights and Freedoms of the EU.

¹⁴This article is wider than the Article 12 of the Treaty establishing the European Community dealing with discrimination only on the grounds of nationality. According to Article 12 (ex Article 6a), any discrimination on the grounds of nationality within the scope of application of the treaty was prohibited. The aim of this article is to ensure smooth functioning of the internal market by securing equality between the citizens of member states with the nationals of the other member states concerned states.

¹⁵Council of Europe, "*Convention for the Protection of Human Rights and Fundamental Freedoms*," 4 November 1950, Strasbourg: Directorate of Press and Information. Article 14 of European Convention of Human Rights 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

¹⁶UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series. Article 26 of International Covenant of Human Rights states that: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Two provisions of the Charter are relevant for non-discrimination aspect of minority protection. These are Article 20 and Article 21. Article 20 is the general provision for equality articulating that "everyone is equal before the law." Article 21(1) is directly related with the prohibition of discrimination against minorities. It states that "any discrimination based on any ground such as sex, race, color, ethnic or social origin genetic features such as sex, race, language, religion or belief, political or any other opinion, membership of a national minority, property birth, disability, age, or sexual orientation shall be prohibited."¹⁷ This is an important innovation given that neither Article 13 of the EC has a comprehensive grounds prohibiting discrimination. For the first time, discrimination on the grounds of having minority status is prohibited. However, the Charter, even though there are many proposals and efforts in order to provide the definition of the minority in drafting process, fails to define the concept of national minority. Furthermore, Article 21 of the Charter fills widely criticized gap of the Article 13 of the EC Treaty by including "language" which is one of the most important aspects of the minority identity as prohibited grounds of discrimination.

Protection of cultural diversity forms another part of the legislation concerning minority specific rights. Since the conclusion of Maastricht Treaty, the protection of cultural roots of the member states has become an aim of the Community. The EU declared in its preamble that it respects history, culture and tradition of the people and national identities of its member states (Article 6(3)). With Article 151 of the Amsterdam Treaty, it founds cultural policy as an official EU policy. The treaty article on culture states the goal of cultural policy as follows: "The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore." The Community can "contribute" cultural policies of the member states and "support and supplement" the policies of the member states in this field. Lisbon Treaty doesn't change much legal basis of the EU's culture policies. But it sets respect for cultural and linguistic diversity as one of the main objective of the Treaty in its Article 3. It also codifies the EU's action within in the sphere of culture in the areas of supportive action. It points out in Article 6 of TFEU that the Union has the competence to take actions to support, coordinate or supplement the actions of the Member States, which includes the issue of culture as well. At the same time, the EU Charter which is adopted with Lisbon Treaty explicitly promotes the cultural and linguistic diversity of its member states. In its article 22, it states that "the Union shall respect cultural, religious and linguistic diversity."As a result of these provisions, diversity and multiculturalism has become mainstreaming EU policies.

¹⁷Article 21 of the Charter.

In general, it is possible to conclude that the EU in general sense gives particular importance to human rights aspect of minority rights protection by incorporating the Charter into the Lisbon Treaty. It has also taken important step in the second pillar of minority protection and particularly with regard to prohibition of discrimination on the racial and ethnic grounds. However, despite the fact that the EU includes respect for minorities as a foundational value of the Union in article 2 of the Lisbon Treaty, this does not mean a consistent and fully fledged minority policy. The EU generally left intact granting special rights and policies for different minority groups. Despite such a shortcoming in its internal minority protection policy of the EU, the EU has been able to impose candidate countries to adopt certain norms which are not a part of the acq. However, this situation makes it difficult to determine the standards that the EU imposes on candidate countries, as the EU's approach is ad hoc and there are no single common standards. That is why cases under considerations are needed to be dealt respectively in order to find which groups are recognized as minority, what is the content of the EU's adaptation pressure.

B. THE EU'S ADAPTATION PRESSURE ON MINORITY PROTECTION IN TURKEY

I. The Strength of the EU's Adaptation Pressure

The treaty of Lausanne which was signed with Allied powers in 1923 regulates minority protection regime of Turkey. This treaty officially establishes Turkish Republic. That is why its provisions are not restricted to minority protection and covers many issue areas. The Lausanne treaty defines the concept of minority on the basis of religion and does not take into consideration language and ethnicity as grounds for having minority status. Only non-Muslim communities are officially recognized as minorities. Despite the fact that the Treaty does not denote any non-Muslim community, only Armenians, Greeks, and Jews are official recognized as minorities. Those groups are granted the right to education in minority language (Art: 40, Art:41), equal civil and political rights (Art:38), the right to access public employment (Article 39), the right to establish, manage, control charitable, religious and social institutions (Art:40), the right to set up schools and institutions of instruction (Art:40).¹⁸ According to Tokdas and Aras (2009), these articles mainly have the objective of guaranteeing freedom of religion of non-Muslim groups and equality before law.¹⁹

¹⁸ Zelal Kizilkan-Kisacik, "Europeanization of Minority Rights: Discourse, Practice, and Change in Turkey. ," *EDAP Paper* 01 (2010). (p: 10)

¹⁹ Sule Toktas and Bulent Aras, "The Eu and Minority Rights in Turkey," *Political Science Quarterly* 124, no. 4 (2009).(p: 700)

However, the treaty falls short in providing fully fledged protection to all minority groups in Turkey. Three main shortcomings draw attention in this respect.²⁰ Firstly, the treaty officially confers certain rights to all non Muslim minorities in Turkey. But in practice, only Jews, Armenians and Greeks can enjoy the rights stated in the Lausanne Treaty. The other non-Muslim minorities such as Orthodox Assyrians, Caldeans, Assyrians and Jews were excluded minority protection guaranteed by the Treaty. Moreover, the Baha'is, the Yezidis, and believers of the Syrian Orthodox Church, the Catholic United churches (the Chaldean Church and the Syrian Catholic Church), and the Roman Catholic Church were not included in the minority protection system regulated by the treaty.²¹ Secondly, officially recognized minority groups could not fully enjoy the rights stated in the Lausanne Treaty.²² There are important restrictions with regard to their freedom of religion and property rights of their foundations. Lastly, the rights granted to all Turkish citizens regardless of religion cannot enjoy their stated rights such as the right to language. Lausanne's narrow definition left outside Turkey's numerous ethnic, linguistic and cultural groups from protection such as the Kurds and Alevis. Despite the fact that Lausanne Treaty as an instrument far from providing efficient minority protection both for Muslim and non Muslim groups, the provisions of those treaty has not been fully implemented.

Moreover, Turkish constitution does not make reference to the concept minority²³ According to Kurban (2007), "the Turkish constitutional scheme 'solves' the question of minorities without ever addressing it." For her, there is no legislative framework for minorities in Turkey either in the form of minority specific rights and anti-discrimination law.²⁴ The reason of this perspective is to establish monotheistic nation, erasing all the remains of the Ottoman Empire's multiculturalism from public arena and limiting those differences to private sphere. However, such approach of Turkish Republic creates important dilemmas and tensions given ethnic, religious and cultural diversity of Turkey.

It is this picture of minority protection regime of Turkey has attracted the criticism of the EU. Starting from early progress reports, Turkey's approach to minority protection has been assessed extensively. Though the EU does not have a single

²⁰ See the discussion concerning three shortcomings in Baskin Oran, "The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues," in *Human Rights in Turkey*, ed. Zehra Kabasakal Arat (Philadelphia: University of Pennsylvania Press, 2007). Baskin Oran, *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat Ve Uygulama (Minorities in Turkey: Concepts, Regulations, Adaptation and Interpretations)* (Istanbul: Tesev 2004).

²¹ Toktas and Aras, "The Eu and Minority Rights in Turkey." p: 700.

²² Oran, "The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues."

²³ Dilek Kurban, *A Quest for Equality: Minorities in Turkey* (UK: MRG, 2007).

²⁴ Ibid.

catalogue of minority protection standards, Turkey's minority protection regime falls short even European minority protection regime drawn by Council of Europe and OSCE and the EU's indeterminate legislations which might have implication to minority rights protection. Given Turkey's general human rights policy, non-discrimination and cultural diversity policy, the misfit between the EU's norms—including formal and informal rules—and Turkey's normative structure concerning minority protection is very high. Such misfit results in important pressure from the EU side on Turkey for adopting minority norms which the EU has normatively and morally referred. That is why Turkey has been under the strong pressure to change its minority protection regime with more inclusive perspectives and legal frameworks.

II. The groups recognized by the EU as minority in Turkey

As it is stated above, Turkey recognizes officially only religious groups Jews, Armenians and Greeks as minority. Despite the fact that there have been important implementation problems and serious human rights violations against these groups as well, those groups are granted cultural, educational and religious rights. The other ethnic, religious and linguistic groups such as the Kurds, Romas, Alevis and Assyrians have not minority status and they are excluded from protection. There is a very strict legal prohibition any groups being referred as minorities. The claims about the existence of minority groups based on ethnic, religious and linguistic differences are punishable acts according to Turkish penal code. Such claims can easily be interpreted as acts for "denigrating the state or dividing the nation."²⁵ These judicial approaches of Turkey result from official ideology founded on hyperthetical apprehension over integrity of Turkish state.

The approach of the Commission displays important difference from official Turkish stance. Firstly, compare to narrow conceptualization of minorities in Turkey, the Commission has adopted very comprehensive definition of the term minority. The Commission has considered ethnic, national and cultural groups as minorities and not taken into account official recognition of minority status as a necessary condition for the enjoyment of minority protection. In this way, the Commission has a parallel approach with other international organizations which uphold the view that the qualification of "minority" is a matter of fact and not of law.²⁶ Regardless of state recognition, the Commission accepts the groups as "minority communities"

²⁵ See this discussion in Baskin Oran, "Minorities in Turkey and in the Eu," in *Deutsch-Türkisches Forum fuer*

Staatsrechtslehre Iii, ed. Ono DepenleuerI, Iyas Dogan, and Osman Can (Berlin Lit Verlag, 2006). Oran, "The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues.", Oran, *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat Ve Uygulama (Minorities in Turkey: Concepts, Regulations, Adaptation and Interpretations)*.

²⁶ Permanent Court of International Justice, Advisory opinion regarding Greco-Bulgarian communities, 31 July 1930, PCJ Reports, Series B No. 17.

which display ethnic, linguistic and religious differences and which consider those particularities integral part of their identities.

In this framework, the Commission deals with three categories of minority groups in Turkey. These are: (1) Non Muslim religious minorities. Apart from Jews, Greeks, and Armenians, the Commission takes into consideration the situation of Orthodox Assyrians which are not acknowledged by Turkey as minority. (2) Muslim religious minorities that are not the members of Sunni denomination including Alawi Muslims. (3) Ethnic and cultural groups encompassing the Kurds and Roma groups.²⁷ Other ethnic, linguistic and religious groups such as *Caucasians*, *Laz*, *Caferis*, *Ezidis* and *Arabs* were not dealt with under the subheading of minority protection. But, in general, the Commission recognizes miscellaneous groups which are numerically inferior; having non-dominant position and possess different features from majority in terms of religion, culture and language and demonstrate the willingness to preserve their identity. The groups which are well integrated to dominant culture, such as *Lazs* and whose numbers are so small such as *Ezidis* and *Caferis*, and which do not mobilize for political and cultural recognition are not mentioned in the regular reports. But ethnic groups —the Kurds and Romans— attract particular attention of the Commission.

Secondly, the Commission articulates differential treatment between the officially recognized minorities and other groups in Turkey. It states that "there is a de jure and de facto difference in the treatment accorded to minorities officially recognized under the Lausanne Treaty and those outside its scope."²⁸ According to the Commission, cultural, linguistic and religious rights of the official minority communities are guaranteed by law. Each community in this category can administer its own churches, schools and hospitals. But, the groups such as Alevi Muslim, Assyrian Orthodox and the Kurds which are not recognized by the Lausanne treaty cannot enjoy special rights and have experienced important discrimination. In this respect, the Commission considers there is an important difference of treatment between those recognized religious minorities and other religious groups.²⁹ For example, Assyrian Orthodox is subject to pressures in the exercise of religious education,³⁰ as they are not recognized religious minority. Alawi Muslims are discriminated against Sunni Muslims due to the lack of state funding for religious exercise and government salaried religious leaders.³¹ Moreover, the Kurds asserting their Kurdish identity have always the risk

²⁷ European Commission, Regular Report, 1998, p: 19.

²⁸ European Commission, Regular Report, 1998, p: 20.

²⁹ European Commission, Regular Report, 1999, p: 13.

³⁰ European Commission, Regular Report, 1998, p: 19.

³¹ European Commission, Regular Report, 1999, p: 19.

harassment or prosecution, albeit no legal barriers to ethnic Kurds participation in political and economic affairs.

Thirdly, even though the Commission has exerted important pressure on Turkey to recognize particular forms of cultural and religious identity of different groups in Turkey, it does not claim from Turkey to grant minority status to all ethnic, cultural and linguistic groups mentioned in the Reports. Nowhere in the Regular Reports has the Commission stated that Turkey should extend the scope of the Lausanne Treaty to the other communities. The Commission has two basic concerns. The first one is that fundamental rights and freedoms of the minority groups should be guaranteed and human rights violations against members of minorities would be prevented. The Commission reads the situation as “regardless of whether or not Turkey is willing to consider any ethnical groups with a cultural identity and common traditions as “national minorities,” members of such groups are clearly still largely denied certain basic rights”³² and for this reason, there is an urgent need for effective protection provided to those groups. The Commission enumerate possible forms of respect for, protection of and promotion of identities. This includes promotion of cultural diversity and protection of minorities according to international standards and best practices of member states.³³ The second concern of the Commission is to guarantee “equal treatment” to all Turkish citizens which are culturally, linguistically and ethnically different from majority and prevent discrimination for the enjoyment of those rights granted to official minorities by the other groups. The focus of the persistent emphasis of the Commission to Lausanne minorities in this respect is to display differential treatment between those groups and other ethnic and cultural minorities.

III. The content of the EU’s adaptation pressure

If one examines Regular Reports and Opinions of the Commission on Turkey’s accession, one should see a catalogue of rights explicitly and implicitly recognized by the Commission for minorities in Turkey. The rights articulated by the Commission generally pertain to three frameworks. These frameworks are all related to, first, the improvement of individual fundamental rights and freedoms, second, protection of minorities without making any explicit reference to group rights and third ratification of international human rights instruments. The Commission generally makes pressure on Turkey to take measures within these three frameworks.

³² European Commission, Regular Report, 2000, p: 19.

³³ AB Turkiye’yi Azinliklar Konusunda Uyardi, (EU warns Turkey on Minority Issue), 05.01.2007, Anf news Agency

a. General Fundamental Rights and Freedoms and Non Discrimination

Within the field of fundamental rights and freedoms, the Commission covers the protection of minorities in Turkey by making references to basic human rights such as freedom of expression, freedom of association and assembly, freedom of press, right to fair trial and prohibition of torture. Not all minorities expressed in the Commission documents are enunciated within this framework. The Commission gives particular importance to prevent human rights violations against Kurdish groups in Turkey. In its early reports, it links directly ignorance of human rights in Turkey to Kurdish issue. For example, having mentioned that cases of torture, disappearances and extra-judicial executions are recorded regularly and freedom of expression is not fully assured, the Commission states that disregarding "civil and political rights is connected in one way or another with the way in which the government and the army react to the problems in the south east of the country."³⁴ While the EU acknowledges the legitimacy of the struggle of the Turkish government in its "fight against terrorism," condemns all forms of terrorism and upholds territorial integrity of Turkey,³⁵ it expresses the conduct of fight against terrorism must be within the limits of respect of human rights, the rule of law and democratic norms.³⁶ It expects from Turkey to resolve Kurdish issue by political means with full respect for human rights, the rule of law in democratic society and in full accordance with Turkey's commitments as a member of the Council of Europe. In this context, the EU differentiates "fight against terrorism from the search for political solutions and promote conciliation."

Within general human rights dimension of minority protection, the Commission has made strong emphasis on the restriction of freedom of expression, freedom of press and freedom of association within the context of minority protection. It has repeated many times in its regular reports that the restriction to freedom of expression in Turkey is closely related with the Kurdish issue.³⁷ According to the Commission Report in 2000, "Turkish courts restrict the expression of views with which the State disagrees, notably when it concerns the situation of the population of Kurdish origin."³⁸

For the Commission, the excessively narrow interpretation of the existing legislations and the constitution within the framework of the unity of state and nation and territorial integrity result in series breaches to freedom of expression as

³⁴ European Commission, Regular Report, 1998, p: 15.

³⁵ European Commission, Regular Report, 1999, p: 6.

³⁶ European Commission, Regular Report. 1999, p: 6.

³⁷ See European Commission, Regular Report 1998, p: 15. European Commission , Regular Report 1999, European Commission, Regular Report 2000, p: 16.

³⁸ European Commission, Regular Report 2000, p:16.

guaranteed by the European Convention of Human Rights.³⁹ Legal provisions such as Articles 7 and 8 of the Anti-Terror Law disseminating separatist propaganda, Articles 158, 159, concerning insulting to parliament, army, republic and judiciary, and Article 311 and 312 of the Criminal Code concerning incitement to racial, ethnic or religious enmity are regularly used by public prosecutors and judges to restrict freedom of expression.⁴⁰ According to the Commission, an overall reform of both legislation and practice in this field is urgently needed to avoid further violations.

Non discrimination aspect of the minority protection has also appeared in the Regular Reports of the Commission. The Commission underlines the lack of any comprehensive strategy and legal-administrative regulations for combating discrimination in Turkey.⁴¹ The Commission states that minorities are subject to certain discriminatory practices. For example, they face difficulties in acceding to senior administrative and military positions. Moreover, the history books portray minorities "as untrustworthy, traitorous and harmful to the state." In this respect, the Commission expresses the need of transposing and implementing relevant anti discrimination *acquis* based on Article 13 of the EC Treaty⁴²

b. Minority specific rights

Within the framework of minority protection, the Commission makes pressure on Turkey with respect to first the right to existence, second the right to language, third the right to profess and practice one's religion, fourth the right to participation.

With respect to the right to existence, two levels of protection can be observed.⁴³ Firstly, it can arise with respect to the recognition of a group's minority status, which is a question of fact, not law.⁴⁴ This to certain extent provides safeguards against a states unilateral denial of legal protection for a minority group⁴⁵. Existence is also related with the "physical life of members of minority groups, as implied by international laws protection against the acts of genocide towards group, protection of individual's right to life and protection of a minimum level of physical well being, such as the prohibition on torture."⁴⁶ Concerning first dimension of the

³⁹ European Commission, Regular Report 2000, p: 16. European Commission, Regular Report 1999, p: 15.

⁴⁰ European Commission, Regular Report 1998, p: 14-15, European Commission, Regular Report 2001, p: 21.

⁴¹ European Commission, Regular Report 2003, p: 22.

⁴² European Commission, Regular Report 2003, p; 23.

⁴³ Ahmet, *The Impact of Eu Law on Minority Rights*. (p:33)

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

right to existence, the Commission states that Kurds and Alevi Muslims are not recognized as national, racial or ethnic minority. The Turkish authorities do not recognize the existence of those groups, considering for example the Kurds being simply Turks of Kurdish origin. According to the Commission, Turkey should find a non military solution to the Kurdish problem and this include recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity provided it does not advocate separatism or terrorism.⁴⁷ Concerning second dimension, the Commission makes important pressure to Turkey to eliminate torture, disappearance, and extra judicial executions still exist in Turkey, mainly in the South east region in which the majority of the population has a Kurdish origin.⁴⁸

Another area on which regular reports put important emphasis is the right to language. The question of language rights is directly related with the Kurdish issue and forms one of the important dimensions of Turkey-EU relations during the accession process. No languages other than Turkish are allowed in teaching purposes and in TV/radio broadcasting. According to the Commission such situation is an important impediment to the enjoyment of cultural rights of Turkish citizens having Kurdish origin. Among many minority related issues that are discussed in the course of the accession, linguistic rights are the most sensitive one. As a group or individual, the recognition of language rights of Kurds has been perceived as an important challenge to historically constructed and monolithic official identity of Turkey basing one language and one nation.

The EU has strongly emphasized language rights of the minority groups in TV and radio broadcasting, in education and in access to public services. It criticizes Turkey for banning the use of Kurdish in political communication and broadcasting in radio and television. Not always end up with complete and official recognition; the EU pressure has opened the window of opportunity and partially makes heterogonous identities in Turkey more visible. It is, of course, interesting to note that the claim of the Commission not only creates concern among statist elites and institutions, but also among Kurdish actors and circles, who find the requirements of the Commission far from satisfying their claims. This is because apart from early Commission reports in which the Commission names the problem explicitly and necessitates taking measures easing Kurdish language use, the Commission has a very withdrawn approach to Kurdish issue. The Commission has adopted the expressions like "Turkish citizens of Kurdish origin," "languages and dialects traditionally" spoken by Turkish citizens. These articulations are formulated by law-makers in Turkey with an aim to avoid the use of words like "Kurds or Kurdish" and

⁴⁷ European Commission, Regular Report 1998, p: 14

⁴⁸ European Commission, Regular Report 1998, 1999, and 2000.

thereby prevent official recognition. But, at the same time, the Commission approach to the language rights and paves the way for a legal and political climate which reinforces Kurdish mobilization for their linguistic rights.

Within the framework of freedom of religion, the Commission has dealt with the situation of three groups. The first group is non-Muslim groups recognized by the Lausanne Treaty, including Jews, Armenians and Greeks (hereafter Lausanne minorities); the second groups are those which have Christian religion, but do not have official minority status. In this group, the focus of the Commission is particularly on Assyrian Orthodox; and the third groups are accepted as Muslim groups, but they are not the member of dominant Sunni creed. Among these groups merely Alevi Muslim attracts particular attention of the Commission. In general, the Commission pressures Turkey to fulfill right claims of these groups and take positive measures to facilitate their enjoyment of freedom of religion. In its early reports (Commission Reports 1998-2002), the Commission does not emphasize strongly the situation of non-Muslim minorities. Despite the fact that the Commission addresses the question of religious minorities in every report, initially the overwhelming focus of the Commission is on Kurdish groups. But starting with 2002 reports, the Commission presents a detailed picture of claims and problems of non-Muslim groups.

According to the Commission there is "de jure and de facto difference in the treatment accorded to minorities officially recognized under the Lausanne Treaty and those outside its scope." Lausanne minorities are free to exercise their religion.⁴⁹ They can open their educational institutions, hospitals and exempted from Muslim religious instruction. But those remaining outside the scope of the Lausanne Treaty, is subject to restrictions in the exercise of religious freedom. Despite relatively advantageous status of Lausanne minorities, the Commission mentions all religious groups apart from Sunni Muslims are subject to practical bureaucratic restrictions in Turkey in terms of ownership of premises and expansion of activities.⁵⁰ The Commission claims with respect to non-Muslim minorities are first stated in its Regular Report in 2000. The Commission articulates the necessity of examining concrete claims of non-Muslim groups whether or not they are included within the scope of the Lausanne Treaty. Within this framework Turkey should address the issue of reopening of the Halki seminary and take measures with respect to property rights of Christian Churches and recognition of legal status of various Churches.⁵¹

⁴⁹ European Commission, Regular Report 1998, p: 19.

⁵⁰ European Commission, Regular Report 1998, p: 19

⁵¹ European Commission, Regular Report 2001, p: 27.

The status of the Alevis as a group having different cultural and religious identity from dominant Sunni creed has become one of the key issues of the accession process. Within the framework of minority protection, Commission has pressured Turkey to recognize cultural and religious identity of Alevis. In this framework, the Commission strongly emphasis the status of Alevis as religious minority discriminated against Sunni majority and Lausanne treaty minorities. In the first regular report in 1998, the Commission stated that Turkey's Alevi Muslims constitute at least 12 Million of Turkish population. In contrast to Sunni religious leaders, there are no government salaried Alevi religious leaders. In its regular report in 2000, the Commission draws more concrete picture concerning Alevis claims and the steps that should be taken in this regard. It indicates three concerns of Alevi community. These are first exemption from compulsory religious instruction in schools, second, the school books not reflecting Alevi identity and third provision of state funding is exclusively limited Sunni mosques and religious foundations.⁵² Despite the sensitiveness of these issues for Turkish society, the Commission suggests Turkey to launch an open debate concerning Alevis-claims.

The Commission has dealt with the situation of minorities within the framework of the right to political participation. In terms of the right to political participation, the Commission gives particular importance to the situation of the Kurdish groups. The Commission considers that even though there no legal barriers to ethnic Kurds participation in political and economic affairs, Kurds who publicly or politically assert their Kurdish ethnic identity risk harassment or prosecution. It criticizes Turkey with respect two main points. Firstly, it criticizes pro-Kurdish party closures and election threshold as a hindrance to political participation of the Kurds. Secondly, the EU makes important pressure to transfer certain powers from central government to local and regional administration and to make reforms concerning decentralization.

Since it was established in 1963, the Constitutional Court had decided to close 24 parties. The parties having programs based on the solution of the Kurdish problem form the vast majority closed parties in the 1990s. People's Labor Party (HEP) in June 1993, the Freedom and Democracy Party (ÖZDEP) in November 1993, Democracy Party (DEP) in 16 June 1994, Democratic Movement Party (DDP) in 19 March 1996, Democratic Mass Party (DKP) in 26 February 1999 and Democratic People's Party (HADEP) in 13 March 2003 and Democratic Society Party in 11 December 2009 were closed down by Constitutional Courts on the grounds of their activities against territorial integrity of Turkish state and nation. The Commission criticizes Turkey for closures of pro-Kurdish parties in regular intervals by the Constitutional Courts and difficulties that the members of these groups are facing as an impediment of Kurdish group's participation to political process by democratic

⁵² European Commission, Regular Report 2000, p: 18.

means. Moreover, the Commission makes critics concerning the election threshold. It stresses that the electoral system in Turkey hinders the political participation and representation of minorities in Parliament. In this respect, the Commission gives as an example the election of November 2002 as example. It states that even though the Democratic People's Party got over 45% of the votes in the Kurdish regions, it could not reach 10% threshold.

In order to promote political participation of the Kurdish groups, the EU makes important pressure to transfer certain powers from central government to local and regional administration. The Commission considers administrative structure of Turkey too central. Despite the fact that it did not mention explicitly Kurdish question and address regional policies within general frameworks, the Commission pressures Turkey to make reforms concerning decentralization.⁵³ But in general sense, the Commission pressures Turkey to take measures over social and economic development of the Southeast region and overcome regional disparities between East and West of Turkey.

c. Ratification of International Instruments

As it is stated above, the EU does not have a common approach consolidated at the EU level. It refers to a number of international and regional instruments drawn at the Council of Europe (CoE), Organization for Security and Cooperation (OSCE) and United Nations (UN). Minority policy of the EU is generally based on the norms, principles and guidelines adopted by these organizations. The EU in this respect makes important pressure on Turkey to ratify the conventions and declarations of different international organizations. It gives particular importance not only Framework Convention for the Protection of Minorities (FCPM) and European Charter for Regional or Minority Languages (ECRM) adopted by the Council of Europe (CoE) but also other general human rights treaties such as United Nations Covenant on Civil and Political Rights (ICCPR) and United Nations Covenant on Economic, Social, and Cultural Rights (ICESCR). With respect to adoption of universal and European norms, the EU makes pressure on Turkey, firstly, to ratify Framework Convention and Charter on Minority Languages; secondly, it pressures Turkey to eliminate the reservations that Turkey has made to the ICCPR and the ICESCR. Despite the fact that Turkey has signed most of the international instruments, their impact on minority protection is limited, as Turkey always seeks to hold the right to interpret the provisions of those instruments in line with the provisions of the Lausanne Treaty.

In this respect, the EU's approach to minority protection towards Turkey and other candidate countries is not to impose clearly defined common standards with respect

⁵³ European Commission, Regular Report 2000, p: 12.

to minority protection. It has two dimensions. On the one hand, the Commission imposes different standards to different candidate countries depending on the issue in question. For example, in Turkey's case, it imposes obligation on Turkey to find a solution to internally displaced persons, which is a problem specific to Turkey's case and cannot be observed such a policy with respect to other candidate countries. On the other hand, the EU has transformed candidate countries by interacting them with the universal minority protection norms.

C. EU LEVEL FACTORS LIMITING THE INFLUENCE OF THE EU

There are generally three EU level factors limiting the EU's influence on minority protection in Turkey. These are the lack of EU standards in the area of minority protection which is generally not only related with Turkey's case, but as a factor, limit the EU's impact in all candidate countries, secondly, the EU's individual rights approach with respect to minority protection, and lack of obligation on state to take positive measures.

Firstly, with respect to lack of clear standards, as it is stated above, there are no consolidated minority norms at the EU level. Minority protection aspect of the Copenhagen criteria is not very precise. EU legislation relevant to minority rights was only developed in 2000 and remained limited to second pillar of minority protection, namely nondiscrimination. The uncertainty of the *acquis* with respect to minority protection has limited the EU's impact on minority protection, as it increases the scope of action for Turkey in choosing minority norms which Turkey considers fits its normative structure. As there are no clearly established minority norms that Turkey could download, the whims of the reform process with respect to minority protection depends basically on factors in the domestic political arena in Turkey. Such a loose definition of minorities and their rights gives important discretionary power in interpreting and selectively adopting the minority norms. Secondly, the EU's approach to minority rights protection is basically on individual minority rights approach. This is in parallel with institutionalized minority norms at international and regional level. Despite the fact that the standards imposed by the Commission on Turkey would provide considerable solution to minority protection in Turkey and they are sufficient for accommodating the claims of certain minority groups, such as Alevis and non-Muslim minorities mobilizing for individual minority rights, equality with majority and non-discrimination, those benchmarks would not fulfill in the claims of the groups such as the Kurds, seeking full their collective minority rights, including self-determination and autonomy. Thirdly, the EU does not impose positive obligation on Turkey for promoting minority identity. Financial resources granted to minority groups are particularly important for developing minority cultures, eliminating socio-cultural differences and disadvantages of the past.

D. CONCLUSION

Minority protection is considered by many “contested norms.”⁵⁴ Three uncertainties and two incoherencies exist in minority protection level at the European level. Firstly, there is an uncertainty in determining who minorities are. No consolidated definition of the concept of minorities exists at the EU, CoE, UN and OSCE level. Despite the fact that important attempts were made in order to define the notion of minorities, the question of which groups are recognized as minorities unanswered. Secondly, there is an uncertainty with respect to content, types and degree of minority protection. Minority protection granted to minorities can be basic human rights supported by non discrimination as the lowest level of protection, individual minority right as moderate level of protection and collective minority rights such as self government and autonomy forming the highest level of protection. The level of protection that can be granted to minorities is uncertain at the EU level. It can range from total ignorance to absolute protection in different member states. Thirdly, there is an uncertainty with respect to the standards the EU imposes on candidate countries. There are no common standards or catalogue of minority rights consolidated at the EU level. The EU has not given a place to minority rights within the *acquis communautaire*. It is just recently with the adoption of the Lisbon Treaty minority protection become a foundational value of the EU.

Two incoherencies accompany to these three uncertainties in minority protection. Firstly, there is incoherence between the EU’s internal and external minority protection policies. On the one hand, the EU has strong engagement on minority rights protection and their implementation in its external relations. It sets minority protection as entry criteria and puts strong pressures on the member states to take affirmative measures. On the other hand, it shows considerable unwillingness to address minority issue in its internal affairs. It doesn’t explicitly mention minority rights protection in its primary legislation. And minority protection is traditionally left to the member state and international level constitutional guarantees. For this reason, there is a lack of common standards for minority protection among member state. The gap between external and internal nexus gives rise to the process of setting unconsolidated norms which are not homogenously observed by all member states for candidate countries. Secondly, there is incoherence in the EU’s approach to minority protection in different candidate countries. The EU does not impose single minority protection standards to all candidate countries. It has employed different definitions of minorities and uses different and sometimes contradictory approaches to minority protection in different candidate countries. Despite these inconsistencies and incoherencies, the EU was able to impose certain normative and moral standards on candidate countries.

⁵⁴ Antje Wiener and Guido Swellnuss, "Contested Norms in the Process of Eu Enlargement: Non Discrimination and Minority Rights," *Constitutionalism Web Papers*, no. 2/2004 (2004).

Turkey is one of the candidate country in which the EU's norm has changed to an important extent minority protection system of Turkey. The Commission with its regular reports makes recommendations, express its concerns and ask from Turkey to fulfill certain standards in Turkey. The pressure of the EU on Turkey has an important impact on the traditional minority regime of Turkey, which was drawn by the Treaty of the Lausanne. The EU has adopted very comprehensive operational definition of minorities in Turkey compare with Turkey's narrow official conceptualization of minorities. That is why it de facto recognizes certain groups such as Kurds, Alevis and Assyrians as minorities. From the outset, with the early reports of the Commission, the EU's approaches to minority protection have challenged established domestic structure in Turkey in this field. The EU's has asked from Turkey to take steps within three frameworks. These are general human rights framework supported by non discrimination principles, individual minority protection with an aim to promote multiculturalism and respecting diversity and ratification of international instruments addressing human and minority rights. The EU claims from Turkey and Turkey's attempt to fulfill such claims largely transform minority regime of Turkey, despite the fact that Turkey has made important reforms without even mentioning the word minority.

REFERENCES

- Ahmet, Tawhida. *The Impact of Eu Law on Minority Rights*. Oxford Hart Publishing, 2011.
- Chayes, Abram, and Antonia Handler Chayes. "Regime Architecture: Elements and Principles." In *Global Engagement. Cooperation and Security in the 21th Century*, edited by Janne Nolan. Washington: Brookings Institution 1995.
- Clapham, Andrew. "Where Is the European Union's Human Rights Common Foreign Policy and How It Is Manifested in Multilateral Fore?" In *The Eu and Human Rights*, edited by Alston Philip, Bustelo Mara R. and Heenan James. Oxford: Oxford University Press, 1999.
- De Witte, Bruno. "Politics Versus Law in the Eu's Approach to Minorities " In *Europe Unbound* edited by Zielonka Jan. New York Routledge 2002.
- Estebanez, Mario Amor Martin "The Protection of National or Ethnic, Religious Ad Linguistic Minorities." In *The European Union and Human Rights*, edited by Neuwahl Nanette and Rosas Allan. The Hague: Kluwer 1995.
- Hurrel, Andrew. "Norms and Ethics in International Relations." In *Handbook of International Relations* edited by Thomas Risse and Beth. Simmons Walter Carlsnaes. London Sage, 2002.
- Kizilkan-Kisacik, Zelal. "Europeanization of Minority Rights: Discourse, Practice, and Change in Turkey. ." *EDAP Paper* 01 (2010).
- Kochenow, Dimitry. "Commission's Approach to Minority Protection During the Preaperation of the European Union's Eastern Enlargement: Is 2 Better Than the Promised 1?" *European Diversity and Autonomy Papers (EDAP)* 02 (2007).

- Kochenow, Dimitry "A Summary of Contradictions: An Outline of the Eu's Main Internal and External Approaches to Ethnic Minority Protection " *Boston College International and Comparative Law Review* 31, no. 1 (2007): 1-51.
- Kurban, Dilek. *A Quest for Equality: Minorities in Turkey*. UK: MRG, 2007.
- Kymlicka, Will. *Contemporary Political Philosophy*. New York: Oxford University Press, 2002.
- Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press, 1996.
- Oran, Baskin. "The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues." In *Human Rights in Turkey*, edited by Zehra Kabasakal Arat, 35-57. Philadelphia: University of Pennsylvania Press, 2007.
- . *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat Ve Uygulama (Minorities in Turkey: Concepts, Regulations, Adaptation and Interpretations)*. Istanbul: Tesev 2004.
- Oran, Baskin "Minorities in Turkey and in the Eu." In *Deutsch-Türkisches Forum für Staatsrechtslehre III*, edited by Ono Depenleuer, Ilyas Dogan and Osman Can, 49-53. Berlin Lit Verlag, 2006.
- Radelli, Claudio. "The Europeanization of Public Policy." In *The Politics of Europeanization* edited by Kevin Featherstone and Claudio Radelli. Oxford: Oxford University Press, 2003.
- Schwellnus, Guido. "The Domestic Contestation of International Norms an Argumentation Analysis of the Polish Debate Regarding a Minority Law." *Journal of International Law and International Relations* 5, no. 1 (2009): 123-54.
- Toggenburg, von Gabriel. "The Eu : A Rough Orientation through a Delicate Relationship: The European Union's Endeavors for Its Minorities." In *European Minorities and Language Rights*, edited by Snezana Trifunouska, 205-40. Hague: TMC: Asser Press 2001.
- Toggenburg, von Gabriel "The Eu's Evolving Policies Vis-a-Vis Minorities: A Play in Four Parts and an Open End." In *Human and Minority Rights in the Life Cycle of Ethnic Conflicts*. Bozen: European Academy of Bozen/Bolzano, 2008.
- Toktas, Sule, and Bulent Aras. "The Eu and Minority Rights in Turkey." *Political Science Quarterly* 124, no. 4 (2009).
- Weiler, Joseph. "Fundamental Rights and Fundamental Boundaries: On Standards and Values in the Protection of Human Rights." In *The European Union and Human Rights* edited by Nanette Neuwahl and Rosas Alkan, 51-76. Boston: Nijhoff Publishers, 1995.
- Wiener, Antje, and Guido Schwellnus. "Contested Norms in the Process of Eu Enlargement: Non-Discrimination and Minority Rights." *Constitutionalism Web-Papers* 2 (2004).
- Wiener, Antje, and Guido Swellnuss. "Contested Norms in the Process of Eu Enlargement: Non Discrimination and Minority Rights." *Constitutionalism Web Papers*, no. 2/2004 (2004).