

THE TURKISH CONCEPT OF “MINORITIES” – AN IRREMOVABLE OBSTACLE FOR JOINING THE EU?

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Abstract

Fifty years ago, on 12 September 1963, the association agreement between the European Economic Community (EEC) and Turkey was signed in Ankara. However, in contrast to many other countries who applied later on, Turkey has not yet become a member of the EU. Nevertheless, Turkey's candidacy to join the EU is still one of the most considerable and controversial topics within the European political arena. Within the accession negotiations, apart from human rights, the Kurdish and the Cypriot issues, one of the greatest challenges to Turkey's successful candidacy is the issue of respect for and protection of minorities. It might indeed represent an unsolvable problem, which will ultimately block Turkey joining the EU. Neither the EU nor Turkey has really come to terms or dealt with what the EU sees as an "unsatisfactory" protection of minorities in Turkey. What lies at the root of this disagreement is what the term "minority" actually means. Due to Turkey's own nation state concept as being a united and undivided country and to the terms of the Treaty of Lausanne signed in 1923, which defined Turkey as a nation, the country only recognises non-Muslim minorities such as the Greek, Armenian and Jewish populations. In contrast, the EU concept of minority includes ethnic, linguistic and religious minorities. According to the author, the most promising approach to deal with this unreconciled conceptual difference is the introduction of the "ethnic group" concept. Ethnic groups could form a sub-identity of Turkishness and help build a legal basis to the treatment of minority groups founded on human rights, which would be compatible with both Turkish and EU Law.

Keywords: Turkey, Minorities, European Union

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In Europe, more than 330 ethnic groups with altogether more than 100 million members exist (Pan/Pfeil 2006: 1). On Turkish territory alone there are thought to be at least 47 different ethnic groups (Andrews 2002: 1 et seq.). This diversity of peoples and the restricted settlement area for living together bears – depending on each state – a more or less great potential for conflicts. Domestically, this becomes evident by means of differences between the majority of the state's population and various kinds of minorities living on the national territory. In Turkey, these tensions most significantly emerge in the relation between the Turkish majority of the population and the minority of Kurdish origin. However, in contrast to the European concept of minorities, Turkey does not officially recognize the Kurdish population in its national territory as a minority.

According to international law there is no official definition of the term “minority” Until now, the term “minority” is not clearly defined in international law (Henrard 2000: 18; Hofmann 2005: 599; Kunnecke 2007: 159 et. seq.; Topidi 2010: 13 et. seq.). However, there is mutual consent that a single state is not entitled to decide upon the existence of minorities on its national territory on its own. Otherwise the state could simply deny the existence of a minority and withdraw itself from all internationally binding legal obligations in that area (Ermacora 1993: 34, 40; Heintze 1994:188). Therefore, since the times of World War I,

various efforts were made to define the term “minority“. But the problem of defining the term “minority” proved to be far more difficult than outlining the rights of minorities. For a long time, academics of various kinds of disciplines have been dealing with the term “minority“.

However, they all come to different conclusions. While political scientists and sociologists deal with political and sociological minorities without defining them exactly, jurists need exact facts of the matter in order to subsume their case. Hence, in international law, a definition of the term “minority” can only be reached which is a compromise between the legally necessary and the politically possible.

Nowadays, especially the EU candidate country Turkey serves as an example showing the problems following the lack of a universally recognized and binding concept of minorities.

Turkey’s problems within the process of joining the EU

The preconditions for accession to the EU were concretised by the EU in the so-called Copenhagen Criteria from 1993 (Europäischer Rat 1993: 13). Among other things, the Criteria require an institutional stability as guarantee for a democratic order in accordance with the rule of law, for the safeguarding of human rights and the respect and protection of minorities. For Turkey, the accession criteria “respect for and protection of minorities“ is one of the most problematic areas. The reason for that is the Turkish concept of state. According to the preamble of the Turkish Constitution, Turkey defines itself as a centralised state with a uniform national population. Although Turkey no longer denies the existence of several groups of different ethnic origin on its national territory, it does not take the necessary steps towards such recognition. The Turkish state does not grant these different ethnic groups any specific legal status. Even today, in Turkey the existence of minorities is denied.

The only exceptions are the religiously defined groups of Greeks (*Rum*), Armenians (*Ermeni*) and Jews (*Yahudi*).

Concerning accession to the EU, the official attitude of the Turkish state towards minorities causes problems in two respects: On the one hand, the EU is not willing to tolerate the disregard and discrimination of the huge Kurdish minority in Turkey. On the other hand, the EU is not willing to accept the legal and *de facto* discrimination of non-Muslim communities of faith – for example Christians – by public authorities (European Commission 2005: 35-40). Therefore, the solution of the minority problem is central to the accession negotiations on Turkey’s way to full membership in the EU.

Concept of minorities within the EU

Within the EU a universally recognized and binding concept of minorities does not exist. Also no international law document includes a definition of the concept of minorities (Künnecke 2007: 59 f.). This can be put down to the fact that no consensus could be reached because of the different range of interests of the single states. Whereas some states – such as Austria – guarantee a far-reaching protection of minorities on the domestic level and also support this practice on the international level, there are other states – such as France and Greece – which, on account of their traditional concept of state and partly also for fear of a threat of their territorial integrity, fully or partly deny the existence of minority on their national territory and therefore refuse to comply with a universally binding concept of minorities (Hofmann 1995: 34, 66 et seq.).

To determine which minorities are supposed to be protected, some regularly applied characteristics have been developed within the political process and by some authorities of the EU. In spite of a lack of codification, these characteristics can be considered to be constant and continuous criteria of a European minority definition. These are the following criteria: (1) numerical inferiority, (2) non-dominant position, (3) distinctive ethnic, religious or linguistic characteristics, (4) citizenship of the country of residence and (5) explicitly made known

sense of affiliation and solidarity. This means concretely, that a minority can only be (1) a group of persons being numerically smaller than the rest of the population (2) which may not have a dominant position in the state in the form of a sole right to make decisions, (3) which at least has to show a specific ethnic, religious or linguistic characteristic distinguishing them from the rest of the population, (4) whose members have to be citizens of their country of residence and (5) who have declared their membership and solidarity with their group of people. These five criteria have to be fulfilled cumulatively in order to be able to qualify a group of people as “minority” (Ahmed 2001: 20 et seq.; Gornig 2001: 35 et seq.; Künnecke 2007: 60 et seq.).

Restrictive concept of minorities in Turkey

The regulations on minorities in Turkey and their rights are laid down in Section III, Articles 37-44 of the Treaty of Lausanne from 24 July 1923 under the title “Protection of Minorities” (Bilsel 1933: 593-595; Conférence de Lausanne sur les Affaires du Proche-Orient 1923: 13-16). These regulations are directly applicable law in Turkey. In the Turkish Constitution, minorities are not mentioned at all. Only in some sub-constitutional laws the term “minority“ is mentioned. However, the concept of minorities is neither defined nor outlined anywhere.

Turkey has only signed international treaties concerning the protection of minorities – if at all – with the reservation that it will interpret and apply the articles concerning minorities only taking the concept of minorities laid down in the Turkish Constitution and the Treaty of Lausanne as a basis (Künnecke 2007: 123 f.).

Concerning the Turkish concept of minorities and the protection of these minorities, the Treaty of Lausanne is the most important legal document. However, the Lausanne Treaty’s concept of minorities and the guaranteed minority rights in there may not be examined in an isolated way. They have to be evaluated in the historical context of the successful Turkish struggle for liberation and the previous humiliation by the regulations of the Treaty of Sèvres from 1920. Only in this historical setting they become sufficiently understandable.

In contrast to other treaties concerning the protection of minorities which were concluded between the allied victorious powers after World War I, the Treaty of Lausanne does not include the standard wording “racial, religious and linguistic minorities“ (Kurban 2003: 168; Oran 2001: 216). Instead, the concept of minorities of the Lausanne Treaty is limited to “non-Muslim minorities”. In the original French and Turkish wording of the Treaty there is mention of “*minorités non-musulmanes*“ (Conférence de Lausanne sur les Affaires du Proche-Orient 1923: 14 et seq.) or „*gayri müslim ekalliyetler*“⁶⁰ (Bilsel 1933: 593 et seq.). No particular non-Muslim minorities are mentioned explicitly in the wording of the treaty.

By narrowly restricting the concept of minorities to non-Muslim minorities, ethnic and linguistic minorities as well as religious minorities within the Islamic faith – so-called Muslim minorities – are excluded from the concept of minorities and consequently also from minority rights. Therefore, ethnic and linguistic minorities like Kurds or Muslim religious minorities like Alevis are not covered by the concept of minorities in the Lausanne Treaty.

Beside membership of a non-Muslim religious community, according to the wording of the Lausanne Treaty, additional criteria of the Turkish concept of minorities can be deduced from the Lausanne Treaty’s term “non-Muslim minorities“. These criteria are numerical inferiority, a non-dominant position, Turkish citizenship and an explicitly made known sense of affiliation and solidarity (Künnecke 2007: 128). According to the Turkish concept of minorities, a group of people is recognized as a minority if it is (1) numerically smaller than the majority of the Turkish population (2) does not have a dominant position in

⁶⁰ „Ekalliyet“ is the old Ottoman term for „minority“. Nowadays, in Turkish the common term for “minority” is „azınlık“.

the Turkish state in form of a sole right to make decisions, (3) whose members belong to a non-Muslim religious community, (4) possess Turkish citizenship (5) and have declared their membership and solidarity with this group of people.

The reasons for this restrictive, solely religious, but limited to non-Muslim religions limited Turkish concept of minorities can be found in its historic roots, the ideological foundations of the state and its constitutional and legal order:

(1) The Islamic concept of nation which distances itself not according to ethnic or political features but according to religious features and the tradition of the Millet-system in the Ottoman Empire, lasting for centuries, in which the recognized minorities of the Greeks, Armenians and Jews enjoyed far-reaching autonomy, only knew non-Muslim minorities. This comprehension of minorities was still deeply rooted in the way of thinking of the Turkish nation which comprises more than 90 percent Muslims, so that in the normal usage of language only non-Muslims were understood by the term “minority” (Oran 2000: 151; 2004: 48).

(2) The European powers regarded themselves as protecting the power of the Christian minorities living in the Ottoman Empire. Therefore, they increasingly interfered in the Ottoman Empire’s home affairs. In the Ottoman Empire, particularly the Christian minorities were considered to be a colony of the states which protected them. That’s why they were regarded as traitors, and were also held responsible for the fall of the Ottoman Empire (Duncker 2003: 83; Hibbeler 2004: 3; Kurban 2004: 3 f.; Oran 2000: 152; Steinbach 2003: 19). For Turkey, this impression was confirmed by the humiliating Sèvres Peace Treaty, and explains the Turkish mistrust with regard to the Allies’ wide concept of minorities and its rejection in the Treaty of Lausanne.

(3) Turkey, as a newly created nation-state, which was hard won in the war of liberation, had to fill the entity of its late nationhood, with life and had to keep it alive. In the view of the Kemalists, this could only be achieved by a Turkish nationalism which had to be created by means of a homogeneous nation within the indivisible unity of national territory and national population. Therefore, during the process of the building of the Turkish nation, minorities were a thorn in the Kemalists’ side (Oran 2000: 152; 2010: 47 ff.). For them, already the Ottoman Empire proved that no national consciousness and no national identity could develop within a multiracial state, which to a large extent gave autonomy and privileges to minorities.

(4) For the Turkish nation-state which was just about to be constituted internally, the diversity of ethnic groups and Muslim religious communities emerged to be an explosive mixture of citizens. Taking into account the Kemalist logic of the state, according to which pluralism in religious life is regarded as first step towards religious and ethnic separatism and to which religious instrumentalisation always involved the danger of a linguistic and denominational division of the nation, it becomes clear that the Turkish state considers Islam as an uniting power and therefore does not recognize Muslim minorities (Taştan 2001: 147 et seq., 152 et seq.). The Turkish state depoliticised Islam under the guise of Laicism and put it under state control by the Presidency of Religious Affairs (Burdy 2004: 157 et seq.; Göle 2005: 80 et seq.; Tibi 1998: 76; 2005: 94, 102). Hence, the Turkish state used Islam as a religious-cultural source of Turkish identity to create national unity.

Discrepancy between the European and Turkish concepts of minorities

There are only a few differences between the EU’s concept of minorities and the Turkish concept of minorities. However, these very few differences have considerable effects and consequences. Being a recent nation, Turkey missed the step into the modern age concerning its concept of minorities. The country remained with the level of an exclusivity in a religiously defined concept of minorities of pre-modern times, which, however, meanwhile is justified with the nation-state. In contrast to that, since the times of the Enlightenment, the

European concept of minorities is defined in a political way and includes religious, linguistic and ethnic minorities. Having otherwise concurrent criteria to define a minority, the decisive difference is, that, in addition to non-Muslim minorities, the European concept of minorities also covers other religious, ethnic and linguistic minorities. This broader version of the concept of minorities, in comparison with Turkey especially, has consequences for the number of minorities which according to the EU and Turkey exist and have to be protected on Turkish national territory. Taking the European concept of minorities as a basis, apart from the Turkish state officially recognized non-Muslim minorities, also Muslim, ethnic and linguistic minorities exist in Turkey. Hence, in addition to the non-Muslim minorities of the Greeks, Armenians and Jews, who are recognized by Turkey in practice, at least also the Kurds as an ethnic minority, the Assyrians as a non-Muslim religious minority, the Alevis as a Muslim religious minority and the Laz as a linguistic minority have to be recognized according to the European concept of minorities (Künnecke 2007: 147 et seq.).

But subsuming correctly, also by the Turkish concept of minorities laid down in the Treaty of Lausanne (“Turkish citizens who belong to non-Muslim minorities“) more minorities are covered than the ones who are recognized by Turkey in practice. Accordingly, for example, the Christian religious community of the Assyrians is not recognized as a minority by the Turkish state, although it fulfils the criteria of the Lausanne Treaty’s concept of minorities. In fact, in 1923 the Syrian-Orthodox patriarch at the time had decided not to go out on a limb as a minority in accordance with the Treaty of Lausanne (Hermann 2004a: 88 f.). However, instead of interpreting the relevant provisions of the Lausanne Treaty correctly and recognizing the religious community of the Assyrians nowadays *de facto* and *de iure* as non-Muslim minority in accordance with the Treaty provisions, Turkey splits the Assyrians up into separate groups of religious denomination, and denies their existence as an independent minority, in spite of their common religious and linguistic grounds (Gesellschaft für bedrohte Völker 2001: 11). Accordingly, the Assyrian do not enjoy any rights as a religious community (European Commission 2005: 30, 37 f., 109; Hermann 2004a: 96 et seq.).

However, concerning the existing minorities, Turkey does not only interpret the Treaty of Lausanne (ToL) in a too restrictive way. But also in practice, it does not entirely implement the minority rights guaranteed in Arts. 37-43 ToL. This (too) restrictive interpretation of the Lausanne Treaty refers to several articles concerning the protection of minorities and is practised by the Turkish state consequently and continuously since the entry into force of the Lausanne Treaty. Through it, according to objective standards, especially the one-sided and exclusive promotion of the Sunni Islam by the Turkish state, the discrimination of non-Muslim clergymen in education and exercise of their profession, the discrimination of non-Muslim minorities in founding and maintaining their own schools and religious establishments, and the restricted opportunities to learn and use their minority language in schools, language courses and the media, constitute a too restrictive interpretation of Arts. 39-43 ToL. This means for the recognized minorities of the Greeks, Armenians and Jews that they have to suffer from the missing legal entity of the patriarchy and the chief rabbinate, the confiscation of property since 1974, problems concerning the registration of asserted pieces of real estate, missing financial support by the Turkish state, missing opportunities for the education of clergymen due to the continuing closure of the seminaries, imposed restrictions for the elections of the patriarch and the chief rabbi, and the missing licence to carry out the elections to the executive of the community foundations (European Commission 2003: 8 f; European Commission 2005: 37, 41, 109; 2006: 16; 2012: 24 f., 74; Hermann 2004b: 110 et seq.; Hofmann 2002: 24 et seq.; Kizilkan-Kisacik 2013: 118 et seq., 149 et seq.; Oehring 2012: 14 et seq.; Yıldırım 2012: 176 f.).

Possible solutions

Considering Turkey's possible accession to the EU, until now the accession criterion respect for and protection on minorities was not clearly defined sufficiently by the EU. Because it is a political criterion with a broad political scope for interpretation, the decision about the way of its interpretation is solely a political one.

Due to the lack of an universally recognized and binding concept of minorities and because of the different prevailing minority standards in the EU member states, it has to be questioned how a common European-Turkish concept of minorities can be found within the framework of the accession negotiations, according to which the fulfilment of the Copenhagen accession criterion respect for and protection of minorities can be judged.

The unrestricted adoption of the European concept of minorities by Turkey is a desirable but at present unrealistic perspective. The fear of the Turkish state of separatism and the danger for national unity is still too great, if ethnic, Muslim and linguistic minorities were granted privileges in the form of minority rights. The fear of the Turkish state of separatism and the danger for national unity is still too great, if ethnic, Muslim and linguistic minorities were granted privileges in the form of minority rights. The main obstacle for a changed concept of the state and minorities in Turkey is the still the predominant restrictive interpretation of the principle of indivisibility of national territory and national population. As long as this doctrine does not permit any further sub-identities besides the civic-national identity as Turk because of their possible danger for the unity of the nation-state, there is neither room for a reinterpretation of the Turkish national identity nor for a broader concept of minorities. Thus, for Turkey, the adoption of the European concept of minorities is currently out of the question. Because by recognizing further minorities these would automatically benefit from the existing minority rights, and that would result in privileges for numerous ethnic groups *vis-à-vis* the Sunni-Muslim majority of the population causing domestic tensions as well as a threat to public order. Therefore, in this context, the following solution seems to be possible and satisfactory for both sides:

The concept of “ethnic groups“

On account of the danger for the maintenance of the indivisibility of national territory and national population which is involved in the guarantee of minority rights for ethnic, Muslim or linguistic minorities, an official recognition and acceptance of additional minorities is currently neither desired nor practicable. Thus, the Turkish Constitutional Court equated the unity of the nation state with the unity of its culture and put it under irrevocable protection of the constitution. In its interpretation of Article 66 of the Turkish Constitution, on the one hand the Court set out that the principle of the indivisibility of national territory and national population as an integrating and consolidating element which prevents any group taking priority as founder of the Turkish nation. Turkish citizens would not have to deny their ethnic roots within the frame of the national identity because the emergence of cultural differences is not prohibited. Therefore, the principle of the indivisibility of the national territory and the national population demands no laws which aim at the statutory prohibition of existing diversity or the affiliation to a different linguistic or cultural environment (Cavusoglu 2002: 127, 141).-However, on the other hand, the *creation* of minority groups on the basis of cultural differences is prohibited because it would destroy the national unity or would lead to the foundation of a new governmental order which would finally cause the destruction of the national unity (Çavuşoğlu 2002: 127). For these reasons, legislation is justified and demanded, which does not deny the existence of ethnic minorities, but prohibits politico-cultural, politico-social and politico-economic consequences from this (Rumpf 1992: 213). Consequently, in Turkey the acceptance of further minorities is currently neither desired nor practicable.

However, those groups which are also not officially recognized as a minority by the Turkish state but which are mentioned by the EU in the context of minority protection within the Turkey progress reports and the accession recommendation, do not want to be a minority. Apart from some parts within the numerically large religious community of the Alevis, none of the ethnic, Muslim or linguistic minorities in Turkey wishes to be granted the status of an officially and formally recognized minority (Fırat 2001: 94; Neumann 2004: 6; Oran 2010: 207). This results in the paradoxical situation that the ethnic, Muslim and linguistic minorities vehemently resist being labelled with the term “minority”, but at the same time demand rights which are generally regarded as minority rights. This paradox becomes clear for the following reason: In Turkey, the term “minority” has a complete negative connotation. In contrast to the European understanding, according to which minority status is regarded as a privilege, in Turkey the status as minority is regarded as sign and expression for inferiority. In contrast to the European concept of minorities, according to which the status of a minority is regarded as a privilege, the minority status in Turkey is a sign of inferiority. In Turkey, the label “minority” has a segregating effect and still does not mean in the Turkish praxis in politics and society any protection or privilege but suppression.⁶¹ The ethnic, religious and linguistic minorities in Turkey do not want to be put down as minority and thus be segregated from the collective of the Turkish nation. They profess their national Turkish identity and they still want to be part of the Turkish nation. In spite of their ethnic, religious or linguistic group identity they do not strive to being treated in a special way in comparison with the Sunni-Muslim majority of the Turkish population. Only the recognition of their sub-identity as an integral part of the Turkish nation and the equal guarantee of their freedom of religion and their cultural rights matters for them (Ergil 2001: 186; Gürbey 2000: 78, 88; Gürbey 2012: 5; Kuniholm 1996: 353, 357; Kurban 2003: 214; Marcus 2013: 15 et seq.). Accordingly, the ongoing discussion in Turkey does not give priority to the recognition of further minorities as collective, but concentrate on the guarantee of rights such as freedom of religion, education in the native language and pursuance of the own culture as individual rights.

Since the recognition of ethnic, Muslim and linguistic minorities is not worthy of consideration for the state nor the affected groups themselves, the classification of ethnic, religious and linguistic minorities as “ethnic groups“, while at the same time recognizing and securing their identity within the framework of adequate individual rights, could be an acceptable solution for all parties.

As has been explained before, in Turkey the term “minority” (“*azınlık*“) has a negative connotation, for historic reasons even more than in most other countries. In contrast to that, the term “ethnic group“ (“*topluluk*“), which is often used in international professional literature as a synonym for the term “minority“, is not biased negatively and does not create belittling, segregating or excluding associations. Therefore, members of minority groups can accept this term. But also for the Turkish state, the classification of ethnic or religious groups like the Kurds or the Alevis as “ethnic group“ (“*topluluk*“) offers the opportunity to adhere to its present concept of minorities, which was and still is formative for the national self-conception of the Turkish republic. The term “minority” (“*azınlık*“) is in Turkey inevitably associated with something strange and alien which is a threat for the unity of the nation, whereas the term “ethnic group“ (“*topluluk*“) does not conflict with the unity of the national population. The term “ethnic group“ (“*topluluk*“) would open the possibility to establish a doctrine which accentuates and emphasizes the cultural heritage of a nation that is composed

⁶¹ In particular, the since the times of the Ottoman Empire (at least formally) remaining privilege for non-Muslim minorities by giving them special privileges over the Muslim majority of the population polarized the Turkish society. This resulted in the situation that the non-Muslim minorities, who enjoyed a special legal treatment because of the Lausanne Treaty, were regarded as alien element in society and therefore became subject to social and legal discriminations (cf. also: Kurban, Unravelling a Trade-Off: Reconciling Minority Rights and Full Citizenship in Turkey, p. 31).

of several (ethnic) groups and that forms the unity “Turkish nation“ as an inseparable unification of these (ethnic) groups. Consequently, each ethnic group would be an integral part of the Turkish nation with equal rights.

Thus, the classification of ethnic, religious and linguistic minorities as “ethnic minority“ (“*topluluk*“) offers the possibility for the members of these ethnic groups to profess their sub-identity as members of a specific ethnic group within the Turkish national population beyond their superior national identity as Turkish citizens. For the Turkish state, the concept of a national population consisting of various ethnic groups has two main benefits: firstly, it offers the chance to take advantage of the potential and strength, which will be released when the single ethnic groups can cultivate their sub-identities without hindrance, in order to reach a better national integration. Secondly, it offers the chance to bring the national population closer together by increasingly and deeper integration of the single ethnic groups into the concept of the Turkish nation. By admitting and recognizing that each ethnic group is an important part of the nation as a whole, an increased responsibility to do their bit for the welfare of the nation as a whole inheres in these ethnic groups. If each ethnic group is jointly responsible for the stability and continuance of the Turkish nation, the danger of separatist tendencies are minimized. Consequently, each single ethnic group will or could make its contribution not to give rise to separatist tendencies and movements within the community of the national population, because guaranteeing the indivisibility of national territory and national population won’t be the sole responsibility of the state anymore but of each ethnic group. Each ethnic group’s joint responsibility for the stability and continuance of the Turkish nation would therefore have a disciplining effect on all ethnic groups. It would be much more difficult for a separatist ethnic group to enunciate and enforce its interests towards the other ethnic groups who are only able to survive within the common alliance nor “national population”.

Beyond this conceptual solution of the minority question, in addition the religious and cultural rights of the members of these ethnic groups have to be guaranteed and secured individually. Finally, apart from the simple recognition of ethnic groups, also the foundations have to be laid, that each individual member of an ethnic group has the possibility to cultivate its religious and cultural characteristics. In order to grant each member of the various ethnic minorities this possibility, and not to make him dependent on the (majority) behaviour of his group, these religious and cultural rights should be formulated in terms of individual fundamental rights and freedoms, similar to the international documents concerning the protection of minorities or the minority protection clauses of the Lausanne Treaty.

However, the situation of the groups who are covered by the European concept of minorities but who are not recognized as minorities by Turkey, must no longer be reviewed by the EU within the scope of the Copenhagen criterion “respect for and protection of minorities“, because, according to this solution, Turkey does not respect and protect these groups as minorities. The EU would have to deal with and review the situation of these groups within the scope of the “guarantee of human rights“. Therefore, the EU would have to review, if each individual member of these groups is protected by means of individually guaranteed human rights exactly to the same extent as being a member of a minority group who could invoke the corresponding minority protection clauses. Here, Turkey could orientate itself on the rights for everybody laid down in Section III of the Lausanne Treaty. There, in Article 38 Paragraphs 1, 2 and Article 39 Paragraphs 2, 3, 4, 5 ToL, already the religious and cultural rights for each Turkish citizen are guaranteed, which are also essential for the members of an ethnic group. Due to the legal force of these provisions according to Article 90 Paragraph 5 of the Turkish Constitution, Turkey only had to make sure that they are implemented resolutely. Because the consistent implementation of the Lausanne Treaty would put Turkey in the position to fulfil the international standards with regard to the freedom of religion, the non-discrimination rule and the linguistic rights without any further

efforts. Moreover, the other minority protection clauses of the Lausanne Treaty offer examples for rights of ethnic groups' members, being formulated arising from individual rights.⁶²

For its part, the EU would have to settle for the unrevised Turkish concept of minorities. However, at the same time, having made a conceptual detour via the term “ethnic group“, the EU would have achieved its main aim, namely granting sufficient minority protection in Turkey according to European standards. Accordingly, the Kurds, Alevi and other groups who are covered by the European concept of minorities, would be protected to the same extent as if Turkey had given them conceptually and practically the same rights as non-Muslim minorities.

If the EU does not have the intention to let the ongoing accession negotiations with Turkey fail on account of irreconcilable differences with regard to the term and concept of minorities, the concept of “ethnic groups“ could provide an acceptable and satisfactory solution for both sides. The EU would build a bridge for Turkey by taking the Kurds, Alevi and the other groups being covered by the European concept of minorities off the complex of minority problems, in order to enable Turkey not to entirely define its concept of the state in a new way and not to lose face. However, Turkey, in spite of conceptually taking ethnic, Muslim and linguistic minorities off the complex of minority problems, would be forced to guarantee these groups rights which fulfil the European standards of minority protection on the basis of human rights being formulated arising from individual rights.

Conclusion

The complex of the different concepts of minorities within the EU and Turkey reveals a core dilemma in the mutual relations of both partners. Without firstly tackling the core problem of the EU's and Turkey's different concepts of minorities, and without managing to create an identical basis for discussion by clarifying the problem, on the one hand, according to the recommendation of the EU Commission, the EU certified that Turkey “sufficiently” (European Commission 2004) fulfilled the Copenhagen political criteria – correspondingly also including the protection of minorities (Commission of the European Communities 2004: 29-51) – for Turkey, on the other hand, the shortcomings of protecting minorities in Turkey are still denounced (European Commission 2012: 18-26, 74).⁶³ However, the establishment and determination of a common terminology in the minority issue is a compelling requirement and indispensable precondition for the evaluation of the protection of minorities in Turkey. Because, if Turkey still understands something different by “minority” than the EU, in the case of Turkey, the EU cannot comprehensibly determine if Turkey guarantees sufficient protection of minorities.

Summing up, it can be stated that the criterion of the protection of minorities does not have to constitute an irremovable obstacle for Turkey's accession to the EU. Nevertheless, it

⁶² Here, the European signatory states of the Lausanne Treaty have to put up with the reproach that they have been tolerating Turkey's incomplete guarantee of the Lausanne Treaty's minority rights and the continuously (too) restrictive interpretation and application involved, for 90 years now, in spite of having the explicit chartered right in Article 44 Paragraph 2 ToL to check Turkey's implementation of the minority rights clauses in the Treaty of Lausanne.

⁶³ Characteristic for the EU's indecisive attitude is a formulation in the Turkey 2006 Progress Report. Accordingly, in Turkey, in addition to the recognized minorities of the Greeks, Armenians and Jews, there are still „other communities in Turkey which, in the light of the relevant international and European standards, could qualify as minorities“ (European Commission, Turkey 2006 Progress Report, p. 20). This clearly shows that the EU is perfectly aware of the fact that the Turkish concept of minorities significantly differs from the European one. However, the EU shrinks from the consequences and avoids dealing with the different terms and concepts of minorities and clearly taking a stand, *which* other communities in Turkey would have to be qualified as minority pursuant to the relevant international and European standards. This EU behaviour is justifiably held against it as weakness by Turkey, which feels being confirmed in its unconditional adherence to its own concept of minorities.

is a highly explosive topic, because it makes ideological differences and differences concerning the constitutional order between the EU and Turkey become evident. For this reason, for both sides, the criterion of a sufficient protection of minorities is one of the negotiation topics which oblige at least one partner to make considerable concessions. Therefore, at that point, the accession negotiations can easily be shipwrecked. However, if a lasting and practicable solution for Turkey's complex of minority problems is of mutual interest, this is only possible if both sides thoroughly deal with the complexities of their different terms of minorities. The proposed concept of "ethnic groups" might be an acceptable basis for discussion.

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