THE IMPLEMENTATION OF THE COPENHAGEN CRITERIA IN THE CONTEXT OF "RESPECT FOR AND PROTECTION OF MINORITY RIGHTS": THE SLOVAK CASE

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ABSTRACT

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The aim of this thesis is to observe the implementation of the Copenhagen criteria in the context of 'respect for and protection of minority rights' during the accession process of Slovakia. EU's membership conditionality enforces candidate countries to improve the situation of minority groups within their borders. The main motivation of the EU in this process is to eliminate the reasons which cause ethnic conflicts in the continent and to prevent the escalation of minority-related problems into the EU territory. Slovakia which experienced a difficult accession process depending on the fulfilment of political criterion, constitutes an important case for the evaluation of minority clause.

This thesis examines minority issue in a historical framework and specifically investigates the implementation of the Copenhagen criteria's minority clause in the EU's enlargement process. EU's conditionality which is its main tool in the enlargement, lacks clear-cut norms and standards regarding minority rights. Furthermore, there is a duality between internal and external policies of the Union on the issue of minority rights. In addition to this duality, the approach of the Union towards minority issue acquires a different character in different accession processes.

This thesis argues that the lack of well-defined norms and standards, the duality between EU's internal and external minority policies and changing approaches of the Union in different accession processes complicate the implementation and the

monitoring of minority clause giving rise to allegations of double standards in the enlargement process.

Key Words: Minority Rights, Membership Conditionality, Double Standards, Accession Process, Slovakia

ÖZ

KOPENHAG KRİTERLERİ'NİN 'AZINLIK HAKLARINA SAYGI VE AZINLIK HAKLARININ KORUNMASI' MADDESİNİN UYGULANMASI: SLOVAKYA ÖRNEĞİ

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Bu tezin amacı, Kopenhag Kriterleri'nin 'azınlık haklarına saygı ve azınlık haklarının korunması' maddesinin ve bu maddenin uygulanmasının Slovakya örneği üzerinden incelenmesidir. AB genişleme süreci, aday ülkelerdeki azınlık sorunlarının giderilmesini ve azınlıkların durumunun iyileştirilmesini öngörür. AB'nin bu yaklaşımındaki temel motivasyonu, etnik çatışmaları doğuran sebepleri ortadan kaldırmak ve etnik çatışma olgusunu, AB toprakları ve tüm kıta için bir tehdit unsuru olmaktan çıkarmaktır. Slovakya politik kriterlerin tamamlanması konusunda zorluk yaşayan bir ülke olarak, azınlık maddesinin uygulanmasını incelemek için yerinde bir örnektir.

Bu tez, azınlık kavramı ve azınlık hakları konusunu tarihsel bir süreç içerisinde ele alır ve bu konunun özellikle AB genişleme sürecinde ve 'şart koşma prensibi' çerçevesinde nasıl uygulandığı ile ilgilenir. Yapılan incelemede, AB mevzuatının azınlık hakları konusunda kesin ve belirleyici hükümlerinin bulunmadığı ve AB azınlık hakları politikasının iç ve dış mecralarda farklı özellikler gösterdiği görülmüştür. Bu saptamalara ek olarak, AB'nin katılım süreçlerine yaklaşımının aday ülkelere göre değiştiği gözlemlenmiştir.

Bu tez, azınlık hakları konusunda belirleyici hükümlerin eksikliği, AB politikasının azınlık hakları konusunda içeride ve dışarıda farklılıklar göstermesi ve aday ülkelere göre değişen AB yaklaşımı nedeniyle Kopenhag Kriterleri'nin

azınlık hakları maddesinin uygulanmasının ve denetlenmesinin güçleştiğini savunur. Bu güçlük aynı zamanda çifte standart söylemini de gündeme getirir.

Anahtar Kelimeler: Azınlık Hakları, Üyelik Şartı, Çifte Standartlar, Katılım Süreci, Slovakya

To My Family

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TABLE OF CONTENTS

Introduction

The end of Cold War started the period of great transformations and challenges for Europe. The continent was reshaped with dissolutions, dismemberments, divorces and also the emergence of the new states. The change was not only in the territorial map of Europe but also in the political atmosphere. When the bipolar world ended, the ice field between Western and Eastern Europe had already began to melt. Former communist states of the Eastern Europe and Soviet Union came on the scene as newly independent states which are ready to adopt economical and political principles of the West. The international organizations such as the European Union and the NATO became important actors in this process and affected the course of the events.

The European Union initiated the Eastern Enlargement in order to expand towards Central Eastern Europe. There were various reasons that lie beneath this enlargement. The transformation of former communist states into democracy and market economy was the main reason of the EU's orientation towards the region. However, it was not the only one. Changing borders had created new minority groups across Europe as well as new nation-states. The ethnic conflicts which arised during the turmoil of the dissolutions indicated that regional stability and security was only possible under the umbrella of the European Union. On the other hand, the EU had to achieve the stability of the region without disturbing existent stability in the Union. To this end, the European Union stipulated the candidate states (whether CEECs or not) to fulfil certain conditions before joining the EU.

In 1993 Copenhagen European Council, the Union introduced its enlargement strategy and the accession criteria for full membership. The criteria were composed of political, economical dimesions and the acquis communitaire. The respect for and the protection of minorities held a place under the framework of political criterion whose fulfilment is a precondition in order to start negotiation process.

However, it was difficult to determine the fulfilment of minority rights clause of political criterion because there was no universal definition of the

minority concept and the minority rights applications were varying both in Europe and in the world. In this ambiguity, the implementation of the minority clause of the Copenhagen criteria was a very attractive case to be examined.

This thesis aims to analyze the implementation of the Copenhagen criteria in the context of 'respect for and protection of minority rights' in the Slovak example. The issue of minorities and minority rights constitutes one of the most problematic part of the relations between the EU and Slovakia.[1] When it is seen from this aspect, the choice of Slovakia is not a coincidence. The study aims to deal with the subject under four main headings. The first heading covers the conceptual, theoretical and historical framework of minorities and minority rights. The second heading sets out the progress of minority rights in the post-Cold War period within the framework of the CSCE (OSCE), the CoE and the EU. The third heading deals with Slovakia and observes the accession process of the country under the framework of 'respect for and protection of minorities'. The forth and the last heading focuses on Turkey in order to make a brief comparison with Slovakia in terms of implementation of 'minority rights' clause.

The method of this thesis will be firstly an interpretative and textual analysis of primary resources including international, governmental and EU official documents (international agreements, conventions, regular reports, strategy papers, opinions and recommendations) and the examination of secondary resources such as scholarly books and journal articles. Secondly, in order to update the developments related to the region, the news from different media and internet resources will be put forward. The main argument of the thesis will be: The ambiguous norms and standards within the EU policies regarding minority rights complicate the implementation of 'respect for and the protection of minority rights' criterion giving rise to the claims of double standards in the accession process.

In the first chapter, the conceptual, theoretical and historical framework of minorities and minority rights will be mentioned. In the first part of the Chapter I, the concept of minority constitutes the main subject. The study

[1] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

intends to open the concept of minority by asking several questions such as: Whom we call minority?, What are the properties of national minorities?, Why do minority groups need rights? And how does theoratical debate on minority rights evolve? The aim of this part is to introduce the ambiguity of the minority concept and the inconsistency arising from the different applications of the minority rights all over the world. In the question of 'whom we call minority?', the different definitions made by the officials of international organizations and the scholars will be reviewed. In the question of 'What are the properties of national minorities?', the four basic elements, namely objective, subjective, time and number elements are to be presented. The questions regarding the emergence of the minority rights approach will be analyzed through the works of Will Kymlicka. Kymlicka mentions "the dialectic relationship between the nation building process and the emergence of the minority rights".[2] He also divides the theoretical debate on minority rights into three parts; firstly, "individualists versus collectivists"; secondly, "minority rights in a liberal framework"; and thirdly, "minority rights as a response to nation-building".[3]

The second part of the Chapter I examines the development of the minority rights in a historical perspective. The period between the Treaty of Westphalia (1648) and the end of Cold War (1990) constitutes the historical scope of minority rights in this part. The Treaty of Westphalia, the Ottoman Millet System, the Congress of Vienna (1815), the Congress of Berlin (1878), the post-World War I (Inter War Period) and the post-World War II period (Cold War Period) form the main headings in this part. As the beginning of the modern state system and the new world order, the Treaty of Westphalia includes minority rights under the framework of religious rights and defends the religious rights of people whose land comes under the administration of another ruler. However, this study admits that there were applications of religious rights before the Treaty of Westphalia. The Ottoman Millet System

[2] Will Kymlicka & Magda Opalski, 2001, (eds.) *Can Liberal Pluralism be exported? Western Political Theory and Ethnic Relations in Eastern Europe*, New York: Oxford University Press Inc., pp.21.

[3] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.18-27.

which allows the different religious communities to exercise their own religious activities and to be treated differently in terms of education and tax systems, is referred as one of these applications.

While the Congress of Vienna (1815) begins to change the reference point of the minority definition from religious affiliations to national affiliations gradually, the Congress of Berlin (1878) takes the first step in the internationalization of the minority issues. The newly independent states of Balkans are enforced to respect the the rights of religious minorities within their territory in return for their recognition by the international world in the Congress of Berlin. The 20th century is divided into two parts, the post-WWI period and the post-WWII period. The League of Nations (LoN) system and liberal idealist approach constitute the subject of the post-WWI period. The failures experienced in this period affect the approach in the international system towards minority rights and the post-WWII period takes the issue of minority rights mostly under the heading of human rights. The UN system plays a conciliatory role in the protection of minority rights and prefers promoting human rights in the Cold War period. Since the policies and applications regarding minority rights begin to acquire a different character after the end of Cold War, this procees will be the subject of the next chapter. The role played by the international organizations such as the CSCE (OSCE), the Council of Europe (CoE) and the European Union (EU) in the recognition and the promotion of minority rights in the post-Cold War is so impressive that the Chapter II examines the development of the minority rights through the lenses of these three international organizations.

The Chapter II analyzes the minority rights issue in the context of international organizations within the European region and in the post-Cold war period, and pays special attention to the perspective of the European Union in order to understand the situation of the minority rights in the EU legal and policy framework. Three main headings of the Chapter II are respectively the Conference on Security and Cooperation in Europe (CSCE / OSCE), the Council of Europe (CoE) and the European Union (EU). According to threefold typology of Tove Malloy, the CSCE (OSCE) approaches the minority

rights from the "security perspective", the CoE follows a "democratization perspective" and the European Union adopts an "integrationist perpective" towards minority rights.[4] In the Chapter II, firstly the main CSCE (OSCE) documents which display the development of minority rights in the post-Cold War period will be put forward briefly and the most important organ of the CSCE (OSCE), the High Commisioner on National Minorities (HCNM) will be introduced. Secondly, the role of the Council of Europe on the standardization of the minority rights will be examined in the context of the Framework Convention on National Minorities (FCNM). Lastly, the legal and policy framework of the minority rights in the European Union will be mentioned and the implementation of the Copenhagen criteria will be under scrutiny in the final part of the chapter. The Chapter II intends to demonstrate that the lack of consensus on the definition of minority concept among international organizations effects the implementation of provisions related to minority rights. In the context of the European Union, this ambiguity incorporates with the duality of the policies regarding minority rights between the internal and external level. Consequently, the deficiencies in the implementation and the monitoring allow the different applications to appear in the accession process.

The Chapter III observes the implementation of the Copenhagen criteria in the case of Slovakia. The choice of Slovakia for the observation of the minority clause is not a coincidence because the minority question of the country constituted one of the most problematic area of its accession process.[5] The first part of the Chapter III mentions the brief history of Slovakia which experienced a communist rule and a federal structure under the name of Czechoslovakia. After the end of Cold War, the country firstly gets free of communism and secondly leaves its federal structure. For Slovakia, the new era is full of problems arising from the transformation of the country and the

[4] Tove H. Malloy, 2005, *National Minority Rights in Europe*. New York: Oxford University Press Inc., pp.3.

[5] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

accession process to the EU. The second part of the Chapter III deals with the Slovakia's accession process under the framework of its minority question.

Firstly, the minority question of Slovakia is put forward with specific emphasis on two minority groups namely, Hungarians and Roma. The problems regarding these minority groups are introduced in a historical context. Secondly, the implementation of the minority criterion and the conditionality principle is evaluated. In the third part of the Chapter III, the implementation the Copenhagen criteria in the context of the 'respect for and protection of minority rights' is assessed with the Regular Reports which are the most important monitoring instruments of the EU between 1998 and 2003. The aim of the Chapter III is to put forward that Slovakia is a crucial case to observe the limits of conditionality and the problems arising from the ambigious norms and standards on minority rights. The different applications in the legislation and the policy framework of the EU regarding minority rights effect the credibility of the Union and fairness of the accession process.

Lastly, the Chapter IV makes a brief analysis on Turkey regarding its accession process and the implementation of minority criterion. In the first part of the Chapter IV, the different attitudes of the EU towards candidate countries in respect of the implementation of the Copenhagen criteria during the accession process is put forward and for this purpose the Eastern Enlargement and basically Slovakia is taken as a reference point. The allegations regarding double standards in the implementation of minority criterion and the differences in the accession processes of the CEE countries and Turkey constitute the main framework of evaluation. In the second part, an analysis on Turkey is made by referring the EU Regular Reports between 1998 and 2005. These Reports demonstrate the situation of minorities in Turkey as well as the approach of the Union towards minorities of Turkey. Although there is no universal definition of minorities all over the world and the existing documents of the international law allow the states to draw the borders of minority definition by their own, the EU uses its conditionality implicitly in order to extend the borders of the minority definition in Turkey. The Turkish case holds a place in this study in order to show that the double standards of the EU in

terms of minority rights do not only stem from the different applications inside and outside of the Union but also the different applications in the different accession processes.

CHAPTER I

Conceptual, Theoretical and Historical Framework of Minorities and Minority Rights

Questions concerning minorities began to appear frequently in the international agenda in the 20th century especially in the post-Cold War period. As Jennifer Jackson Preece alluded, minority question appeared in the international agenda in those times when a great transformation was about to occur.[6] The two Great Wars and the Cold-War period caused the minority question to be discussed again and again from different perspectives. Results of the wars affected and changed the viewpoint of the states on minority question at different times. However, what was unchanged were the clouds of uncertainity over the definition of minority concept and the scope of minority rights.

To assess the minority rights in depth, a comprehensive survey on the concept of minority is needed. It is crucial to define the concept comprehensively before discussing what minority rights constitute in the international order. In the Chapter I, the concept of minority and the development of minority rights are going to be discussed. In the first part of the chapter (Chapter I.A.), the concept of minority will be analyzed under the questions of firstly, whom we call minority?; secondly, what are their properties?; thirdly, why do they need rights?; and lastly, how does the theoretical debate on minority rights evolve? These four questions help us to evaluate minority question in the international order and specifically in the Slovak Case within the European Union framework. Who are the minorities of Slovakia? Even, in order to answer this basic question which forms the core of this thesis and also its peripheral questions, we need a conceptual framework of minority issue. In the second part of the chapter (Chapter I.B.), the historical course of minority rights will be displayed starting from the Westphalia Treaty (1648) until the end of Cold War period (1991). This process will include the Treaty of Westphalia, the Ottoman Millet System (it sets a precedent for

[6] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.76.

minority protection), the Congress of Vienna, the Congress of Berlin, the Post-World War I and the Post-World War II periods until the end of Cold War. The documents which are prepared by international organizations such as the UN, the CSCE (OSCE), the CoE and the EU in the post-Cold War period will be touched on in the second chapter.

I. A. Conceptual and Theoretical Development of Minority Definition and Minority Rights

Whom We Call Minority?

The term "minority" refers to various groups such as national minorities, indigeneous people, guest workers, immigrants, black people, women, homosexuals, etc. Since it includes this kind of broad spectrum, it is vital to draw borders for minority concept. Then, whom we call minority? A definition may be the first step to answer this question. However, unfortunately there is no universal definition of minority concept which is accepted by all authorities and provides it a legitimacy. Gudmundur Alfredsson says that "the main components or elements of such a definition flow quite clearly from the practice of states and of international organizations".[7] Although international law does not offer any universal definition, the Article 27 of International Covenant of Civil and Political Rights 1966 (ICCPR) which is the first binding document on minority rights after World War II, requires to make a definition of minority term. Upon this requirement, Francesco Capotorti who was UN special rapporteur in 1977, made a study and 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

[7] From the Report submitted by Prof. Gudmundur Alfredsson at European Commission for Democracy Through Law (Venice Commission), Round Table on Non-Citizens and Minority Rights on 16 June 2006 available at http://www.venice.coe.int/docs/2006/CDL(2006)053-e.pdf

> of solidarity, directed towards preserving their culture, traditions, religion or language.[8]

After this study, Jules Deschênes made the second definition in 1985 and said that:

> minority is a group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.[9]

Another definition came from Asbjorn Eide who was the chairman of UN Working Group of Indigenous People in 1993. He defined a minority as:

> a group of persons in a sovereign state, representing less then a half of the population of this state, whose members have in common ethnic, religious, linguistic characteristics that distinguish them from the rest of the population.[10]

As we see, all these three official definitions use some common expressions such as "ethnic, religious, linguistic characteristics, numerically less, non-dominant position and sense of solidarity" which are crucial to determine the framework of minority definition generally if not universally.

Here are some other definitions from scholars. According to Louis Wirth, minority group is:

> a group of people who, because of their physical or cultural characteristics, are singled out from others, in the society in which they

[8] Francesco Capotorti, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities UN Document E/CN.4/Sub.2/384/Add.1-7 (1977) available at http://www.minority-rights.org/docs/mn_defs.htm

[9] Jules Deschênes, Proposal Concerning a Definition of the Term 'Minority' UN Document E/CN.4/Sub.2/1985/31 (1985) available at http://www.minority-rights.org/docs/mn_defs.htm

[10] Asbjorn Eide, U.N., Doc. E/CN. 4/Sub. 2/1993/34 (1993) available at http://www.sant.ox.ac.uk/esc/esc-lectures/Tanase.htm

> live, for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination.[11]

According to Jennifer Jackson Preece, national minority constitutes:

> a group numerically inferior to the rest of the population of a state, in a non-dominant position, well-defined and historically established on the territory of the state, whose members--being nationals of the state--possess ethnic religious, linguistic or cultural 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.[12]

Will Kymlicka makes a shorter definition and describes national minorities as "groups who formed functioning societies on their historical homelands prior to being incorporated into a larger state".[13] According to Baskın Oran, the common features of the minority groups can be listed as:

> First, they differ from the predominant group in race, religion and language; second, they constitute a sizeable number; third, they are not dominant in the state, unlike the Afrikaans in South Africa; forth, they are citizens not aliens; fifth, they are loyal to their state and do not have secessionist aspirations; sixth, they are aware and conscious of their minority status; and lastly, the majority perceive them as a minority group.[14]

In the definitions of scholars, the properties such as "being nationals (not aliens), having historical ties with the land they reside in and to be perceived as minority group by the majority" are added to the definition of minority group. In short, both officials and scholars use some common

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[11] Louis Wirth, 1945 "The Problem of Minority Groups" in R. Linton (eds.) *The Sciencies of Man in World Crisis* quoted in Salahi R. Sonyel, 1993, *Minorities and the Destruction of the Ottoman Empire*, Ankara: Turkish Historical Society Printing House, pp.1.

[12] Jennifer Jackson Preece, 1998, *National Minorities and the European Nation-States System*, Oxford: Clarendon Press, pp.28.

[13] Will Kymlicka & Magda Opalski (eds.), 2001, *Can Liberal Pluralism be exported? Western Political Theory and Ethnic Relations in Eastern Europe*, New York: Oxford University Press Inc., pp.23.

[14] Baskın Oran, 1986, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu,* Ankara: Bilgi Yayınevi, pp.20-21 quoted in Salahi R. Sonyel, 1993, *Minorities and the Destruction of the Ottoman Empire*, Ankara: Turkish Historical Society Printing House, pp.2.

elements and specific properties to draw the borders of minority concept but actually the definition varies up to the enforcements of states and international organizations in international conjunture.

The definition of minority term will be mentioned in the specific case of Slovakia and Turkey in the forthcoming chapters but it is instrumental to point out the official stance of either countries here briefly. There is no any official definition of the national minority term in the Slovak Law. In spite of the fact that the Slovak Constitution and the official documents related to the minority languages include the expression of national minority, they do not explain what the term covers. The Framework Convention for the Protection of National Minorities recognizes the minority groups in Slovakia as "Bulgarians, Germans, Jews, Croatians, Moravians, Poles, Roma, Ruthenians, Czechs, Ukrainians and Hungarians".[15] On the other side, Turkey defines its minority group under the Lausanne Treaty of 24 July, 1923. According to the Lausanne Treaty, the non-muslim population of Turkey namely Greeks, Jews and Armenians are designated as the national minorities of the country. Turkey declares by the Treaty that national minorities have the same rights like other citizens.[16] The following part will try to examine the common properties of the national minorities in order to lighten the concept of national minority more.

What are the Properties of National Minorities?

The second question 'what are the properties of national minorities?' can be answered via the report of Gudmundur Alfredsson who states that there are four basic elements in order to draw the borders of minority definition. Although every minority population has its own characteristics, these four elements are determining in the definition:

[15]The related part can be found in the Slovakia document (Art.3.4) in http://ec.europa.eu/education/policies/lang/languages/langmin/euromosaic/slok_en.pdf

[16] Lausanne Treaty, Section III, Protection of Minorities, available at http://net.lib.byu.edu/~rdh7/wwi/1918p/lausanne.html
Article 38: Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.
Article 39: Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

> These are objective elements (national or ethnic origin, language and religion), the subjective elements (self-identification and common desire to maintain and develop the identity and culture of the group), the numbers element (less than half of the population of the state) and the time element (historical ties or presence in a state for long enough for the children or grandchildren to identify more closely with the new country than with the old country).[17]

As we can see, all of the definitions mentioned above take the minority definition from these four perspectives. However, as Alfredsson emphasized what really shapes the minority definition is the practices of states firstly and, international organizations and international law secondly.[18] Although the minority concept and minority rights were not defined universally and bindingly by international law and their definitions were left to the will of nation-states, the increasing number of non-governmental organizations and independent groups which work on minority issues in the both Cold War and post-Cold War period put pressure not to leave this definition to only nation-states. They collect data and keep statistics in order to convey these informations to monitoring organizations. The details on this issue will be discussed in the next chapter of the thesis. However, before that, it is necessary to put forward the reasons that lie beneath the need of minority rights.

Why Do Minority Groups Need Rights?

Thirdly, why do minority groups need rights? In a society, minorities do not find the possibility of representation easily since they are less than the majority group. Will Kymlicka explains the legitimacy of minority rights very briefly. According to him, "there is a dialectic relationship between the

[17] From the Report submitted by Prof. Gudmundur Alfredsson at European Commission for Democracy Through Law (Venice Commission), Round Table on Non-Citizens and Minority Rights on 16 June 2006 available at http://www.venice.coe.int/docs/2006/CDL(2006)053-e.pdf

[18] "The main components or elements of such a definition flow quite clearly from the practice of states and of international organizations." From the Report submitted by Prof. Gudmundur Alfredsson at European Commission for Democracy Through Law (Venice Commission), Round Table on Non-Citizens and Minority Rights on 16 June 2006 available at http://www.venice.coe.int/docs/2006/CDL(2006)053-e.pdf

emergence of minority rights and states' nation-building processes".[19] Kymlicka says that:

> the liberal-democractic states always passed through a nation-building process which included encouraging and sometimes forcing all the citizens on the territory of the state to integrate into common public institutions operating in a common language.[20]

He adds that different methods have been adopted by Western powers in order to manage integration in the society. "The citizenship law, education and language laws, policies regarding public service employment, military service and national media may be examples of these methods".[21] Since he thinks that the arise of minority rights is the consequence of the states' nation-building process, Kymlicka finds minority rights just and defends "multination federalism" for minorities.[22] According to Kymlicka, nation-building process of the state works against the national minorities and enforces them to choose one of these three options. First option is to accommodate the state institutions like other citizens did, second option is to establish an alternative institution to states' and the last one is to prefer living away from the majority.[23] Kymlicka suggests that "if the presence of state nation-building helps to justify minority rights, one could also turn the equation around, and say that the adoption of

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[19] Will Kymlicka & Magda Opalski, 2001, (eds.) *Can Liberal Pluralism be exported? Western Political Theory and Ethnic Relations in Eastern Europe*, New York: Oxford University Press Inc., pp.21.

[20] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.1.

[21] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.1.

[22] "Multination federalism is a federal or quasi-federal subunit in which minority groups forms a local majority and so can exercise meaningful forms of self-government. By multination federalism, minority language becomes official language of the state." quoted in Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.4.

[23] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.1.

minority rights has helped to justify state nation-building".[24] Although it is known that minority rights existed even before the emergence of nation-states and nationality concept[25], the thesis agrees with Kymlicka that nation-building process accelarated and shaped the rise of minority rights in the sense that we understand it today. On the other hand, the thesis does not accept that the adoption of minority rights would bring justification to nation-building process of a state. Because the adoption of minority rights is very important step which creates its own "rights consciousness"[26] in the minds of minorities. This rights consciousness may even lead to secessionist approaches in the minority groups in the future. However, at the same time not adopting these rights can create injustices for national minorities and also bring the secessionist tendencies maybe even more than its adoption.

How Does Theoretical Debate on Minority Rights Evolve?

Lastly, how does the theoretical debate on minority rights evolve? Kymlicka examines the theoretical debate on minority rights within three stages; "first, the individualists (liberals) versus collectivists (communitarians); second, the minority rights in a liberal framwork; third, the evolution of minority rights as a response to nation-building".[27]

First stage is the debate of individualists versus collectivists. This debate is undertaken in the question of 'which one is more important, individual or community?'. Individualists defend that individuals are more important than the community since they constitute the core of the community. On the other hand, collectivists claim that the value of individual changes depending on what he or she means in the community. Therefore, community

[24]Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.2.

[25]Ottoman Millet System and the following Westphalian Treaties will be mentioned in forthcoming parts.

[26] Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.7.

[27] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.18-27.

is much more important than the individual.[28] In short, while communitarians (collectivists) ordain community, liberals (individualists) appreciate individualism and find the pressure of community over individual harmful. Because of this reason, liberals defend human rights while communitarians defend minority rights. The period starting from the end of WWII gave priority to the individual rights rather than collective rights with the establishment of the United Nations. Patrick Thornberry gives the example of Article 29 of UN Declaration of Human Rights (UNDHR) whose first paragraph states that "Everyone has duties to the community in which alone the free and full development of his personality is possible".[29] Thornberry stresses the significance of word 'alone' by quoting Johannes Morsink (1999). According to Morsink:

> the word 'alone' may well be the most important single word in the document, for it helps us to answer the charge that the rights set forth in the Declaration create egoistic individuals who are not closely tied to their respective communities.[30]

Patrick Thornberry adds that "minority rights have been formally admitted into the contemporary corpus of human rights as 'rights of persons belonging to minorities', not as explicit 'collective or group' rights".[31]

The second stage is minority rights within a liberal framework. In this stage, Kymlicka stresses the adherence of both minority and majority groups to liberal doctrines. Referring to the debate between liberalism and communitarianism, the minority groups are expected to be against liberal doctrines. However, on the contrary Kymlicka claims that minority groups

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[28] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.18-19.

[29] The Universal Declaration of Human Rights available at http://www.udhr.org/UDHR/default.htm

[30] Johannes Morsink, 1999, *The Universal Declaration of Human Rights: Origins, Drafting and Intent,* Philadelphia: University of Pennslyvania Press, pp.248 quoted in Patrick Thornberry, "Minority and Indigenous Rights at the end of history", *Ethnicities Vol.* 2, No.4, 2002, pp.523.

[31] Patrick Thornberry, "Minority and Indigenous Rights at the end of history", *Ethnicities Vol.* 2, No.4, 2002, pp.523.

actually want to be part of liberal institutions in a liberal society. They share the same liberal values with the majority.[32] Therefore, "the debate is not between liberal majority and communitarian minority but amongst liberals about the meaning of liberalism".[33] At this point, Kymlicka questions the role of language, culture and ethnic origin in the liberal-democratic societies and quotes Joseph Raz who mentions the relationship between culture and individual autonomy.[34] Conservation and promotion of culture helps individual to make the right decision for himself or herself in the life. In short, this stage emphasizes that cultural and linguistic rights are still important for minorities even if they share the same liberal values with the majority group.

At the third stage which is the continuation of the second one, Kymlicka claims that the liberal-democratic states are neglectful to the needs of ethnic minorities. According to him, the emergence of minority rights is the consequence of the nation-building process. In the perspective of liberal-democratic states, cultural rights are regarded as domain of private life like religion. The domains which liberal-democratic states are interested in are civil and political rights. Kymlicka claims that this ascertainment is not true. He thinks that liberal-democratic states also create a kind of culture which is called "societal culture".[35] Societal culture aims to generate a cohesion in the society through the common language and promotes a kind of nation-building process depending on linguistic commonalities. At this point, Kymlicka gives the example of USA which reinforces the usage of common language (English) in public sphere in order to establish a commonality in the society. As a result, the

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[32] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.20.

[33] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.21.

[34] Joseph Raz, 1994, *Ethics in the Public Domain. Essays in the Morality of Law and Politics*, Oxford: Clarendon Press quoted in Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.21.

[35] "The societal culture defines a kind of culture which depends on common language operating both public and private realms in a specific territory (mainly within the borders of liberal-democratic state)." quoted in Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.25.

third stage displays that cultural and linguistic properties which minority rights include, are also part of liberal-democractic states' nation-building processes and the values that minority rights rely on are also the principles of the liberal-democratic states.[36]

In consequence, the theoretical debate of minority rights appears firstly as a struggle between individual and community and then it is taken into the borders of liberal-democratic nation state with the rise of nationalism and the birth of nation-states. The conjunture of the 20th century adds two wars and the foundation of international organizations to this picture. Both wars and these new organizations become effective in shaping this theoretical debate and the perspectives upon minority rights. So, it is vital to evaluate the minority concept and minority rights through historical perspective. To achieve this goal, the next part of this chapter will deal with the historical development of minority rights.

I. B. The Historical Development of Minority Rights Starting From the Westphalia Treaty (1648) to the End of Cold War Period (1991)

Minority issue is a delicate issue which constitutes the basis of many ethnic conflicts, seperatist movements and wars. There are various definitions of minority concept on which there is no consensus. Since it is ambiguous in the international terminology, scholars, thinkers and officials always make effort to draw a general framework for what minority is and what minority rights cover in the international order.

To see the progress in the minority rights debate, we should look over the historical process of minority rights starting from the Westphalia Treaty (1648) until the end of Cold War (1991). In this process which approximately lasts 340 years, minority rights developed in parallel with the treaties, conferences and congresses which came on the scene after a war or conflict. The reason why minority rights are found attached to these official documents is that minority rights come to the agenda of international relations generally in

[36] Will Kymlicka, 2001, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, New York: Oxford University Press Inc., pp.25.

periods when a change is about to occur in international order.[37] This change may be a border change, an exchange of populations, and a dismemberment of an empire or a rise of a new state. In the second part of the Chapter I, respectively the Westphalia Treaty (1648), the Ottoman Millet System, the Vienna Congress (1815), the Berlin Congress (1878), the Post-World War I, the Post-World War II and the Cold War periods will be mentioned under the framework of what they brought and changed in terms of minority rights within the international order.

The Treaty of Westphalia (1648)

"At the end of Thirty Years War (1618-1648), the Treaty of Westphalia designated the principles of new world order."[38] The Westphalia Congress set the new territorial order of Europe at the end of Thirty Tears War but this was not the only mission of the Congress. It also introduced the rules of new world order and laid the foundations of the international law in the sense that we understand today. According to Seyom Brown:

> the two tenets of Treaty of Westphalia such as 'government of each country is unequivocally sovereign within its territorial jurisdiction' and 'countries shall not interfere in each other's domestic affairs' still constitute the basis of international relations and international law today.[39]

However, besides these principles, the two articles of the Westphalia laid the foundations of minority rights officially. These are:

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[37] "Consequently, questions concerning the status of minorities usually come to the forefront of international relations at precisely those moments when a new international order is being established." Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.76.

[38] Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth", *International Organization,* Vol. 55, No.2, 2001, pp. 261.

[39] Seyom Brown, 1992, *International Relations in a Changing Global System: Toward a Theorv of the World Polity.* Boulder, Colo.: Westview, pp.74. quoted in Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth", *International Organization,* Vol. 55, No.2, 2001, pp.261.

> First, all parties will now recognize the Peace of Augsburg of 1555, by which each prince would have the right to determine the religion of his own state, the options being Catholicism, Lutheranism, and now Calvinism (the principle of cuius regio, eius religio)[40]; and second, Christians living in principalities where their denomination is not the established church are guaranteed the right to practice their faith in public during allotted hours and in private at their will.[41]

As we can see the articles above, the first form of minority rights is in the figure of rights given to groups because of their religious affiliations. In other words, before the Westphalian States System, the rights given to the minority groups are in the form of religious rights. Anthony D. Smith puts forward that "for a long time religious cleavages prevented the emergence of a strong and enduring ethnic consciousness among populations--until the era of nationalism succeeded uniting the community on a new political bases".[42] According to Smith, "there are some similarities between religious and ethnic identities which make them so close to each other".[43] However, since religious identity is response to broader human needs and actions, it was more common to refer religious identity than ethnic one in this period. Anthony Smith argues that there are other factors defining identity different from ethnic origin in this period. He mentions about Turks in Anatolia before 1900 who define themselves Ottoman and Muslim rather than Turks.[44]

The Ottoman Millet System

At this point, while we mention the importance of the Peace of Westphalia in terms of minority rights, it is imperative for us to mention the Ottoman Millet System which is in force even before Westphalia Treaty of 1648. According to Benjamin Braude and Bernard Lewis:

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[40] 'Whose rule, his religion'. In other words, the religion of the king or other ruler would be the religion of the people available at http://en.wikipedia.org/wiki/Cuius_regio%2C_eius_religio

[41] Treaty of Munich, October 4, 1619 available at http://en.wikipedia.org/wiki/Treaty_of_Munich_(1619)

[42] Anthony D. Smith, 1991, *National Identity.* UK: Penguin Books, pp.7

[43] Anthony D. Smith, 1991, *National Identity.* UK: Penguin Books, pp.8

[44] Anthony D. Smith, 1991, *National Identity.* UK: Penguin Books, pp.21

> The term 'Millet System' is generally used to denote the sociopolitical order that existed in the Ottoman Empire, which allowed each of the major non-Muslim religious communities a measure of legal and cultural autonomy under its own leadership.[45]

İlber Ortaylı states that "in this system, people were bound to their millets by their religious affiliations (or their confessional communities), rather than their ethnic origins."[46] It was this system which enabled the different religious communities under Ottoman rule to carry out their own tax and education systems and exercise their own religious activities without any intervention. Ortaylı says that "besides the Sharia law, there is very prestigious customary law in Ottoman Empire. Also Christians and Jews are free to implement their communities' own law".[47] Will Kymlicka argues that "millet system enabled Jewish, Christian, and Muslim communities to coexist more or less peaceably for centuries, each with their own form of self-government".[48] Justin McCarthy argues that "the tolerance of the Empire was notable: all the religious groups that were present at the beginning of the Ottoman Islamic Empire remained in place when it ended, six centuries later".[49] While McCarthy claims the existence of great tolerance from Ottomans to its millets, Braude and Lewis argue that:

> the alleged Ottoman persecution and oppression of minorities, claimed by so many in the West over the centuries, was largely a myth, but the relations among members of the different communities were less the kind of perfect harmony and 'tolerance' claimed by some Ottoman

[45] Benjamin Braude & Bernard Lewis (eds.), 1982 quoted in Avigdor Levy, "Review", The Journal of Religion, Vol.65, No.4, 1985, pp.565. available at http://www.jstor.org/view/00224189/ap040274/04a00260/0

[46] İlber Ortaylı, 2006, *Son İmparatorluk Osmanlı*, İstanbul: Timaş Yayınları, pp. 87-89.

[47] "Şer'i hukukun yanında saygın ve örfi bir hukuk vardır. Aynı zamanda Hristiyanlar ve Museviler için kendi cemaatlerinin hukukunun uygulanması söz konusudur." in İlber Ortaylı, 2006, *Osmanlı'yı Yeniden Keşfetmek*, İstanbul: Timaş Yayınları, pp.23.

[48] Will Kymlicka, "The Rights of Minority Cultures: Reply to Kukathas", *Political Theory,* Vol.20, No.1, 1992, pp.143.

[49] Justin McCarthy, 2001, *The Ottoman Peoples and the End of Empire*, New York: Oxford University Press, pp.2.

> historians than a kind of mutual contempt, with the considerable persecution to which the Jews in particular were subjected by the far larger Christian communities being little hindered by an Ottoman ruling class, whose powers and authority to intervene were limited, even in times of its greatest wealth and prestige.[50]

In his book, Kemal Karpat defends that Ottoman Empire's problems related to ethnicity and religion and the methods used in order to cope with these problems were different from Byzantine Empire's which experienced similar problems in Balkans and Asia Minor before Ottomans gained power. The Byzantine Empire followed the policy of assimilation of various Christian ethnic groups causing their rebellions in the future. The tension between empire and its subjects laid the foundations of demolition. On the other hand, although Ottomans' policies concerning social-economic and ethno-religious structure caused some permenant and rooted changes in different ethnic and religious groups, the Ottoman Empire did not follow an assimilation policy against its subjects. There were two main domains in front of Ottoman subjects, political loyalty and ethno-religious identity. The political loyalty is for Sultan who is representative of the state and etho-religious loyalty is for the community that they attached. Until the rise of nation-states, these two separate domains stood well side by side.[51] According to Karpat, Millet system was a result of an endeavour to establish a multi-ethnic and multi-religious empire. This sytem was shaped considering the needs, cultures and structures of each millet. Somehow, the system enabled the continuity of cultural, ethnic and religious features of these communities and made them to integrate into Ottomans' administrative, economic and political systems. While these communities (millets) secure their individualistic features, they also come under an ongoing Ottomanization process. Karpat defines Millet system as a socio-economical and congregational framework which is put down on firstly religion and then ethnicity arising from linguistic differences. Lastly, Karpat

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[50] Benjamin Braude & Bernard Lewis (eds.), 1982 quoted in Stanford J. Shaw, "Review", *The American Historical Review*, Vol.94, No.4, 1989, pp.1142. available at http://www.jstor.org/view/00028762/di957298/95p01336/0

[51] Kemal H. Karpat, 2006, *Osmanlı'da Değişim, Modernleşme ve Uluslaşma*, Ankara: İmge Kitabevi Yayınları, pp.84-86. (translated mot a mot from its original)

calls attention to the contribution of Millet system to the rise of nationalistic consciousness at the beginning of 19th century in Balkans. The loyalty for community coming from ethno-religious identity in millet system combined with citizenship concept which gets its roots from homeland constituted the nationalistic consciousness in Balkans in the 19th century.[52]

All in all, before the Westphalian Period, in the Ottoman Empire (and in the empires and states that existed before Ottomans and set a precedent for it)[53] there was a system which aimed to secure the cohesion in the empire which includes people from different religions and ethnic origins. This Millet System of Ottoman Empire which offers a hierarchical and decomposed structure based on parallel communities differed from the following Westphalian System which presents a formula to protect the religious rights of people in case of war and territorial change.

The Westphalia Treaty is very important document not only because it was a turning point in conducting international relations and establishing a new international order but also it introduced a new framework in terms of collective-group rights and put states under international pressure by creating a control mechanism. Referring to Macartney (1968), Carole Fink argues that the main impediment in the implementation of the Westphalia Treaty was the lack of principles regulating implementation. In addition to this reason, newly independent European states did not like the idea of being under control of a great power which uses minority rights for its self-interests.[54] All in all, the rights mentioned in this agreement were given in order to secure peace and stability in the region and in order to declare the absolute and legitimate authority of the ruler over his new subjects. In other words, the concept of

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[52] Kemal H. Karpat, 2006, *Osmanlı'da Değişim, Modernleşme ve Uluslaşma*, Ankara: İmge Kitabevi Yayınları, pp. 275. (translated mot a mot from its original)

[53] The claim of being an empire requires establishing a societal integrity which adopts every etho-religious unit to superior imperial identity. And all empires that precedents Ottoman Empire have tried to achieve this goal. The uniqueness of Ottoman Empire is to implement this system for centuries.

[54] Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.386.

minority rights was narrow at the beginning and it was generally assumed as given rights rather than deserved rights.

Consequently, Jackson Preece argues that:

> these minority provisions should not be interpreted as evidence of an emerging international norm in favour of religious freedom per se, but are better understood in terms of the special relationship between a prince and his co-religionist subjects.[55]

As the relationship between ruler and his subjects changed, the forms of minority rights began to gain different shapes throughout the years.

The Congress of Vienna (1815)

Following the Westphalia, the Congress of Vienna (1815) constituted a significant milestone for international relations and the development of minority rights. The notions such as nation and nationality which appeared after the French Revolution and the Napoleonic Wars affected the debate of minority rights in the Congress of Vienna. "The Congress was concerned with determining the entire shape of Europe after the Napoleonic wars."[56] Since it carried the effects of American and French Revolutions and Napoleonic era, it introduced a new form of identifications for both subjects (people) and princes (empires) in the 19th century, these were nation and nation-state. The importance of the Congress was that it changed the definition of minorities from religious groups to national groups.[57] Joel E. Oestreich gives the example of "the Polish Treaty which recognized the right of Poles to retain their own

[55] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.77.

[56] The Congress of Vienna available at http://en.wikipedia.org/wiki/Congress_of_Vienna

[57] "The Congress of Vienna not only redrew the map of Central, Eastern and Southern Europe but also extended the principle of minority rights to national groups." in Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.386.

culture and institutions".[58] On the other hand, Jackson Preece stresses that implementation of the rights promised to Poles in order to secure their institutions, was under control of the state and could not be against the sovereignity of the state.[59] However, the extension of the scope of minority rights towards national minorities increased the attention of kin states which have nationals in other states. Carole Fink gives the example of Russia which aims to affect the Ottoman internal affairs using the situation of its Slav-Orthodox nationals as an excuse within the Ottoman territory.[60]

When we evaluate the Congress of Vienna in terms of minority rights, we reach two important results. Firstly, through the Congress of Vienna, the scope of minority rights expanded and national identity became an important reference point within the minority rights. Secondly, since the scope of minority rights expanded, states started to use the national minority card as an excuse to interfere in internal affairs of other states.[61] All in all, the general characteristics of the period of Vienna were the temporary solutions for minority problems and the lack of solid minority rights principles. Although these deficiencies would continue to be part of minority rights regime in the future, the scene regarding minority rights started to change after this period gradually.

The Congress of Berlin (1878)

The Congress of Berlin followed the Congress of Vienna in 1878. The main issue which was held in the Congress of Berlin was the situation of the Balkans and the movement of Pan-Slavism.[62] The Congress of Berlin followed

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[58] See Final Act of the Congress of Vienna, 9 June 1815, Aus.- Fr.-Gr. Brit.-Port.-Prussia-Russ.-Swed., 64 Consol. T.S. 453. Article 1 quoted in Joel E. Oestreich, "Liberal Theory and Minority Group Rights", *Human Rights Quarterly,* Vol.21, No.1, 1999, pp.111.

[59] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.79.

[60] Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.387.

[61] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.26.

[62] The Congress of Berlin available at http://en.wikipedia.org/wiki/Congress_of_Berlin

a unique approach in the history and interlinked the recognition of the newly independent states of Balkans to the presentation of the civic and religious rights for religious minorities in their territories. However, although the idea generated in the Congress of Berlin was very crucial, it lacked the implementation mechanisms and became ineffective at the end. The problems experienced in this period portended the deficiencies in the future. As a matter of fact, the problems related to enforcement and universality of minority rights were experienced in the minority treaties of inter-war period again.

Considering the Congress of Berlin, we can say that like today, the Great Powers of the past wanted newly-establishing states to make necessary amendments in order to reach some standards in terms of human and minority rights. This kind of amendments were obligatory in order to be part of international civilization. After the Congress of Berlin, the minority guarantees were no longer a sign of good grace (from prince to his subjects) coming voluntarily but a duty and a task that should be accomplished by the authority compulsorily. Although there was no sanction in the case of non-fulfilment, Inis Claude put forward that "Treaty of Berlin gave the right of interference to great powers".[63] By this way, the first step in the way of internationalization of minority rights was taken in the Treaty of Berlin.

The Post-World War I (Inter-War Period)

The world order which has been established after the Napoleonic Wars with the Treaty of Berlin, was about to change with World War I. The Great War which lasted four years, ended in 1918 and a new period which is called Inter-War Period started. The new theoretical approaches and definitions in the international law, the foundation of League of Nations and the establishment of new independent states after the WWI (Czechoslovakia, Estonia, Finland, Latvia, Lithuania, Poland and Yugoslavia) made their marks on this inter-war period. There are two basic features of this period.

[63] Inis Claude, 1955, *National Minorities*, London: Oxford University Press, pp.8-9 quoted in Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.81.

Firstly, in terms of theoretical approach, there was a complexity in defining the scope of national minority rights until the end of World War I. The step which was taken in the Congress of Vienna in order to extend the scope of minority rights towards national affiliations could not be taken again until the post-World War I period.[64] The principles which were accepted in the Congress of Berlin were revised in the Settlement of Versailles according to requirements of existing ideological atmosphere of idealism. The linguistic and cultural elements were added to the scope of minority rights.[65] The basic rationale of the inter-war period was to put nation-state concept in the heart of the international system and this system had to protect nation concept and draw borders in line with this notion. The nation was identified with "culture and language" therefore the rights given to nations which constitute a minority group within the borders of a nation-state, were shaped according to linguistic and cultural rights.[66] These developments played an important role in the progress of minority rights.

Secondly, in terms of practical approach, the provisions of these inter-war treaties, unlike those of earlier periods, were guaranteed by an international organization, namely the League of Nations. According to Jackson Preece, this time, system should work properly because the League of Nations which is responsible for the implementation of minority rights had built its working principles on "collective decision-making" and "the moral approbation of international public opinion".[67] However, nothing developed like what is expected. Although it adopted the protection of minorities and minority rights as a principle, the League of Nations could not achieve to

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[64] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.28.

[65] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.82.

[66]Anthony D. Smith describes national identity by referring some fundemental features such as "historical territory, common myths, common mass public culture, common legal rights and duties for every national and common economical properties." in Anthony D. Smith, 1991, *National Identity.* UK: Penguin Books, pp.14

[67] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.83.

produce a comprehensive, universal and applicable minority rights policy.[68] During the League of Nations period, the implementation of related articles of treaties (provisions related to minority rights) was problematic. Because the main aim of major powers was to secure internal and external stability and internal stability was mostly requiring assimilation of minorities. Moreover, the control mechanism established by the League of Nations was at the hands of member states which are relunctant to implement necessary provisions. For example, major western powers like Britain and France chose not to intervene into minority rights infringements as long as these infringements did not disturb their national interests. The liberal idealism which appeared at the end of WWI faded away slowly with the discontent of parties which are unhappy with the status-quo created after the WWI. However, despite its lack of functionality Thornberry and Martin Estébanez claim that League of Nations introduced:

> first, recognition of the minorities question as one with distinct parameters; second, an attempt to guarantee the rights of minorities for humanitarian and pragmatic reasons--the threat to world peace presented by the mistreatment of the groups; third, procedures to implement the rights, including a system of petitions for individuals and groups; fourth, encouragement of human rights throughout state laws and constitutions; fifth, treaties and declarations providing rights for all inhabitants of the states, rights for all nationals and nationals belonging to racial, religious or linguistic minorities; and last, autonomy rights for groups concentrated in particular regions.[69]

As prescribed, the League of Nations system was imperfect. According to Carole Fink, "the organization tried to balance three irreconcilable interests, those of the minority states, the minorities and the international community, and the first invariably prevailed".[70] Fink claims that the deficiencies of League of Nations system can be adhered to the several reasons including the problems

[68] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.11.

[69] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.11.

[70] Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.394.

arising from the political atmosphere of the inter-war period and the approach of great powers towards the implementation of the minority rights.[71] The League of Nations system took bold steps in order to defend the values that liberal idealism put forward but it could not achieve to implement what was stipulated in the minority treaties. The failure in the implementation of the League of Nations system caused "a more cautious approach" to be followed in the post-World War II period.[72]

The Post-World War II (Cold War Period)

The discontent of parties which are not pleased with the status-quo created by peace treaties of the WWI paved the way for the World War II. The main difference between the post-WWI period and the post-WWII period in terms of minority rights is the framework that minority rights are studied in. In the post-WWII period, different from inter-war period, the minority rights were examined under the "human rights" heading. During the era of Congresses (Vienna, Berlin) and the League of Nations, a minority rights regime was tried to be established but after the World War II, when the system collapsed, the minority rights issue was taken out of the international agenda and started to be evaluated within a broader framework which is called human rights. Carole Fink argues that "the de-internationalization of the minority problem climaxed at the Paris Conference of 1946-1947".[73] The end of World War II brought up the peace treaties which dealt with the change of boundaries and the guarantee of minority rights. One of the boundary changes was between Slovaks and Hungarians which cause the emergence of new minority population in each state. The most important characteristic of the peace treaties of this period was that the language of the treaties was different from the ones signed at the end of

[71] Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.394-395.

[72]Abdulrahim P. Vijapur, "International Protection of Minority Rights", *International Studies,* Vol.43, No.4, 2006, pp.367.

[73]Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.395.

WWI. For instance, in the Treaty of Peace with Italy, it was stated that signatory state should:

> take all measures necessary to secure to 'all persons under (its) jurisdiction', without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.[74]

Another point which was put forward by Carole Fink was that "in the League of Nations period, the term referring nationals belonging to racial, religious and linguistic minorities was replaced by national minorities"[75] but in the post-WWII period the language of the treaties refrained to use the term 'national minority'. Instead of national minority, the more extensive but at the same time more ambigious term (all persons under its jurisdiction) was used in the peace treaties of the WWII.

The United Nations which is successor of the League of Nations spent notable effort not to repeat the failures of the League of Nations in minority rights issue. In this new period, the most important documents of the United Nations, namely the UN Charter and the Universal Declaration of Human Rights avoided to mention the national and religious minorities especially. The most evident example of this event was the case of 1948 Convention on the Prevention of the Crime of Genocide. This Convention whose mission is to protect people against genocide or war crimes chose to identify the minority rights in a negative form. By this way, the responsibility of the protection of minorities was left to states rather than the power of positive rights.[76] The UN System which came after the League of Nations and Minority Treaties system,

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[74] "Treaty of Peace with Italy, Part II-Political Clauses, Section I-General Clauses, Article 15" These informations were taken from http://en.wikipedia.org/wiki/Paris_Peace_Treaties,_1947

[75] Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.389.

[76] Jack Donnelly, "Third Generation Rights", *Peoples and Minorities in International Law,* 131-2 quoted in Carole Fink, "Minority Rights as an International Question", *Contemporary European History,* Vol. 9, No.3, 2000, pp.395-396.

brought "liberal international law or pacifist international law"[77] which defend human rights (individual rights) rather than minority rights (collective rights). The main rationale that lies beneath this development is changing parameters in approaching national minorities. The perspective that UN puts forward regarding minority rights envisages that every human being should be equal in terms of human rights and fundemental freedoms without looking at his/her race, ethnic origin, religion, language or sex. The protection of minorities should be achieved under this guarantee of individual human rights regime not under any other framework. The UN identified two different domains, respectively non-discrimination and protection of minorities and preferred examining rights needed by minority groups in the context of non-discrimination. Thornberry and Martin Estébanez explain the concept of non-discrimination as "the prevention of any action which denies the equality of individuals or groups of people", furthermore, they add "a measure of differential treatment in order to preserve basic characteristics" to this definition beside the achievement of equality.[78] The UN also accepted the importance of conservation and promotion of cultural and identical properties of the minorities even in the framework of non-discrimination. During this period, the European Convention on Human Rights released by the Council of Europe also preferred using the concept of non-dicrimination instead of protection of minorities.[79] Besides the ECHR (1950), the International Covenant on Civil and Political Rights (1966) constituted an important example for one of the international documents that mention about minorities. In its stipulations, the Covenant states that (Article 27):

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[77] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.29.

[78] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.13.

[79] "Article 14 of the ECHR: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." available at http://www.echr.info/

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[80]

Thornberry and Martin Estébanez regard that the expression in the Art. 27 saying 'in those states in which…minorities exist' provides a flexibility for states not to accept the existence of minorities within their boundaries.[81] However, on the other hand, General Comment No. 23 (5.2) released by the UN High Commissioner for Human Rights states that the situation regarding the "existence of an ethnic, religious or linguistic minority" in a country can not be decided by only that country's criteria but also some "objective criteria" should be looked for.[82] Anyway, the High Commissioner does not explain the scope of these objective criteria. Lastly, the Article 27 of ICCPR does not offer any minority definition and especially uses the phrase "persons belonging to…minorities" to refer national minorities but still its effect on the formation of a minority rights literature is unquestionable. Other documents which belong to the post-WWII period and deal with the protection of minorities, can be listed as the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the Helsinki Final Act (1975) and the African (Banjul) Charter on Human and Peoples' Rights (1981). Jackson Preece argues that except a few international documents, the Cold War period is a period of silence in terms of minority rights.[83]

The period which came with the collapse of Berlin Wall and the dissolution of the USSR, carried significant changes to the international order. The last empire, the USSR dissolved and many new nation-states emerged in

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[80] Article 27 of the International Covenant on Civil and Political Rights (1966) available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

[81] They give the example of France which denies the existence minorities in their territories. Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.13.

[82] The related document can be found in this web-site http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111?Opendocument

[83] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.88.

Balkans and Central Eastern Europe (CEE). These newly-independent states contained a lot of minority populations which remained within their boundaries after the dissolution of the USSR and the seperation of federal states such as Czechoslovakia and Yugoslavia. The chaos in the region mooted the threat of ethnic conflicts emanating from the injustices made in the field of minority rights.[84] In such an environment which is on the verge of new uprisings and even ethnic cleansings (!), the main international organizations such as the UN, the CSCE (after 1995 OSCE), the Council of Europe, the NATO and the EU took action in order to set some international documents that regulate minority rights in the post-Cold War period.

Concluding this chapter, some points should be highlighted briefly. In terms of conceptual and theoretical perspective, the minority concept has no universal definition which is valid for every circumstance and recognized by all nation-states or international organizations. Although it features some common elements (objective, subjective, number and time conditions), Gudmundur Alfredsson claims that minority definition acquires its shape through the practices of states and international organizations in the international conjunture.[85] Although states and international organizations recognize the existence of minorities de facto, they hesitate to make an exact definition which will be binding on them and impel them to take necessary precautions on minority rights issue. They also refrain from giving them positive rights which may enable them to secede in order to achieve their self-determination. Kymlicka argues that the arise of minority rights is the consequence of the nation-building process of nation-states.[86] States policies are designed in order to please majority of the population, therefore minorities are under an implicit pressure enforced by the state. It is thought that they are going to lose their specific features and be part of majority through

[84] Jennifer Jackson Preece, "Minority rights in Europe: from Westphalia to Helsinki", *Review of International Studies,* Vol. 23, No.1, 1997, pp.88.

[85] From the Report submitted by Prof. Gudmundur Alfredsson at European Commission for Democracy Through Law (Venice Commission), Round Table on Non-Citizens and Minority Rights on 16 June 2006 in http://www.venice.coe.int/docs/2006/CDL(2006)053-e.pdf

[86] Will Kymlicka, "Nation Building and minority rights: comparing West and East", *Journal of Ethnic and Migration Studies,* Vol. 26, No. 2, 2000, pp.200.

assimilation. However, the increase in the "right consciousness", "democracy" and "demographic situation of minorities" disproves this thought.[87]

In terms of historical development, as it is put forward in the second part of the Chapter I, minority rights' history is the history of congresses, conventions, treaties and declarations. Before the 19th century, minority rights were in the scope of bestowed rights which were given by a prince to his people coming from different religion or sect. The Ottoman Millet system was the primary example of this application. On the other hand, in the 19th century religious affiliations are replaced by national inclinations. The rise of nationalism and nation states reoriented the conduct of minority rights. In this period, the realm of identification changed from religious affinities to national affinities whose base is composed of a "historical homeland, common culture, customs, traditions, common language and religion, social and economic environment".[88]

At the beginning of the 20th century (the League of Nations period), the liberal idealism is the ideology that embodies the introduction and execution of minority rights. The system created by the League of Nations is ineffective in the implementation of necessary norms and rules since the member states are reluctant to move together or stand still when a violation of minority rights takes place. Not in terms of implementation but in the scope of formulation of a minority and minority rights literature, the inter-war years and the League of Nations are very efficient platforms.

Since the results of World War I plot the course of World War II, the system which is established in the environment of WWI can not continue in the circumstances of the post-WWII period. The new political stream is not liberal idealism but concrete political realism in this post-WWII period and this composes the main differences between the two eras. The main differences between post-WWI and post-WWII period can be listed as; firstly, the international order which comes into being after WWII, changes the borders of

[87]Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002.pp.7.

[88] Anthony D. Smith, 1991, *National Identity.* UK: Penguin Books, pp.14.

many states in Europe creating new minority groups in these states; secondly, the continent is not strong to bear new ethnic cleansings or ethnic conflicts in the region so the new system intends to secure status-quo by disposing any ethnic conflict; thirdly, in order to block the debate on minority rights which may be the reason of any ethnic conflict, the minority rights are taken out of collective rights framework and included under the framework of individual human rights. In this way, the discourse of the minority rights is altered. The new motto of post-WWII period on minority rights is non-discrimination instead of protection of minorities. The next chapter will deal with the post-Cold War period and the role of main organizations such the UN, the CSCE (OSCE) and the Council of Europe on the evolution of minority rights. Furthermore, the role of European Union in the determination and implementation of minority rights and the main framework of protection provided by international law and EU law to minorities is going to be mentioned in the next part.

CHAPTER II

II. The Progress of Minority Rights in the Post-Cold War Period Within the Framework of the CSCE (OSCE), the CoE and the EU

The Chapter II will analyse the progress of minority rights in the post-Cold War period within the framework of the CSCE (OSCE), the CoE and the EU. It will observe the implementation of minority rights within the European Union region through the main tools of the EU, namely the Copenhagen criteria and the conditionality principle. In this plan, firstly the main CSCE (OSCE) documents which display the development of minority rights in the post-Cold War period will be briefly put forward and the most important organ of the CSCE (OSCE), the High Commisioner on National Minorities will be introduced. Secondly, the role of the Council of Europe on the standardization of the minority rights will be examined in the context of the Framework Convention on National Minorities (FCNM). Lastly, the legal and policy framework of the minority rights in the European Union will be mentioned and the implementation of the Copenhagen criteria will be under scrutiny in the final part of the chapter. Earlier, the debates over the definition of minority concept and the history of minority rights have been illustrated. Lack of a universal definition of minority concept and the reflection of this ambiguity upon the historical development of minority rights are the main reasons of the deficiencies in the implementation of minority rights. In this chapter, this ambiguity and the implementation problems will be examined once again and the approach of the EU to its candidate states in the enlargement process will be examined. The aim of this chapter is to prove that the ambiguity in both concept and scope of minority rights makes implementation and monitoring unfair causing the claims of double standards in the enlargement process of the EU.

II. A. The Progress of Minority Rights in the Post-Cold War Period Within the Framework of the CSCE (OSCE), the CoE and the EU

This part of the chapter will examine the minority rights issue in the context of international organizations within European region in the post-Cold war period and will pay attention to the perspective of the European Union in order to understand the situation of the minority rights in the EU legal and policy framework.

The transformation which comes with the end of the bipolar world generates crucial changes in the geographical, mental, social and economical boundaries of Europe. The developments that are experienced in the context of minority rights are results of these previous changes. The importance given to minority rights in this period can be described as the effort to cope with this transformation which may induce new uprisings and ethnic conflicts in the region. The past experiences also burden the responsibility of not repeating the old mistakes and creating a new dimension in the minority rights approach. According to Tove Malloy, the discussion on minority rights in the post-Cold War period is quite different from the past experiences. The theoretical debate on minority rights regime extends in this period and encloses "moral and political philosophy as well as political and international relations theory".[89] This new discourse is shaped by "threefold typology" which are respectively security, democratization and integration.[90] Firstly, in the security dimension, there are the CSCE (OSCE), the UN and the NATO which regard the minority rights issue as a threat for the security and stability of Europe. Secondly, in the democratization dimension, the Council of Europe, its Parliamentary Assembly and the UN's General Assembly see the direct relationship between the transition to democracy and respect for minority rights. These bodies try to establish a link between democratization process and the determination and implementation of minority rights. Thirdly, in the integrationist dimension which joins the discourse lastly, the main figure is of course, European Union.

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[89] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.3.

[90] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.3.

Tove Malloy argues that role of the EU in terms of setting legal stadards regarding minority rights is weak but the Union deals with the cases related to protection of minorities in its legal organs.[91] In the picture that is drawn by Malloy, it is seen that security and democratization bases of this threefold typology has contributed to the legalization of minority rights with documents, pacts and conventions more than integration base. However, this is a relative assumption since the binding effect of the CSCE (OSCE) and the CoE is open to discussion. Below, the same order will be followed in order examine the CSCE (OSCE), the CoE and the EU in the context of minority rights.

II. A. 1 The CSCE / OSCE

The security dimension of the Malloy's threefold typology regards that it is the CSCE (OSCE) which shows concern for minority rights earlier than the Council of Europe and European Union. This can be delineated as a reflex action for the threat of possible ethnic conflict in the region. The primary feature of the post-Cold War period is that minority rights are shaped by the notion of security and protection of minority rights rather than ethical consideration of minority rights. This understanding causes ad hoc solutions come on the scene instead of long lasting policies.

The CSCE, also known as Helsinki Process is the primary form of the OSCE which deals with minority issues since 1970s. Helsinki Final Act (1975) constituted a turning point in terms of human and minority rights in a period when a rapprochement occured between the two sides of the bipolar world. After the end of Cold-War, at the beginning of the 1990s, the synergy created in this document caused the establishment of the CSCE and the conference was turned out to be an organization called Organization for Security and Co-operation in Europe (OSCE) in 1994.[92] The main feature of the OSCE is that it is an organization which interlinks the stability of implementation and

[91] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.3.

[92] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.159.

protection of human rights with the continuity of peace and security in international order. Thornberry and Martin Estébanez argue that in the perspective of the OSCE, security and stability of Europe depends on promotion and protection of human rights as well as containment of some economic and political factors across the region.[93] For Thornberry and Estébanez, the main features of the OSCE's approach towards minority rights can be summarized in five clauses. Firstly, the OSCE established the linkage between the protection of minorities and the preservation of peace and security in the region. This feature plays an enourmous role in the perception of minority rights by nation-states. The attitude of member states towards minority rights is determining for avoidance of ethnic conflicts in the OSCE region. Secondly, the OSCE members recognized that minority question was no longer only a national question but an international one which requires international concern. Although intervention into internal affairs of a state is still a controversial issue, the legitimization of international scrutiny over the implementation of minority rights is achieved by courtesy of the OSCE. Thirdly, The OSCE introduced new norms and standards in the context of minority rights. These new norms and standards which extend the scope and the level of minority rights in this period, became effective in the prospective decisions and legal documents of the UN and the CoE. Fourthly, the OSCE carried the platform of discussion regarding minority right onto a permanent base. The details on High Commissioner on National Minorities will be given further on. And lastly, the OSCE documents were not binding on participating states. Thornberry and Estébanez claim that binding effect of the OSCE documents emanates from the perspective which is put forward by the OSCE itself. The security perspective is the most important reason which makes the documents of OSCE credible among states. The states which understand the negative effects of ethnic conflicts upon the peace of European region respect the clauses of the OSCE documents related to minority rights.[94]

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[93] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.17.

[94] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.17-18.

The CSCE / OSCE Documents

Patrick Thornberry and Maria Amor Estébanez list the documents related to the CSCE (OSCE) in a chronological order like this; the 1975 Helsinki Final Act, the 1989 Vienna Concluding Document, the 1990 Document of the Copenhagen Conference on the Human Dimension of the CSCE (OSCE Copenhagen Document), the 1990 Charter of Paris for a New Europe, the 1991 Geneva Meeting of Experts on National Minorities, the 1991 Moscow Meeting and the Concluding Document of the 1992 Helsinki Follow-up Meeting.[95]

The 1975 Helsinki Final Act does not make any definition regarding minority term and beside leaves the judgement of minorities' definition and recognition to the states. The principle VII, Paragraph 4 states that "The participating States on whose territory national minorities exist …".[96] Although the Helsinki Final Act is an important step in this process, it fails to introduce a new dimension in the minority rights reflecting the conjuncture of Cold War. The Vienna Follow-Up Meeting (1986-1989) takes place in the atmosphere of forthcoming transformation and restates what is emphasized in the Helsinki Act adding the conservation and promotion of the minority identity to the non-discrimination principle. Among these documents, the 1990 Copenhagen Document can be ranked as the most noteworthy one and therefore, needs special attention. The prominence of the Copenhagen Document comes from the scope of minority rights displayed by the document. The Chapter IV, Paragraphs 30-40 of the Copenhagen Document are belong to the provisions of minority rights ranging from language rights to institutional rights. For instance, the paragraph 33 enables the promotion of the identity of national minorities, the paragraph 32.1 guarentees the use of their mother tongue and the paragraph 32.2 gives them the right of establishing and maintaining their

[95] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.17.

[96] 1975 Helsinki Final Act, Principle VII, Paragraph 4. "The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere." available at http://www.hri.org/docs/Helsinki75.html

own educational, cultural and religious institutions. According to Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, other important points of the Copenhagen Document can be summarized in three clauses. Firstly, according to the Copenhagen Document , it is no longer under the authority of state to define minority population living in its territory. This decision, decision to be inside or outside of a minority group, is left to the will of individual. As Neukirch, Simhandl and Zellner put forward, the paragraph 32 of the Copenhagen Document states that "to belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such voice"[97] Secondly, another significant point which comes with the Copenhagen Document is the realization of the importance given to minority rights preserving peace and stability of the CSCE region. With the Copenhagen Document, states began to see what the minority rights mean for the peace of region. For this reason, they accepted the necessity of positive rights for the protection of minorities on condition that these rights would not contradict with the sovereignity of state and the rights of majority.[98] Thirdly, different from other documents the impact of the Copenhagen Document was very evident because it clearly displayed the relationship between security and protection of minorities. Furthermore, it constituted the base of another major minority document which is called Framework Convention on National Minorities (1995) in spite of the fact that it had no obligatory status upon participatory states.[99]

The Charter of Paris for a New Europe which is signed in the same year, indicates the strong mind of states to accept the place of minorities in

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[97] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.160.

[98] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.24.

[99] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.160.

their societies and to perceive the meaning of a multicultural society.[100] Still, the contribution provided by the Copenhagen Document to the minority rights is so huge that it can not be compared with the Charter of Paris for a New Europe. The following meeting of the CSCE is held in Geneva in 1991. The decisions of Geneva Meeting can be called unprogressive when it is compared to the Copenhagen Document since the provisions of the Geneva Meeting takes the right of 'identifying himself / herself as minority' from individuals. The Chapter II, Paragraph 4 of the Geneva Document states that "not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities" which means that states still have the last word on the identification of their minorities.[101] As a country which denies the existence of any minority groups within its territory, France constitutes a major example for the states which avoid to define their minorities. The main concern of these states is not encouraging their minority groups for secession while granting them some rights.[102] Different from the Vienna Meeting, the 1991 Moscow Meeting brought some innovations to the implementation mechanism of minority rights. However, its effect was weak. Florence Benoit-Rohmer states that "it is understood in this meeting that the process of forging a consensus around rules for the protection of minority groups had reaced its limits".[103] In the 1992 Helsinki Conference, the High Commisioner on National Minorities which will be evaluated in detail below, was founded. The 1992 Helsinki Document was assumed as an end of an era in which standard-setting process on national minorities completed its progress and reached its limits. Neukirch, Simhandl and Zellner state that "neither the concluding document of the

[100] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.25.

[101] The Report of Geneva Meeting can be found at http://www.minelres.lv/osce/gene91e.htm

[102] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.26.

[103] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.26.

Lisbon Summit (1996), nor the documents adopted at the İstanbul Summit (1999) provided new minority provisions".[104]

The High Commissioner on National Minorities (HCNM)

The High Commisioner on National Minorities which is established in 1992 Helsinki Meeting by then CSCE, takes the implementation of minority rights and protection of minorities as its main goal. The High Commisioner in the period between 1993 and 2001 is Mr. Max van der Stoel who also plays a great role in the formation of the Hague, Oslo and Lund Recommendations. The mission has been taken over by Mr. Rolf Ekeus since 2001. The mission of the High Commissioner is to observe the OSCE region in terms of ethnic conflicts and to prevent any dispute before it starts. This is called "early resolution of ethnic tensions" and urges the High Commissioner to take necessary precautions for the prevention of ethnic conflicts.[105] The HCNM is the outcome of the CSCE (OSCE)'s endeavours to cope with ethnic conflicts through institutions on a constant basis. The Section II, Paragraph 3 of the 1992 Helsinki Document states the main task of HCNM as such:

> the High Commissioner provides early warning and, as appropriate, early action, at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating states.[106]

Despite this article states the mission of the HCNM as "early action", the main task of the HCNM is indeed "early warning" in the framework of observing the region, speaking to government officials regarding to minority issues and collecting information.

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[104] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.163.

[105] The related information can be reached at http://www.osce.org/hcnm/13019.html

[106] The related information can be found in the 1992 Helsinki Document available at http://www.osce.org/documents/mcs/1992/07/4046_en.pdf

In order to achieve this mission, the HCNM uses three instruments respectively, "specific recommendations directed to governments, general thematic recommendations, miscellaneous projects and programmes".[107] Firstly, the specific recommendations for governments can be in the form of suggestions which aim to change a policy regarding minority rights or to pass a legislation in order to improve the situation of minorities. The main reference points of the HCNM while it is promoting minority rights are the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Secondly, the thematic recommendations target the specific areas in the minority rights such as cultural rights, linguistic rights and educational rights. And lastly, in terms of projects and programmes, the HCNM exports education and training programmes in order to ease the works of states on the issue of operating in a multiethnic society.[108]

In order to see the functionality of the HCNM in a specific case, it is rational to observe the role of the High Commisioner in the minority problem of Slovakia. The role of the HCNM in Slovakia covers the problem of Hungarian minority within Slovak borders. Since the mission of the HCNM is early resolution, it firstly tried to deal with the issue of Hungarian minorities in a open discussion including experts on minority issue. The interference of the HCNM to this issue took place in a period which tension between Slovaks and Hungarians increased a lot. The adoption of State Language Law in 1995 and the policies of the Mečiar government tighten the relationship between Hungarian minority and Slovak state. In this period, the HCNM played a great role with the EU and the CoE in the improvement of relations between two sides. With the contributions of the HCNM, after the end of Mečiar period Hungarian minority got the chance of entering into Slovak parliament and the new law regarding the minority languages passed in 1999.[109] As it is seen from

[107] The related information is taken from the official web-site of the HCNM available at http://www.osce.org/hcnm/23628.html

[108] These informations can be found in the official web-site of the HCNM available at http://www.osce.org/hcnm/23628.html

[109] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues

all these developments, the HCNM supported Slovakia in its way towards European Union membership by pushing it to take concrete steps, to communicate with the other party and to form a multi-ethnic parliament structure.

Consequently, as a mechanism of the OSCE, the HCNM also regards that the maintenance of peace and security depends on the protection of minority rights in the long run. In spite of the fact that the HCNM recommendations are not legally binding, the approach of the HCNM towards minority question from the security perspective of the OSCE made it a prestigious foundation in the eyes of parties. The HCNM used mostly the standards and norms of international documents such as the ICCPR (1966) while it was approaching to the ethnic conflicts. Neukirch, Simhandl and Zellner argue that the prominence of the HCNM comes from the effort it spent to internationalize the potential ethnic conflicts at the earliest stage and to transform the ambigious norms and standards into action in order to solve the problem.[110]

II. A. 2. The Council of Europe (CoE)

The Council of Europe (CoE) which was founded in 1949, aims to protect and promote the common principles of Europe such as democracy, respect for human rights and fundemental freedoms and rule of law emphasized in the major European documents such as the European Convention on Human Rights.[111] After the WWII, the rebuilding of the European state-system required to take some precautions on the issue of human rights and protection of minorities. All the human rights violations experienced in the WWII period obliged the establishment of an organization which will

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(eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.171.

[110] Claus Neukirch, Katrin Simhandl and Wolfgang Zellner, "Implementing Minority Rights in the Framework of the CSCE/OSCE", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.176.

[111] The related information can be found in the official web-site of the Council of Europe available at http://www.coe.int/T/e/Com/about_coe/

enhance the democratic structure of Europe and secure the individuals against these kinds of infringements. The Council of Europe which accounts for the democratization branch of the Tove Malloy's threefold typology[112] aims; firstly, to protect common principles of Europe such as human rights and democracy; secondly, to enhance cultural diversity of Europe; thirdly, to fight against discrimination; and lastly, to create a common platform in order to achieve these goals.[113] As it is seen from its objectives, the Council of Europe deals with the minority rights within more humanistic and democratic perspective depending on principles and norms. This thesis argues that the approach of the Council of Europe towards national minorities is shaped by two perspectives. The first approach is in a European perspective and defends that national minorities and diversity of the European nations indicate the richness of the continent that should be protected and preserved. Second approach is universal and claims that the rights of national minorities are part of human rights which are crucial for peace and stability in international system. In the first point of view, the Council of Europe regards that ethnic, religious, linguistic and cultural diversity of European society is a value that should be first protected and then enhanced by legal norms. Formation of the dialogue among different cultures and creation of a tolerant atmosphere are the first steps in order to turn this diversity into energy in the political dynamics of the continent. The policies devoted to minority rights should not be composed of only protection but promotion of the identities of national minorities should also take part in these policies. Concisely, the identity and culture of the national minorities should be preserved and promoted by creating necessary conditions. In the second point of view, the Council of Europe regards that the protection of national minorities holds a place in the heart of security and democratization of Europe and therefore, implementation of minority rights

[112] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.3.

[113] The related information can be found in the official web-site of the Council of Europe available at http://www.coe.int/T/e/Com/about_coe/

should be supported by solid standards and complemented by strict monitoring.[114]

The institutions of the Council of Europe play a crucial role in its working procedure. While the Committee of Ministers is responsible from the execution of recommendations and programmes upon participatory states, the Parliamentary Assembly moves as a advice body which works in the preparation of these recommendations and programmes.

There is an undeniable contribution of the Council of Europe to the formation of legal norms and principles on the protection of the national minorities after the Second World War until today. Basically, the European Convention Human Rights (1950), European Charter for Regional or Minority Languages (1992), the Framework Convention on National Minorities (1995) are the documents which the Council of Europe presented to the literature of minority rights. The Framework Convention (FCNM) which constitutes a source of inspiration for subsequent international documents on minority rights is critically important among these Council of Europe documents.

The European Convention on Human Rights which was adopted by the Council of Europe on November 4, 1950 was designed to protect human rights and fundemental freedoms in international system. By courtesy of the ECHR, the Europen Court of Human Rights was established. The Court of Human Rights initiated the application of litigating an international organization for human rights violations. This is an important dimension in the implementation of the norms of human rights since the judgements of the Court are also binding. In the Article 14 of the ECHR, it is stated 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, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[115]

[114]The related information can be found at http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_(monitoring)/1._texts/H(1995)010%20E%20FCNM%20and%20Explanatory%20Report.asp#TopOfPage

[115] Article 14 of the ECHR available at http://www.hri.org/docs/ECHR50.html

This non-discrimination principle is an important reference point for future formulations.

The European Charter for Regional or Minority Languages (ECRML) which was granted by the Council of Europe in 1992 in order to protect and promote the regional and minority languages, is the first sign of the CoE initiatives increasing in the post-Cold War period. The movement which starts with the Framework Convention on National Minorities was firstly originated with the ECRML which aims to enhance the European cultural heritage and diversity through protecting regional and minority languages. Both the definition of the minority languages and the implementation of the Languages Charter is crucial to observe the approach of the CoE towards minority rights.

Firstly, the definition of the minority languages is made in the Article 1 of the Languages Charter. According to this definition, minority language should be "traditionally used" in a "given territory" and "different from the official language of the state" it should be used by "numerically smaller population".[116] This approach reflects the viewpoint of the CoE in definition of the minorities. For the CoE, the minorities should be citizens of the country in order to be called minority of that country. The languages of immigrants and the different dialects spoken in the country can not be recognized as minority languages.[117]

Secondly, the implementation of the ECRML also carries some specific properties which reflect some characteristic points of the general implementation of the charters and the conventions on minority issues. The Charter presents à la carte menu for signatory states which they can choose a minimum of 35 different engagements from a total of 68.[118] Since each regional and minority language constitutes a special case, the CoE does not sanction the same engagements for every state and allow them choose the ones

[116] The related definition can be found in the European Charter on Regional and Minority Languages in http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm

[117] Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.26.

[118] The related information was taken from http://www.coe.int/T/E/Com/Files/Themes/Minority-languages/default.asp

which are convenient for their cases. The flexibility of the implementation procedure is thought for both the continuation of the system in the long run and the limits of the state applications. The monitoring procedure takes place in two stages, first in the state level and then in the supranational body called the Committee of Experts.[119]

The Framework Convention on National Minorities (FCNM)

It is stated by the Parliamentary Assembly of the CoE that there is a need for a document which specifically deals with the minority rights and is complementary to the ECHR. Upon this need, the Parliamentary Assembly presented the Recommendation 1201 in 1993 and demanded the Committee of Ministers to adopt an additional protocol to the European Convention on Human rights.[120] The Framework Convention on National Minorities was adopted on 1 February, 1995. FCNM follows a method depending on programme-type provisions. This method aims to achieve implementation of minority rights by the precautions taken in the nationwide firstly and in the international arena secondly. Florence Benoit-Rohmer states that this strategy which makes states move more comfortably in the area of minority rights was adopted on purpose in order to increase participation of states to the activities of the HCNM.[121]

The characteristics of the Framework Convention which make it an important document for minority rights can be summarized as its legality and its flexibility. Firstly, the Framework Convention is the legal form of the 1990 CSCE (OSCE) Copenhagen Document. The norms and standards which are formed under the Copenhagen Document at beginning of the post-Cold War period are so comprehensive that the Council of Europe determines to compose a legal framework which will bond states under these norms and standards.

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[119] The related information can be found at http://www.coe.int/T/E/Com/Files/Themes/Minority-languages/default.asp

[120] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.36-37.

[121] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.39.

However, as a legal document which defends preservation and promotion of minority rights, FCNM operates depending on the limits of territorial integrity and states sovereignity.[122] The programme-type provisions of the FCNM take place in a legal context which is accepted by the participating states with the ratification of the FCNM. Although the FCNM attributes a legal responsibility to the states, the limits of this responsibility is drawn depending on the rule of law, territorial integrity and the sovereignity of the states. In terms of scope and level, the minority rights granted under the framework of the FCNM are the most comprehensive rights among other minority documents, however, they have still deficiencies in terms of saction power. In the issue of methodology, the FCNM does not grant positive rights to minorities but gives the responsibility of protection to states. The rights given to minorities are characterized in a negative form rather than positive.[123] It is the duty of state to protect and promote the identity of the minority, a minority group can not ask for such a demand. Benoit-Rohmer claims that this negative rights approach prevents the healthy implementation of minority rights because minorities can not question the state policies and call for their rights. The most important of all, this kind of approach impedes the internalization of minority rights by the legal systems of states.[124] This ascertainment is very crucial since the law is a contract between the individual and the state in order to secure peace and canon within the borders of the state and both sides have duties and responsibilities in order to achieve this harmony. However, the responsibility taken by the states unilaterally in the lack of clear definition of minority is not sufficient to integrate the international standards into their internal legal system. Moreover, the implementation mechanism is not expected to work properly in an atmosphere where the rights are developed as a gift rather than a

[122] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.40.

[123] There is an exception to these negative wording in the Section I, Article 3 of the FCNM which states that "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice." available at http://conventions.coe.int/treaty/en/Treaties/Html/157.htm

[124] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.42.

right. On the other hand, for the international law, it is very recent development to accept the individuals as its subject because the subject is traditionally nation states for international law. This fact also constitutes one of the impediments before the direct application of minority rights.

Secondly, the flexibility and less-binding nature of the FCNM is the reason of its easily adoption. The first task of the FCNM is to make states join the FCNM and to achieve a wide range participation. For this purpose, the FCNM offers a formula of minority rights which is applicable and appropriate for every type of minority groups in these states. Since there is no universal definition of minorities, the provisions presented by the FCNM is flexible and is designed to cover the characteristics of minority groups in different states. It is also crucial to leave a space for the participating states in the implementation of the provisions because they are relunctant to ratify this kind of conventions in fear of losing their sovereignity and territorial integrity. This is why all legal and political instruments on the issue of minority rights are ambigious and flexible because they are documents prepared by the governments which regard sovereignity and territorial integrity of the nation states as the guarantee of peace and order in the world.

The FCNM which encounters the problem of the definition of minority concept, uses four main criteria, namely religion, language, traditions and cultural heritage in order to specify minority groups. However, the last word on the determination of the minorities is left to the states. In other words, not every group which carries these characteristics can be accepted as minority group. It is under the authority of the state to define a group as national minority since there is no universal and recognized definition of minorities.

On the issue of monitoring mechanism, the FCNM has two organs namely, the Committee of Ministers and advisory committee which is composed of experts experienced in the protection of minorities. According to Benoit-Rohmer, the healthy monitoring procedure needs clear norms and

standards and a schedule for the implementation of these norms and standards.[125]

Consequently, in spite of the fact that the Framework Convention constitutes the most important legal document which is referred by other international organizations such as the European Union, the flexible nature of the FCNM decreases its effect on the states. The wording of the FCNM, the ambigious expressions such "where necessary", "adequate measures"[126], the programme-type provisions, the space left to the states in the implementation of standards weaken the obligations of the FCNM upon the states. The general conclusion which can be assumed by the provisions, the implementation and the monitoring of the Framework Convention is that the bindingness of the FCNM depends on the states' abilities, willingness and limits at the end of the day.

Finally, although the OSCE and the CoE play an important role in the development of minority rights in the international community, the lack of definition, the lack of standards and the lack of data prevent the effective implementation and monitoring of these rights. At this point, it should be emphasized that the case of minority rights needs much more public attention in order to overcome these difficulties, therefore more non-governmental groups should participate into this issue. As Maria Pérez-Solla states "any process lacking a role for the main stakeholders is designed to fail".[127]

II. A. 3. The European Union (EU)

According to Tove Malloy's three-fold typology, the OSCE follows security path, the CoE follows democracy path and the European Union

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[125] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.43.

[126] Section II, Article 4 of the FCNM states that "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities." available at http://conventions.coe.int/treaty/en/Treaties/Html/157.htm

[127]Maria Fernanda Pérez-Solla, " What's Wrong with Minority Rights in Europe" available at http://www.eumap.org/journal/features/2002/nov02/minrightsineu (21 July 2007)

follows integration path while approaching the minority rights. The OSCE accepts the importance of the protection of minorities for the safeguard of security in the region and the Council of Europe envisages the correlation between the democratic order and the respect for minority rights. The EU's perspective embraces both approaches and perceives respect for and protection of minority rights as one of the main tasks that should be accomplished before entering into the EU.

The EU's perspective towards minority rights will be examined under the legal and policy framework of minority rights in the EU and the implementation of the Copenhagen Criteria and the Conditionality Principle. This part of the Chapter II argues that in terms of both legal and policy framework, the provisions generated by the European Union in order to protect minorities carry different characteristics inside and outside of the Union. There are deficiencies in the implementation of the legislation by the member states inside the EU. In addition to this duality at the internal and external level and the deficiencies in the implementation process, the ambigious norms and standards on minority rights weaken the credibility of the European Union in the Enlargement Process.

Legal and Policy Framework of the Minority Rights in the EU

The European Union generates both legal decisions and policies in order to improve the situation of minorities. In this part, firstly legal decisions will be put forward analyzing the basic EC treaties, and secondly the policies developed in this framework will be examined.

In order to examine the basic EU Treaties in terms of minority rights, we should start from the 1951 Treaty of Paris firstly. Since the EU was established as the European Coal and Steel Community at the beginning, there was no mission of this organization like protecting minorities. The form of the ECSC was economical rather than political. However, the Treaty of Rome which founded the European Economic Community in 1957 touched on two fundemental principles. These priciples were also in harmony with the economic character of the organization. One was about the freedom of

movement for workers and self-employed persons (Article 48-58 of the Treaty of Rome), the other one was about the prohibition of any discrimination on grounds of nationality (Article 7, 48, 220) or sex (Article 119).[128] These rights have been also in parallel with the economic objectives of the organization and have been designed in order to achieve equality among workers in their workspace.

The Single European Act which was adopted in 29 June 1987, constituted the first legal document of the European Community touching on human rights. The SEA declared that it had a mission like achieving the coherence between the EU law and human rights and it also asserted the role of human rights and fundemental freedoms in the protection and promotion of democracy.[129] In thirty years between the Treaty of Rome and the Single European Act, both the character and the structure of the European Community and also the degree of importance given to human rights in international relations had changed. The period in which the Single European Act was released, was also the eve of great transformations both in Europe and world in terms of international relations.

The Treaty of Maastricht on European Union (TEU) which entered into force 1 November 1993, does not make any reference to minority rights. The Article F of the Treaty of Maastricht states that:

> The Union shall respect the national identities of the member states and fundemental freedoms guranteed by the European Convention on Human Rights (ECHR) and constitutional traditions of the Member States.[130]

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[128] Kyriaki Topidi, "European Union Standards and Mechanisms for the Protection of Minorities and the Prevention of Discrimination", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.183

[129] The full text of the SEA can be found in http://ec.europa.eu/economy_finance/emu_history/documents/treaties/singleuropeanact.pdf

[130] The full text of the Maastricht Treaty can be found in http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001

The amendments made in the Treaty of Amsterdam, highlighted the significance of the human rights. The Article 6 which replaced the Article F of the Maastricht Treaty announces in its paragraph 1 that "the principles of the European Union common to all member states are liberty, democracy, respect for human rights and fundamental freedoms and the rule of law" and in the paragraph 3, it stresses "the respect for national identities of the member states".[131] The Article 151 of the EC Treaty (ex-Article 128 of the TEC) declares that "the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures".[132] Although these provisions display the importance given to human rights and cultural diversity, they do not mention any sanction against non-fulfilment. Kyriaki Topidi stresses that the ony article which invites the states to be serious about the compliance with the provisions is the the Article 7 of the Amsterdam Treaty (ex Article F.1). This article impends member states to suspend their rights within the Union when such a infringement occurs.[133]

According to Kyriaki Topidi, the legislation and policies generated by the EU for protection of minorities can be examined at two levels. The first level is the internal level which deals with minorities residing within EU territory. The second one is the external level which deals with minority issues between the EU and the third countries.[134]

The same separation is also made by Patrick Thornberry and Maria Amor Martin Estébanez who claim that there are two spheres in the

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[131] The full text of the Amsterdam Treaty can be found in http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001)

[132] The consolidated version of the TEC available at http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html

[133]Kyriaki Topidi, "European Union Standards and Mechanisms for the Protection of Minorities and the Prevention of Discrimination", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.183.

[134] Kyriaki Topidi, "European Union Standards and Mechanisms for the Protection of Minorities and the Prevention of Discrimination", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.186-187.

implementation of minority rights within the European Union. They also claim that "it has been in the area of external relations that a more long-standing and solid minority policy has been developed" and indicate the Europe Agreements and Association Agreements as the evidences of this application. Another point which is highlighted by Thornberry and Martin Estébanez is the difference between internal and external policies in terms of scope and nature. For instance, the minorities of Central Eastern Europe are regarded as seperate nations whose rights should be under the protection of collective rights, however the minorities of Western Europe are seen as the cultural motive of the society and their rights are examined under the framework of individual rights.[135] Gaetano Pentassuglia also argues that there are two levels of the EU approach towards minority rights. At the internal level, the emphasis is on equality and non-discrimination rather than minority rights. At the external level, "the core of minority rights activities lies in a range of mechanisms designed to facilitate and/or consolidate transition towards democracy by Eastern European Countries".[136]

It is vital to look at the legislations which target inside and outside of the Union in order to examine the difference between internal and external level of European Union's approach towards minorities.

In terms of internal policy, the Union establishes its legislation on the base of non-discrimination, respect for diversity and equality and as it is mentioned above those rights are in the form of individual rights which are far from group rights recognizing minorities as a seperate nation. The internal legislation of the Union on minority rights can be summarized as the ECJ rulings, the Article 13 of the EC Treaty (amended by the Treaty of Amsterdam), the three legislations which are prepared under the framework of Article 13, namely the Directive 2000/43/EC, the Directive 2000/78/EC and

[135]Patrick Thornberry & Maria Amor Martin Estébanez, 2004, *Minority Rights in Europe*, Strasbourg: Council of Europe Publishing, pp.19.

[136]Gaetano Pentassuglia, "Minority Rights, Human Rights: A Review of Basic Concepts, Entitlements and Implementation Procedures Under International Law", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp.18.

the Council Decision on 27 November. The Articles 20-22 of the Charter of Fundemental Rights can be counted as the last developments regarding minority rights in the EU legislation.

One of the amendments made in the Treaty of Amsterdam is the Article 13 which "enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".[137] The European Council which was held in Tampere on October 15-16, 1999 charges the European Commission to take necessary steps in order to combat discrimination under the framework of the Article 13. The Commission reached three important results after this Council. These results are the Council Directive 2000/43, the Council Directive 2000/78 and the Council Decision of 27 November 2000 establishing a Community action programme to combat discrimination for 2001 to 2006.

Firstly, the Council Directive 2000/43 asserts the fighting against discrimination based on racial or ethic origin as one of the main objectives of the EC. The Employment Guidelines 2000 (European Council in Helsinki, 10-11 December 1999) which lies in the Directive 2000/43, stresses the need to fight against discrimination especially in the field of labour market. The guideline argue that this is the first rule of having a socially integrated and harmonius labour market.[138]

Secondly, the Council Directive 2000/78 aims to achieve equal treatment in employment and occupation. The Directive affirms that the discrimination based on religion or belief, disability, age or sexual orientation in the field of employment and occupation prevent the realization of the aim of high level employment and social protection. On this account, the discrimination based on these areas should be prohibited.[139]

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[137] The Article 13 of the Amsterdam Treaty available at http://europa.eu/scadplus/leg/en/lvb/a10000.htm#a10005

[138] Official Journal L 180, 19.7.2000 available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf

[139] "In paragraph 11, it affirms that discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the

Thirdly, the Council Decision on 27 November 2000 initiates a Community action programme in order to fight against "direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation".[140] As a result of these texts, the ocular changes and improvements have been observed in the EU legislation regarding non-discrimination in the recent period.

However, as the Commission put forward in the framework strategy for non-discrimination and equal opportunities for all, there are some member states which do not adopt these legislations (Directives 2000/43/EC and 2000/78/EC) into their legal systems. Upon these developments, the Commission initiated an operation against infringements and published a report regarding this issue in 2006.[141]

The last link of the legislation on minority rights inside the EU is the Charter of Fundemental Rights of the European Union. The Charter which is announced in December 2000 in Nice contributes to this legislation with its Articles 20, 21 and 22. Respectively, the Article 20 declares that "everyone is equal before law", the Article 21 prohibits "any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion" in paragraph 1 and "any discrimination on grounds of nationality" in paragraph 2.[142] Finally, the Article 22 proclaims that "the Union shall respect cultural, religious and

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free movement of persons. It continues in paragraph 12 that to this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation."
Official Journal L 303 of 02.12.2000 available at
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf

[140] Official Journal L 303 of 02.12.2000 available at
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_303/l_30320001202en00230028.pdf

[141] "A framework strategy for non-discrimination and equal opportunities for all" available at
http://europa.eu/scadplus/leg/en/cha/c10313.htm

[142] The Charter of Fundemetal Rights of the European Union available at
http://www.europarl.europa.eu/charter/pdf/text_en.pdf

linguistic diversity".[143] These three articles encapsulates the scope and the perspective of EU legislation on minority rights briefly. The main headings which the European Union deals with the minority rights internally are the equality, non-discrimination and respect for diversity. However, these provisions do not recognize minorities within the EU as a separate nation and grant them group rights. These provisions are for the preservation of the 'so called' harmony inside the EU without jeopardizing the authority of member states over their territory. However, the deficiences and ambiguities in the standard-setting and the implementation of minority rights inside the Union affect the position of the EU towards the third countries, especially the candidate states which have attached to the EU with the enlargement process. Finally, the Constitutional Treaty includes a clause related to minorities and providing that it is accepted, the rights of minorities will be part of EU law at the end.[144]

In terms of external policy, the EU generates both legislations and policies in conducting relations with third countries. From the legal perspective, the Treaty on European Union involves legislations on minority rights under the framework of human rights and fundemental freedoms. The Article 11 of the TEU (ex Article J.1) states that "the development and consolidation of human rights and fundemental freedoms is one of the Common Foreign and Security Policy objectives".[145] The Article 177 of the EC Treaty denotes that:

> The Community policy in the sphere of development cooperation shall contribute to the general objective of developing and consolidating

[143] The Charter of Fundemetal Rights of the European Union available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[144] Andrzej Mirga, "Making the EU's Anti-Discrimination Policy Instruments Work for Romani Communities in the Enlarged European Union" available at http://www.per-usa.org/Reports/Andrzej%20Mirga%20_2.PDF

[145] The Article 11 of the TEU available at http://www.ellispub.com/downloads/eu_cons_treaty.pdf

democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.[146]

The Article 6 (1) which is added to the Treaty on European Union by the Treaty of Amsterdam declares the principles of the Union as "democracy, liberty, rule of law, respect for human rights and fundemental principles".[147] The Article 49 of the same treaty stipulates the adherence to these principles as a condition for all countries intended to apply for EU membership.[148] According to Gwendolyn Sasse, the inconsistency between the legislation and the policy within the EU create ambiguity on the issue of minority rights. Both the Article 6 (1) of the TEU and the Copenhagen Criteria proclaim the common principles of the European Union. However, while the Copenhagen Criteria involves the clause of "respect for and the protection of minorities" expressing the common principles of the Union, the Article 6 (1) does not. The Article 49 asserts that the states which want to be a member of the Union should fulfil the principles which are mentioned in the Article 6(1). In other words, in the policy framework, the EU stipulates the 'respect for and protection of minorities' for the candidate states but in the legal framework this stipulation does not find its return in equivalent. Gwendolyn Sasse argues that although the expression of minority becomes frequent in the EU's enlargement policies recently and it is usually named as one of the areas that EU affected Central Eastern Europe in a positive way, "the EU has in fact promoted norms which lack a basis in EU law and do not directly translate into the acquis communitaire".[149]

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[146] The Article 177 of the EC Treaty available at http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html

[147] The Article 6 of the consolidated version of the TEU available at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf

[148] The Article 49 of the consolidated version of the TEU available at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf

[149] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.1.

In the policy framework, the EU's Enlargement Process in the post-Cold War period and the Accession Criteria which is mostly known as the Copenhagen Criteria play an important role in its relations with third countries.

The end of the Cold War caused some crucial changes in the European continent. These changes were not only in ideological sense but also in territorial sense. After the collapse of the Soviet Union, some old states were divided and some new states emerged. Changing borders affected the intensity of some national groups in certain regions and created new minority populations across the Europe. The EU was aware of the fact that the lack of democracy, human rights violations and the ethnic conflicts in the region may spread over its region and imperil the stability. In fact, those kind of ethnic conlicts were experienced in Bosnia and Kosovo during the 1990s.

The EU which generated its enlargement process as a response to these new developments in the continent, gave special importance to human rights and minority rights in its accession criteria. However, before the introduction of the accession criteria, there was another application which demonstrates the policy framework of the European Union concerning minority rights. Upon the dissolution of Yugoslavia, the Council of Ministers of the EC organized a conference which is called the Arbitration Commission of the Peace Conference on the Former Yugoslavia (Badinter Arbitration Committee) in 1991. The aim of this conference was to discuss about the dissolution of Yugoslavia and its effects on the region.[150] The CSCE norms were transposed to the EC law in the framework of Badinter Arbitration Committee. The most important conclusion of the Committee that the EC also agreed on was the provision related to the recognition of new states. According to this provision, beside other stipulations the states should grant some rights to their minorities in order to be recognized by the international world and these should be in the context of CSCE norms.[151]

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[150] The related information can be found at http://en.wikipedia.org/wiki/Badinter_Arbitration_Committee

[151] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.3.

The accession criteria which were adopted at the June 1993 European Council in Copenhagen (the Copenhagen Criteria), divides the criteria into three categories, political, economic and acquis communitaire. The political criterion stipulates the "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities". The economic criterion asserts the "existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union". The adoption of acquis communitaire requires "to take on the obligations of membership, including adherence to the aims of political, economic and monetary union".[152] Among these categories, the fulfilment of the political criterion is compulsory for opening of the negotiations by the European Council.

The Criteria constitute a milestone in terms of the EU's external relations. The Union decides to implement its enlargement process under the conditions introduced by the Copenhagen Criteria. Tim Haughton argues that in order to be a EU member, states firstly should fulfil the Copenhagen criteria and secondly should adopt "the EU's body of law (acquis) into their domestic law with no opt-outs".[153]

The importance of the Copenhagen Criteria in terms of minority rights comes from the two reasons, firstly, it is the first document which explicitly mentions the 'respect for and protection of minority rights' through the EU history, secondly, it makes this political criterion a compulsory condition to open negotiations for candidate countries. On the other hand, in spite of the fact that the political criterion is a compulsory step to enter into the EU, the Article 6(1) hesitates to mention minority rights explicitly while stating the common principles of the Union. Since the Article 49 refers the Article 6(1) instead of the Copenhagen Criteria, the consideration given to minorities in the Criteria become empty of legal base. The lack of legal base and sound stance

[152] The information related to accession criteria was taken from http://europa.eu/scadplus/glossary/accession_criteria_copenhague_en.htm

[153] Tim J. Haughton, "When does the EU make a difference? Conditionality and the Accession Process in Central and Eastern Europe", *Political Studies Review,* Vol. 5, No.2, 2007, pp.235.

regarding minority rights diminishes the possibility of the healthy implementation of the Copenhagen Criteria through the Enlargement Process.

On the eve of the ratification of the TEU, the Union introduced another mechanism under the framework of the Common Foreign and Security Policy. The Pact on Stability which is also called the Balladur Report addresses at first to the countries of Central and Eastern Europe which are prospective members of the European Union and intends to prevent potential tensions and conflicts in Europe, especially those concerning national minorities and borders.[154] The main aim of the Pact on Stability is to prevent the potential conflicts in the region which may arise from the disputes over borders and minorities. The Pact also tries to establish a bond between prospective EU members depending on mutual trust and announces that only in this way the peace and stability within the region and within the EU can be secured.[155] Another point which should be highlighted here is that the Pact on Stability contributed to the formation of the 'Treaty of the Republic of Hungary and the Slovak Republic on Good Neighbourliness and Friendly Cooperation'. This treaty is an important example which indicates the effect of the Pact on Stability and the concern of the EU on the issue of Hungarian minorities in Slovakia in that period.[156]

The decisions of the Badinter Arbitration Committee, the Copenhagen Criteria and lastly the Pact on Stability are the main policy initiatives regarding minority rights launched by the Union in the post-Cold War environment. Although these policies cause the issue of minority rights to be brought about more frequently in this period, they are merely political undertakings and do not have sufficient control mechanisms to monitor the implementation of the related provisions regarding minority rights. However, when these policies are compared among themselves, the Copenhagen Criteria gain the upper hand in

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[154] Judy Batt, Dov Lynch, Antonio Missiroli, Martin Ortega and Dimitrios Triantaphyllou, "Partner and Neighbours: a CFSP for a wider Europe", Chaillot Papers No.64, September 2003, pp.11-12. available at http://www.iss.europa.eu/chaillot/chai64e.pdf

[155] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.30-31.

[156] Jiri Priban, "European Union Constitution-Making, Political Identity and Central European Reflections" *European Law Journal,* Vol.11, No. 2, 2005, pp.6
available at http://www.iue.it/LAW/Events/WSWorkshopNov2003/Priban_paper.pdf

terms of the effect it left on candidate countries. Therefore, it is vital to analyse the implementation of the Copenhagen Criteria and the Conditionality Principle under the framework of the minority rights.

Conditionality Principle and the Implementation of the Copenhagen Criteria

The stability and security of Central Eastern Europe is a major concern for the EU in the post-Cold War period. The Eastern Enlargement is initiated in order to achieve this stability and security and also to realise the coherence throughout Europe. To this end, the EU put its enlargement strategy into a program which stipulates certain conditions upon candidate countries. The name of this program is the Copenhagen criteria and its method is the conditionality. In this section, firstly conditionality will be introduced and then the main problems regarding conditionality will be put forward. Secondly, the procedure of the implementation of the Copenhagen Criteria and the deficiencies arising from the ambiguity and the general scope of norms and standards will be displayed.

According to Judith Kelley, the OSCE, the CoE and the EU are the main international organizations which effect states in order to take certain steps on the issue of minority rights. They have made states adopt some legislations regarding protection of minorities specifically using two important methods, "normative pressure and conditionality".[157] Normative pressure takes place when an organization recommends a state to make a policy change in return for nothing but only approval of the organization. On the other hand, conditionality offers a reward such as membership or credit in return for a certain policy change.[158] Kelley argues that the roles of main European organizations namely, the OSCE, the CoE and the EU in changing and reshaping the domestic policies of the European states on the minority issues are unquestionable. She has three arguments regarding the roles of these institutions on this change. Firstly, while the conditionality of the EU and the

[157] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.3.

[158] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.3.

CoE for full-membership constitutes the main reason in the policy changes of states, the normative pressure draws a road map in order to realize this conditionality. Both the OSCE and the CoE contribute to the development of norms and standards regarding minority rights in Europe. These norms and standards constitute the main reference points of the EU while conducting its relations with candidate countries. These three important European organisations make a connection between their membership status and the adoption of some norms related to minority rights. The main aim of this policy is to improve the conditions of the CEE countries in terms of democracy, rule of law, human and minority rights and by this way to protect peace and stability in the region. It is the OSCE and the CoE which contribute to the formation of a normative base about minority rights more than the European Union. Despite of the fact that norms and standards about minority rights gain acceleration in the first half of the 1990s by these organizations, international law does not make any universal definition upon the concept of minority or any sanction about the implementation of minority rights. Secondly, when it is compared to conditionality, the normative pressure takes more reaction from public sphere than the membership conditionality. It is difficult to realize the expected policy change when there is no reward but only approval of the institution. Thirdly, membership conditionality is so effective motivation that it may overcome the strong reaction coming from public on the issue of minorities.[159]

On the other hand, the effectiveness of the conditionality principle is open to discussion most of the time because of the existence of variable conditions such as political environment, economic conditions and characteristics of the countries. Tim Haughton also claims that effectiveness of the EU changes according to accession stages and issue areas. Haughton divides accession process into three stages shortly, pre-accession, accession and decision phase and argues that EU is the most effective during the decision phase. Furthermore, he claims that the EU's power of sanction changes depending on different issue areas and gives the examples of single market and

[159] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.4.

minority protection. While the single market is an area where the EU is effective in changing domestic policies, for the issue of minority protection we can not say the same thing.[160]

In the case of the European Union, conditionality principle constitutes main mechanism to conduct relations with the CEE countries. Heather Grabbe argues that the EU aims to achieve two important goals in the CEE region: "on the one hand, supporting post communist transformation, and on the other, guiding CEE towards taking on the obligations of membership".[161] These two spheres, namely transformation and accession which are important phases for CEE countries, put a lot of pressure on these countries creating problems about the implementation of conditionality. Grabbe claims that being in a transition period and trying to fulfil the Copenhagen criteria at the same time are two challenging tasks which constitute the main obstacle before the implementation of these criteria. According to her, the old members of the EU did not experience such a challenging task in such a difficult time. They had a chance to demand some opt-outs from the acquis while the CEE countries do not have such a right for this kind of demand. Furthermore, the EU expects the CEE countries to fulfil criteria completely before the negotiations start. On these conditions, it is inevitable to say that different treatments are being applied in the accession processes of old members and the new prospective members. Grabbe says that "the EU's inflexible stance raises a question of double standards that has aroused resentment in CEE and is a complaint voiced in their domestic political debates about EU accession".[162] Grabbe remarks that another point which complicates the implementation of the Copenhagen criteria is "the

[160] Tim J. Haughton, "When does the EU make a difference? Conditionality and the Accession Process in Central and Eastern Europe", *Political Studies Review,* Vol. 5, No.2, 2007, pp.*234-235.*

[161] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.3. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

[162] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.5-7. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

gap between the conditions and the reward" and gives the example of Slovakia.[163]

Slovak case is an important case in order to see the implementation of the Copenhagen criteria in the context of minority rights. The transformation of Slovakia in terms of minority rights was problematic until the end of Mečiar government in 1998. The factors which arise from the domestic politics and the fact that reward is at the end of a long process affected the fulfilment of the minority criterion. Moreover, the ambigious norms and standards complicated the judgement on whether Slovakia fulfiled the criteria or not. In other words, "the limits of conditionality" was observed in the case of Slovakia.[164]

The example of Slovakia is also significant in terms of observing the problems in the post-Cold War period experienced by the countries which have huge minority populations within their new borders. The protection of minority rights is crucial since the environment of post-Cold War is very suitable for ethnic conflicts and uprisings. The states which gain their independence newly are very jealous about their sovereignity, nationality and borders. Moreover, these countries experience a nation-building process after the dissolution of the USSR where the nationality is a neglected phenomenon during the communist regime. Therefore, the reaction of Slovakia to the implementation of conditions can be adhered to both the internal difficulties it experienced and the double standards emanating from ambiguous norms offered by the Copenhagen Criteria. And these internal difficulties can be summarized as the nationalist tendencies emanating from the state-building process and the effects of post-Cold War period on political and economic situation of Slovakia.

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[163] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.7. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

[164] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.8. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

According to Karen Smith, "conditionality is widely seen as a primary means of democracy promotion and Europeanization in CEE".[165] On the other hand, Helen Wallace (2000) uses another term in order to explain the effect of European Union on candidate countries, the EU-ization. The EU-ization represents the transformation of a country in order to be a EU member, on the other hand, the Europeanization means adoption of European norms, values and policies in the long run.[166] This thesis defends that the EU-ization can be described as the expectation of EU from candidate countries in the short run while Europeanization is what is expected from candidate countries in the long run.

According to Radaelli:

> Europeanization is the ways of doing things which are first defined and consolidated in the making of EU decisions and then incorporated into the logic of domestic discourse, identities, political structures and public policies.[167]

Gwendolyn Sasse claims that "the issue of minority rights does not easily fit these conceptual boundries either".[168] The difference between the internal and external policies of the EU on minority rights is the biggest impediment before the Europeanization of CEE. The duality between inside and outside of the Union on the issue of minority rights effects the credibility of the EU negatively during the enlargement process. Sasse claims that the healthy application of conditionality requires firstly, "a consensus on norms and rules", secondly, "their transmission within EU and beyond" and thirdly, "clear benchmarks and enforcement mechanisms ensuring credibility,

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[165] Karen Smith , "Western Actors and the Promotion of Democracy", Jan Zielonka and Alex Pravda (eds.), 2001, *Democratic Consolidation in Eastern Europe: International and Transnational Factors*, Vol.2, Oxford: Oxford University Press, pp.31.

[166] Tim J. Haughton, "When does the EU make a difference? Conditionality and the Accession Process in Central and Eastern Europe", *Political Studies Review,* Vol. 5, No.2, 2007, pp.233-234.

[167] Claudio Radaelli, "Whither Europeanization: Concept Stretching and Substantive Change", *European Integration online Paper (EioP)*, Vol.4, No.8, 2000, pp.3. available at http://eiop.or.at/eiop/texte/2000-008.htm#I.A.

[168] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.4.

consistency and continuity".[169] She argues that especially the minority clause of the Copenhagen political criterion lacks these properties of conditionality.

Besides the difficulties in the implementation of conditionality, there are difficulties arising from the minority condition itself. Minority condition constitutes various problems during the accession process of the EU. Sasse introduces four reasons in order to explain this problem. Firstly, minority rights are not emphasized in clear and well-defined norms and standards within the EU law. As international law does not make any clear-cut definition of minorities and minority rights, the EU law is also far from open and clear standards upon minority rights. The EU law deals with the issue of minority rights under the framework of human rights and fundemental freedoms and it does not offer any normative base which is binding for both member states and candidate countries. Secondly, the importance given to promotion of minority rights in the external relations does not find its counterpart in the internal relations. The internal policy of the EU on minorities is shaped depending on non-discrimination, equality and respect for diversity. Some of the EU member states deny that their countries have minority populations. For instance, France neither signs or ratifies the Framework Convention on National Minorities which is called the most important document regarding minority rights.[170] The duality in the internal and external approach of the EU towards minority rights both in normative and practical sense effect the accession process negatively. Because Europeanization requires the transfer of norms and practices which are applied within the EU borders firstly. Thirdly, there is no universal definition of minority rights both in international and EU law. The lack of clear norms and standards are always the real barriers before the healthy implementation of minority rights provisions. Lastly, the financial support given to promotion of minority rights in the pre-accession period is not sufficient. Sasse argues that there is no specific budget in the Phare programme in order to support the

[169] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.4.

[170] The Council of Europe web-site available at http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P307_16155

policy change in the context of minority rights and "the most closely related activity heading civil society and democratisation accounted for only about one percent of the total Phare funds distributed".[171]

In sum, the EU tries to export some norms and standards to CEE which have deficiencies in conceptual framework and financial resources. This is the sign of EU's unpreparedness in view of generating policies on minority rights or corresponding ethnic conflicts. Will Kymlicka argues that the existence of a minority condition in the political criterion of the accession process is the indicator of EU's response towards fears of ethnic conflicts and possibility of these conflicts' spread into EU borders.[172] Since these fears are imminent, the methods adopted by the EU towards this peril should be impetuous. Therefore, the EU adopts ad hoc policies on minority rights which aim to improve the conditions of the prospective EU member states in the field of minority rights. The ad hocery of the minority policies generated in the West is the main reason of not having a long standing system for effective implementation of the minority rights.[173] Hence, the approach of the EU does not have holistic and robust character on minority rights. Instead, the EU prefers preventing any minority related dispute to come inside the boundaries of the EU but keeping status-quo same within its own borders.

Kylimka argues that the environment of the post-Cold War period and the situations of CEE countries accelerate the internationalization of the minority rights. The internationalization of the minority rights brings about the new norms and standards on minorities and new mechanisms to apply these norms and standards. In the example of the EU's enlargement process, the Union follows the way of exporting its common principles including 'respect

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[171] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.5.

[172] Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.2.

[173]Gaetano Pentassuglia, "Minority Rights, Human Rights: A Review of Basic Concepts, Entitlements and Implementation Procedures Under International Law", Council of Europe/European Centre for Minority Issues (eds.), 2004, *Minority Issues Handbooks, Mechanisms for the Implementation of Minority Rights, Vol.2,* Strasbourg: Council of Europe Publishing, pp. 19.

for and protection of minorities' to CEE. Kymlicka defends that this kind of exportation can only be possible only if:

> Firstly there is a clear-cut definition of minority all over the world; secondly, these definitions and models work well in West; thirdly, they are applicable to Eastern European countries and lastly, there is a legitimate role and responsibility of international world to implement these standards to CEE.[174]

However, the EU does not fulfil the necessary conditions for the exportation of its 'so called' minority rights regime to CEE. Kymlicka remarks that neither EU member states nor CEE countries do not resemble each other in terms of applications of minority policies and characteristics of the minorities. While the member states apply different policies for minority rights among themselves, the candidate countries differ in terms of characteristics of minorities among themselves. Therefore, the exportation of the minority rights policies from the EU to the candidate countries does not ground on solid assumptions.

The implementation of the Copenhagen Criteria requires the existence of some mechanisms in itself in order to monitor the process of accession. The main tools of the EU to monitor the progress of candidate countries during the accession process are the commission opinions (1997), the regular reports and accession partnerships. While "the regular reports have the purpose to assess progress achieved by each country in preparation for accession",[175] the accession partnerships determine the pre-accession assistance, the short and medium-term priorities, objectives and conditions of the candidate countries on the basis of the accession criteria. In other words, the accession partnerships present a road map for candidate countries in order to indicate expected policy changes. To this end, each candidate country prepares "a National Programme

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[174] Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.1

[175] The official web-site of the EU regarding the steps of enlargement process available at http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/index_en.htm

for the Adoption of the Acquis (NPAA), which sets out a timetable for putting the partnership into effect".[176]

The monitoring of the political criterion is based on checkout of notions which have very general scope such as democracy, rule of law and respect for and protection of minorities. Gwendolyn Sasse affirms that the EU conducts its monitoring procedure on the protection of minority rights through the help of some basic European documents such as European Convention on Human Rights and some major OSCE and UN documents. Among these, the Framework Convention on Minority Rights (1995) constitutes the main reference point in terms of monitoring.[177] As it is seen, the minority rights documents of the international organizations are not only a source of inspiration for EU documents and practice but also they constitute a direct reference point in the monitoring process of the integration.

It is the duty of the Commission to monitor the progress of the candidate countries on basis of the Copenhagen Criteria. The Commission provides the necessary information regarding preparation of the candidate country and its progress to the Council and the Parliament.[178] The main aim of Regular Reports is to indicate the compliance of the candidate countries with the acquis. Gwendolyn Sasse states that "the Luxembourg Council of December 1997 equates integration with the speedy adoption of acquis".[179] This approach demonstrated in the Luxembourg Council proves that the adoption of acquis is much more important than the adoption of political criterion. In other words, the EU's approach towards the protection of minorities does not show any consistency but an ad hocery. Gwendolyn Sasse

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[176] The definition of Accession Partnership from the Glossary of Europa available at http://europa.eu/scadplus/glossary/accession_partnership_en.htm

[177] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.5.

[178]The official web-site of the EU regarding the steps of enlargement process available at http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/index_en.htm

[179] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.6.

claims that regular reports carry three characteristics when they are examined under the framework of minority rights. Firstly, the reports examine the minority groups in a hierarchical order. In other words, some minority groups are mentioned more frequently than others. There are two groups like this, namely Russophones and Roma which come to the agenda of the EU most of the time. Sasse explains that the general concern for the ethnic Russians is for not to take the reaction of very important neighbour Russia and the Roma issue is at the top of the agenda since it has direct social consequences to all European states. Secondly, reports offer ad hoc solutions in the context of minority rights. And lastly, there is gap between the standards and implementation arising from the ambiguity of existing standards in the reports.[180] This thesis argues that all these characteristics which are put forward by Gwendolyn Sasse indicate that the EU executes its enlargement process according to the needs and fears of the Union aiming the continuation of enlargement process in the long run. Therefore, Maria Fernanda Perez-Solla argues that "the monitoring mechanism of the EU on minority rights is insufficient: conflicts of interest are inevitable".[181] The detailed examination of the regular reports, accession partnerships and the Comprehensive Monitoring Report of Slovakia will be the subjects of the next chapter.

To conclude, the Chapter II analyzes the role of main European organizations namely, the Organization for Security and Co-operation in Europe (CSCE / OSCE), the Council of Europe (CoE) and European Union (EU) in the formation of a normative base regarding minority rights and the implementation of these rights upon the CEE countries. Tove Malloy puts forward a "three-fold typology" in order to categorize the approaches of these organizations towards minority rights.[182] According to these typology, the OSCE (CSCE) represents the security approach, the CoE represents the

[180] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI), pp.7.

[181]Maria Fernanda Pérez-Solla, " What's Wrong with Minority Rights in Europe" available at http://www.eumap.org/journal/features/2002/nov02/minrightsineu (21 July 2007)

[182] Tove H. Malloy, 2005, *National Minority Rights in Europe*, New York: Oxford University Press Inc., pp.3.

democracy approach while the EU represents the integration approach. The OSCE and the CoE contribute to the formation of norms and standards upon minority issue more than the EU. The release of the 1990 OSCE Document and the establishment of the High Commissioner on National Minorities are the main steps in internationalization of the minority rights. The Framework Convention which comes out in 1995 as a consequence of the endeavours of the Council of Europe has an undeniable place among other documents released on minority rights.

The European Union which began to deal with minority issues under the heading of human rights and fundemental freedoms in 1980s, spent much more time on this issue with the end of Cold War. The post-Cold War environment of Central Eastern Europe was open to ethnic conflicts since the dissolution of the USSR brought new states and new borders besides new ideological expansions to the continent. The minority rights constituted one of the conditions which is put forward by the Copenhagen Criteria's political dimension. The EU stated that a candidate country should fulfil the political criterion of Copenhagen Criteria if it wants to see the opening of accession negotiations. The integrationist approach of EU affected both transformation and accession of the CEE countries.

EU followed the conditionality principle in order to implement the provisions of the Copenhagen Criteria in CEE. Although it is accepted that EU's conditionality has certain influence on the accession process, its effectiveness is open to questions. The healthy implementation of conditionality requires a universal definition of minority concept and clearly-stated norms and standards regarding minority rights. However, firstly, the lack of consensus on the definition of minority concept and minority rights in the international law and the EU legislation; secondly, the duality in the legal and policy framework of the minority rights between the internal and external level; thirdly, the deficiencies in the implementation of the minority criterion emanating from ambiguous standards and lastly, the lack of certain data to monitor the implementation of minority rights create problems in the implementation of the Copenhagen criteria and conditionality principle. These

problems prevent the healthy implementation and monitoring of the minority criterion whose fulfilment is vital to open the negotiations. The candidate states are assessed depending on political decisions instead of objective evaluation depending on the implementation of political criterion. The double standards which arise because of the different legal and policy frameworks between inside and outside of the Union, may come on the scene this time in different accession processes.

The Chapter III will deal with the Slovak Case under the framework its history, the EU accession process and the evaluation of its regular reports in order to observe the implementation of the Copenhagen criteria in the context of 'respect for and protection of minority rights'.

CHAPTER III

III. Slovakia: The One That Puzzles The Teacher

Slovakia constitutes the case study of this project which investigates the implementation of the minority criterion during the EU enlargement process. Why is Slovakia an important example in terms of minorities? What kind of peculiarities does it show in its relationship with the EU in minority issues? The aim of the Chapter III is to evaluate the accession process of Slovakia in order to apprehend how the minority criterion in the enlargement process was implemented. As previous chapters put forward, the lack of consensus on the definition of minority concept and the ambigious norms and standards on minority rights complicate the implementation and monitoring of these rights. With the "internationalizing of minority rights"[183] in late 1980s and early 1990s, the adoption of these rights became a condition for joining many international organizations such as the OSCE, the CoE and the EU. The Eastern Enlargement of the European Union is critically important in this sense because it offers unique cases to observe this conditionality principle and its impacts. Among other candidate states, Slovakia looms large in the EU enlargement process from various aspects. According to Greg Nieuwsma, if we accept the CEE countries as students who want to be graduated from the school of the EU, Hungary would be the most brilliant one, Czech Republic would be the more moderate one and "Slovakia would be the one that puzzles the teacher".[184] What puzzles the EU about Slovakia is not only the minority problems but also the problems arising from transition to democratic structure and independence.

This thesis argues that the stance of the European Union in terms of legal and policy framework regarding minority rights is not certain and solid since the norms and standards related to minority criterion-which the

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[183] Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.1.

[184] Greg Nieuwsma, "Lessons in Democracy: Slovakia, its minorities and the European Union", *Central Europe Review*, Vol.1, No.20, 1999, available at http://www.ce-review.org/99/20/nieuwsma20.html

conditionality principle is also based on-are ambigious and inconsistent. This inconsistency increases when we realize that the Union applies different minority policies inside and outside. Therefore, the implementation and the monitoring of minority criterion can not be achieved completely since the expression of 'fulfilment' in the case of respect for and protection of minority rights is baseless.

The aim of this chapter is to indicate that when Slovakia started negotiations with the EU, it was not in the position of a country that had solved its minority problem completely. Although the European Union announced in the 1999 Regular Report that "Slovakia fulfiled the Copenhagen political criterion"[185], the 2003 Comprehensive Monitoring Report declared that "Slovakia was partially meeting the requirements for membership in the area of anti-discrimination".[186] The imperfection of Slovakia in the case of minorities' situation, especially in respect of the Roma community, did not impede its accession in 2004. In addition to the double standards arising from the different applications on minority rights between inside and outside of the EU, there are double standards emanating from the different approach of the Union to different candidate countries. The implementation of the minority criterion is one of the remarkable areas to observe this different approach.

In order to examine the implementation of the Copenhagen criteria in the accession process of Slovakia, first section of this chapter will illustrate the brief history of Slovakia between 1989 (the end of communism) and 2004 (the date of its accession to the European Union). The second section will identify the minority question of Slovakia introducing the basic minority populations namely Hungarians and Roma and discuss the Slovakia's accession process into the EU under the framework of 'respect for and protection of minority rights'. And the last section will evaluate the progress of Slovakia in respect of

[185] "Thanks to the changes introduced since September 1998 Slovakia now fulfils the Copenhagen political criteria." in 1999 Regular Report on Slovakia
available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf

[186] "Slovakia is partially meeting the requirements for membership in the areas of public health, European Social Fund and anti-discrimination."
in the Comprehensive Monitoring Report 2003 available at
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf

its minority question out of the EU documents namely, the Commission opinion, regular reports and monitoring report.

The Chapter III intends to demonstrate that the lack of solid stance in the minority question complicates the implementation and the monitoring of the Copenhagen criteria and discredits the fairness of the EU in the enlargement process. Both the legal and political approach of the EU towards minority question and the Slovak example shows that "the respect for and the protection of minority rights" is not a prerequisite for the European Union at the internal and external level. There are other parameters which embody the enlargement process. Furthermore, the fact that the evaluation of minority criterion changes from state to state reveals the questions of double standards in the enlargement process.

III. A. The Brief History of Slovakia Between 1989 and 2004

The end of Cold War (1989) caused the collapse of communist regime in Czechoslovakia. After the end of communist regime, Vaclav Havel became president of Czechoslovakia and the Velvet Revolution of the country concluded. The country began to be called Czech and Slovak Federative Republic in 1990. In 1992, Vladimir Mečiar became the head of government of the Slovak side and Vaclav Klaus became his counterpart at the Czech side. The problems between two sides regarding new economic policies and national tendencies emanating from Mečiar government caused the country to seperate. Following these developments, Czechoslovakia was dissolved in November 1992.[187] This dissolution was called "Velvet Divorce" and two new states came into existence on January 1, 1993, namely Czech Republic and Slovakia.

The first premiership of Mečiar was during the seperation process of Czechoslovakia between June 1992 and June 1993. His second premiership which he went to coalition with SNS (Slovak National Party) was between October 1993 and March 1994. He continued to be prime minister until 1998

[187] BBC News-Czechoslovakia available at http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1844842.stm

with only a little exception between March and November 1994.[188] In this short period, a coalition government was on duty under the leadership of Jozef Moravčík. However, the premiership of Moravčík did not last long and Mečiar came to power again in 1994. According to Geoffrey Pridham, the first and the second Mečiar governments did not become effective within the country but the last one which is a coalition government with SNS and ZRS (Association of Left) brought nationalist and authoritarian perspectives to the administration and affected the fate of country in that period.[189] Indeed, the Mečiar government between 1994-1998 formed an important period for Slovakia. As a country which comes from a communist rule, it had to adopt itself to the new economic practices and democratic regime. However, Mečiar government moved in a populist manner and tried to use the national feelings of Slovaks in order to secure and enhance the power of government across the country. The main targets that should be achieved were "marketization and democratization" and beside these important tasks, Slovakia had to establish a new independent state.[190] However, there were two main difficulties before Slovakia in this mission. Firstly, Slovakia started its journey to establish a new independent state lacking the skills of building up a new state. Since the capital of Czechoslovakia was Prague, the knowledge necessary for this kind of state building remained in the Czech side.[191] Secondly, during the state building process, Slovaks experienced difficulties in defining their identity, history and values while Czechs did not come across with such a problem.[192] This uncertainity related to national identity made Slovaks want to separate from

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[188] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.117.

[189]Geoffrey Pridham, "Complying with the European Union's Democratic Conditionality: Transnational Party Linkages and Regime Change in Slovakia, 1993-1998", *Europe-Asia Studies*, Vol.51, No.7, 1999, pp.1226.

[190] Tim J. Haughton, 2005, *Constraints and Opportunities of Leadership in Post-Communist Europe,* Hants: Ashgate Publishing Limited, pp.3.

[191] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.86.

[192] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge., pp.88.

Czechoslovakia at first and follow a nationalist path in the leadership of Mečiar later.

In order to secure its borders and legitimatize its existence, as all new nation-states did, Slovakia applied to international organizations for membership. Some of the memberships of these international organizations were achieved during the Mečiar government. First application was made to the United Nations on 10 December 1992 by Czechoslovakia for the recognition of its successor states, namely Slovakia and Czech Republic. The application was accepted and Slovakia became the member of the United Nations on 19 January, 1993. Slovak Republic became member of the Organization for Security and Co-operation in Europe (OSCE) in January 1993 and depending on its ratification of the European Convention on Human Rights (ECHR) in 1992 it achieved the membership status of the Council of Europe (CoE) in June 1993.

Among these international organizations, the European Union (EU) and the North Atlantic Treaty Organization (NATO) were the most significant ones for Slovakia since their perspectives presented opportunities for security and economic development of the country and their membership status were difficult to achieve. In the case of NATO, after Slovakia gained its independence, the official relations started in 1993. At the November 2002 Prague Summit, Slovakia was invited to join the NATO and at the end it became a NATO member in March, 2004. In the case of EU, the Association Agreement signed with Slovakia in 1993 became effective in 1995. And on the European Union Summit in Cannes (1995) prime minister Mečiar applied for the EU membership officially.[193] However, although Slovakia was one of the main actors in CEE, its journey towards the EU and the NATO was halted for a period depending on the nationalist and authoritarian regime in the country. The failure in the fulfilment of the Copenhagen criteria and the undemocratic developments in Slovakia put the country back of the queuing line of both the

[193]Survey of evolution of bilateral relations between the Slovak Republic and the European Union available at http://www.vlada.gov.sk/eu/Integracia/en_vztahy.html

EU and NATO entrance.[194] However, at the end of a formidable accession process, Slovakia achieved to be member of the EU in May, 2004 as it became the member of the NATO in the same year.

Although the applications to these two vital international organizations were made during the Mečiar government, the membership status was gained in the period of Mikuláš Dzurinda who won the 1998 elections against Mečiar and served for two periods between 1998-2002 and 2002-2006. The negative effects of the Mečiar government began to be apparent when Slovakia was left out from the first wave group of enlargement process. "The instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of democracy" were put forward as arguments for the exclusion of Slovakia from the first round of accession negotiations.[195] In addition to these reasons, the minority question of Slovakia played a significant role in this decision of the European Commission. According to Karen Henderson, the minority question of Slovakia constituted the most problematic area in its relations with the European institutions during the accession processes.[196] In such an atmosphere, Mikuláš Dzurinda came into power in a coalition government which is composed of SDK (Slovak Democratic Coalition), SDL (The Party of the Democratic Left), SMK (Hungarian Coalition Party) and SOP (The Party of Civic Understanding). After the disappointment experienced during the Mečiar government, Dzurinda put the mission of EU membership into its agenda as a priority. This enthusiasm and determination affected the EU officials and they began to support membership of Slovakia again. The next part will deal with Slovakia's EU-entry under the framework of the Copenhagen Criteria in the context of 'respect for and the protection of minority rights'. However, it is necessary to

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[194] Stefan Auer and Antoaneta Dimitrova, "Slovakia", John Dryzek and Leslie Templeman Holmes (eds.), 2002, *Post-Communist Democratization. Political discourses across thirteen countries,* Cambridge: Cambridge University Press, pp.173.

[195] European Commission, "Agenda 2000: Commission opinion on Slovakia's application for membership of the European Union", *Bulletin of the European Union,* Supplement 9/97. 77. 1997.

[196] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

put the case of Slovakia's minority question before all else. To this end, the minority question of Slovakia introducing the basic minority populations namely Hungarians and Roma will be identified firstly and then the accession process in the context of minority rights will be under focus.

III. B. Slovakia's Minority Question and the EU Accession Process

Karen Henderson defines the minority question of Slovakia as the most important factor affecting the image of country negatively during its accession process to European institutions.[197] As an organization whose integration conditions are emphasized point by point under the title of the Copenhagen Criteria, the European Union is the most desired one of these institutions. The significance of the European Union arises from the economic and political perspectives that the EU presents to its member states. Moreover, the integration with the Western Europe politically, economically and in security matters requires the adoption of values stated by the EU and the NATO. Therefore, the achievement of the membership status of these organizations is critically important for Central Eastern Countries.

Under these circumstances, the impact of the minority question on Slovakia's accession process can be explained by the conditions stipulated under the name of the Copenhagen Criteria. The Copenhagen political criterion demands candidate countries to achieve 'respect for and protection of minority rights' before accession negotiations start. In the case of Slovakia, the minority question poses a great obstacle on its way towards the EU besides other deficiencies in democratic structure.

The Minority Question of Slovakia

The term of minority is used in Slovak law in documents like Slovak constitution and the act on minority languages, however, none of these documents makes any definition on minority term. The FCNM recognizes eleven ethnic groups within Slovakia as minorities. These are "Bulgarians, Germans, Jews, Croatians, Moravians, Poles, Roma, Ruthenians, Czechs,

[197] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

Ukrainians and Hungarians".[198] According to the 2001 census of Slovakia, there are 9,68 % Hungarians, 1,67% Roma, 0,87% Czechs / Moravians and 0,65% Ukranians /Ruthenians in Slovakia.[199] As it is seen, the main minority groups of Slovakia are Hungarians and Roma. Although there are doubts about the real number of Roma population, the number which indicates the Hungarian population is considered to be right. The reason that lies beneath this consideration is the ratio between the number of votes coming for Hungarian parties and the number of Hungarian minorities counted in the 2001 census.[200] On the other hand, the exact number of Roma minority does not overlap with what is stated in the 2001 census. According to Karen Henderson, the exact number of Roma minority varies between 5 and 10 per cent of the population.[201] She argues that "discrimination and maltreatment" are the main factors preventing Roma minority to define their ethnic origins as Roma.[202] While Roma population avoid identifying themselves as Roma, Hungarian population constitute a well-preserved identity with their history, language and kin state within Slovak borders. According to the 'national minority' definition of Jennifer Jackson Preece, the Hungarian minority of Slovakia can be easily labeled as a national minority since they are "well-defined" and "show a sense of solidarity directed towards preserving their culture, traditions, religion or language".[203] Besides these features, the Hungarian minority also benefits from the protection of a kin-state, namely Hungary. From the same definition's perspective, it is difficult to call Roma community as national minority but

[198] Euromosaic III, Slovakia
http://ec.europa.eu/education/policies/lang/languages/langmin/euromosaic/slok_en.pdf

[199] Statistical Office of the Slovak Republic
http://portal.statistics.sk/files/Sekcie/sek_600/Demografia/SODB/grafy/aj/08_a.pdf

[200] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

[201] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

[202] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.72.

[203] Jennifer Jackson Preece, 1998, *National Minorities and the European Nation-States System*, Oxford: Clarendon Press, pp.28 quoted in Tove H. Malloy, 2005, *National Minority Rights in Europe*. New York: Oxford University Press Inc., pp.19.

only distinct ethnic group. The perception of these two minority groups by the Slovak state changes depending on their different properties. While Hungarians are percieved as a threat factor which has intentions to secede from Slovak state, the situation of the Roma community is seen as a social problem whose solution requires determination and long time.

The bonds between Slovaks and Hungarians are vey deep-rooted since they shared a common territory and common past for a long time. The control of one nation over another changed during this period. For instance, Slovaks were under the control of Hungarians until the establishment of Czechoslovakia in 1918.[204] Living under the rule of Hungarians for a long time was the main reason that lies beneath the suspicion felt against Hungarian minorities by Slovaks. Although the rights of all minorities living in Czechoslovakia were guaranteed by the 1969 legislation, the minority question of the country was not dealt with seriously until end of Cold War.[205] After the end of Cold War, the seperation of Czechoslovakia made the question of Hungarian minority more apparent. The Hungarian population which seemed three per cent within the Czechoslovak borders increased to ten per cent in the Slovak borders.[206] This percentage decreased to 9,68 % in the 2001 census.

After the seperation of Czechoslovakia, with the effect of nationalist tendencies the suspicion felt for Hungarian minority increased. When Czechs-balancing factor between Slovaks and Hungarians-left the stage, the two nations came across the problem itself. Another reason of the problem between two nations was the increasing interest of Hungary over ethnic Hungarians living out of its territory. Slovaks perceived this interest as a direct threat to

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[204] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.116.

[205] Protection of Minority Rights in Europe: Policy Recommendations based on case studies of Eastern and Central Europe and the Former Soviet Union. An Occasional Paper from Minority Rights Group commissioned by the Advisory Committee on Human Rights and Foreign Policy of the Netherlands, June 1996
avalaible at http://www.geocities.com/Athens/Delphi/6509/nether.html

[206] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.116.

their newly gained independence.[207] Depending on these threat perceptions, the precautions taken against Hungarin minority began to increase. These precautions included getting the rights of Hungarian minority back in the areas of using mother tongue, education in their own language, using bilingual signs and Hungarian in official places.[208] As a result, the main source of concern for the Hungarian minority in Slovakia was to lose their political and cultural rights which they had since they settled in this region. Ironically, they perceived the nationalist tendencies of Slovakia as a threat to their cultural and political existence.

The era which Roma community reached Europe from Northern India is estimated as the early fourteenth century. The relationship between Roma and the local people of Europe developed throughout the centuries and they became close to each other in terms of linguistic and culture. Therefore, it is difficult to define Roma minority according to these factors because their language and culture are mixed with the local language and local culture of the country they resided. On the other hand, although they became a local figure of the region they lived after a period, they mostly came across prejudices arising from their differences and poverty.[209]

Central Eastern Europe harbours seventy per cent of the Roma population living in the continent of Europe. In the past, the communist regime which ruled over CEE after the end of WWII perceived Roma community as a social problem. They tried to assimilate Roma people or at least tried to keep them out of society. Their culture and life styles were prohibited.[210] Beside

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[207]The Slovak.Org web-site, "Slovakia and Her Hungarian Minority" avalaible at http://www.slovakia.org/society-hungary2.htm

[208] The Slovak.Org web-site, "Slovakia and Her Hungarian Minority" avalaible at http://www.slovakia.org/society-hungary2.htm

[209] Protection of Minority Rights in Europe: Policy Recommendations based on case studies of Eastern and Central Europe and the Former Soviet Union. An Occasional Paper from Minority Rights Group commissioned by the Advisory Committee on Human Rights and Foreign Policy of the Netherlands, June 1996
avalaible at http://www.geocities.com/Athens/Delphi/6509/nether.html

[210] Protection of Minority Rights in Europe: Policy Recommendations based on case studies of Eastern and Central Europe and the Former Soviet Union. An Occasional Paper from Minority

these negativities, Roma people were under some degree of social protection during the communist period. They were subject to "obligatory health care system" and they would able to find job in the state institutions.[211] The aim of the communist system was to remove ethnic differences in the society. For this purpose, they tried to collect all people coming from different ethnic origins under the umbrella of labour. According to officials of the communist period, if Roma people achieved to be good labourers in the society, they would be part of that society at the end. All in all, the situation of the Roma community under the communist regime was better than any other period in terms of social and economical protection although there was a assimilation policy towards Roma.[212] At the end, with the collapse of communism in 1989 the Eastern Central European countries began to experience a transformation period affecting all people from the whole region. The Roma minority also got its share from this severe transformation.

Slovakia's 2001 census states that there are 1,67 per cent Roma within the Slovak borders. However, the estimations regarding the Roma minority indicate that the real datas change between 5 and 10 per cent. Their fears arising from the maltreatment of police forces prevent them to declare their identity. On the other hand, the monitoring of the police over the Roma population sources from the illegal activities that Roma people involved in. Since they do not have good education, they miss their chance to find a long lasting and legitimate job. Therefore, they are labeled in the society as criminals and thieves. However, their ill-fortune does not only stem from themselves, society makes them marginalized somehow. For instance, Roma children are sent to special schools for the mentally retarded children although they do not have such a health problem. Together with insufficient health care,

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Rights Group commissioned by the Advisory Committee on Human Rights and Foreign Policy of the Netherlands, June 1996
avalaible at http://www.geocities.com/Athens/Delphi/6509/nether.html

[211] Anna K. Meijknecht, 2004, *Minority Protection, Standards and Reality: Implementation of Council of Europe Standards in Slovakia, Romania and Bulgaria,* The Hague: T.M.C. Asser Press, pp.52.

[212] Anna K. Meijknecht, 2004, *Minority Protection, Standards and Reality: Implementation of Council of Europe Standards in Slovakia, Romania and Bulgaria,* The Hague: T.M.C. Asser Press, pp.52.

increasing unemployment and hard housing conditions, the lack of education constitutes the main problem of Roma community both in Slovakia and in all Central Eastern Europe.

Slovakia's EU Accession Process : The Conditionality and The Minority Question

The conditionality principle is the main tool of the European Union in order to integrate the candidate countries to its structure politically, economically and in terms of acquis communitaire. Implementation of the conditionality principle eventuates depending on three stages. In the first stage, the well-defined and clear conditions are presented for the fulfilment of the candidate country, in the second stage prize is given to the candidate country in return for its fulfilment and in the third stage, the control of fulfilment is made by a monitoring mechanism.[213] Judith Kelley argues that a stipulation mechanism which moves along slowly on solid steps, makes the integration process more reliable and increases the commitment of candidate countries to the enlargement process.[214] And also according to Tim Haughton, the effect of Union's conditionality varies depending on two factors. The first factor is active one and it is called the Copenhagen criteria. The second factor is passive one and it is called the eagerness of the country in order to be a EU member.[215] However, the internal dynamics of the candidate country is also an important factor in the implementation of conditionality principle.

In the case of Slovakia, the coalition government of Vladimir Mečiar including Slovak National Party (SNS) posed an obstacle in the EU accession process in terms of consolidating democratic institutions and adopting measures regarding minority rights. This situation can be linked to the

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[213] Marek Rybar and Darina Malova, "Exerting influence on a contentious polity: the European Union's democractic conditionality and political change in Slovakia" Antoaneta Dimitrova (eds.), 2004, *Driven to Change European Union's Enlargement Viewed From the East,* Manchester: Manchester University Press, pp.39.

[214] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.118.

[215] Tim J. Haughton, "When does the EU make a difference? Conditionality and the Accession Process in Central and Eastern Europe", *Political Studies Review*, Vol. 5, No.2, 2007, pp.5.

authoritarian regime of Mečiar who realizes that following a nationalist path will enhance his power in the government.

In order to start accession negotiations, Slovakia should fulfil the Copenhagen Criteria. Although the prime minister Mečiar announced that the EU membership was a priority for Slovakia, the efforts spent for fulfiling the Copenhagen Criteria were not sufficient. During the third government of Mečiar, the relations between Slovakia and the EU worsened more than the previous periods. Upon the undemocratic developments in Slovakia, the EU sent its first warning to this country. Depending on this warning which came in 1994, the EU demanded Slovakia to take steps in order to enhance its democratic structure, to create working market economy and to improve its relations with its own Hungarian minority and its neighbour Hungary.[216]

Due to this warning and internal pressures, Mečiar signed the Basic Treaty on Good Neighbourly Relations and Friendly Cooperation with Hungary in March 1995. First the EU and then the NATO, the USA, the HCNM played a great role in the formation of this treaty. While the EU desired the candidate countries to come into the EU after solving their problems, the other international actors wanted the Eastern Central Europe to be cleaned from ethnic conflicts. However, the signing did not bring any immediate positive effect to the relations between Slovakia and Hungary because there was lack of enthusiasm in the implementation of the Treaty. Despite this negativity, the EU officials assumed the signing of the Basic Treaty between Slovakia and Hungary as a success since the gradual commitment to the criteria which is also supported by a strong cooperation among other international organizations and states gave its fruit in the form of a treaty.

Following the Basic Treaty, a penalty code amendment came into the agenda of Slovakia. Especially the coalition partner SNS desired the application of this amendement which allows the penalization of people questioning the sovereignity of Slovakia or making statements against territorial integrity of the country. The aim of this amendment was keeping the Hungarian minority leaders under control actually. On the other hand, the

[216] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.92.

reaction of the EU concerning this amendment came immediately and the EU put forward that this kind of penalty was not in compliance with the freedom of speech principle of the Union. At the end, Slovakia adopted an amendment which is composed of milder provisions. Another plan of the government was to reorganize the school certificates in Slovak language only. Earlier, these certificates were printed bilingually but the intention of this government was to change this application. Although the HCNM showed a reaction against this attempt, the EU did not mention about the situation of school certificates and "the EU Commissioner for Foreign Affairs van der Broek declared that there was no danger of the EU's canceling Slovakia's association agreement".[217] Although the EU stated clearly with this statement that Slovakia would be a EU member at the end and not even one reason could stop this process, the concerns relating to school certificates were uttered in Agenda 2000 which released in 1997. However, this criticism which came lately did not cause any policy change in the Mečiar government because Slovakia was already left out the first wave of the enlargement and there was no reason to fulfil the condition if there was no reward. This case indicates that besides well-defined standards and norms, the concrete stance and strong commitment are needed in order to impose certain values and principles to a candidate country. The confident attitude of Mečiar government which keeps away from fulfiling the criteria during the accession process arises from the EU officials' declarations stating that there will not be an enlargement process excluding Slovakia.[218]

The State Language Law which is a another debatable issue during the accession process of Slovakia was signed in 1995. With this law, Slovak was stated as the state language of the country and the superiority over other languages in the country was proved once more. The law before the State

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[217] Judith G. Kelley, 2004, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton and Oxford: Princeton University Press, pp.127.

[218] A declaration by Jean-Christophe Flori, a spokesman on enlargement at the European Commission regarding Roma minority "a problem, but … has not influenced our decision on the readiness of the candidate countries to join the EU."
as quoted in "Shame of a continent", by Gary Younge, *The Guardian,* 8/01/2003 http://www.guardian.co.uk/eu/story/0,7369,870469,00.html quoted in Kyriaki Topidi, "The Limits of EU Conditionality: Minority Rights in Slovakia", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 1 / 2003, pp.30.

Language Law had envisaged the right of minorities to speak their own language for official transactions in provinces where they constituted at least twenty per cent of the population. Although this law was also dependent on some conditions, the State Language Law limited the linguistic rights of Hungarians drastically compared to previous periods.[219] Upon this State Language Law, the HCNM, the CoE and the EU insisted Mečiar government to pass another law recognizing and protecting the use of minority languages. However, Slovak Foreign Affairs Minister stated in a letter written to the HCNM that there is no need for seperate law about minority languages.

At this point, the EU Regular Reports came into the agenda starting from the 1997 Opinion released within the Agenda 2000. These regular reports constituted the main monitoring tools of the enlargement and reflected the reactions of the EU towards the developments in candidate countries. In the case of Slovakia, it is vital to evaluate these reports in order to observe the policy frameworks of the EU about minority rights.

III. C. The Evaluation of Slovakia in the Context of Minority Rights: The Regular Reports on Slovakia

The 1997 Opinion of the European Commission mentioned firstly the international human and minority rights treaties that Slovakia signed in order to be member of the Council of Europe. Signing of the European Convention of Human Rights (ECHR) in 1993 and the Framework Convention on National Minorities (FCNM) in 1995 was appreciated by the Union. It was stressed that Slovakia rejected the recognition of collective rights assessed to minorities by not subscribing to Recommendation 1201 of the Parliamentary Assembly of the CoE. The Opinion also touched upon the situations of Hungarian and Roma minority seperately. On the issue of Hungarians, it was stated that Slovak government defeated the right of Hungarians regarding the usage of their own language in official transactions with the adoption of State Language Law in 1995. The Opinion mentioned about the promises given to the EU officials on

[219] Pieter Van Duin and Zuzana Poláčková, "Democratic Renewal and the Hungarian Minority Question in Slovakia: From populism to ethnic democracy?", *European Societies* Vol.2, No.3, 2000, pp.347.

the adoption of a new law protecting the linguistic rights of minorities. It also put forward that although the Article 34(2) of the Slovak Constitution has already enabled minorities to use their own languages in official places, Slovakia has not kept its promise on consolidating this provision with practice yet.[220] These negative comments continued with ascertainments on the situation of the Roma community. The 1997 Opinion indicated that Roma community was subject to discrimination mostly arising from their social position. Since they did not have permanent jobs and mostly suffered from unemployment and they did not have direct access to health care opportunities, they were marginalized from the society.[221] As a result, the 1997 Opinion excluded Slovakia from the first wave group of enlargement process emphasizing that "the situation with regard to the stability of the democratic institutions and their integration into political life was unsatisfactory" and the improvement regarding both Hungarian and Roma minorities was insufficient.[222] When we evaluate the 1997 Opinion, we see that the Hungarian minority is much more under attention when it is compared to Roma minority. The social position of the Roma community constitutes a problem rather than their political or cultural representation. On the other hand, Hungarians are seen as minority group whose culture and language should be protected by legislation depending on pressures coming from international organizations such as the EU, the Council of Europe and the OSCE. Another factor which triggers this protection is the kin state of Hungarians, namely Hungary which will declare the Act on Hungarians Living in Neighbouring Countries in 2001 and disconcert the Slovak government especially the nationalists.

In 1998 Regular Report the main concern was related to 'Minority Language Law' again. The problems of Hungarian minority ranked higher than Roma's once more. This time Minority Language Law was the main point

[220] 1997 Opinion on Slovakia available at http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/slovakia/sk-op_en.pdf

[221] 1997 Opinion on Slovakia available at http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/slovakia/sk-op_en.pdf

[222] 1997 Opinion on Slovakia available at http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/slovakia/sk-op_en.pdf

which measures the progress of Slovakia in terms of minority rights. It was stated that Slovak and Hungarian governments did not come together in order to discuss the structure of the committee which would deal with minority issues. Therefore, the positive effects of the Basic Treaty of 1995 did not appear yet. On the issue of Roma minority, this time there was a report prepared by Bureau of Legal Protection for Ethnic Minorities which indicates the maltreatment and discrimination applied by police forces and government officials towards Roma. Also, the government launched a program which is called the Plan for Solving Romany Problems with the spport of 42.1 mn ECU. All in all, the 1998 Report declared that "there had been problems in the treatment of minorities and a lack of progress concerning the adoption of legislation on minority languages in Slovakia".[223]

Slovak politics experienced important changes in 1998. In this year, the Mečiar government was replaced by the coalition government under the leadership of Mikuláš Dzurinda. One of the coalition partners of this government was the Hungarian Coalition Party (SMK). The participation of a Hungarian party into the government was the indicator of a new period in the Slovak politics. The nationalist path followed by Mečiar government was left and more democratic and pluralist understanding was adopted by the Dzurinda government.[224] However, according to Van Duin and Poláčková, the participation of the SMK into Dzurinda government did not provide any improvement for minority policies, furthermore the party was used in a pragmatic manner to cover this government which does not promise any permanent solutions for minority question but prefers ad hoc ones.[225] Although the Dzurinda government followed more enthusiastic EU policy compared to the Mečiar's, their approach to the minority rights was criticized by the

[223] Regular Report on Slovakia 1998 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovakia_en.pdf

[224] Pieter Van Duin and Zuzana Poláčková, "Democratic Renewal and the Hungarian Minority Question in Slovakia: From populism to ethnic democracy?", *European Societies* Vol.2, No.3, 2000, pp.343.

[225] Pieter Van Duin and Zuzana Poláčková, "Democratic Renewal and the Hungarian Minority Question in Slovakia: From populism to ethnic democracy?", *European Societies* Vol.2, No.3, 2000, pp.349.

Hungarian community on the assumption that the provisions released in this period were prepared for the EU officials rather than minorities.

Due to both external and internal pressures, the Dzurinda government moved in order to form a minority languages law. On 10 July 1999 the Law on the Use of Minority Languages was passed by the Slovak parliament. However, the adoption of new minority language law did not bring any permanent solution for the problems of ethnic Hungarians. Anyhow, none of the Hungarian deputies who are conscious about the results of new law voted for it. It was regarded as a bunch of law which bring the minumum standards regarding the usage of minority language and only intend to please the officials of the EU and the OSCE ostensibly.[226] The new law enabled minorities to use their own language in official transactions in provinces where at least twenty per cent of the population is composed of them.[227]

1999 Regular Report on Slovakia announced that Slovakia fulfiled the Copenhagen political criteria. The declaration of Minority Languages Law, the establishment of a Committe for Human Rights and National Minorities, the participation of SMK into the government and the restart of bilingual school certificates became effective in this announcement. However, Karen Henderson puts forward that besides these developments there were other reasons for the EU's decision arising from political conjuncture. The situation of the NATO which did not get necessary help from Slovakia, Bulgaria and Romania during the Kosovo War (1999) proved that these countries should have found their places under the umbralla of the EU immediately. Therefore, although they had deficiencies in fulfiling the Copenahgen criteria, for instance Bulgaria and Romania in fulfiling economic criteria, they were invited to accession negotiations.[228] In these circumstances, it can be said that the EU had also ignored the unpreparedness of Slovakia in terms of minority rights. This

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[226] Pieter Van Duin and Zuzana Poláčková, "Democratic Renewal and the Hungarian Minority Question in Slovakia: From populism to ethnic democracy?", *European Societies* Vol.2, No.3, 2000, pp.353.

[227] Regular Report on Slovakia 1999
http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf

[228] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.95.

case demonstrates that political decisions can be determinant in the opening of negotiations forestalling the fulfilment of the Copenhagen criteria. Although the 1999 report made a positive evaluation regarding the situation of the Hungarian minority, it emphasized clearly more than ever that the developments regarding Roma minority were not sufficient. After the 'so called' completion of the Copenhagen political criterion, the situation of the Roma community began to be mentioned more than the Hungarian minority in the following reports.

The reason of this increase in the importance given to the Roma was the migration of Roma to Western Europe. The asylum applications of Roma people reached the number of 1, 256 in Britain in 1998, more than 1000 in Finland in 1999 and 1,372 in Belgium in 2000. The increasing asylum applications disconcerted major European states such as Belgium, Denmark, Finland, Ireland, Luxembourg, Norway and the United Kingdom and these countries started to demand temporary visa from Slovak citizens starting from 2000.[229] Upon the mass migration of Slovak Roma to Western European countries, the European Union began to deal with the Roma minority more seriously. A strategy was introduced in order to deal with the Roma minority. Although the introduction of this strategy seemed as a concrete step, the lack of a schedule blocked the progress in the strategy.[230] While the short-term priority of the 1998 Accession Partnership was to adopt minority language-use legislation, the 1999 Accession Partnership stated its short-term priority as to improve the situation of the Roma minority by the help of concrete implementation procedures supported by financial measures. The main target areas were emphasized as employment, housing conditions and education.[231] EU officials criticized the situation of Roma in 1999 Accession Partnership and said that the conditions of Roma minority should be improved and reach the

[229] Anna Meijknecht, 2004, *Minority Protection, Standards and Reality: Implementation of Council of Europe Standards in Slovakia, Romania and Bulgaria,* The Hague: T.M.C. Asser Press, pp.68.

[230] Regular Report on Slovakia 1999 http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf

[231] Regular Report on Slovakia 2000 avalaible at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/sk_en.pdf

degree of standards existing within the EU. At this point Kyriaki Topidi questions whether there are clear-cut standards on minority rights applied by EU member states or not. According to Topidi, scope and content of the minority rights existing within the EU member states are ambigious and variant. It varies among different member states. Furthermore, the EU legislation on this issue is insufficient and the procedures, so called the EU standards are applied to member states "in an à la carte fashion at best".[232]

The 2000 Regular Report confirmed once more that Slovakia continued to meet the Copenhagen political criteria. On the other hand, it asserted that although the necessary regulations and declarations regarding minority rights were introduced in this period, the implementation of these rights were insufficient.[233] Most of the Roma population were unaware of their rights and they were still subject to maltreatment of the police forces and government officials. The Report also mentioned that Roma problem was a social problem as much as a minority problem. It was emphasized that the lack of funding prevents any healing to the situation of Roma minority and local administrative bodies should be part of the solution of Roma question immediately.

In 2001, Slovakia ratified the European Charter of Regional and Minority languages and recognized the right of minorities to speak their languages in provinces where they constitute more than twenty per cent of the population. The documents which are going to be used in the 2001 census contained different language options in order to reach more precise numbers of ethnic populations. Under these circumstances, the 2001 Report stated that different minority groups within the Slovak borders were "comparatively well integrated in Slovak society with the exception of Roma minority".[234]

The following Regular Report which came in 2002 referred the conclusions of the FCNM and Committee of Ministers of the CoE in order to

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[232] Kyriaki Topidi, "The Limits of EU Conditionality: Minority Rights in Slovakia", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 1 / 2003, pp.7.

[233] Regular Report on Slovakia 2000 avalaible at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/sk_en.pdf

[234] Regular Report on Slovakia 2001 http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/sk_en.pdf

evaluate the situation of minorities in Slovakia. The Committee of Ministers appreciated the situation of Hungarian minority while the FCNM found the improvements inadequate in the case of Roma. Furthermore, Slovakia was reminded in order to ratify the Additional Protocol 12 of the ECHR which bans any kind of discrimination. The report criticized the amount of funding allocated for the policies on minority rights and asserted that Roma people were still subject to discrimination. The "adoption of a comprehensive anti-discrimination legislation" was seen urgent in order to improve the situation of Roma.[235]

The Comprehensive Monitoring Report which came out in 2003 before the accession process completed, did not deal with the political criterion since it should be already fulfiled to start negotiations. Instead, it dealt with the economic criteria and other commitments. The situation of minorities was mentioned under the framework of anti-discrimination in the Chapter 13 of Social Policy and Employment. According to the Report, "Slovakia was partially meeting the requirements of membership in the areas of public health, European social fund and anti-discrimination".[236] The situation of Roma was still difficult and most of the Roma people were still subject to marginalization and discrimination in the areas of "education, employment, justice system and public services".[237] The Monitoring Report was the last step before joining the EU. However, the membership status of the candidate countries had already became definite before the report was released. Therefore, the Report had no reward to offer for future members and its ascertainments regarding anti-discrimination legislation and Roma minority were left to the fairness of Slovak government. In view of these circumstances, Slovakia became the EU member on 1 May 2004 with other Central Eastern European partners namely,

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[235] Regular Report on Slovakia 2002
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf

[236] Comprehensive Monitoring Report 2003
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf

[237] Comprehensive Monitoring Report 2003
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf

the Czech Republic, Poland, Hungary, Slovenia, Estonia, Lithunia, Latvia, Malta and Cyprus.

Consequently, Slovakia's journey towards the European Union started in 1995 and ended in 2004 with the membership status. During this process Slovakia faced three main diffiulties, firstly it tried to adopt itself to post-communist period, secondly it tried to establish a new independent country and lastly it tried to manage the EU accession process. These three phenomena effected and nurtured each other. The accession process of Slovakia under the framework of the implementation of Copenhagen criteria in the context of 'respect for and protection of minority rights' constituted the main focus of this chapter.

According to the Copenhagen political criterion, a country that desires to be a member of the EU should adopt the common principles of the Union such as democracy, the rule of law, human rights and respect for and protection of minorities. The fulfilment of political criterion is also a 'sine qua non' for the opening of the accession negotiations. However, the lack of clear-cut standards and norms regarding minority rights within the legal and policy freamework of the Union complicate implementation and monitoring of the political criterion. Depending on these reasons, other factors different from the fulfilment of the Copenhagen criteria loom large in the accession process. Although these factors are not spelled out loudly, they constitute the real linkage between candidate state and the EU and determine the fate of accession process. The statements of both EU Commissioner for Foreign Affairs van der Broek in 1997 and Jean-Christophe Flori in 2003 indicated that the EU had formed its judgement on Slovakia's entrance before the announcement of the last regular report and the deficiencies regarding the minority rights would not be an impediment before the opening of the negotiations. Furthermore, the commencement of war in Kosovo and the mass migration of Roma minority to Western Europe displayed that the approach of the European Union towards the accession process of Slovakia acquired a shape depending on the needs and fears of the Union. While the Kosovo War accelerated the accession process of Slovakia due to political decisions, the migration of Roma minority carried the

situation of Roma to the top of the EU agenda in Slovak accession. Shortly, the needs of the Union forestalled the fulfilment of the Copenhagen criteria in some cases.

Slovakia experienced a difficult accession process and according to Karen Henderson this difficulty stemmed from the domestic politics of Slovakia.[238] The nationalist tendencies of Mečiar government, the lack of stability in democratic institutions and the situation of minority groups in the country constituted the main obstacles in its way towards the EU.

There were two main minority groups in Slovakia, namely Hungarians and Roma. The European Union followed the progress of minority rights in Slovakia by evaluating the situation of these minority groups through the regular reports. Since there was no definition of minority concept within the EU law and the Slovak constitution, and the 'respect for and protection of minority rights' clause lacked legal and policy framework, the implementation of the political criterion was measured through the ratification of international documents prepared by the OSCE and the CoE. Although Slovakia ratified most of these international documents such as the ECHR and the FCNM, it rejected the recognition of collective rights assessed to minorities by not signing the Recommendation 1201 of the Parliamentary Assembly of the CoE and avoided from any provision serving demands of Hungarian minority regarding autonomy in the Basic Treaty on Good Neighbourly Relations and Friendly Cooperation with Hungary.

Karen Henderson claims that due to lack of consensus on standards, there is no clear definition or decision regarding minority question. She criticizes the attitude of prime minister Mečiar who compares Slovakia with EU member states which did not sign or ratify basic minority documents on the contrary of what Slovakia did.[239] According to Henderson, every EU country has its own way to deal with their minority population and Slovakia should

[238] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York : Routledge, pp.88.

[239] From the interview made with Karen Henderson on 26 March 2007.

find its own.[240] This thesis claims that the policies which EU countries generate in order to solve the minority question in their borders, do not grant rights to minority people in the sense that we understand. Different from the stance expected from candidate countries, the EU member states do not recognize the minorities within their borders as seperate nations.[241] Emphasizing the importance of individual rights, the EU member states guarantee 'equality, non-discrimination and respect for diversity' for their minority groups. Since the nature and scope of the rights given to minorities in the EU borders are very different, we can not present these rights as solution of entire minority problem or an European standard. In addition, if they are accepted as solution, their successes are still doubtful and we can not say that all member states has solved their minority problems.[242] Since it is a condition, Slovakia has to fulfil minority criterion and improve the situation of its minority citizens before joining the EU but on the other hand, Slovakia can criticize the EU member states concerning the lack of clear standards in EU law and different applications of minority policies inside and outside of the EU. In spite of the fact that EU stipulates the adoption of basic minority rights documents (such as FCNM) to candidate countries, there are EU member states which have not adopt these documents yet. If EU member states desire the conditionality principle to work effectively, first they should epitomize in the adoption and implementation of basic minority documents. Furthermore, in the lack of clear standards, the monitoring of implementation is rather difficult. Due to this difficulty, some candidate states start accession negotiations without fulfilling their tasks emphasized in the Copenhagen political criterion's minority clause. Although it is the EU's decision to open negotiations or not, an improper application may damage the credibility of the Copenhagen criteria and the impartiality of the enlargement process. Future candidates may cite former

[240] Karen Henderson, 2002, *Slovakia: The Escape From Invisibility.* New York: Routledge.pp.78.

[241] The minority groups in EU member states carry different characteristics from minority groups in CEE states and this is determining in policy differentiation.

[242] See Corsicans in France.

candidates' accession processes even they do not stress the duality between inside and outside of the Union regarding minority rights.

In the following chapter, the Turkish case will be under scrutiny in order examine another candidate country and its countinuing accession process in the context of 'respect for and protection of minority rights'. The Turkish case is a significant example for the ones who wants to observe that the different treatments on the issue of minority criterion do not only stem from lack of clear standards or duality between internal and external policies of the Union but also different accession processes.

CHAPTER IV

IV. The Case of Turkey

In this chapter, firstly the different attitudes of the EU towards candidate countries in respect of the implementation of the Copenhagen criteria during the accession process will be put forward and for this purpose the Eastern Enlargement and basically Slovakia will be a reference point. Secondly, the situation of Turkey in terms of minority rights will be analyzed through the Regular Reports between 1998 and 2005.

IV. A. The Source of the Allegations of Double Standards: The Different Attitudes

The Eastern Enlargement of the European Union in the post Cold War period took place due to some substantial reasons. The reason which gets ahead of other reasons and looms large was to eliminate the factors that cause ethnic conflicts in the region and to prevent the escalation and extension of these conflicts into the EU borders. The stabilization of the region, the political and economical adaptation of Central Eastern European (CEE) countries to post-communist era and the achievement of democratic principles and free market economy were the main aims of the Union when it placed the the enlargement into its agenda. However, the dissolution of multinational states like Czechoslovakia and the disintegration of Yugoslavia depending on ethnic conflicts made the European Union understand that the region should be integrated into the Union immediately in order to maintain security across Europe. On these grounds, the Copenhagen criteria which are stipulated for the applicant countries (whether CEE or not) included a clause regarding 'respect for and the protection of minority rights' in its political division.

In order to compare Slovakia and Turkey in terms of their accessions, it should be firstly noted that the Eastern Enlargement in which Slovakia holds a place and the accession process of Turkey carry different meanings for the European Union. Therefore, the approach of the Union towards Turkey is shaped depending on how the EU perceives Turkey. Although the application

of Turkey dated back to 1987, the CEE countries which applied for membership in the post-1989 period forestalled Turkey in the accession process. The evaluation of the Eastern Enlargement differently from the accession of Turkey emanated from the importance given to the region and the greatness of the enlargement. The Union was conscious of its duties towards Central Eastern European countries. In the Rome European Council which was held in 1990, the Union announced that it knew its duties towards CEE countries and it would do its best in order to support these countries in the transformation period.[243] Furthermore, the integration of the CEE countries was called reunion of the continent after Cold War period. The necessity of the integration was also linked to the common cultural and historical heritage shared with the CEE countries. According to Barbara Törnquist Plewa, the common property among candidate states that achieved to become EU members in 2004 was their adherence to Western Christian Culture. She defined the motivation that made EU tend towards CEE countries as this commonality. By the courtesy of this commonality, CEE countries would adopt Western European norms and principles easily and become member of the Union.[244]

All these evaluations regarding CEE countries indicated that the EU legitimatized the Eastern Enlargement in terms of security, democracy, common history and culture bases in its viewpoint. On the other hand, the application of Turkey was never held as seriously as the CEE's until a certain time. Although Turkey had applied for the EU membership before all the CEE countries, it was not counted as a candidate country until 1999, Helsinki European Council. In addition, the positive evaluations attached to the Eastern Enlargement were not made in the case of Turkey, instead of it, European Commissioner for Foreign Relations Hans van der Broek mentioned Turkey as

[243]Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.135.

[244] Barbara Törnquist Plewa, "East goes West or West goes East? Reflections on the EU Enlargement to Eastern Europe", Michael Herslund and Ramona Samson (eds.), 2005, *Unity in Diversity. Europe and the European Union: Enlargement and Constitutional Treaty,* Copenhagen: Copenhagen Business School Press, pp.46.

a critically important partner and emphasized the interconnected relationship between Turkey and the EU.[245] The point which we should pay attention here is the perception of Turkey as a partner rather than a part of Europe and the definition of relationship as something full of obligations and responsibilities rather than something naturally flourishing. During this period, significant names from the European political stage like Helmut Kohl and Valéry Giscard d'Estaing also made statements identifying Turkey as a muslim country which does not pertain to Europe.[246] All in all, the accession of Turkey was not welcomed like other applicant countries. However, the Article 49 of the EU Treaty had stated that the membership status was open for all European states which respect the principles set out in Article 6 (1) namely principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.[247] In view of these circumstances, there were two difficulties before Turkey; firstly, it should meet the ambigious criterion of 'Europeanness'; secondly, it should adopt the vaguely-defined principles stated in the Copenhagen criteria. The Copenhagen criteria and the conditionality principle were the main indicators of the EU's motivation in the enlargement.

According to Helene Sjursen and Karen Smith, a foreign policy activity should acquire a shape depending on three approaches namely "utility, rights and values" in order to reach success and gain legitimacy.[248] Asa Lundgren applies this thought to the Eastern Enlargement of the EU and investigates which motivation runs the enlargement process in the case of Turkey. First, utility-based perspective suggests that economical and security interests get the priority in the EU's enlargement strategy. Second, rights-based perspective

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[245] Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.136.

[246] Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.121.

[247] The two conditions related to accession of new member states to the EU available at http://europa.eu/scadplus/glossary/member_states_accession_en.htm

[248] Helene Sjursen and Karen E. Smith, "Justifying EU Foreign Policy: The Logics Underpinning EU Enlargement", *Arena Working Papers 01/1*
available at http://www.arena.uio.no/publications/wp01_1.htm (29 August 2007)

puts forward that the EU conducts its enlargement process so as to spread universal rights and norms such as democracy, rule of law, human rights and fundemental freedoms in the continent. Third, value-based perspective claims that common values, kinship and identity constitute the main motivation of the EU for expanding. According to Asa Lundgren, in the case of Turkey, the value-based perspective overbears the utility and rights-based perspectives since Turkey's performance which is higher than some of the CEE candidate countries in terms of complying economic and democratic criteria can not help it from hanging back in the enlargement process.[249] It proves that besides economic and democratic performances, other characteristics under the name of 'Europeanness' such as kinship, common historical and religious (Christianity) values play an important role in the accession process. Turkey which lacks these commonalities finds itself hanging back in the enlargement process.

Turkey was not only judged upon value-based perspective of course, although its situation was not worse than other CEE countries, Turkey had also problems in the fulfilment of political and economic criteria completely. However, Lundgren argues that the financial and moral support that the EU provides for candidate countries were not given to Turkey as much as the CEE countries. Since the Eastern Enlargement carried a different meaning for the Union, the priority in terms of financial aid was given to CEE countries and the aid granted for Turkey remained very moderate until 2001-2002 period when the necessary preparations were completed in the case of the CEECs. Furthermore, the financial aid provided for Turkey did not grow out of the Phare programme but from the Euro-Mediterranean programme (MEDA I and MEDA II) and it was less than the amount granted for CEECs.[250] Financial aid was an important indicator which shows the support of the Union to the

[249] "Turkey scored higher than Romania on both economic and democratic indicators prior to the EU's decision to enlarge to the CEECs in 1993." Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.122.

[250] Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?" Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.123.

candidates because the reforms expected from candidate countries were difficult to cover financially. However, the amount of the aid and the source of it proved that the Union treated Turkey differently from other candidate states. This different treatment continued in terms of moral backing. In the past, the negative speeches on Turkey's membership delivered by several EU officials and European leaders and the indifferent attitude of the Union regarding Turkey's candidateship proved that Turkey was left alone in the accession process for a long time in terms of moral backing. Today, this kind of demoralization still exists. The Article 49 which includes a value-based and ambiguous feature such as 'being European' as a condition, the different treatment which was applied to Turkey in terms of financial and moral backing and the indifferent attitude of the Union towards the candidateship of the country for a long time demonstrated that Turkey was not treated under the same conditions with the CEECs in the EU enlargement process. The different treatment continued under the framework of the implementation of the Copenhagen criteria in the context of 'respect for and protection of minority rights'. The problem of double standards in the implementation of 'minority rights' criterion was mentioned at different times by both CEE candidate countries and many scholars. The Central Eastern European countries and especially Slovakia, Latvia and Estonia whose minority problems caused a real challenge during their accession processes emphasized that the standards stipulated on candidate states did not have their counterparts in some of the veteran EU member states. The lack of common standards and well-defined provisions about minority rights made the implementation of minority criterion difficult. In addition, the duality between internal and external policies increased the hump of candidate states and weakened the credibility of the Union. As it was mentioned in the previous chapters, the EU dealt with minority rights under the framework of non-discrimination, equality and cultural diversity within the EU borders. On the other hand, the external policy of the EU was shaped on more harsh terms demanding groups rights in some occassions alongside measures for non-discrimination. Guido Schwellnus claimed that the oppression coming from the EU in terms of minority rights

varied among candidate countries depending on the seriousness of the issue.[251] According to Schwellnus, the different treatment between Eastern and Western Europe in the realm of minority rights could only be explained by the security and utility based approach of the Union. The EU which feared the escalation of ethnic conflicts into its borders, preferred to apply relatively more harsh and scheduled policies on the candidate states. On the other hand, Schwellnus quoted Risse-Kappen (1996) who says that the efforts of the EU on the issue of improving minority rights in CEE is launched as a transfer of European common standards to this region.[252] It was accepted that there is commonality within the Union regarding the implementation of minority rights, however, there was not such a commonality among EU member states or there were not clear-cut standards on this issue in the Union. For instance, the provisions of the Framework Convention on National Minorities (FCNM) were regarded as the European standards shared by the entire Union but there were many member states which did not sign or ratify the FCNM.[253] The duality was so apparent that the EU had to diminish its expectations from candidate states. In spite of the fact that the EU demanded Slovakia to recognize the CoE's Recommendation 1201 which promises collective rights to national minorities, Slovakia redefined this Recommendation and added it to its Basic Treaty with Hungary only by excluding the notions of collective rights and autonomy.[254] The reaction of the CEE candidate states towards these relatively harsh and scheduled conditions was also emanated from the different perception of the nation-state notion by the CEE countries. According to Törnquist Plewa, Western and Eastern Europe which experienced different historical processes

[251] Guido Schwellnus, "Double Standards? Minority Protection as a Condition for membership", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.187.

[252] Guido Schwellnus, "Double Standards? Minority Protection as a Condition for membership", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.191.

[253] France did not sign or ratify the FCNM while Greece signed in 1997 but did not ratify yet.

[254] Guido Schwellnus, "Double Standards? Minority Protection as a Condition for membership", Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.195-196.

in terms of emergence of nationality and nation-state concept, perceived the relationship between nation and state also differently. For the West, nation and state constituted a whole and formed the nation-state whose borders and citizens were well defined, on the other hand, the East could not reach this stage easily and nation-state remained as an "ideal" for them.[255] Therefore, the CEE states always held the issue of minority rights under the framework of security and integrity of the state. Referring the duality between internal and external minority approaches, the CEE states accused the EU that they did not understand the realities of the region and pressed for the norms and standards which did not exist within the EU.

On the other hand, the duality and double standards were not only limited to the different policies of the EU inside and outside. There were double standards arising from the different applications in the accession processes of the CEECs and Turkey. As it was mentioned above, there was difference between the treatments towards Turkey and Central Eastern European countries. The announcement of Turkey's candidateship in 1999 after 12 years that Turkey applied for membership, the negative statements coming from some European leaders and the lack of both financial and moral backing displayed that the approach of the EU towards Turkey's membership was more reluctant and critical.

In terms of minority rights, the application of conditionality principle acquired a different character in Turkey when it was compared to Slovakia. Slovakia whose minority problem affected its accession process more than any other CEE countries conducted this process in a well-planned and scheduled membership perspective presented by the Union. EU officials declared on several occassions that Slovakia might have minority problem but this would not constitute a barrier before its entrance to the EU. However, Turkey did not have this kind of membership perspective all along. Slovakia whose membership was guranteed explicitly on several occassions found the chance

[255] Barbara Törnquist Plewa, "East goes West or West goes East? Reflections on the EU Enlargement to Eastern Europe", Michael Herslund and Ramona Samson (eds.), 2005, *Unity in Diversity. Europe and the European Union: Enlargement and Constitutional Treaty,* Copenhagen: Copenhagen Business School Press, pp.48.

to manoeuver more comfortably in the accession process when it was compared to Turkey.

IV. B. The Evaluation of the Regular Reports Between 1998-2005: The Minority Rights in Turkey

In this part, the evaluation of Turkey through regular reports will be put forward in order to observe the situation of the country in terms of minority rights. To this end, the clause of minority rights and protection of minorities existing in the regular reports will be under scrunity between the years of 1998 and 2005.

In 1963, Turkey and the European Economic Community signed an Association Agreement (Ankara Agreement) which presented a membership perspective to Turkey for the future. In 1995, Customs Union was formed and, in Helsinki in December 1999, the European Council decided to grant Turkey the official status of an accession candidate.[256] The Union considered Turkey as a country which achieved its democratization process but had deficiencies in terms of human rights and fundemental freedoms.

1998 Regular Report on Turkey stated that Turkey recognized only non-muslim minorities namely Greeks, Armenians and Jews as national minorities according to 1923 Treaty of Lausanne. According to Turkish legal system, the term of 'minority' is used only for people who are clearly stated in the "multilateral or bilateral treaties" that Turkey signed.[257] Although Turkey did not recognize Kurds as a national minority group, the report mentioned about the population of Kurdish origin and Turkey's armed conflict with the Kurdistan Workers Party (PKK) under the heading of the Minority rights and Protection of Minorities. The report asserted that the minorities who are mentioned in the Treaty of Lausanne and recognized by Turkey and the ones who are not accepted as a minority became subject to different applications in

[256] The official web-site of the EU, Europa "Turkey's Pre-accession Strategy" http://europa.eu/scadplus/leg/en/lvb/e40113.htm

[257] Letter from Minister of Foreign Affairs of the Republic of Turkey, 14 June 2000 quoted in Walter A. Kemp (ed.), 2001, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities,* The Hague: Kluwer Law International, pp.214.

Turkey. Referring to the terrorist activities in the south-eastern region, it was stated that the main expectation of the EU from Turkey on the issue of south-eastern problem was formulation of a peaceful solution. This solution should include the recognition of Kurdish identity and expression of it without letting the creation of a seperatist atmosphere.[258]

In 1999 Regular Report on Turkey, the EU's call for a peaceful solution which envisages "the recognition of certain forms of Kurdish cultural identity" was repeated.[259] The 1999 Report pointed out the important statement made by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. According to this statement, Turkey had a responsibility of providing necessary environment to people (people of Kurdish origin) who want to develop their cultures, traditions and languages. The conditions which explain how these rights are conducted were presented in the two important documents of the CoE, namely the FCNM and the ECRML. Concisely, the EU demanded Turkey to develop some new perspectives regarding group rights in this report.[260]

The following Regular Report in 2000 announced that Turkey still insisted not to subscribe to the FCNM and still continued to recognize the minorities which were stated in the Treaty of Lausanne. The Report defined main cultural rights that should be provided for the citizens who have different ethnic identity as "the right to broadcast in their mother tongue, to learn their mother tongue or to receive instruction in their mother tongue".[261] Like other regular reports, the Report 2000 dealt with only Turkish citizens of Kurdish origin under the framework of minority rights.[262]

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[258] Regular Report on Turkey 1998 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf

[259] Regular Report on Turkey 1999 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/turkey_en.pdf

[260] Regular Report on Turkey 1999 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/turkey_en.pdf

[261] Regular Report on Turkey 2000 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/tu_en.pdf

[262] Regular Report on Turkey 2000 available at

According to the 2001 Report, Turkey still failed to make rooted changes in terms of healing the situation of its ethnical groups. The situation regarding ratification of the FCNM and definition made by the Lausanne Treaty had not changed. A brief summary was held about Turkish Roma population. It was stated that the inappropriate expressions defining Roma people were omitted from the school books and dictionaries.[263]

The 2002 Regular Report on Turkey mentioned about the south-eastern region of the country under the framework of "the state of emergency, the situation of displaced persons and the Return to Village and Rehabilitation Project".[264] Undemocratic situations in the south-east were criticized by the EU officials. The Report stressed that the situation of ethnic groups in terms of expressing their identity and enhancing their languages and cultures did not change very much. Lastly, the EU appreciated the Turkey's permission regarding the visit of the OSCE High Commissioner on National Minorities to the country.[265]

After a long letter traffic between the High Commissioner Max van der Stoel and Turkish Minister of Foreign Affairs İsmail Cem, the visit of High Commissioner took place in January 2003. However, the political dialogue regarding the situation of national minorities could not be established. The 2003 Regular report asserted that Turkey ratified the UN Covenant on Civil and Political Rights adding a condition to Article 27. This condition enabled Turkish state to interpret the Article 27 according to provisions of Turkish Constitution and Lausanne Treaty.[266] As it was mentioned in the Chapter III, this kind of condition was also added to the implementation of the

http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/tu_en.pdf

[263] Regular Report on Turkey 2001 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf

[264] Regular Report on Turkey 2002 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf

[265] Regular Report on Turkey 2002 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf

[266] Regular Report on Turkey 2003 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf

Recommendation 1201 of the CoE in Slovakia. In the 2003 Regular Report, for the first time the situations of different religious groups in Turkey and the minority groups which were defined by the Treaty of Lausanne were mentioned. The rest of the Report dealt with the undemocratic conditions of the south-eastern region emanating from terrorism, social problems of the displaced persons and government's efforts to remedy these conditions. However, as per usual the evaluation of the Union regarding Turkey was critical rather than being supportive in terms of financial and moral backing.

The Regular Report 2004 stated that in terms of minority rights Turkey achieved to pass important legislations since it was announced as a candidate country. "Two constitutional reforms and eight legislative reform packages" which include provisions regarding "gender equality, elimination of death penalty and freedom of press" were accepted.[267] Turkey also became signatory part of some important minority rights documents. However, the most important development was that Turkey recognized the superiority of international treaties to its own legislation on the issue of fundemental freedoms. Upon these developments, the EU admitted that Turkey wended a lot since the last regular report but added that the improvements were still insufficient. The situation of the FCNM and the Revised European Social Charter (they were not ratified) made the EU decide that Turkey still had deficiencies regarding protection of minorities.[268]

The Recommendation of the European Commission on Turkey's progress towards accession which was released on 6 October 2004 pointed out that Turkey sufficiently fulfiled the political criteria and there was no impediment before the opening of the accession negotiations. However, the Recommendation also added that the implementation of these legislations should be observed for a long time in order to see Turkey's determination on

[267] Regular Report on Turkey 2004
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf

[268] Regular Report on Turkey 2004
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf

the issue of applying these reforms regarding fundemental rights.[269] After this recommendation of the Commission, the Union decided to start negotiations with Turkey in October 2005. The 2005 Regular Report which came after the opening of the negotiations, continued to criticize Turkey regarding minority rights. The Report put forward that Turkey's approach to minority rights remained unchanged since last year's report announced. This approach was the Turkey's stance in the recognition of the minority groups within Turkey. The 1923 Treaty of Lausanne which kept its legal force since the end of WWI, was the document that Turkey defined the minority groups within its borders. However, the Report claimed that besides Greeks, Jews and Armenians which were recognized by Turkey legally, there were other minority groups within Turkey according to relevant international and European standards. At this point, it is vital to ask the Union to explain these international and European standards and introduce the legal force of them because there is no consensus or holistic approach in the international law and the European Union regarding minority rights. Furthermore, the norms and standards which the EU exports during the enlargement process should have their foundations in the international law firstly and the applications within the EU territory secondly. As will Kymlicka stated before, only on these conditions the transfer of the EU's norms and standards can achieve its purpose.[270]

Consequently, the difference between the implementations of the minority criterion in the case of Turkey and Slovakia arises from firstly the lack of coherence in the minority rights policy of the Union inside and outside and secondly the difference in the perceptions of the Eastern Enlargement and the acession of Turkey by the Union. There is no consensus on the definition of the minority concept and what the minority rights cover in the international law and the European Union law. This kind of incoherence causes different policies and applications to emerge in different places of the world. As it was mentioned before, according to Turkish legal system, the term of 'minority' is

[269] Recommendation of the European Commission on Turkey's Progress http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0656en01.pdf

[270] Will Kymlicka, "Multiculturalism and Minority Rights: West and East", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 4 / 2002, pp.1.

used only for people who are defined in the "multilateral or bilateral treaties" that Turkey signed.[271] The 1923 Treaty of Lausanne defines the national minorities existing in Turkey as non-muslims namely Greeks, Armenians and Jews. On the other hand, Slovakia lacks such a document defining its national minorities. In the case of the EU, the ambigious norms and standards and the different applications between inside and outside of the Union reveal different treatments in the implementation of the minority criterion. As it happened in the previous enlargements, the EU demands Turkey to fulfil the standards which do not reach a commonality within the EU borders. The best example is France which do not sign or ratify the Framework Convention on National Minorities as a veteran and founding member of the EU. Despite this fact, the EU keeps criticizing Turkey in the regular reports over the subscription of the FCNM.

The degree of importance given by the EU to the Eastern Enlargement and the accession of Turkey also introduced some double standards in the accession process. While the CEE countries are seen as a part of Europe and their accession is regarded as a must after the end of Cold War, Turkey is marginalized and kept waiting for a long time. The value-based perspective also eases the accession of the CEECs. The EU admits that they share a common culture and history with the Central Eastern European countries and their integration into the EU can be called as the reunion. However, Turkey which is founding member of many European institutions and important security provider for Western Europe during the Cold War, is not identified as 'European'. Although Ollie Rehn defines the relationship between Turkey and the EU "highly interdependent", this interdependence does not require a membership perspective for Turkey until recent years.[272] All in all, the CEE countries which have solid, well-defined and scheduled membership

[271] Letter from Minister of Foreign Affairs of the Republic of Turkey, 14 June 2000 quoted in Walter A. Kemp (ed.), 2001, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities,* The Hague: Kluwer Law International, pp.214.

[272] Asa Lundgren, "The Case of Turkey: Are some candidates more 'European' than others?" Helene Sjursen (eds.), 2006, *Questioning EU Enlargement. Europe in Search for Identity.* London: Routledge, pp.136.

perspective, feel the pressure of deficiencies regarding minority rights less than Turkey in the accession process.

Conclusion

This study which aims to examine the implementation of the Copenhagen criteria in the context of 'respect for and protection of minority rights' and chooses the accession process of Slovakia as a case in this respect, has reached some conclusions. It is better to put forward these conclusions in the order of the chapters. This does not mean that the study has not reached a holistic and fundemental conclusion however, on the contrary, all the chapters follow each other and takes us to the final sequence. The lack of the universal definition of the minority concept, ambigious norms and standards regarding minority rights and the inconsistency between the internal and external policies of the European Union in the issue of minorities complicate the implementation and the monitoring of the minority criterion during the accession process. Under these circumstances, the political decisions and other factors become determining instead of the fulfilment of the Copenhagen criteria in the accession process.

The Chapter I puts forward that there is no universal definition of the minority concept all over the world throughout the history. In spite of the fact that the definitions of minority concept have some common subjective and objective elements and some common characteristics such as time and number, every state and international organization determine its own minority definition de facto. Gudmundur Alfredsson claims that minority definition acquires its shape through the practices of states and international organizations in international conjunture.[273] The reason of this lack of consensus also emanates from the perception of the minorities by the nation states. As the main actor of the international order, the nation states hesitate to accept an universal minority definition and give positive rights to minorities. By this way, they prevent the secessionist claims of the minorities over the territory of the nation state. However, it is apparent that the ethnic conflicts constitute an important threat for the stability and the borders of the these states.

[273] From the Report submitted by Prof. Gudmundur Alfredsson at European Commission for Democracy Through Law (Venice Commission), Round Table on Non-Citizens and Minority Rights on 16 June 2006 available at http://www.venice.coe.int/docs/2006/CDL(2006)053-e.pdf

The role of international organizations is to encourage nation states to take concrete steps in terms of minority rights. The two periods in the 20th century, namely post-WWI and post-WWII period prove that the approach of these organizations are also effected by the political conjuncture and ideologies existing in that period.

While the League of Nations period reflects the liberal idealist viewpoint to the policies of minority rights, the United Nations deals with the minority rights in a realist manner. The collectivist approach of the LoN is replaced by the individualistic approach of the UN in the second half of the 20th century due to the World War II and its consequences. The protection of the stability and the borders is regarded more important than the protection of minorities. Therefore, minority rights is began to dealt with under the framework of human rights. As a consequence, there is no consensus on the definition of the minority concept and, since there are a lot variables to reach such a consensus, states determine the definition of minorities by their own.

The Chapter II argues that in the post-Cold War period the international organizations such as the OSCE, the CoE and the EU stipulate the adoption of minority rights as a membership condition. However, the lack of clear benchmarks regarding minoritiy rights and the definition of minorities complicates the implementation of this conditionality. In the case of the European Union, the implementation of the conditionality becomes more difficult because of the duality between the internal and external policies of the Union on minority rights.

The dissolution of the USSR and the end of Cold War give rise to ethnic conflicts and instability in Central Eastern Europe. In order to maintain security and prevent potential ethnic conflicts, the European international organizations undertake the duty of expanding some political principles in the region. This development causes the minority rights to enter into the agenda of the international organizations after a long period of silence. The CSCE / OSCE and the CoE are the main European organizations that provide necessary norms and standards regarding minority rights in this period. They establish institutions such as the High Commissioner on National Minorities (the HCNM

by the OSCE) and they release legal documents such the Framework Convention on National Minorities (the FCNM by the CoE) in order to create a mechanism to achieve an improvement in the condition of the minorities in Europe. Although the HCNM and the FCNM are the basic instruments of the implementation and the monitoring of the minority rights, their authority is limited with the sovereignity of the nation states. As Florence Benoit Rohmer puts forward for the Framework Convention, the Framework Convention can interpret the rights of minorities depending on "the rule of law, territorial integrity and the sovereignity of the states".[274] All in all, the applications of minority rights are restricted by the territorial integrity and the soveregnity of the states.

The role of the European Union in the promotion of minority rights becomes definite with the introduction of the Copenhagen criteria. However, the ambigious norms and standards and the duality between the external and internal policies of the EU constitute the main barriers before the implementation of the Copenhagen criteria. While the common principles which are put forward by the Copenhagen political criterion include the clause of 'respect for and the protection of minorities', the Article 6 (1) of the TEU declares the common principles of the Union as "democracy, liberty, rule of law, respect for human rights and fundemental principles".[275] The EU hesitates to mention the clause of 'respect for and protection of minorities' in a legal document. Furthermore, the Article 49 asserts that the states which want to be a member of the Union should fulfil the principles which are mentioned in the Article 6(1). Since the Article 49 refers the Article 6(1) instead of the Copenhagen Criteria, the consideration given to minorities in the criteria becomes empty of legal base. As Gwendolyn Sasse argues although it was assumed that the EU affected and changed CEE by promoting minority rights, the norms and principles which the EU defended and interpreted as transfer of

[274] Florence Benoit-Rohmer, 1996, *The Minority Question in Europe: Texts and Commentary*, Strasbourg : Council of Europe Publishing, pp.40.

[275] Article 6 of the TEU available at http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/htm/C_2002325EN.000501.html

European standards did not have their legal basis in the acquis communitaire.[276]

The lack of solid standards regarding minorities in the EU law also gives rise to duality between the internal and external policies of the Union. The EU deals with the minority issue under the framework of the non-discrimination, equality and respect for cultural diversity inside the Union. The member states which gain their membership status before the introduction of the Copenhagen criteria are not obliged to adopt certain policies regarding minority rights. On the other hand, the issue of minority rights constitutes an important part of the EU's external relations and the EU stipulates the fulfilment of the Copenhagen political criterion in order to start negotiations with the candidate countries. Moreover, the EU presents this conditionality as the expansion of European common values to the candidate countries. Here, it is inevitable to ask whether there is a common standard among the member states of the Union regarding minority rights or not. There is no such a common standard among member states and plus some of the members of the Union lag behind the candidate countries in terms of minority rights. For instance, France neither signs or ratifies the Framework Convention on National Minorities which is called the most important document regarding minority rights while Slovakia signed and ratified the FCNM in 1995.[277] All in all, like in the international law there is no common definition of minority or common standards regarding minority rights in the EU legal and policy framework. The EU lacks a holistic and robust minority policy which exists inside and outside of its borders. This situation might not be a problem if there was no conditionality applied to candidate countries for adopting certain minority policies under the name of EU common principles.

The Chapter III focuses on the case of Slovakia in order to examine the implementation of the minority criterion before the opening of the negotiations.

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[276] Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating Copenhagen Criterion into Policy", *EU Working Papers RSCAS No: 2005 / 16*, Italy: Badia Fiesolana, San Domenico Di Fiesole (FI)

[277] The official web-site of the CoE regarding minority rights available at http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P307_16155

Slovakia is a very appropriate case to observe the minority criterion and its effects on a country because the minority issue constitutes one of the most problematic areas between Slovakia and the EU. According to the Comprehensive Regular Report which is released in 2003, "Slovakia is partially meeting the requirements for membership in the areas of public health, European Social Fund and anti-discrimination".[278] The report which comes just before the opening of the negotiations indicates that the deficiencies regarding the fulfilment of Copenhagen political criteria do not effect the accession process. The statements made by the EU officials and European leaders proves that the conditions for the opening of negotiations are not so strict and they do not constitute a real barrier prior to the opening of negotiations.[279] It is already stressed that these conditions are designed especially flexible in order to make the accession process continue properly but this situation causes candidate countries to receive different treatments from the Union depending on other factors. The Chapter III displays that in addition to the lack of clear benchmarks regarding minority rights and the duality between the internal and external policies of the Union, the Union's failure to conduct a clear and open implementation and monitoring mechanism play a role in the allegations of double standards. Heather Grabbe puts forward that "the gap between the conditions and the reward constrains the effectiveness of the EU conditionality"[280], this thesis can add to this statement that the gap between the conditions and the reward also effects the fairness and the credibility of the Union during the accession process.

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[278] Comprehensive Monitoring Report 2003 available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf

[279] A declaration by Jean-Christophe Flori, a spokesman on enlargement at the European Commission regarding Roma minority "a problem, but … has not influenced our decision on the readiness of the candidate countries to join the EU."
as quoted in "Shame of a continent", by Gary Younge, *The Guardian,* 8/01/2003 http://www.guardian.co.uk/eu/story/0,7369,870469,00.html quoted in Kyriaki Topidi, "The Limits of EU Conditionality: Minority Rights in Slovakia", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 1 / 2003, pp.30.

[280] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.7. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

The last chapter, Chapter IV mentions about Turkey and analyzes the EU regular reports on this country between 1998 and 2005. The case of Turkey is different from other candidate countries in many ways. As a country which applies for membership in 1987, Turkey gains its candidateship status in 1999 and starts the negotiations in 2005. At the end of 18 years, there is still no specific membership perspective for Turkey and the status which will be given at the end of the accession process is a debatable issue among existing EU member states. In respect of minority rights, the Turkish case indicates that the approach of Union towards the CEE countries and Turkey effects the evaluation of the Turkey's report on minority rights. As a country which is perceived 'European' historically, culturally and traditionally, Slovakia feels the pressure of deficiencies regarding minority rights less than Turkey in the accession process. The value-based approach of the Union causes Turkey and Slovakia to be evaluated differently not only in terms minority rights but also in terms of other issues.

Lastly, Turkey is under an implicit pressure to extend its minority definition which was accepted in the 1923 Treaty of Lausanne. This pressure coming from the European Union and other major European institutions such as the HCNM is a unique application in the history of the Union. As it was put forward previously, the definition of minority concept and the scope of minority rights are left to authority of nation states de facto. France which does not accept the existence of national minorities within its borders refuses to sign the Framework Convention on National Minorities (FCNM). Under these circumstances, it is not wrong to claim that Turkey is much more under pressure in the issue of minority criterion than old member states and new member states.

Consequently, this study argues that concerning the implementation of the Copenhagen Criteria in the context of 'respect for and protection of minority rights' there are double standards emanating from; firstly, the lack of consensus regarding the definition of minority concept and the scope of minority rights; secondly, the duality between the internal and the external policies of the EU in the issue of the minority rights; thirdly, the gap between

the conditions and the reward effecting the implementation of the criteria[281]; and lastly the changing attitudes of the EU towards different candidate countries due to different perceptions of these countries.

[281] Heather Grabbe, "A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants", *European University Institute Working Paper RSC 12:99*, 1999, pp.7. available at http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf

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