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CULTURAL IDENTITY: A "MINORITY QUESTION" ?

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I. In the documents adopted by the Conference on Security and Cooperation in Europe (CSCE/OSCE) , the United Nations and the Council of Europe¹ since the beginning of 90's, although a general definition of the concept of "minority" is not given, the demands aiming to preserve the cultural identity of persons who display distinctive ethnic, linguistic or religious characteristics differing from those of the majority are regarded in the context of the "minority question", for which the solution requires the granting of specific rights to minorities.

In the background of this approach lies the effort of finding a solution to the destabilising effects of the "ethnic factor"². In this respect, minority rights, to a certain extent, aim to suppress, pacify ethnic conflicts.

The various international instruments on minority protection all include two types of measures to this effect³:

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

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¹ CSCE Copenhagen Document (1990), UN Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities (1992), Framework Convention for the Protection of National Minorities (1995; 1998).

² Heinrich Klebes, "The Council of Europe's Framework Convention for the Protection of National Minorities", 16 Human Rights Law Journal (1995), p. 92.

³ See Naz Çavusoglu, Uluslararası İnsan Hakları Hukukunda Azınlık Hakları (Minority Rights in International Human Rights Law), Bilim Yayınları, İstanbul, 1999.

2. The condition of “the territorial integrity of states”: The obligation to respect the states’ territorial integrity, included in every international document on minority rights, is the clearest imprint of the policies aiming at stability. Designed to counterbalance the granting of specific rights to minorities (persons belonging to minorities), this is what shapes the fundamental philosophy of minority rights preventing them to develop into secessionist demands.

At this point it seems necessary to clarify the distinction between the right of self-determination of “peoples” recognised in international documents and minority rights: The qualitative difference between the two is that while the right of self-determination, covering all the rights in the cultural, economic and political spheres, in essence, is the right “to determine the political status freely”, minority rights, on the other hand, take shape around the right of “cultural identity”⁴.

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

On the other hand, presently, the internal aspect of self-determination is on the agenda. The General Comment on self-determination issued by the Human Rights Committee, regarding Article 1 of the UN Covenant on Civil and Political Rights, acknowledges that the “realisation” of “the right of self-determination is an essential condition for the effective guarantee and observance of individual human rights” and adds that “States Parties” in their reports “confine themselves to a reference to election laws”, but they “should describe the constitutional and political process which in practice allow the exercise of self-determination”⁵.

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

The OSCE High Commissioner on National Minorities Max van der Stoep, when in Istanbul for the OSCE Summit (1999), stated that the concepts of “internal self-determination” and “non-territorial autonomy” together were about ensuring a more effective participation of minorities in public life without prejudice to the territorial integrity of the states.

⁴ Cf. Patrick Thornberry, “Self-Determination, Minorities, Human Rights: A Review of International Instruments”, (1989) 38 *International and Comparative Law Quarterly*, p. 880.

⁵ *Ibid.*, pp. 883-884.

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

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

In the Explanatory Report on the Framework Convention, some of the measures that the states could take within the framework of their constitutional systems in respect to this article are mentioned⁶:

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

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

Also when the Framework Convention is taken as a whole, the consequence of considering the recognition of rights to protect the cultural identities of persons belonging to minorities together with the positive obligations of states and the prohibition of assimilation is the protection of “group identity”, and in all international instruments on minority rights, even though the subject is the individual, the rights carry a collective dimension.

⁶ Framework Convention for the Protection of National Minorities and Explanatory Report , in: 16 Human Rights Law Journal (1995), pp. 98 ff.

That is where the problem emerges.

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

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

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

However, the Constitutional Council, mentioning that the Article 2 of the Constitution should be read together with the Article 11 of the 1789 French Declaration of Human and Citizen’s Rights which enshrines the right to freedom of expression, did not find the other provisions France undertook to implement in spheres of education, media (printed media, radio, television) and cultural activities by signing the Charter contrary to the Constitution. According to the Council, most of these provisions do not go beyond the already existing practices regarding the use of regional languages.

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

According to the Constitutional Court, the purpose of the regulations to protect the indivisible integrity of the state with its territory and nation is “not to prohibit the differences existing in the country and their languages and cultures”; “what is prohibited is not the expression of cultural differences and richness, but

their utilisation to create minorities on the territory of the Republic of Turkey for the purpose of undermining national unity and founding a new state order on that basis". Consequently, what is feared is that the demands of the recognition of cultural rights later may instigate "a tendency to break off from the whole".⁷

III. The conditions of accession to the European Union for the applicant States known as Copenhagen Criteria were set by the Copenhagen European Council Summit Meeting in June 1993. These criteria, stated in a paragraph of the Conclusions of Presidency, have three components⁸:

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

In 1997 European Union Luxembourg Summit it was decided that compliance with the Copenhagen political criteria is a prerequisite for the opening of any accession negotiations⁹. In this regard, "protection of minorities" becomes to be one of the important issues of Turkey's accession to the European Union.

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

⁷The Turkish Constitutional Court, stating "the principle of 'indivisible integrity' of the State requires the integration of sovereignty with a single State structure composed of the unity of the nation and the territory", claims that the Constitution is closed to a federal system where the sovereignty is exercised by constituent units as much as it is closed to forms of autonomy and self-government for regions (See Decision No. 1994/2, in: Official Gazette, 30 June 1994).

⁸ Bull. EC 6-1993, p. 13.

⁹ Bull. EU 12-1997, p. 10.

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

The principle of “territorial integrity of states”¹⁰, which comprises the fundamental philosophy of all the international instruments on minority rights, including the Framework Convention for the Protection of National Minorities, the first legally binding multilateral instrument devoted to the protection of national minorities in general, is a principle, also not questioned by the European Union. But as mentioned earlier, the problem wraps around the collective dimension of rights conferred on minorities. In the examples of France and Turkey, the protection of cultural differences by means of “minority rights” is regarded to be in conflict with the constitutional fundamental principles.

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

In the context of protection of cultural identity, provisions on linguistic freedoms are again based on a fundamental right: the protection of freedom of expression. Additionally, the provisions of the Framework Convention are mostly programmatic provisions that leave the States a measure of discretion in the implementation of its objectives by enabling them to take particular circumstances into account.

For example, the use of minority languages in relations with the administrative authorities: This provision has been worded very flexibly; only in the condition of the existence of a “real need”, which is to be assessed by the State, the States Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between the persons belonging to minorities and the administrative authorities¹¹.

¹⁰ Article 21 of the Framework Convention.

¹¹ Article 10/2 of the Framework Convention.

There is a similar statement in the article referring to the teaching of and instruction in a minority language: If there is “sufficient demand”, the States Parties shall endeavour to ensure, as far as possible, the teaching of or the instruction in the minority language. This provision is at the same time conditioned to be implemented without prejudice to the learning of the official language or the teaching in this language¹². However the Framework Convention recognises the rights of persons belonging to minorities to set up and manage their own private educational and training establishments and institutions; but the exercise of this right does not entail any financial obligation for the States¹³.

These examples show what is understood when “minority rights” are mentioned. So, as a solution, a compromising formula which would recognise the principles covered by the Framework Convention, on the basis of individual human rights, without referring to the concept of “minority”, could be developed.

Such a formula can be found in the Bulgarian Constitution (1991)¹⁴:

Article 54/1 of the Constitution of the Republic of Bulgaria reads:

“ Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognised and guaranteed by the law” ; and Article 36/1-2:

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

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

¹² Article 14 of the Framework Convention.

¹³ Article 13 of the Framework Convention.

¹⁴ “Constitution of the Republic of Bulgaria”, in: *The rebirth of democracy*; 12 constitutions of central and eastern Europe, Council of Europe Press, 1995, pp. 9 ff.

To conclude this should be underlined: Today Turkey is yet more distant than France that acknowledges the use of “regional languages” in education and radio/television broadcasting limited to the sphere of private life, with respect to the right of freedom of expression. Therefore, in these circumstances, it is quite difficult to envisage a process of accession devoid of problems in the relations between Turkey and the European Union, taking into account that compliance with the Copenhagen political criteria is its prerequisite.