Miskolc Journal of International Law
MISKOLCI NEMZETKÖZI JOGI KÖZLEMÉNYEK

VOLUME 2. (2005) NO. 1. PP. 32-42.

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Protection of national minorities, international security and the freedom of expression

The protection of minorities and questions raised by the protection of national minorities cannot be separated from problems relating to the maintenance and assurance of international or collective security. The protection of minorities can be considered as an essential factor of international security thanks to which it would be possible to prevent national-ethnic conflicts which, following their outbreak, could present a danger even to international security. There are several examples in history which show that unsolved ethnic tensions or national conflicts can lead even to armed conflicts.

The different regional organisations can be – thanks to their geographic nearness – suitable to forecast or too try to hinder prior to their formation those events which present a danger to global security. The activity of several organisations can be mentioned in Europe in this respect like for example the High Commissioner on National Minorities working in the frame of the Organization for Security and Co-operation in Europe, his mission is to make forecasts and carry out preventive activities in the earliest stage of national and ethnic tensions.[2] The Council of Europe and other regional international organisations could also serve as forum for discussing legal disputes which exist between the states in respect of minorities, and the problems of those minorities which do not have a home-country[3] (kin-state). Opinions are divided as to the real effectiveness of this kind or similar preventive mechanisms, the states, lacking real will (in general for political and economic reasons) do not go as far as using these dispute settling forms. Therefore, minorities' conflicts remain unsolved often for several decades, and can present a smaller or larger but continuous and permanent source of danger because of the administrative, legislative and military measures of the concerned states, and because of the violent actions of the majority nation or the minority in question. The actions of Basque, Northern-Irish and Chechen extremists, the fights of Balkan peoples against each other and the state activity of Turkey vis-a-vis Kurdish inhabitants can be mentioned as

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[2] However the competence of the institution of the High Commissioner does not cover minorities' problems which are in connection with organised terrorist acts. For more details: Péter KOVÁCS: Nemzetközi jog és kisebbségvédelem / *International law and protection of minorities.* Osiris Publishing House, Budapest, 1996, p. 121

[3] See: Convention on Conciliation and Arbitration within the the OSCE

sources of ethnic tensions which have been formed in Europe in this way. Lacking a solution, the above-mentioned conflicts have escalated in several cases and terrorist acts executed or admitted by extremist groups have also appeared.

The international system of minority protection, the modern history of which started with the peace treaties closing the First World War and with the minority protection system of the League of Nations, presents itself as a possible solution to ethnic tensions – and therefore to one of the reasons threatening international security. The protection of national minorities as a group – without dealing with the question of the definition of minorities[4] - cannot be separated from the question of the different approaches and ideas of collective and individual human rights. After the Secoond World War, we can witness the disregard or the rigid rejection of collective rights in the international law and order built on the Charter of the United Nations. This was accompanied by the complete abolishment of the international minority protection system which was not successful enough, but it still existed between the two world wars[5]. As a consequence of the ethnic conflicts on the Balkan in the '90s, the demand for regulation reappeared[6], but not at all with a claim for universality. After the political transformations of the '90s, it seems that the recognition of minority rights means first of all some kind of obligation for Central and Eastern European countries (the respect of minority rights was one of the criteria of being admitted to the Council of Europe, furthermore European states and organisations urged the conclusion of bilateral agreements and general agreements promoting good neighbourhood relations, and those rules which serve the protection of national and ethnic minorities and which are often only of *soft la*w character are important elements of these agreements).[7] Several questions can arise in relation with the abovementioned facts: Is it worth following universal regulation in the field of minority protection or let us be satisfied with the fact that this kind of double measure is not really disadvantageous for us, Hungarians and people living in Central Europe? Is there a possibility to protect minorities through individual human rights? Does not this latter conception which emphasizes individual human rights mean the emptying of minority protection and a possibility of wriggling out of concrete responsibilities?

If we regard today's situation along the problems presented in the above questions and if we compare the institutions and the means of minority protection in today's Europe, we receive a heterogeneous image. (At the same time we must point out that minority protection regulated in international conventions can be found only on the European continent.) Certain states

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[4] You can find more about the definition of national minorities, the problems of definition and the development of minority protection at the end of 20th century in: Erzsébet SÁNDOR SZALAYNÉ: *The international legal system of institution of minority protection in the 20th century,* Institution for Research on minorities, Hungarian Academy of Sciences, Gondolat Publishing House, Budapest, 2003

[5] After the Second World War, reference to the rights of minorities can be found, besides bilateral agreements, only in Article 27 of the International Covenant on Civil and Political Rights, but it determines also the rights of *persons* belonging to minorities.

[6] See resolution no. 47/135 of the General Assembly of the United Nations accepted on 18 December 1992 called "Declaration on the Rights of *Persons* (highlighted by me) Belonging to National or Ethnic, Religious and Linguistic Minorities"

[7] We can mention here, without being complete, recommendation no. 1201 (1993) of the Parliamentary Assembly of the European Council and the Copenhagen Declaration of the CSCE of 1990. Naturally we cannot leave out of consideration among the means of minority protection the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities which, as they are international agreements, represent actual obligations for the signatory states.

show in advance a negative attitude as to collective rights, others expressively recognise it or have a transitional standpoint between the two others.[8] France must be accentuated among the extreme cases since it refuses even the existence of minorities referring to the Constitution which forbids all kinds of distinction based on ethnical reasons.[9] This gap between the conception of rights is not new, it existed already at the moment when the institutional system of minority protection was born. After the First World War, no one tried to point at the winner powers the norms they prescribed as compulsory for Central and Eastern European countries. (Those states which were interested to do so were on the losers' side.) The protection of national minorities has not become a universal obligation in spite of the fact that several states have undertaken to respect them only by means of unilateral act[10].

It was not after the political transformations of the '90s that the idea of applying the system of minority protection only to Central and Eastern European states appear in the jurisprudence. Prior to the peace treaties of Paris, the Hungarian Ministry of Foreign Affairs and the Hungarian foreign policy, knowing the Charter of the new organisation, the United Nations, made desperate efforts until the conclusion of the peace treaties for preserving minority protection to which the United Nations' Charter did not consecrated any chapter. The Department of Peace Preparation of the Ministry of Foreign Affairs worded proposals relating to this question already in summer 1945, and the Hungarian government addressed a memorandum on 14 August 1945 to the representatives of the great-powers in which it stated that:: *„no matter how the frontiers will be drawn, there will probably be national minorities in the states, therefore their protection should be cared for through the international organisation of the United Nations. There is no doubt that the protection of minorities, which operated in the frame of the League of Nations, gave cause for more or less founded critics, but at least it existed. In many cases the pure existence of the protection braked and enforced to think those governments which wanted to take measures against minorities. It would be a regrettable step backwards if national minorities could not have this protection either in the future."*[11] In 1945, some of the representatives of the great-powers saw at the beginning an opportunity for reinforcing minorities' rights, but later they refused categorically to insert the protection of minorities' rights in the peace treaties.[12] As a result of the lack of political will on the part of the great-powers, there was no more retaining force which could have hindered the vindicatory measures of neighbouring countries against the Hungarian communities therefore it was possible (with the silent assistance of the Allied and Associated Powers) to denationalize Hungarians living in Czechoslovakia and to force out about 200.000 Hungarians of Slovakia, and these are only the most significant violations of law. Even today it is only in a regional

[8] For the classification of the states according to their practice of constitutional law see: Péter KOVÁCS: *op. cit.* pp 174-175

[9] According to Article 2 of the Constitution of France: „(1) France is an indivisible, secular, democratic and social republic. It ensures that all citizens are equal before the law irrespective of origin, race and religion. It respects every faith." in.: István KOVÁCS (editor): Nyugat-Európa alkotmányai / *The constitutions of Western Europe,* Közgazdasági és Jogi Könyvkiadó, Budapest, 1988, p. 281. The decision of 9 May 1991 of the Conseil Constitutionnel on the autonomy of Corsica (Décision n° 91-290 D, NOR : CSCX9110299S) and the reservation added to the European Charter for Regional or Minority Languages at the moment of its signing and the decision of 15 June 1999 of the Conseil Constitutionnel refusing the ratification (Décision n° 99-412 DC, NOR : CSCX9903612S) demonstrate well the relating practice of constitutional law.

[10] On the jus cogens character of public obligations relating to the protection of minorities: see below.

[11] Memorandum to the three allied great powers on Hungary's points of view at the peace negotiations. Quoted by Mihály FÜLÖP in.: A kisebbségi kódex / *Code of minorities,* Külpolitika, / Foreign Policy, 2/89. p. 102

[12] Mihály FÜLÖP, *op. cit.:* p. 103

frame and in Europe that we can find effective means for the protection and recognition of minorities and their language.[13]

Between 1945 and 1947, the Ministry of Foreign Affairs thought that the protection of minorities was realisable in the system of the United Nations as well, particularly with the procedure rights of the Security Council in the field of international peace and security. (At that time, Hungary's and the other neighbouring countries' becoming member of the United Nations did not seem far at all…The representatives of the Allied and Associated Powers often emphasized its acceptation as a member within a short period of time.[14]) The apparatus of foreign affairs tried (even against the Soviet and Allied pressure which excluded to raise territorial questions) to use several legal and political means and arguments for maintaining, and even for developing the protection of minorities, and could not even imagine that the system could be abolished and the acquired rights could be revoked. It is true that the unsuccessful travel to the West of Mr. Ferenc Nagy, Prime Minister, forecasted the rather disadvantegeous character of the negotiating positions,[15] but at that moment there was still a slight hope for ensuring the legal protection of minorities. On 7 May 1946, a minority legal and expert reunion was held for discussing the draft treaty on minority protection drawn up by Professor Ernő Flachbarth. The government forwarded the draft to the members of the Council of Minister of Foreign Affairs on 11 June 1946 and to the representatives at Budapest of the great-powers on 2 July.[16]

An important element of the Draft is that in its preamble it states that its territorial force covers the Danubian basin since it wanted to promote in this way that the draft be accepted and supported by the Allied Powers which had at that time significant colonial empire. At the end of the 20th century, these states made compulsory for Central and Eastern European countries the respect of minorities' rights and the ratification of certain conventions coming into being in the frame of the Council of Europe and they refused, referring to reasons of

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[13] Of course not leaving out of consideration Article 27 of the International Covenant on Civil and Political Rights and the declaration of the United Nations made in 1992

[14] Mihály FÜLÖP, *op. cit.*: p. 108

[15] On 21 June 1946, Noel-Baker, Secretary of State for Foreign Affairs, expounded to Ferenc Nagy, Prime Minister of Hungary, the followings in London as a response to his critical remarks relating to the removals in Czechoslovakia: „After Munich you are not in a position to instruct the Czechs not to change their country into a national state." Attlee, the British Prime Minister said the followings: „establishing suitable relations between the peoples is more important than creating legal regulation in the frame of a peace treaty or the Organisation of the United Nations." Quoted by: Mihály FÜLÖP. *op. cit.* p. 109. It must be mentioned, among others, that the above quoted British standpoint was not formed without well knowing the situation since the Czech government led by Beneš operated in London, and issued a standpoint already on 24 September 1944 (!) what it sent to the Slovak National Council. According to it, Czech laws in force prior to the Decison of Munich and Edvard Beneš's presidential decrees published in emigration will be in force on the liberated territories of Slovakia. According to information received from the government, decrees on national committees, war criminals, the punishment of traitors and citizenship were under negotiation (quoted above), on the basis of which Germans and Hungarians – with the exception of those who fought for the republic – lost their Czechoslovakian citizenship. See Árpád POPÉLY: *Historical chronology of the Hungarian minority of Czechoslovakia (from 21 August 1944 to 11 April 1945)* in.: FORUM Sociological Revue, Periodical of Hungarian Scientific workshops in Slovakia, Volume 2, no. 2000/1. For more details on violations of law against Hungarians of Slovakia see: the summary published in 1993 by the Cohabitation Political Movement in Bratislava on the website of Hungarian Human Rights Found, http://www.hhrf.org

[16] The final text of the draft is published by: Mihály FÜLÖP, *op. cit,* it modified in certain points the propositions made by Ernő Flachbarth. The original manuscript can be found in the Library of the Hungarian Parliament.

constitutional law, not only the ratification of the abovementioned agreements, like for example the Language Charter, but also the minorities' collective rights and existence.[17] It can be therefore seen that the idea according to which the assurance of collective rights could be realised first of all in Central Europe and in the Danubian basin has been existed since the middle of the last century, but it was sometimes forgotten. In the light of these points the fact that the Arbitration Court operating beside the so called „European Conference for the Peace in Yugoslavia" qualified, under the presidency of the French senator, Mr. Robert Badinter, the protection of national minorities an *imperative norm of international law* can be seen in a new light.[18]

Nevertheless, the protection of national minorities cannot be limited to the agreements on the protection of minorities. The universal international law after 1945 thinks that it can be realised only within the protection of individual human rights. We must therefore look for those cases which affect minorities' rights (sometimes qualified by them as collective rights) in the field of the protection of individual human rights. The jurisdiction of the European Court of Human Rights knows several cases where, in relation with disadvantageous discrimination (e.g. the Belgian Linguistic Case) the rights of minorities could also been discussed, but these questions arose always indirectly, in connection with the protection of other rights.[19] Such rights are the right to freedom of expression and the freedom of assembly and association. Their limitation can seriously affect „persons belonging to a minority" in certain geographical-historical situation. Several applications could be picked out from the applications relating to nowadays' European ethnic conflicts, but those complaints in which the submitters make before the Court a grievance of the violation of their rights by Turkey merit a special attention. In the background of these cases there are often state measures which are in relation with the rights ensured in Article 10 of the European Convention on Human Rights which ensures the freedom of expression. Turkey which hurries to join the European Union carries the weight of serious problems of human right a part of which is the consequence of armed actions and legal acts against the Kurdish inhabitants living in the Eastern part of the country. (Even if the Turkish state has made serious efforts in the last years for respecting more severely human rights, the Court often passes condemning judgment against the country in spite of the amendments made in the constitution in 2001[20] as urged by the Council of Europe and the European Union[21].) It can be generally stated that the states often use in their proceedings the means of limiting the freedom of expression which, in a given case, can be a serious sanction

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[17] See above.

[18] See Article 2 of the advisory opinion no. 2 and 9 and Article 4 of its advisory opinion no. 10, Péter KOVÁCS: Nemzetközi jog a Badinter-bizottság joggyakorlatában / *International law in the legal practice of the Badinter commission,* Jogtudományi Közlöny, no. 93/1, pp 34-37, and the same study Péter KENDE (editor) *Selected passages and documents of international law,* Osiris, Budapest, 2000, pp 125-130

[19] The general prohibition of discrimination was worded in the Protocol no. 12 which has not entry into force.

[20] Turkey modified in 2001 in the frame of its law harmonisation program, a requirement for its joining to the European Union, several laws which affect the rights of minorities as well, among them the Constitution and laws on education and the media. See the French and English translation of the constitution translated by the Turkish state on the following websites: http://www.byegm.gov.tr, its comments LECLERC, Jacques: *„Turquie"* in: *L'aménagement linguistique dans le monde*, Québec, TLFQ, Université Laval, 29 October 2003, http://www.tlfq.ulaval.ca/axl/asie/turquie.htber 2003).

[21] See resolution no. 1256 (2001) of the Parliamentary Assembly of the Council of Europe, resolution no. 2001/235/CE of 8 March 2001 of the Council of the European Union *(Official Journal of the European Union 2001/03/24, L no. 085, pp 0013-0023)*, and the Commission's COM(2001) 700 final-SEC(2001) 1756; and COM(2002) 700 final-SEC(2002) no. 1412 reports.

for a minority (or its members) fighting for its rights or the recognition of its rights. Turkey does not recognise the collective rights of the around 10 or 12 millions of Kurdish inhabitants, the extension of individual rights affecting minorities is going on nowadays by the abovementioned modification of the constitution and law harmonisations under way in the frame of which it is theoretically possible today to use the language in the private life and - limitedly - in education[22] as well as to publish certain publications or artistic editions in the language of the minority.[23] (As to Turkish language rights, paragraph 1 of Article 3 of Act no. 2932 of 19 October 1983 is worth mentioning according to which *„The mother tongue of Turkish citizens is Turkish language."* According to paragraph (2) *„It is forbidden to use as mother tongue any other language than the Turkish language…"*[24] It must be mentioned however that paragraph (9) of Article 42 of the Turkish Constitution is still in force after the modifications made in 2001, it says that: *„ No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education."*[25]. According to Article 2 of Act no. 29932 of 19 October 1983, it is possible to use in the field of education and scientific research as well as in the publications of public institutions other languages than the first official language of the states recognised by Turkey (this was forbidden by the basic version of the abovementioned Act…) if this is regulated by international treaties of which Turkey is also signatory.[26]
The impacts of minority conflicts in the country (due to which emergency state was also declared in the territories of Eastern Turkey) go beyond the frontiers of Turkey, the actions of extremist groups represent a danger even to international security. The lack of minority protection and the negation of the existence of minorities can in certain cases be the source of international terrorism if the abovementioned groups become radical. We could look for the solution of the problem in the field of the extension of minorities' collective rights, but, knowing the opinion and the legal system of Turkey, there is little chance for this so much the more because – as we have mentioned earlier – the great-powers do not have compulsory rule or practice regarding the recognition of minorities' collective rights. At the same time, the ratification of the means of minority protection, besides meeting the conditions of the joining to the European Union, are among the recommendations of the Council of Europe aiming at the promotion of democratic processes,[27] and their ratification by Turkey would be an important step forward the recognition of minorities. As a consequence, we must look for the protection of minorities' rights, and through this for the solution of those situations which threaten international security, in the field of individual human rights as well.

If we examine the cases submitted to the European Court of Human Rights, which ensures the control mechanisms of the European Convention on Human Rights, we can make the

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[22] Teaching the Kurdish language is allowed from August 2002 in schools. The amendment of the Law on the education of foreign languages allows to give private lessons in a language what Turkish citizens traditionally use in everyday life. For more details on this question see: The Turkish government's newsletter issued on the harmonization of law, http://www.byegm.gov.tr/on-sayfa/uyum/uyum-inglizce-59hukumet.htm (2004. 24 January), and LECLERC, Jacques, *op. cit.:* point 7. 3

[23] On its conditions and practice see: LECLERC, Jacques, *op. cit.* point 6. 2

[24] See: LECLERC, Jacques, *op. cit.:* point 6. 3

[25] Constitution of the Turkish Republic, Article 42, paragraph (9). http://www.byegm.gov.tr (24 January 2004)

[26] See: LECLERC, Jacques, *op. cit.* point 6. 3

[27] In point 1 of paragraph 16 of resolution no. 1256 (2001), the Parliamentary Assembly of the Council of Europe recommended to the Turkish authorities to examine the principles of the Framework Convention for the Protection of National Minorities and of the European Charter for Regional or Minority Languages in oreder to sign and ratify the mentioned conventions and to apply the principles worded in them in respect of the different ethnic groups living in Turkey.

conclusion that disadvantegeous discrimination against minorities appears often in the guise of violation of individual human rights, like for example the freedom of speech or the freedom of expression, therefore possible changes in the state practice or laws made as a consequence of the condamning judgment of the Court in respect of the above subject prove not only the success of the observance and the enforcement of the Convention, but it can be an important step forward the assurance of rights of persons belonging to a minority and the recognition of minorities. There are several cases in the jurisdiction of the Court relating to Article 10 of the Convention that can prove this. Among the recently passed judgments, the Court judgment in the case of *Kizilyaprak v. Turkey*[28] is worth mentioning in detail in which the applicant, who was the owner of a publishing house, was sentenced by the „Turkish Court of State Security" (!) to six months in prison and to pay 50.000.000 Turkish lira because he made a separatist propaganda of terrorist organisations, by publishing the memoirs of a young soldier who served in the south-eastern part of the country (where the Kurdish people live)[29]. The publication talks about, among others, the murders and violent acts executed by the soldiers against civil people (according to the official wording of the Court of State Security against *citizens of Kurdish origin*) what the writer called Nazi method[30], and about a „war against a political movement (PKK)[31]" what was waged, according to the army, against persons qualified „separatists" and „bandits"[32]. According to the court, the fact that the publication qualified the people living on the mentioned territory and attached to Turkey by the link of citizenship Kurdish and called the actions of PKK *national fight* bears, pursuant to the law, all the marks of a *separatist propaganda* against the territory of Turkey. According to the judgment of the Court of Strasbourg, there is no doubt that the abovementioned publication is not a „neutral" description of the events, it is heated by sensitive elements, presents the Turkish army in a rather negative way and words a severe criticism against the activity of Turkish organs but it does not incite to violence nor to armed opposition or riot. Even the writer expounds that he did not want to express in the writing that the „members of the PKK are right"[33]. According to the standpoint of the Court, even if the Turkish court's statement relating to separatist propaganda were right, it would not been a propaganda which would justify in itself the intervention into the applicant's right of freedom of expression. As a consequence, the applicant's sentencing was disproportionate with the aimed objective, the „necessity of intervention" could not have been stated „in a democratic society", therefore Article 10 of the Convention was violated. The charge of the so called „separatist propaganda" can often be met in cases brought to the Turkish courts, mainly in those cases where the accused persons refer (in general in a publication) to the right of self-government of the Kurdish people or to the independent Kurdish state both in their national argumentation and their argumentation made before the Court of Strasbourg with reference to the freedom of expression. The applicant of the case *Caralan v. Turkey*[34] was the major shareholder and the editor of a publishing company and was sentenced to 5 months in prison because he published the conference material of the outlawed Turkish Revolutionary Communist Party. In this case the Istanbul State Security Court passed its judgment with reference to the provisions of law

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[28] ECHR, *Case of Kizilyaprak v. Turkey,* judgment of 2 October 2003
[29] The title of the published work is: *„How we fought against the Kurd people! – A soldier's memoirs"*. The publisher used in its preface the expression of „Turkish Kurdistan".
[30] ECHR, *Case of Kizilyaprak v. Turkey,* judgment of 2 October 2003, paragraphs from 10 to 12
[31] Kurdistan Workers Party
[32] ECHR, *Case of Kizilyaprak v. Turkey,* judgment of 2 October 2003, paragraph 16
[33] *Id.*: paragraph 39
[34] ECHR, *Case of Caralan v. Turkey,* judgment of 25 September 2003

against terrorism pursuant to which the disseminated separatist propaganda against the indivisible integrity of the state. The book referred to *„a certain part of the Turkish territories as Kurdistan. The book also claimed that Turkish citizens living in those territories were of the Kurdish nation and that they should be given the right to self-determination, including the right to form a separate State, and that the Turkish army had invaded those territories"*[35].

The Court of Strasbourg did not have the opportunity to present its standpoint since the government and the applicant reached a peaceful agreement proving that the current governments of Turkey do not approach negatively the obligation of ensuring the rights of the Convention even if the country's legal system and jurisdiction is not always in harmony with the spirit of the European Convention on Human Rights.

It is not surprising for the Central and Eastern European lawyers dealing with minority questions that the Western European idea, which recognises the minorities' rights only as individual human rights, identifies the concept of nation with that of citizen[36], and does not make a difference between the notions which, according to our idea, can clearly be separated. Knowing all these facts, the Turkish legal system's idea regarding the concept of Turkish nation is not surprising. In the *Case of Socialist Party of Turkey (STP) and others v. Turkey*[37], *the applicants* – the founding members of the party – lodged a complaint on the winding up of the organisation what was enforced by the Turkish Constitutional Court because of threat against the territorial integrity and unity of the nation (i.e. the program was inconsistent with the abovementioned principles and the charter made reference to national freedom movements). In the reasons for the judgment the Turkish Constitutional Court gave its interpretation of the concept of „Turkish nation" on the basis of the constitution: „All those persons who form the Turkish Republic are called *Turkish nation.*"[38] (…) „The ethnic groups which form the nation are not divided into majority and minority"[39] The Constitutional Court justifies this with the general prohibition of discrimination (similarly to the argumentation of the French Conseil Constitutionnel according to which the French constitution does not allow any kind of discrimination which would make a difference between French citizens on the basis of ethnic or racial origin).[40] It also expounded that the constitution did not contest the Kurds' right to identity and nothing hinders citizens of Kurdish origin to express their identity since in their private life, at work, in the printed press and even in the artistic fields they can use the Kurdish language. As a quotation of the Treaty of Lausanne it contained the following sentence as well: "*Having a different language or origin is not enough for granting the classification of „minority" to a group."*[41] (I think it is important to mention in connection with this statement that the above drafted standpoint represented by the Constitutional Court appeared also in the closing document of the expert conference of OSCE held in Geneva on 19 July 1991…) According to the charge and the judgment, the party called upon to independence fight and this attitude is

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35 ECHR, *Case of Caralan v. Turkey,* judgment of 25 September 2003 paragraph 11

36 See for example the distinction of the French concept of *nationalité* and *citoyenneté* according to which the first one means citizenship and the second one means the rights of a citizen and it cannot be translated in one word.

37 ECHR, *Case of Socialist Party of Turkey (STP) and others v. Turkey,* judgment of 12 November 2003

38 ECHR, *Case of Socialist Party of Turkey (STP) and others v. Turkey,* judgment of 12 November 2003, paragraph 15

39 *Id.*

40 See above

41 Nevertheless according to Article 39 of the referred Treaty of Lausanne – according to Article 37 of which Turkey recognised the equality of the Treaty with the Constitution – it is forbidden to use restrictions in respect of Turkish citizens' free language use in the field of private life, trade, religion, press and any kind of publication or public assembly. See: LECLERC, Jacques, *i. m.* point 6. 1

similar to that of terrorist groups which mobilize for violence. The Constitutional Court quoted also the Charter of Paris for a New Europe which condemned racism and hatred of ethnic origin as well as terrorism, and the Helsinki Final Act which emphasized the inviolability of the frontiers and the observance of territorial integrity. The national law, besides the Article referring to the unity of the nation and the territory of the country[42], quoted also the Articles of Act on political parties which contains, among others, the following sentences: *"Political parties a) cannot say that there are nationalities on the basis of national or religious, cultural or confessional, racial or language difference, b) their objective cannot be to undermine the unity of the nation by creating minorities through the protection, development and expansion of languages and cultures other than the Turkish language and culture on the territory of the Turkish Republic, and they cannot carry out any activity aiming at this objective."*[43] The applicant did not refer before the Court of Strasbourg to the Article of the European Convention on Human Rights which forbids discrimination, it lodged a complaint only in respect of the violation of Article 11 which declares the freedom to meet and to unite. The sentence can have something important to say for us in respect of minorities' rights and even in respect of self-government and autonomy. According to the Court, the program of the party, which mentioned self-government as well, did not encourage the separation from Turkey in the given context. The most important statement of the sentence is – in my opinion – that the Court says: *"The fact that a political plan (i.e. autonomy) like the one in question seems to be incompatible with the current principles and construction of the Turkish state does not make it contradictory with democratic rules."*[44] Regarding today's events in Central Europe and namely in Romania – first of all those which affect the Hungarian national community in Romania –, we cannot emphasize enough the significance of the above statement of the Court of Strasbourg. The autonomy plan of the Székely (Szekler, Hungarian) National Council, which wants to reach its autonomy in a legal way, was qualified by the Romanian Defence Council on 21 January 2004 not only contradictory with the constitution and offending in respect of the territorial integrity of the state, but also "contradictory with the legal principles of democracy and Europe".[45] This body is not a judicial or jurisdictional forum, but it is still a question whether the Romanian Constitutional Court – before which this problem will also probably be brought – will have the same standpoint as the European Court of Human Rights in respect of the autonomy of Hungarians. According to the statements of the Court's judgment in the case of the Turkish Socialist Party *„Submitting and discussing different political plans represent the essence of democracy even if they raise questions relating to the current organisation of the state, provided that they do not aim at threatening democracy itself".*[46] (As to terrorism mentioned by the Turkish Constitutional Court, according to the judges of Strasbourg, the case did not have any element that could base the responsibility of the party, which has not even started its activity and was already prohibited, in respect of terrorism in Turkey. Finally, the Court stated that the decision of the Constitutional Court on the dissolution of the party violated Article 11 of the Convention and

[42] According to Article 3 of the Turkish Constitution „ The Turkish state, with its territory and nation, is an indivisible entity. (…)" See: http://www.byegm.gov.tr .

[43] Article 81 of Act no. 2820 of 24 April 1983 on the statutes of political parties. See: LECLERC, Jacques, *op. cit.* point 6. 3

[44] ECHR, *Case of Socialist Party of Turkey (STP) and others v. Turkey,* judgment of 12 November 2003, paragraph 43

[45] See Róbert SZÜSZER-NAGY's article entitled *Unnecessary panic* in Hargita Népe, 23 January 2004 (XVI.) http://www.hhrf.org/hargitanepe/2004/jan/hn040123.htm (23 January 2004) It must be mentioned that the Council of Protection cannot give an authentic interpretation of the constitution, the Constitutional Court is entitled for this in Romania as well.

[46] ECHR, *Case of Socialist Party of Turkey (STP) and others v. Turkey,* judgment of 12 November 2003, paragraph 43

it was disproportionate with the aimed objective, therefore it was not *„necessary in a democratic society"*.)

The relation between the freedom of expression ensured in Article 10 of the European Convention and minorities can be followed up in the decision of the Court made in the *Case of Karkin v. Turkey* 23 September 2003. In the national legal procedure which is the base of the case, the applicant, who was the secretary of a trade union, was sentenced to 1 year in prison and to penalty because of a speech pronounced on the occasion of a Kurdish festival. The charge was in this case too incitement to hatred and hostility, and *discrimination against social class and racial discrimination*. The Turkish court justified its intervention into the applicant's rights stipulated in Article 10 of the Convention with threat against *national security, public security and territorial integrity,* what was recognised by the Court. In the speech in question the applicant made a connection between mythology and current politics undertaking solidarity with the Kurdish people. In his speech he named the capitalist class as main causer of unlawfulness and murders against the Kurdish people, incited workers and „exploited people" to oppose to capitalism and compared them to a mythological person. According to the judgment of the Court *„the fact that a political speech like the one in question can be qualified incompatible with national laws does not make them contradictory with democratic rules"*.[47] The speech did not incite neither to violence, nor to armed resistance or riot. Furthermore it was pronounced at a peaceful festival in Ankara, far from territories affected by the conflicts. The Court stated finally that: the intervention *was not necessary in a democratic society, the penalty* was disproportionate, therefore the applicant's rights protected in Article 10 of the Convention were violated.

Nevertheless, „minority protection" realised through individual human rights as drafted above can be considered only to be a starting point in those states which do not know collective rights. Minorities keep fighting (not always with legal means) for decades or even for centuries for their rights due to them as a community – and this is not without precedent any more. Finally, the recognition of collective rights can lead to solve situations threatening international security, this is proved for example by the recognition of the rights of the German speaking "Austrians" of South-Tyrol, Swedes of the Åland islands or the Catalans. The judgments of the European Court of Human Rights recognizing the autonomy of religious communities show the way in this direction.[48]

Summary

The protection of national minorities, international security and the freedom of expression seem to be different areas of jurisdiction which are rather far from each other. At first sight there is a relation between the protection of minorities and international security in the event when minorities' conflicts escalate. Nevertheless if we examine the history of the protection of minorities in the 20th century, we can come to the conclusion that the recognition of collective rights is limited, it has a special importance first of all for Central and Eastern European countries which have their own national parts over their frontiers, and the respect of rules

[47] ECHR, *Case of Karkin v. Turkey,* judgment of 23 September 2003, paragraph 36
[48] *„The autonomy of religious communities is an indispensable condition of pluralism in a democratic society"* ECHR, *Hassan and Tchaouch v. Bulgaria case,* judgment of 2 October 2000, paragraph 62

relating to minority protection was (is) prescribed firstly for these countries. From the middle of the 20th century, the protection of the individual's human rights has come to the front, and this has fundamentally changed the attitude to minorities' rights. The protection of the individual's human rights as a 'person belonging to minorities' could be, even if limitedly and indirectly, a means of minority protection, first of all by ensuring the freedom of expression ensured in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time this may be only the starting phase of the fight for the recognition of minorities' collective rights, as according to experience, those minorities' conflicts which do not threaten international peace any more are the result of the recognition of collective rights.