

**THE BASIC OBJECTIVES OF DEMOCRACY AND FUNDAMENTAL
INTERNATIONAL AGREEMENTS
FOR THE PROTECTION OF HUMAN RIGHTS**

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ABSTRACT

The basic objectives of democracy, as they take place openly in the definition of the concept and are lead primarily by freedom and equality, are listed as political representation, political participation and rights. The first important document created in the international arena concerning human rights is the Universal Declaration on Human Rights, an instrument of the United Nations. A regional agreement which has great significance is the European Convention on Human Rights and Fundamental Freedoms (ECHR), an instrument of the Council of Europe. An initiative that started as a Conference and was later turned into an organization, the Organization of Security and Cooperation in Europe (OSCE), comprises important provisions on human rights.

Keywords: Democracy, International Agreements, Human Rights.

INTRODUCTION

Within a considerable stretch of time, from the classical Greek era to the present day, democracy has been observed as the worst type of governance for the state and society. Democracy has even been considered as “the rule of the lowest classes” and consequently seen as a source of great danger for all the basic values of a civilized and ordered society (Arblaster, 1999: 20).

Democratic administration may be defined as the harmonious existence of unity and diversity, freedom and solidarity. Democracy cannot survive where there is no respect for the rule of the majority and the rights of the minority that represents its own interests. In other

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words, democracy is the kind of administration, based on the rule of law, which accepts that today's majority may easily turn into the future's minority and that it needs to respect the basic rights of the existing minority. Democracy further depends upon the public institutions' recognition of individual and equal freedoms for all (Touraine, 2002: 30).

Touraine specifies that democracy is born not out of recourse to the rule of law but to ethical principles in the name of the unruly masses against sovereign interests; to freedom and justice. Political life is realized due to the controversy between the political decisions or the legal rules that support the position of sovereign elites on the one hand, and the resort to a social morality which cannot be ignored for its contribution to social cohesion by defending the interests of the minority or those subjected to sovereignty, on the other hand (Touraine: 32). In this sense, democracy can never be reduced down to merely procedures or the existence of institutions; it may be seen as a political power that struggles to change the rule of law in the direction that would benefit the interests of those subjected to sovereignty.

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FREEDOM AND EQUALITY

Freedom which is the first element and the common value of democracy is one of the basic indexes which point out whether democracy prevails in a country or not. What is meant by freedom is not what everyone can do whatever she/he wishes anytime anywhere. Freedom in democracy means that everyone, on condition that she/he remains within the boundaries of constitutional and legal order and without limiting the freedom of others, can do what she/he wants. In this context, one can talk about the freedom of thought, which is the most inalienable, and the freedom of education, work, protection of health, life, communication, justice, and so on. Where there is democracy, free thought should not be limited; all ideas can be defended in societies where the administration is democratic and those who defend an idea can form associations in line with their thoughts. A democracy is greatly wounded when restrictions are applied to freedom of thought and to associations which people wish to form.

At the core of democracy, there is the free individual, equipped with rights and freedoms and relieved of oppression. Everything else is positioned according to this core. Democracy, which is the totality of institutions, organizations, methods, and techniques, is established

upon freedom which is conceived as a value in the sense of autonomy (Selçuk, 1999: 23).

In conclusion, only when any kind of idea can be orally expressed, written and forms the basis for an association in an unlimited and unrestricted way, the most useful one for the society emerges as a result of discussions over all thoughts and ideas through legitimate media and social platforms and an administrative model along that line of thinking is adopted. Another indispensable condition of democracy is equality. The aim in equality is not the equality of everyone in all aspects. The meaning of equality here is in the services the state, thus the political regime in power, takes to the citizens, and the equality of all citizens before the law. All applications must be administered equally to all the citizens when the state takes services and when laws are implemented, irrespective of differences in language, religion, race, ethnicity, philosophical belief, education, age, gender, political view or ideology. However, all this means only political and civil equality.

Developments that started with the industrial revolution within the capitalistic societal structure brought extensive criticisms to the understanding of freedom and equality. It would not be quite right to consider all individuals equal and free in a society if resources are distributed unequally between societal classes and groups in that society. Starting with the first quarter of the 19th century, social /economic inequalities in industrialized capitalistic societies gave rise to large, rooted social tensions and controversies (Şaylan, 1980:109). In line with such developments, there emerged the need to reevaluate the concepts of freedom and equality in capitalistic societies. These concepts were taken out of their abstract and static contents and attempted to be turned into concrete and dynamic entities. Towards the middle of the 20th century, as a result of the state's assumption of the liberalizing functions, such tasks as finding jobs for the unemployed, providing education for the masses, health, cultural opportunities, social security measures, the right to strike and make collective bargaining for the workers; all these started to become the basic rights and freedoms rather than merely a public duty on the part of the state (Şaylan:110).

From the historical perspective, equality has been the basic principle which the bourgeoisie class, that got hold of economic power, defended as it struggled for political and social power as well, and this principle later became one of the basic characteristics of classical democracy. What is important is to try to keep the equilibrium between the prosperous who own every kind of opportunity and those who can not make use of their

freedoms due to economic inequalities in the society. Healthy operation of democracy is possible only to the extent to which this balance can be maintained. Otherwise, the greater this balance tips off, the greater the retarding of democratic governance would be.

POLITICAL REPRESENTATION

Designating the members of the nation as the “persons represented,” and those who are elected by the people as the “representatives,” the concept of political representation is one of the necessary aspects of democracy (Gözler:117). The aim in political representation is to make possible the participation any kind of thought and ideology by forming unrestricted association, to enter into the race of getting hold of political power in order to govern the country, and make possible the representation of all thought and all societal segments in parliament and make their voices heard and their rights and interests defended on all democratic platforms. Otherwise, the race for political power falls into the hands of only people of specific political and ideological views or their organizations; and in this kind of administration, where only the voices of certain segments of the society are heard and only those find a chance for representation, one can not talk of pluralism or democratic state.

POLITICAL PARTICIPATION

Political participation is one of the principles of democracy, which makes it possible for people, after they elect those who are to govern them, to participate especially in decision-making over the implementation procedures of the government in power, by means of their civil society organizations, and to have the capacity to effect those decisions and even to retain the right to change them when necessary.

Participation finds an area of application primarily in Western European countries, where all societal segments, all kinds of Professional organizations, groups and persons, have the right to form associations of various levels and dimensions. Associations get united among themselves to form federations then confederations, of quite large sizes and may turn into organizations of a great number of memberships. Non-governmental organizations (NGO) of large scale, having hundred thousands or even millions of members, can make their presence felt and become capable of creating pressure upon the political power, in relation to their own and other societal problems, and governments can not easily resist or refuse the

decisions taken by such NGOs (Tanilli, 1990:37-38).

When it is considered that the membership of an organization of such a size are also voters each, and moreover when one evaluates the numbers of persons influenced by these members, it is possible to say that NGO of a massive size may even attain a strong enough force to change the government in power.

RIGHTS

A variety of terms are used to describe the concrete concept of fundamental rights and freedoms such as “human rights,” “public freedoms,” “personal rights,” “citizenship rights,” “fundamental rights,” “constitutional rights.” The concept of right is freedom turned concrete (Gözler, 2001: 146-147).

The fact that fundamental public rights that comprise the definition of democracy are recognized and secured shows how important the concept of right is. It is necessary that fundamental rights and liberties are recognized and protected in a democratic polity if elections that are held to determine the political power are to have any significance. Such rights are freedom of thought, freedom of the press, freedoms of expression, association and public demonstration, and so on. “Human rights,” the most comprehensive concept in this area, are rights which all people can use without the differences with respect to race, religion or language being taken into consideration. There should be no difference between citizens and foreigners in the use of these rights. Public liberties give expression to the division of human rights recognized by the state and included in positive law. Public liberties are organized by the constitution and laws, with their limits specified and thus made practically convenient to use by individuals (Gözler:197).

There are various conceptions and classifications in the subject of rights and liberties. While there are different systems with respect to the uses of fundamental rights and liberties, there are also various rules as to their restrictions. Just as the domestic protection of individual rights is of prime importance, the existing international systems on rights and liberties have great significance.

FUNDAMENTAL INTERNATIONAL AGREEMENTS FOR THE PROTECTION OF HUMAN RIGHTS

Efforts to bring improvements to the protection of human rights can be said to have started from the beginning of the history of humanity. The reason is because this set of rights primarily is concerned with the protection of these individual rights against those who hold the power of government. Rights which are referred to by the concept of human rights are generally accepted as rights arising from being human and to be protected irrespective of a person's ethnic origin, language or religion.

Human rights and fundamental freedoms are individual rights born out of human beings' needs and capacities. Recognition of human rights in international law and the development of various instruments for their protection can be said to be the most significant moral initiative of the 20th century. When the relationship between democracy and human rights is analyzed, it is seen that they are interconnected and mutually supportive. International community today has gained the awareness that the protection of human rights can be secured and the rule of law can be attained only by adherence to the principles of democracy, not only in developed countries but also in the developing world. Besides, it is also widely accepted that the use of human rights and fundamental freedoms is a necessity for the proper functioning of democracy (Beethan and Boyle, 2005:94).

The concepts of democracy and human rights are very close to each other and are often directly connected. Democracy as a political regime represents the system in which human rights are realized. Human rights as a doctrine constitute the conceptual basis of democracy (Çeçen, 2000:25). Individual rights and freedoms are no more merely issues of domestic law, but have become subject to protection on the international level.

The transfer of human rights issues to the foreign policy area of states is quite recent and limited. The foreign policy idea that national interest prevails over everything else including human rights, the still prevalent interpretations of customary international law over investigations concerning human rights applications as interference into domestic affairs of another state, and doubts over the validity of the concept of universal human rights have prevented the human rights subject to take a primary listing in domestic politics.

Developments with respect to the protection of human rights in the international arena started in the aftermath of World War II. Human rights protection which had been a subject evaluated within the confines of domestic law, gave way to the legitimacy of international law over the rights of the individual. The move away from the absolute sovereignty of the state over the rights of the individual and towards the platform of international law took place especially with the establishment of the United Nations Organization after the Second World War (Çelik, 1989: 464-465).

The first important document created in the international arena concerning human rights is the Universal Declaration on Human Rights, an instrument of the United Nations. A regional agreement which has great significance is the European Convention on Human Rights and Fundamental Freedoms (ECHR), an instrument of the Council of Europe. An initiative that started as a Conference and was later turned into an organization, the Organization of Security and Cooperation in Europe (OSCE), comprises important provisions on human rights.

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948)

Universal Declaration on Human Rights, the first international text in the general sense, designates the responsibilities of the state to individuals. The Declaration acquires its great significance from this perspective. Universal Declaration on Human Rights carries its worth in the historic and moral context, even though it has no legal binding upon the signatory states.

The majority of states in the world express their belief in the protection of human rights and fundamental freedoms and they accept these as the highest moral ideals, no matter how insufficiently or with what deficiencies they could have realized such rights within their own territories (Kapani, 1993:43).

The United Nations Organization (UN), had the text of the Universal Declaration on Human Rights prepared by the human rights commission it set up and had the Declaration accepted and made public in the UN General Assembly on 10 December 1948. With this historic Declaration, the belief in the foundations of freedom, justice and peace in the world

and respect for the inalienable rights of all human beings was underlined. The common ideal to be reached for humanity was stated as follows: All people are born free, have dignity, and are equal with respect to rights. All people can make use of all the rights and freedoms included in the Universal Declaration, irrespective of any differences arising from race, color, sex, language, religion, political or any other kind of belief, national or social origin, wealth, birth or any other characteristics (Gözübüyük, 1989:42-46).

The Universal Declaration is a manifesto of contemporary democratic ideologies comprising a Preamble and 30 provisions. The terminology used in the Declaration is in a general sense and quite rounded in many aspects. In the Preamble, the spirit of human rights and freedoms is reflected (Akin, 1987:369).

The Universal Declaration on Human Rights stands at a special place and significance among the other agreements. In the Declaration, which starts with freedom, equality and fraternity (The Preamble, Clause 1 and 2), the rights and liberties can be grouped under four categories: the individual's corporal rights and freedoms (Clause 3-11), the individual's rights in her/his relations with others and associated groups (Clause 12-17), the individual's political, public and conscientious freedoms (Clause 18-21), the individual's economic, social and cultural rights (Clause 27-28). The Declaration ends with the principles of the United Nations and the individual's responsibilities before the society. The Universal Declaration has a great moral value in the international arena and with respect to states, even though it has no legally binding power (Kaboğlu, 1993:117).

The Declaration gains prominence in time as a reference norm with respect to states and international organs responsible for the protection of human rights. The Declaration forms the basis of a number of international agreements and has been a reference to regional agreements as well and has become unified with international agreements in relation to legal measures applied to controversies. For example, the International Court of Justice makes references to the Universal Declaration, and national Constitutions often express in their Preamble their adherence to the Declaration.

EUROPEAN CONVENTION ON HUMAN RIGHTS (1950)

European Convention on Human Rights is the second agreement that specifies the

international significance of human rights and liberties after the acceptance of the Universal Declaration on Human Rights. European Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, is one of the most important applications of the Council of Europe (COE), established in 1949. The Convention, known as ECHR, went into force in 1953. The ECHR is the first international agreement that secured the respect for human rights by the totality of the democratic family of states in Europe. The Convention recognizes the right of “individual application” against a member state by means of a complaint submitted by voluntary associations, civil society organizations and by individuals who believe that their rights have been violated and no remedies could be found in the courts or tribunals of their own country (Duparch, 1992: 7-8).

A Commission was formed of distinguished and independent lawyers, not representing their own states, in order to investigate the applications forwarded to the organization. There were three control mechanisms established in Strasbourg under the Convention (Robertson and Merrills, 1989: 1-3):

- A Commission, responsible for investigating the applications of member states and their citizens;
- The European Court of Human Rights, to which the cases concerning the member states were forwarded through reports prepared by the Commission;
- The Committee of Ministers of the Council of Europe, which assumes the protection of the European Convention on Human Rights and is the platform where a case may be resolved politically.

Protocol No. 11, which went into effect on 1 November 1998, unified the European Court of Human Rights and the European Commission on Human Rights. The new structure, which improves the human rights protection system, does not only bring an order that provides for the effective protection of human rights on a regional scale but also accepts the existence of some rights born out of the positive international law (Gözübüyük: 42-45).

The European Convention comprises the traditional civil rights and liberties, leaving out economic and social rights; however, the primary significance of the Convention lies in its capacity to bring effective judicial control of the violation of the rights included (Akin:379). While the protection of human rights is drawn out of the national level and into the

international level, the individual thus becomes capable of making her/his own state accountable before an international law instrument which has the capacity for effective sanctions (Çelik: 471-472).

ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE (1994)

With a membership of 55 states and “global” in status, Organization for Security and Cooperation in Europe (OSCE) is active in the discussion of basic subjects such as security, environment, science and technology, democracy and human rights, in line with the principles of the United Nations Organization. It is a political Eurasian forum where decisions are taken by consensus.

The OSCE started as a “Conference” with the Helsinki Final Act in 1975, but was changed into an “organization” at the 1994 Budapest Summit. The 1975 Final Act had started a process of cooperation between the two major blocs of the Cold War era, the United States of America and the Soviet Union, and had succeeded to inject the concept of human rights and fundamental freedoms into East-West relations and had turned this subject into a legitimate area of mutual interest for the participating countries (Karaosmanoğlu, 2004:329-344).

The Helsinki Act was not only an international agreement, but a harmonious resolution with political and moral effects on the signatory states. Efforts to make the Helsinki text applicable, the follow-up meetings with this purpose, the pauses, the numerous controversies and dissatisfactions fortunately led to the eventual institutional structure of an “Organization.” The countries that had taken part in the Vienna Conference agreed and signed, in the Vienna Declaration of 15 January 1989, to bring their domestic policies and implementations in the area of human rights and freedoms in line with the international agreements to which they had already been a party, and the decisions agreed to and written down in the CSCE documents so far. Similarly, the final document of the CSCE Copenhagen Conference on the Human Dimension, dated 28 June 1989, guaranteed full respect for human rights and fundamental freedoms, as well as political pluralism (Kaboğlu: 121-122).

The CSCE Summit Conference in Paris on 19-21 November 1990, by accepting the

Paris Charter for a new Europe, proposed new structures and institutions. The foreign ministers of signatory states were assigned to meet in the form of a Council once a year on a permanent basis to discuss specifically problems of human rights and democracy and respect for the rule of law and the developments on these subjects. The Paris Charter specified the principles of the democratic state and the rule of law and stressed on the protection of human rights including the ethnic, linguistic and religious identity of national minorities. Moreover, this Charter prepared the Moscow Declaration of the 1991 Moscow Conference on the development of human dimension mechanisms, emphasizing in the Preamble the human rights and fundamental freedoms and the international scope of the state based on the rule of law. Thus, it was underlined once more that the subject of human rights is a common area of concern for all signatory states to the Charter and not merely a domestic problem of the state (Aral, 1998:90)

Istanbul Summit of the OSCE took place on 18-19 November 1999 with the participation of 54 heads of state or government. The documents signed were as follows: The Istanbul Charter for European Security, the Istanbul Summit Declaration for increasing confidence and security measures in Europe, the Final Act of the Conference of States Parties to the Treaty on Conventional Armed Forces in Europe, the Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures, Decision on the Spread of Small Arms and Light

Weapons (FSC. DEC/6/99), and Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe.

The Istanbul Charter, which forms a security model for Europe of the 21st Century, constitutes a guide for creating an OSCE area of greater security based on closer relations built on cooperation between the member states. The Charter moreover has the character of a strong guarantee with respect to the realization of an OSCE area of free, democratic and more integrated space, where peace, stability and freedom prevails.

Some of the important subjects comprised by the Istanbul Charter with respect to human rights are the following (Karaosmanoğlu:99): Human rights and fundamental freedoms, democracy and the rule of law take place within the center of the security

dimension of OSCE. It is stipulated that there shall be fight against the violation of human rights and fundamental freedoms, including the freedom of thought and conscience, and that intolerance, militarist nationalism, chauvinism, racism, xenophobia and anti-Semitism shall be eliminated. Gender inequality and discrimination of women, as well as violence against women and children are also among the subjects dealt by OSCE.

The basic characteristics of this Organization, which came to life with the Helsinki Final Act, the Paris Charter and the Charter for European Security, through the 30-year long process, are as follows (Bloed, 1990):

- A wide security concept has been adopted. Human subjects comprising political, economic and human rights issues and intertwined subjects in the sustainability of a peaceful environment take place within this concept;
- It is the only European forum where all subjects, including human rights, are discussed at regular intervals;
- Individuals also take place in the OSCE process. This subject is underlined in the Helsinki Final Act as follows: “Governments, institutions, organizations and individuals shall have a related and positive role in contributing to the success of these objectives (1989 Vienna Final Document, Part 1, paragraph 13).
- OSCE has developed its action capacity and follow-up system to which it owes its dynamism and sustainability. This plays an important role in the progress of human rights issues besides the others.
- OSCE documents do not have any legal binding with respect to positive law, but they have legal significance besides their political impact.

CONCLUSION

Democracy, the form of governance which finds different interpretation and implementation in different polities, is closely related to the protection of human rights according to universal values. It is necessary to study the historical development of democracy to understand its various facets and in order to assess its present characteristics and the necessity of its indivisible existence together with the protection of human rights and fundamental freedoms. Equality, political participation and representation are other important objectives of democracy, which aims to guarantee that the free individual is relieved of all oppression and is provided with opportunities for advancement.

A number of effective instruments clarify how a series of mechanisms intended for the encouragement of democratization in the international arena have been created, and the advancement of democracy and the protection of human rights have been supported by various initiatives. The importance of international and supranational organizations such as the European Union and the overall effects of the transnational interactions due to the increasing cooperation of such organizations can be realized more clearly. Today, the processes of democratization thus take place and spread out not only by means of domestic public demands but also by international pressures.

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