DEVELOPMENT OF THE PRINCIPLE OF THE PROTECTION OF FUNDAMENTAL HUMAN RIGHTS IN THE EUROPEAN UNION AND THE AMSTERDAM TREATY AMENDMENTS WITH SPECIAL REFERENCE TO THE RELATIONS BETWEEN TURKEY AND THE EUROPEAN UNION

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I. Definition of Fundamental Human Rights in the Context of the European Union

Fundamental human rights in the Community system[1] cover those basic rights inherent in human dignity which must not be violated by any action of the public authorities whether by the legislature, the executive or the judiciary unless interference with the right is

i) necessitated by the interest of the public in pursuance of Community objectives,

ii) proportional to the objectives pursued, and

iii) not contrary to the substance of the right[2].

These rights include the classical civil and political rights that are incorporated in the European Convention for the Protection of Human Rights and Fundamental

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1 Throughout the article, the terms 'European Union' (EU) or the Union and 'European Community' (EC) or the Community are used, the former referring to the whole entity established by the Treaty on European Union / Maastricht Treaty including three pillars, namely the Communitarian pillar, common foreign and security policy and cooperation on justice and home affairs; the latter referring to the core of the Union possessing legal personality, which dates back to the Treaty of Rome, including the jurisdiction of the European Court of Justice.

2 Lars Bondo Krogsgaard, "Fundamental Rights in the European Community After Maastricht", *Legal Issues of European Integration*, No. 1, 1993, p. 100.

Freedoms signed by the Council of Europe in 1950, generally referred to as the European Convention on Human Rights. The fundamental freedoms stipulated by the EC Treaty such as the freedom of movement for workers, the freedom of establishment, the freedom to provide services, the principle of equal pay for equal work, and the principle of non-discrimination on grounds of nationality are not included in the current analysis.

II. Protection of Fundamental Human Rights as Developed by the Case Law of the European Court of Justice :

The Founding Treaties of the European Communities did not enshrine any references to fundamental human rights. The lack of Treaty provisions or a catalogue of fundamental rights included in the basic texts of the Community caused some ambiguity regarding the place of human rights in Community law. Accordingly, it fell upon the European Court of Justice, as the primary interpreter of Community law, to fill in the legal gap regarding the protection of human rights. During the first years of its existence, the European Court of Justice rejected appeals to fundamental rights codified in the national laws of the Member States. In such cases when an applicant referred to fundamental rights in his/her national law, the Court of Justice reacted by underlining the supremacy of Community law over the laws of the Member States, which is a fundamental principle of the Community legal system[3].

The path-breaking development in the Court's interpretation of fundamental rights came with the *Stauder* case[4]. Judging on the merits of the case, the Court held that "the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court". Here, the Court recognised, for the first time, that fundamental human rights form part of the general principles of Community law. In this way, The Court of Justice established the principle of the protection of fundamental human rights of Community citizens against the administrative practices of the Community and the Member States.

The second milestone in the recognition of fundamental human rights came with the *Internationale Handelgesellschaft* case[5]. In this case the Court established that "respect for fundamental human rights formed an integral part of the general

3 Related cases: *Stork* (Case 1/58 [1959] ECR 17); *Geitling* (Joined cases 36-38, 40-59 [1960] ECR 423); *Sgarlata* (Case 40/64 [1965] ECR 215) cited in T.C. Hartley, *The Foundations of EC Law,* (Oxford: Clarendon Press, 1988, second edition) p. 132; L. Neville Brown, *The Court of Justice of the EC,* (London: Sweet and Maxwell, 1989, third edition) p. 304.

4 Case 29/69 [1969] ECR 419.

5 Case 11/70 [1970] ECR 1125.

principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community." Herewith, the Court carries the recognition of fundamental human rights as part of the general principles of Community law, one step further. It identifies the national constitutions of the Member States as sources of fundamental human rights.

The Court gave its third important judgment regarding human rights in the *Nold* case following the ratification of the European Convention on Human Rights by all the Member States. In this case, the Court ruled as follows[6]:

> "... Fundamental human rights form an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot, therefore, uphold measures, which are incompatible with fundamental rights, recognised and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law."

Among these international treaties, special reference is made to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocol to that Convention of 20 March 1952. In several cases following the Nold judgment, the Court made references to specific provisions of the European Convention on Human Rights. The *Rutili* case[7] is an example of such a judgment. In this case the Court built on the applicability of the European Convention on Human Rights in the Community legal system. Here the Court referred to several Articles and Protocol No 4 of the Convention as general principles guiding the conduct of Member States :

> "... Taken as a whole these limitations placed on the powers of Member States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national

6 Case 4/73 [1974] ECR 491.

7 Case 36/75 [1975] ECR 1219.

security or public safety shall be placed on the rights secured by the above-quoted articles other than such as are necessary for the protection of those interests 'in a democratic society'."

In another case[8], yet, the Court made reference to both the European Convention on Human Rights and to specific provisions of the German, Italian, and Irish constitutions.

"The right to property is guaranteed in the Community legal order in accordance with the ideas common to the constitutions of the Member States, which are also reflected in the first Protocol to the European Convention for the Protection of Human Rights."

It may be concluded that the European Court of Justice developed a substantial case law on the protection of fundamental human rights in the Community over the years. The sources for the protection of fundamental human rights in the Community legal system as accepted by the Court are as follows :

- general principles of Community law;
- national constitutions of the Member States including specific provisions of the constitutions;
- international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories;
  - among these most notably the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and the European Social Charter.

Despite the case law of the European Court which allowed the principles enshrined in national constitutions and international treaties to be used as sources for the interpretation of fundamental human rights in the Community, there is still some controversy over whether this case law provides adequate protection. Although some are content with the present situation, some advocate the adoption of a bill of rights by the EU, while others claim that the accession of the Community to the European Convention on Human Rights would better serve the purpose of the protection of human rights of EU citizens against the practises of the EU institutions.

The Commission put the issue of accession of the Community to the European Convention on Human Rights twice on the agenda. However this has not taken place to this day. One of the main reasons hindering this development is the necessity of

8 Case 44/79 *Hauer v. Land Rheinland - Pfalz*, [1979] ECR 3727.

unanimous approval by all the Member States in the European Council. Some Member States are opposed to the idea of the accession of the Community to the European Convention on Human Rights since they do not favour the Community's acts being subordinate to the jurisdiction of the European Court of Human Rights.

The Commission first brought the issue of the accession of the Community to the European Convention on Human Rights with a memorandum[9]. In response to this memorandum the Council delayed discussion of the matter until April 1986, and thereafter the matter was left to further reflection. The Commission raised the issue a second time with a communication dated 19 November 1990[10]. Four years later, the Council requested an opinion from the Court of Justice about the compatibility of accession to the European Convention on Human Rights with the EC Treaty. (26 April 1994)[11].

The Court concluded in its opinion that the Founding Treaties do not permit the accession of the Community to the European Convention on Human Rights: "... as Community law now stands, the Community has no competence to accede to the Convention."[12] This served the interests of those Member States which are against the accession of the Community, but which also do not want to appear as hindering the protection of human rights within the Community.

III. The Approach of the Other EU Institutions to the Issue of the Protection of Fundamental Human Rights in Community Law :

The other main institutions of the Union mostly adopted a midway approach to the issue. They generally supported the case law developed by the Court of Justice. In 1977 the European Parliament, the Council and the Commission made a joint Declaration on human rights. The wording of the Declaration is as follows :

1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.

9 Bulletin of the EC, Supplement 2/79, also cited in Giorgio Gaja, "Case Law: Court of Justice", *Common Market Law Review*, Vol. 33, No: 5 (October 1996) p. 974.

10 Doc. SEC (90) 2087, cited in Gaja, *ibid.*

11 Gaja, *ibid.*

12 Opinion 2/94, 28.3.1996, cited in *ibid.* p. 983.

The institutions declare their allegiance to the protection of fundamental human rights and acknowledge that they are derived from the constitutions of the Member States and the European Convention on Human Rights. In this way the institutions give their support to the Court in its interpretation of fundamental rights in the Community legal system, and encourage the Court to continue in its approach to this issue.

The European Commission has formerly suggested the adoption by the Community of a bill of rights, but as a first step advocated the accession of the Community to the European Convention on Human Rights, which as discussed above, has not been materialised to this day.

3.1. The Position of the European Parliament Regarding Human Rights

The European Parliament is one of the most active and concerned institutions in the field of human rights. It is a keen advocate of the protection of human rights and civil liberties both within and outside the Union. Although it has only limited influence in the policy-making process, it affects other institutions through the powers it has acquired over the years with consecutive amendments of the Founding Treaties. The Parliament's resolutions, despite the fact that they have no legal force, exert influence on the shaping of public opinion. Concerning the issue of the protection of fundamental rights in the Community system, the Parliament advocates the accession of the Community to the European Convention on Human Rights. In parallel with its federalist tendencies, the Parliament also supports the adoption of a Community Charter of Human Rights and Fundamental Freedoms.

In a Resolution dated 21.5.1979[13], the Parliament calls for the accession of the EC to the European Convention on Human Rights and Fundamental Freedoms. It also makes reference to drafting of a European Charter of Civil Rights by a Committee of experts.

The Parliament, in a consecutive resolution on Community accession to the European Convention on Human Rights[14] of 18 January 1994, again calls for the accession of the Community to the European Convention on Human Rights and Fundamental Freedoms. In the preamble of the resolution, the grounds for the Parliament's reasoning are cited :

- There will be gaps in the system for protecting human rights until such time as the community is subject to the monitoring procedures provided for under

13 Official Journal of the EC, C 127, 21.5.1979.

14 Official Journal of the EC, C 44, 14.02.1994.

the European Convention on Human Rights and Fundamental Freedoms in the same way as its Member States.

- The extension of the Community's sphere of competence under the Treaty on European Union... entails an increased risk of interference involving violations of fundamental rights and freedoms.

- The European Court of Justice will be increasingly confronted with problems concerning the interpretation of the European Convention on Human Rights and Fundamental Freedoms with the risk that one and the same dispute will give rise to contradictory judgments by the European Court of Justice and the European Court of Human Rights.

- Giving individuals the possibility of bringing an action directly before the Court of Human Rights to determine whether a Community act or national implementation act is compatible with his or her fundamental rights should be seen as the Community's maturity.

- It would also encourage Community institutions and Member States to take preventive measures to ensure that Community legislation took due account of the European Convention on Human Rights and the case law of the European Court of Human Rights.

The European Parliament advocates the accession of the Community to the European Convention on Human Rights as a first step. It is also of the opinion that this should only complement the main endeavour, which is the adoption by the Community of its own declaration of human rights and fundamental freedoms. In fact, the European Parliament passed a resolution adopting the Community Declaration of fundamental rights and freedoms[15]. It is argued that this resolution is an attempt to develop the principles established by the Joint Declaration on Fundamental Rights adopted by the Council, Commission and the Parliament, and the reference to fundamental rights in the preamble of the Single European Act of 1986[16]. The Parliament also wishes this catalogue of basic rights to be included in the Founding Treaties.

The European Parliament's declaration on human rights and fundamental freedoms has no legal force, but it is instrumental in establishing the approach of the Parliament to a Community charter on human rights. The Declaration includes the below-mentioned categories of rights :

15 OJ of the EC C 120, 12.07.1989.

16 Lars Bondo Krogsgaard, "Fundamental Rights in the EC after Maastricht", *Legal Issues of European Integration,* 1993/1, p. 104.

- Right to human dignity
- Right to life
- Right to equality before the law
- Freedom of thought
- Freedom of opinion and information
- Right to privacy
- Protection of the family
- Freedom of movement
- Right of ownership
- Freedom of assembly
- Freedom of association
- Freedom to choose an occupation
- Right to just, healthy, and safe working conditions
- Collective social rights
- Right to social welfare
- Right to education
- Principle of democracy
- Right of access to information
- Right of access to the Courts
- Non bis in idem (no one shall be tried or convicted for offences for which they have already been acquitted or convicted)
- Non-retroactivity
- Abolishment of the death penalty
- Right of petition to the European Parliament
- Right to the protection of the environment and the consumer.

The Draft Treaty on the European Union adopted by the Parliament in February 1984[17], on the other hand, provides for the protection of fundamental rights "derived from the common principles of the Constitutions of the Member States and from the European Convention on Human Rights". The Draft constitution[18] prepared by the Parliament's committee on institutional affairs also included the 24 basic rights adopted in the above-mentioned declaration, in the final chapter.

Most recently, The Parliament in its resolution on respect for human rights in the European Union in 1995[19] draws attention to the fact that "human rights in the Union must be protected without reservation if efforts to secure their observance outside

17 Official Journal of the EC, C77, 19.03.1984.

18 Official Journal of the EC, C61, 28.02.1994.

19 Official Journal of the EC, C132, 28.04.1997.

the Union are to be credible". The Parliament expresses its preference for the accession of the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms and calls on the Member States to make the necessary changes to the Community law to make it possible for the Community to accede to the European Convention on Human Rights. The Parliament also declares its will for the Union "to issue a European Declaration of Fundamental Rights with the status of a full component of the Treaty and in which the rights of the individual, including economic, social, cultural and ecological rights are clearly set out and firmly established". In the resolution the Parliament also calls for the Protocol and Agreement on Social Policy and the Charter of Fundamental Social Rights to be integrated into the Treaty and for the EU to accede to the Council of Europe's Social Charter.

IV. Fundamental Human Rights in the Founding Treaties

The Rome Treaty that founded the European Economic Community did not contain any provisions on the protection of fundamental human rights in the Community legal system. Fundamental human rights were to be included in Community law by way of their existence in the constitutional traditions of the Member States. In accordance with this understanding the Court of Justice of the EC developed a substantial case law concerning this issue. The case law of the Court has been dealt with above.

The Single European Act, which constituted the first amendment of the founding treaties, included references to fundamental human rights in its preamble :

> Determined to work together to promote democracy on the basis of the fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice...
>
> Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence, in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter...

Although these references to human rights in the preamble do not have much legal significance, it led to increased attention being given to this issue in the Com-

munity, contributing to the Court's use of the European Convention on Human Rights as a direct source of Community law[20].

The Maastricht Treaty that came into force in November 1993 dealt with fundamental human rights more extensively. References to fundamental human rights are made in three different Articles. In Article F it is stipulated that "the Union shall respect fundamental human rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law. In the fifth indent of Article J (1) "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms" are cited as objectives of the common foreign and security policy. The third reference to human rights is made in Article 130u(2) concerning the development policy of the EC. Here, developing and consolidating democracy and the rule of law, and respecting human rights and fundamental freedoms are cited as themes comprising the general objective the development policy of the Union shall contribute to.

4.1. The Amsterdam Treaty and Fundamental Human Rights

The recently signed Amsterdam Treaty is the third development in the constitution building of the EU. The growing importance of human rights as a political ideal and a standard of conduct are reflected in the Amsterdam Treaty's provisions on human rights. The amendments made to the Founding Treaties by the Amsterdam Treaty also include advancements concerning the protection of human rights in the Union. Article F of the Maastricht Treaty is amended and renamed as Article 6 with the Amsterdam Treaty. The ex-Article F, or the new Article 6 is more assertive in its treatment of the issue. Paragraph 1 establishes the principles on which the Union is founded:

> The union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles, which are common to the Member States.

As different from the Maastricht Treaty, the Amsterdam Treaty includes a listing of the principles underlying the EU. These highly esteemed principles are liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. In the second paragraph of Article 6 fundamental human rights are further elaborated on. The second paragraph, which is unaltered, defines the sources of human rights

20 Krogsgaard, *op. cit.* P. 104.

as the European Convention on Human Rights and Fundamental Freedoms, and the constitutions of the Member States.

What is innovative in the Amsterdam Treaty is the enforcement mechanism for infringement of the founding principles of the Union by the Member States. The ex-Article F(1) which is the new Article 7 bring an enforcement mechanism in case of "serious and persistent breach by a Member State of principles mentioned in Article 6(1)". The mechanism works in this way :

1. One third of the Member States (presently 5 countries) or the Commission brings forth a proposal against a Member State for breach of the fundamental principles.
2. The government of the Member State in question is invited to submit its observations.
3. The Council, acting by unanimity, may determine the existence of a serious and persistent breach by the concerned Member State of these principles.
4. After such a determination is made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaty to the Member State in question, including the voting rights in the Council.
5. In determining the existence of breach, the Council is to act without taking into account the vote of the Member State in question.

The codification of such a mechanism against breach of the fundamental principles of the Union, which are democracy, liberty, respect for human rights and fundamental freedoms, and the rule of law, into the founding treaties of the EU is a path-breaking development. Considering the fact that these principles were not even mentioned in the Treaty of Rome, the Amsterdam Treaty amendments are instrumental in displaying the elevation of such political ideals into the top of the world's political agenda. The development is also instructive in evidencing the changing nature of the EU. The EU has started out as a mainly economic endeavour. Over the years, it has been transformed into a political union with emerging common policies in the foreign policy, security, and justice and home affairs spheres. The EU is no longer motivated only by economic considerations, but by certain values and ideals, which determine whether or not a country belongs to "Europe".

At this point it is also important to take into consideration the fact that this mechanism is quite hard to invoke in practise. One third of the Member States or the Commission should propose the initiation of this process against a Member State. Moreover, there has to be "serious and persistent breach" the existence of which is

more difficult to determine than merely a breach. The definition of when a breach is serious and persistent lends much to judicial interpretation. It does not take much prophecy to foresee that the probability of the occurrence of such a situation is extremely rare. It may be only in times of crisis such as armed conflict or internal strife. Nevertheless, the incorporation of such a provision into the Treaty, that is the identification of the Union's main tenets and a mechanism to enforce these is important in itself as a *de jure* milestone.

In the last analysis, the Amsterdam amendments enshrined the commitment of the EU to the principles of democracy, liberty, respect for human rights and fundamental freedoms, and the rule of law in the founding treaties. Having in mind the criteria for membership established at the Copenhagen Summit of the European Council, allegiance to the protection of human rights has been reaffirmed as a precondition for membership of the EU. The Amsterdam Treaty took the process a step further by producing a mechanism for the monitoring of the state of human rights in countries that are already in the EU.

The development is extremely important in giving the EU an identity, which includes not only economic interests but also political values. The emergence of such an identity will also lead the way for applicant countries, which want to become part of Europe. Especially for countries such as Turkey whose Europeanness is in question, the emergence of a political Europe is instructive in determining their policies concerning integration with Europe. The political ideals the Union is based upon should be shared, not only in words but also in deed, by those countries.

Even if the Turkish ruling elite and public opinion believe that the approach of the EU to Turkey is not objective and genuine, it cannot be denied that these principles have become standards which the applicant countries should strive to achieve, just as low budget deficits and inflation are. Countries that aspire to become EU members should establish a political system based on these values. There may of course be occasional faults in the system as may occur in EU Member States today. Nevertheless the system based on the above mentioned values should hold intact, thus supporting the societal security and political stability of the country.

V. Some Concluding Remarks Concerning the Relations Between Turkey and the EU With Regard to the Protection of Fundamental Human Rights

To conclude, it may be useful to study the argument developed by cultural relativists in the field of human rights since this view may be employed by those people who argue against Turkey's adoption of international human rights standards. This approach contends that the notion of human rights is a concept culturally and politically belonging to the Western tradition of thought, which gives priority to the in-

dividual. Contrary to the western conception, non-Western cultures underline the primacy of the collectivity as against the individual. Therefore, in these cultures the individualistic human rights tradition of the West is not upheld. The rights of the individual may be sacrificed against the overarching interests of the community.

Moral/cultural relativism is based on two approaches that are termed as the diversity thesis and the relativity hypothesis[21]. The diversity thesis contends that societies differ in their moral norms, values and worldviews. Building on this perception, the relativity hypothesis argues that a group's moral norms and values are shaped by the culture and survival needs of the group, and therefore, moral values and approaches are relative to the culture and circumstances.

Following from the diversity thesis and the relativity hypothesis it may be claimed that there is no rational method of choosing or justifying moral norms and values, and therefore moral norms cannot be objectively differentiated as true or false. This view is called sceptical relativism[22]. The inference of this approach in the field of human rights points out that since moral values are culture specific, the preference for the Western conception of human rights cannot be justified as morally superior. According to this school of thought, the human rights movement championed by the West is not founded on objective grounds, and is employed as a means of imposing ethnocentric values on other societies.

Another related approach is prescriptive relativism[23]. In this approach, different moral attitudes stemming from cultural or circumstantial differences are viewed positively. Since culture and circumstances cannot be changed, and therefore are givens, these variations ought to be respected and tolerated. Accordingly, prescriptive relativism claims that universal norms should be few and broad so that most local standards and practises will be compatible with them.

The conclusion drawn by such theorists for the application of universal human rights standards is that cultural differences in this field should be tolerated and should be settled through compromise and a lowest-common-denominator solution. This approach leads to the conclusion that human rights are not universal or of general application. Different cultures may view human rights differently and apply different standards.

As cited by Jack Donnelly, Pollis and Schwab argue that the western conception of human rights makes no sense in most parts of the world and therefore is "in-

21 See James W. Nickel, *Making Sense of Human Rights,* (Berkeley: University of California Press, 1987), p. 69.

22 See *ibid,* pp. 72-74.

23 See *ibid.* pp. 74-77.

applicable, of limited validity and irrelevant". It is contended that "standards and values are relative to the culture from which they derive and thus what is held to be a human right in one society may be regarded as anti-social by another people. Respect for differences between cultures is validated by the scientific fact that no technique of qualitatively evaluating cultures has been discovered"[24].

The moral-cultural relativism argument has a number of weak points. First of all culture is not a given. No culture develops in a vacuum. It is open to influences from other cultures, technical innovations, globalisation, mass media, changing structures, life styles and institutions etc. Moreover, different values may exist in the same society as so often happens.

The importance of human rights as a standard of conduct for governments increased after the advent of modernisation. Modernisation, which changed the way societies organise, and interact, made the individual increasingly vulnerable against the state. Or put in a different way the state acquired new and diverse means to influence and intervene in the life and activities of the individual. Concurrently, rise of the monetised economy based on private property rights destroyed the social bases of traditional communities, ended the self-subsistence family unit and created separate and distinct individuals free from communal ties, which would enjoy the protection of human rights in the modern sense[25].

Those developments that triggered the need and demand for human rights emerged in the West. But since similar developments take place in other parts of the world, human rights are also needed and demanded in these countries which may have different cultural backgrounds than the West.

The arguments developed by cultural relativists are mostly relevant for premodern tribes and traditional societies. But such insular groups no longer exist today. Even the innermost corners of the world are penetrated. Local cultures have been transformed by the effects of globalisation, western institutions such as the modern nation state, monetary economy, industrialisation, modern production techniques, practises and values, etc. Even such examples like the Afghan regime today which is set on strict Islamic rules do not follow cultural patterns but use religion and tradition as a pretext for repressing the people who want more participation and development and discouraging opposition.

Appeals to the cultural specificity of human rights are most often brought forth by repressive regimes in developing countries. The political elite in such countries

24 Adamantia Pollis, Peter Schwab eds. *Human Rights: Cultural and Ideological Perspectives,* (New York: Praeger Publishers, 1980) pp: 13, 8, 9 cited in Jack Donnelly, *Universal Human Rights in Theory and Practise,* (Ithaca: Cornell University Press, 1989) pp. 60-62.

25 Donnelly, *ibid.* p. 64.

usually uses this argument as a cover-up for their ill methods of ruling the populace. They regard international human rights standards with hostility because they see them as limitations on national sovereignty, which may be translated to mean limitations on their arbitrary rule. They suspect that greater participation of the people and greater transparency will unveil the corruption and mismanagement, which they feed upon. In those countries national sovereignty usually means that the political elite treat the populace in an arbitrary manner in accordance with their interests. Therefore, protection of human rights cannot infringe national sovereignty, which exists only in rhetoric.

Such practises as disappearances, arbitrary arrests and detention, torture, non-judicial executions that are the mostly criticised violations in developing countries have no cultural justification. They are done to suppress freedom of expression, participation and dissent. These practises do not rest on an alternative conception of human dignity, which underlies the concept of human rights. But rather they deny human rights and do not put anything in its place, hiding behind an abstract notion as the 'sacred state'.

Therefore we can rightly argue that cultural relativism in human rights is no longer valid today. Cultures have been penetrated by other cultures. Moreover, the advent of modernity changed the life styles of masses of population forever. This is especially true for a country like Turkey, which is right next to Europe, the cradle of human rights. Therefore, a statement such as "Human rights are our internal affair. We do not want anyone interfering", has no relevance in today's world. Defending violations of human rights under the guise of protecting the overarching interests of the state can only be a joke in the post-modern, or should we say pre-modern, fashion.

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