END OF "END OF HUMAN RIGHTS" DEBATE: CRITICAL JUNCTURES AND INCREMENTAL CHANGES OF HUMAN RIGHTS*

"İnsan Haklarının Sonu" Tartışmasının Sonu: İnsan Haklarında Kritik Dönüm Noktaları ve Kademeli Değişimler

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Abstract

Many scholars emphasize that human rights face a major challenge: the gradual erosion and end of human rights. This erosion has led to a rethinking of the balance between security and rights and freedoms, and raised concerns about how reliable human rights are in the face of changing political dynamics. Minority and marginalized groups suffer from discrimination and systematic persecution, while the rise of control technologies and authoritarian regimes exacerbate these challenges. The post-9/11 era was thought to be the "end of human rights" as debates over the legitimacy of measures such as torture were driven by security needs. However, technological developments and historical trends suggest otherwise. Human rights have experienced (i) critical junctures through political decisions, and (ii) incremental changes through judicial protections and activism by civil society organizations, which both lead to empower the understanding and application of human rights. The debate about the "end of human rights" continues but is essentially misleading. However, the changes that have occurred in the history of human rights demonstrate consistent and continuous progress, driven by political and judicial decisions.

Keywords: end of human rights, Post-9/11 security measures, political decisions as critical junctures, judicial protections as incremental changes, accountability mechanisms, historical trends of human rights

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Özet

Akademi ve uygulayıcılar, insan haklarının önemli bir zorlukla karşı karşıya olduğunu vurgulamaktadır: insan haklarının kademeli bir şekilde aşınması ve sonunun gelmesi. Bu aşınma, insan haklarının güvenlik ile haklar ve özgürlükler arasındaki dengeyi yeniden düşünmeye yol açmış ve değişen siyasi dinamikler karşısında insan haklarının ne kadar güvenilir olduğu konusunda endişeleri artırmıştır. Azınlık ve marjinal gruplar, ayrımcılık ve sistematik zulümden muzdarip olurken, kontrol teknolojilerinin ve otoriter yönetimlerin yükselişi bu zorlukları daha da kötüleştirmektedir. 11 Eylül sonrası dönemde, işkence ve insanlık dışı muamelenin meşruiyeti üzerine yaşanan tartışmalar ile güvenlik gereksinimleri nedeniyle alınan aşırı tedbirler, "insan haklarının sonu" tartışmasını öne çıkarmıştır. Esasında "İnsan haklarının sonu" tartışması oldukça yanıltıcı. Zira teknolojik gelişmeler ve tarihsel trendler bu tartışmanın aksi yönünde veriler sunmaktadır. İnsan hakları tarihi, iki farklı şekilde insan hakları alanında tutarlı ve sürekli ilerlemeler kaydedildiğini göstermektedir: i) kritik dönüm noktaları (critical junctures) olan siyasi kararlarla ve ii) mahkeme ve BM komisyon kararları ve insan hakları konusunda çalışan çoğu STK'ların çabalarıyla gerçekleşen kademeli değişimlerle (incremental changes).

Anahtar Kelimeler: insan haklarının sonu, 11 Eylül sonrası güvenlik önlemleri, kritik dönemeçler olarak siyasi kararlar, kademeli ilerlemeler olarak yargı kararları, hesap verebilirlik mekanizmaları, insan haklarının tarihi trendleri

INTRODUCTION

The landscape of human rights faces a complex and multifaceted challenge: not overt assault, but a gradual erosion through seemingly isolated incidents and normalized practices. This insidious trend manifests in various forms, as documented by many scholars all over the world.[1] We have witnessed many developments that threaten and have a potential to restrict or annihilate the human rights.

On the one hand the bomb attacks, massacres, civil wars on the other measures are taken after September 11 attacks which resemble the "enemy criminal law" [criminal law of the enemy; -ger. Feindstrafrecht] policy and the violation of the basic rights and freedoms. For example, the violations of right to life and liberty all around world and the prohibition of torture in prisons in which Guantanamo or Abu Ghraib. Likewise, many of the writers propound after the terrorist attacks around the world, the politics of human rights has been changed

[1] Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013); Philip Alston, 'Human Rights Under Siege: How to Respond to the Populist Threat Facing Human Rights' (2017) 14 Sur - International Journal on Human Rights 267; Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press 2019).

and the balance between the rights/freedoms and security has been altered to the detriment of rights/freedoms.

Some declare that human rights are in crisis[2] and some others question whether human rights can survive.[3] World politics has been seen as to steer for taking measure to security then strengthen or vivify the idea of human rights.[4] Thus, the language of politics went beyond the human rights because their language deteriorates difference and otherness and cannot lead emancipation.[5]

On the other hand, one concerning example lies in the growing use of surveillance technologies, blurring the lines between legitimate security measures and mass data collection. Such practices can create chilling effects on freedom of expression and association, documented by international organizations like Privacy International.[6]

Furthermore, the erosion of democratic institutions and the rise of authoritarian leaders pose a significant threat. These actors often weaken judicial independence, manipulate elections, and crackdown on dissent, eroding the very foundations of human rights protections, furthermore, the plight of minorities and marginalized groups further highlights this erosion.[7]

From discriminatory policies against refugees and migrants, to the systematic persecution of religious minorities, documented by organizations like Amnesty International, these groups bear the brunt of weakening human rights standards. Holding governments accountable through mechanisms like the United Nations Human Rights Council and regional human rights courts is crucial. Empowering civil society organizations and fostering a culture of human rights awareness are equally important. Ultimately, safeguarding human rights demands constant vigilance and collective action to resist the tides that threaten to erode these hard-won gains.

Obviously, soon after the 11 September incident, the environment for the human rights has changed drastically and some of the advances which have

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2 Geneviève Souillac, *Human Rights in Crisis: The Sacred and the Secular in Contemporary French Thought* (Lexington Books 2005).

3 Conor Gearty, *Can Human Rights Survive?* (1st edition, Cambridge University Press 2006) 26.

4 Richard A Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (Routledge 2000) 217.

5 Stewart Motha and Thanos Zartaloudis, 'Law, Ethics and the Utopian End of Human Rights' (2003) 12 Social & Legal Studies 243.

6 Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs Books 2019).

7 Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown Publishing 2018).

already been achieved face in jeopardy. Michael Ignatieff, the liberal human rights defender, has presented the idea of "the end of human rights"[8], at the same time with the Costas Douzinas[9]. Ignatieff has predicted that the "in the wake of the terrorist attacks, security would become the prime concern of governments and the age of human rights and humanitarianism would draw to a close".[10] According to Douzinas there was a post-Second War Western consensus that there are certain acts like torture, that intolerable among the liberal-democratic society. And such kind of acts, has been told, were taken under dictatorships or totalitarian regimes. However, this consensus was broken after 11 September.[11] Thus torture and its morality or legitimacy has become a debatable issue under ethical studies and conferences are organized, papers are published. Liberal writers such as Alan Dershowitz and Ignatieff has offers terms such as "torture warrant", "sunset clause" or "lesser evil strategy" for legalizing torture through.[12] As for Bruce Ackerman, although he opposed the idea of torture, supports "preventive detention of suspects" and introduction of "emergency constitutions" for limited periods[13] in order to minimize the possibility of terrorism.

Furthermore, within this period of time there were also invasions of Afghanistan, Iraq and Libya and the documented violations of human rights. "These victories have been drowned in a human rights disaster for the local people"[14] and, they overshadowed the attempts for strengthening the culture and progress of human rights at a global scale. As a result of such incidents and spreading discussion about "the end" of everything; ideology, history, utopia etc. over on-going human rights debate, pave the way for idea of the end of the human rights. Therefore, it is vital to ask whether these -and other not mentioned as well- indicators are

8 Michael Ignatieff, 'Opinion | Is the Human Rights Era Ending?' *The New York Times* (5 February 2002) <https://www.nytimes.com/2002/02/05/opinion/is-the-human-rights-era-ending.html> accessed 12 March 2024.

9 Costas Douzinas, *The End of Human Rights* (Hart Publishing 2000) 380; Costas Douzinas, 'The End(s) of Human Rights' (2002) 26 Melbourne University Law Review 445.

10 Ignatieff, 'Opinion | Is the Human Rights Era Ending?' (n 8).

11 Costas Douzinas, *The End of Human Rights* (n 9).

12 Alan M Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (Yale University Press 2002); Michael Ignatieff, *The Lesser Evil | Princeton University Press* (Princeton University Press 2005); Michael Ignatieff, 'Lesser Evils' *The New York Times* (2 May 2004) <https://www.nytimes.com/2004/05/02/magazine/lesser-evils.html> accessed 12 March 2024."plainCitation":"Alan M Dershowitz, Why Terrorism Works: Understanding the Threat, Responding to the Challenge (Yale University Press 2002

13 Bruce A Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* (Yale University Press 2006) 14."plainCitation":"Bruce A Ackerman, Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism (Yale University Press 2006

14 Costas Douzinas, *The End of Human Rights* (n 9) 7.

reliable, satisfying, and sufficient for such kind of an inference that "we have reached the end of human rights era".

In this respect, I will discuss and oppose the "idea of the end of human rights" by bring forward three arguments which are first, discussions on the core of rights, secondly the gap between rhetoric and reality / theory and practice, finally but the most importantly implications taken from the history of human rights.

HOW RELIABLE THE ARGUMENTS ON END OF HUMAN RIGHTS?

A. The Notion of Human Rights

First of all, "it is axiomatic that the historic mission of 'contemporary' human rights is to give voice to human suffering, to make it visible, and to ameliorate it."[15] In other words, concept of human rights becomes visible or revive when pain and suffering is occurred. According to Baxi, however, this is not the only case but "even human rights regimes enact a hierarchy of pain and suffering."[16] I would prefer to name this issue as "cycling effect". Pain or suffering and the concept of human rights are coexisted and support each other.

Luhman's theory on autopoietic systems, which means self-reproduction of systems such as law, politics or economy by using communication as an element, stipulates that concepts/elements are produced as a result of being used.[17] Thus, current developments (violations, measures and criticisms) will again trigger the concept of human rights and whenever it is discussed or criticized, it re-produces itself.

Secondly, human rights are used and understood in a different way throughout the world and history.[18] Baxi has proposed that there are two different notions of human rights: modern and contemporary. Modern notion is characterized by setting rules, but contemporary by setting standards.[19] In other words, in contemporary world the rights are accurate, but they may conflict with each other, so it is needed to set off limits and case-by-case basis to search for solutions to reconcile competing rights. I would prefer to name this issue as "balancing effect".

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15 Upendra Baxi, *The Future of Human Rights* (Third Edition, Oxford University Press 2008) 4.

16 ibid 18.

17 Niklas Luhmann, 'The Autopoiesis of Social Systems' in Felix Geyer and Johannes van der Zouwen (eds), *Sociocybernetic Paradoxes: Observation, Control and Evolution of Self-Steering Systems* (Sage Publications 1986); Niklas Luhmann, *Law as a Social System* (Oxford University Press 2004).

18 Upendra Baxi (n 15) 33.

19 Euan MacDonald, 'Review Essay - The Future of Human Rights? Theory and Practice in an International Context: Review of Upendra Baxi's The Future of Human Rights' (2004) 5 German Law Journal 969, 973.

Nevertheless, the distinction is occurred not only in limit setting/reconciling process but also in legal texts. For example, current developments urge states to reconsider the balance and the limit between two rights: protection of private life and family and right to life liberty and personal security. With the measures taken after 11 September, the balance between those two rights is change to the detriment of prior. Also, it is possible to observe different legal text outlines different bunch of fundamental rights all over the world. The changing balance between two rights does not indicate end of human rights, which indicate one right gains strength against the other. The noteworthy point is that whether new developments are jeopardizing the "substantial core" of the rights.

B. The Gap Between Rhetoric and Reality

Indeed, the end of the human rights discussions derived from an argument -prefer to call this an illusion- which is the gap between rhetoric and reality / theory and practice. This gap gives rise to illusion of "end" issue. The underlying reason for this gap between targets and achievements is derived from the role of the states in today. Governments have eagerness to improve and promote human rights protection in their national legal system; however, most of them are suffered from the insufficient sources and capacity for making meaningful changes.

On the other hand, advancements in information technologies have brought about a significant shift in the visibility of human rights violations.[20] The advent of digital technologies has greatly facilitated individuals' ability to access information pertaining to human rights violations on a global scale. Internet connectivity enables individuals to get knowledge about transgressions occurring in foreign nations or within their own nation, peruse information, and strategize courses of action pertaining to these matters. These advancements have enabled expedited and more extensive communication and dissemination of information. Social media and internet platforms provide individuals with the means to express their viewpoints, disseminate their personal encounters, and bring to light instances of human rights transgressions. For instance, reports of numerous infringements on human rights rapidly disseminate on social media platforms such as Twitter, Facebook, or Instagram, captivating the interest of millions of individuals.[21] This facilitates the dissemination of previously unnoticed or disregarded events to a broad audience.

The advent of information technologies has facilitated the instantaneous capturing and sharing of images and movies among individuals. This serves as a

[20] Molly K Land and Jay D Aronson, *New Technologies for Human Rights Law and Practice* (Cambridge University Press 2018).

[21] Howard Tumber and Silvio Waisbord, *The Routledge Companion to Media and Human Rights* (Routledge 2017).

potent instrument for recording instances of human rights infringements. Visual evidence serves as a means to substantiate the veracity of events and ascertain the identities of those responsible. Similarly, the emergence of independent journalists and bloggers who not only rely on traditional media sources but also utilize online channels to disseminate reports on human rights breaches. This facilitates the inclusion of more news sources and other perspectives, hence enhancing the comprehensiveness of event coverage.

In summary, the progression of information technologies has played a significant role in enhancing the visibility of human rights breaches and creation of illusion that violations cannot be addressed or redressed. Nevertheless, it is crucial to bear in mind that these technical advancements also give rise to apprehensions regarding privacy and security.

C. Nature of International Law on Human Rights

The issue concerning the nature of international law, particularly in relation to human rights, has sparked considerable debate and critique within legal scholarship. Balakrishnan Rajagopal, a prominent legal scholar, argues that the movement of human rights, despite the adoption of the United Nations (UN) Universal Declaration of Human Rights, is afflicted with a fundamental flaw stemming from its historical failure to challenge colonialism. Rajagopal contends that many human rights treaties were crafted by colonialist powers, primarily European nations, which inherently taints the legitimacy and universality of these rights.[22] Furthermore, he questions the future trajectory of human rights, raising doubts as to whether they transcend mere politics or devolve into idolatry.

This critique underscores the complex dynamics surrounding the universality, inalienability, and indivisibility of human rights, which can potentially be manipulated as instruments of hegemony. For instance, Costas Douzinas highlights how human rights can function as ideological tools of empire, serving to legitimize and perpetuate dominant power structures.[23] However, Richard Falk offers a nuanced perspective, noting that while the imposition of human rights norms may act as a constraint on interventionist diplomacy, it also paradoxically provides a pretext for intervention, as exemplified by the concept of the "responsibility to protect" (R2P) norm utilized in the 2011 Libyan intervention.[24]

This contradiction inherent within the nature of international law reflects its historical dual role: serving the interests of powerful states and elites, while

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22 Balakrishnan Rajagopal, 'Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy' (2006) 27 Third World Quarterly 767.

23 Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish 2007).

24 Jon Bailes and Cihan Aksan, *Weapon of the Strong: Conversations on US State Terrorism* (Pluto Press 2012) 23 vd.

simultaneously containing the potential to protect the rights of the weak and vulnerable. Consequently, this dichotomy has profound implications for the conception of human rights as a subset of international law. Despite its inherent flaws, this cycling effect, does not diminish the significance of human rights in the collective consciousness. Instead, it serves to continually reinforce and reinvigorate the discourse surrounding human rights, highlighting the ongoing struggle to reconcile lofty ideals with geopolitical realities.

To sum, the balancing effect, the gap between theory and practice due to lack of capacity and the nature of the international law pave the way for illusion of "end" issue.

WHAT HISTORY SHOWS

Understanding the history of human rights is essential for gaining insights into its future trajectory. The history of human rights proves that progress in human rights has been made by political decisions which are *critical junctures* and court's decisions and efforts of institutions -mostly NGO's working on human rights- which are *incremental changes*.

Historical analysis allows us to identify patterns, trends, and critical junctures that have shaped the evolution of human rights discourse and practice. Importantly, it provides a foundation upon which we can assess the potential for further strengthening of human rights, particularly in light of historical tendencies and emerging technological advancements.

Throughout history, progress in human rights issues has often been driven by a combination of political decisions, judicial rulings, and the tireless efforts of various institutions, including non-governmental organizations (NGOs) dedicated to human rights advocacy. These critical junctures, marked by significant events such as the adoption of landmark declarations and conventions, have catalyzed advancements in the protection and promotion of human rights. For example, the Universal Declaration of Human Rights adopted by the United Nations in 1948 represented a pivotal moment in the international recognition of human rights principles.

Moreover, court decisions, both at national and international levels, have played a crucial role in interpreting and enforcing human rights standards. Landmark rulings by international tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights, have set important precedents and expanded the scope of human rights protections.

In addition to political and judicial developments, the contributions of NGOs and civil society actors cannot be overstated. These organizations have been instrumental in advocating for human rights reforms, raising awareness, and holding governments and other actors accountable for human rights violations.

Their incremental efforts have often complemented and reinforced the broader push for human rights advancement.

Looking ahead, new technological developments present both opportunities and challenges for the future of human rights. The increasing interconnectedness facilitated by digital technologies has enabled greater access to information, enhanced communication channels, and empowered grassroots movements. However, it has also raised concerns about privacy, surveillance, and the weaponization of information.

In conclusion, the history of human rights underscores the importance of political decisions, judicial rulings, and civil society activism in driving progress in this field. While historical tendencies suggest a trajectory towards further strengthening of human rights, the evolving landscape of technology introduces new complexities that will require careful navigation. Ultimately, the future of human rights will depend on the collective efforts of governments, institutions, and individuals to uphold the principles of dignity, equality, and justice for all.

A. Political Decisions as Critical Junctures

The references made to the "human rights" in legal texts are quite new phenomenon. It appears in early legal writings about minorities in the 1920's.[25] But the main impetus was the adoption of UN Charter which set "protection of human rights" among its aims. Then non-binding UN Human Rights Declaration was adopted in General Assembly. This document was characterized "as a common standard of achievement for all peoples and all nations."[26] Also it paves the way for two different treaties which are binding; Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights.

Beyond those legal instruments and the commitments, three major developments led to the rise of human rights and respect for the provisions of the Declaration of Human Rights according to Richard Falk; the role of NGO's, USA activism as supporting human rights and the influence of human rights in collapse of racist regime in South Africa.[27] The activisms of human rights nongovernmental organizations (NGOs) are critical. NGOs such as Red Cross, Amnesty International, and Oxfam etc. have been important participants in human rights campaigns. This can be seen as an emergence of an influential pressure groups engaging in human rights which lead for change in society. The source of their activism is simple, human rights NGOs are using legal or political commitments of the governments made under international treaties as

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25 Costas Douzinas, *The End of Human Rights* (n 9) Chapter 1.

26 United Nations, 'Universal Declaration of Human Rights' (*United Nations*) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 14 March 2024.

27 Bailes and Aksan (n 24) 27.

a tool. Human rights advocates in different regions of the world are working with governments in preparing the required reports to the UN treaty monitoring bodies[28] and where necessary preparing parallel or alternative reports. Furthermore, local legal, political initiatives and campaigns are effective than international treaties, committees and reports. NGOs are able to mobilize public opinion for the promotion of human rights.

Second development was the US 'discovery' of human rights during the Carter presidency in the late 1970's as part of an effort to restore America's moral reputation after its humiliating experiences in the Vietnam War.[29] One of the NGO officials wrote for illustrating how this affects the existing situation on these years, "human rights are suddenly chic. For years we were preachers, idealists, busybodies and now we are respectable".[30]

Thirdly, perhaps most important of all, "human rights allowed the global anti-apartheid campaign to become a political project that contributed to the collapse of the racist regime in South Africa"[31] through 90's. Similarly, some of the scholars argue that Soviet Union actually was collapsed after signing the Helsinki Accord: Declaration on Human Rights in 1975.[32]

To sum, with various political developments or the enthusiasm of politicians towards human rights at various times promoted the human rights issue and create critical junctures. It is like a wave which has ebb and flux.

B. Judicial Protections as Incremental Changes

Courts, quasi-courts or committees given judicial review caused a significant impetus on protection of human rights globally, regionally and nationally. In fact,

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28 The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. There are ten human rights treaty bodies composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties. These bodies are: Human Rights Committee (CCPR), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD), Committee on Enforced Disappearances (CED) 'Treaty Bodies' (*OHCHR*) <https://www.ohchr.org/en/treaty-bodies> accessed 14 March 2024.

29 Bailes and Aksan (n 24) 13 vd.

30 Kenneth Cmiel, 'The Emergence of Human Rights Politics in the United States' (1999) 86 Journal of American History 1231, 1248.

31 Bailes and Aksan (n 24) 53.

32 Robert D English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War* (Columbia University Press 2000) 154–155.

not only for protection but also for closing the gap between theory and practice, they played an important role. Their unique function brings about progressive incremental changes. They set scope of the rights or their boundaries case-by-case basis and in many times extend the scope of the rights. On the contrary to critical junctures, these changes displayed incremental adjustments rather than groundbreaking action.

Firstly, there is binding UN treaties, and every treaty has a committee. Those committees give judicial review on the basis of individual application or reporting system. There is also "follow up procedure" which means monitoring the states after giving decision whether it implement the decision.

Secondly, there are regional protection systems such as European, African and American. Interesting decision given by Inter-American Court of Human Rights in 2003 about the case of *Myrna Mack Chang v. Guatemala*[33] illustrate the level of protection. In final judgments part, court unanimously accepts: *State must remove all de facto and legal obstacles and mechanisms that maintain impunity; carry out a public act of acknowledgment of its responsibility in connection with the facts of this case and of amends to the memory of Myrna Mack Chang; must publicly honor the memory of José Mérida Escobar; must include, in the training courses for members of the armed forces and the police, as well as the security agencies, education regarding human rights and International Humanitarian Law; must establish a scholarship, in the name of Myrna Mack Chang; must name a well-known street or square in Guatemala City after Myrna Mack Chang.* Court also ordered the state to pay compensation for pecuniary *and non-pecuniary damages.*[34] Most importantly, Court ordered that it will monitor compliance with this judgment and will close the instant case once the state has fully complied with its provisions. Within one year of notification of this judgment, the state must submit to the Court a report on the measures adopted to comply with it.

The most effective regional system of implementation is under the European Convention on Human Rights (ECHR). Convention protects main civil and political rights.[35] Under ECHR, aggrieved Europeans, after exhausting the remedies offered in their national legal systems can submit an application to the

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33 *Case of Myrna Mack Chang v Guatemala, Hernández Mack and ors (on behalf of Mack Chang) v Guatemala* [2003] IACHR Series C No 101 (Inter-American Court of Human Rights [IACtHR]).

34 ibid 134–137.

35 For comprehensive analysis in protection of social rights by European Court of Human Rights and European Court of Justice see: Oğuz Kaan Pehlivan, Avrupa İnsan Hakları Mahkemesi ve Avrupa Adalet Divanı Kararları Işığında Sosyo-Ekonomik Hakların Korunması in Kıvılcım Ertan Akkoyunlu, Filiz Kartal and Yeliz Şanlı Atay (eds), *Sosyal Adalet için İnsan Hakları: Sosyal Haklar* (Türkiye ve Orta Doğu Amme İdaresi Enstitüsü (TODAİE) 2014).

European Court alleging that their rights have been violated by actions of their state. Court conducts a full judicial investigation of the claim during which the citizen plaintiff is put on an equal footing with the defendant state. At the end of the process, the state is obliged to comply with any adverse findings of the Court. For example, Britain has changed its law on telephone tapping[36] contempt of court and the treatment of transsexuals[37]; Germany gave non-German speaking defendants the right to an interpreter[38], Australia abolished state monopoly on cable and satellite televisions regarding freedom of expression[39] etc.[40]

The Council of Europe saw significant growth in the 1980s and 1990s, resulting in a substantial increase in the workload of its Convention institutions. In 1981, the Commission dealt with 404 applications, but in 1997, it handled 4,750 applications. Similarly, the Court heard 7 cases in 1981, but this number rose to 119 cases in 1997. In 1998, the part-time Court was substituted by a full-time entity. According to the courts' official statistics, "more than 91% of the Court's judgments since its creation in 1959 have been delivered between 1998 and 2011"[41]. Between 1959-1998 only 837 judgments, in 2002 888 judgments were delivered. Between years 1998-2011 is the decade which "end" or "crisis literature" was occurred. That seems contradictory. The appropriate explanation for this can be found in contribution of technology in human rights. "Internet and mobile networks are spreading, human rights groups are using satellite images and other large scale, centralized technology as well to detect and document human rights abuses."[42] Thus, there are too many violations, but governments have lack of capacity to cope, also measures taken for limiting human rights and transparency created the perception of "end".

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36 *Malone v the United Kingdom (just satisfaction)* [1985] ECtHR 8691/79; *Khan v the United Kingdom* [2000] ECtHR 35394/97.

37 *Z and Others v the United Kingdom* [2001] ECtHR [GC] 29392/95; *Christine Goodwin v the United Kingdom* [2002] ECtHR [GC] 60596/09.

38 *Luedicke, Belkacem and Koç v Germany* [1978] ECtHR 6210/73, 6877/75, 7132/75.

39 *Lingens v Austria* [1986] ECtHR 41193/15, 51044/15, 53856/15, 1724/16, 2809/16, 8141/16, 16976/16, 18306/16, 43625/16, 46334/16, 46376/16, 56677/16, 57523/16, 59609/16, 76672/16, 77512/16, 77526/16; *Informationsverein Lentia and Others v Austria* [1993] ECtHR 24753/13, 28610/13, 57854/13, 65553/13.

40 For other examples see 'Annual Reports - ECHR - ECHR / CEDH' (*ECHR*) <https://www.echr.coe.int/annual-reports> accessed 14 March 2024.

41 'Human Rights - All You Need to Know' (*Politics.co.uk*) <https://www.politics.co.uk/reference/human-rights/> accessed 14 March 2024; 'Statistics - ECHR - ECHR - ECHR / CEDH' (*ECHR*) <https://www.echr.coe.int/statistical-reports> accessed 14 March 2024.

42 Josh Calder, 'Who Will Be Free? The Battles for Human Rights to 2050' [2012] The Futurist 29, 30.

Moreover, judgment ruled by European Court of Justice (ECJ) in Kadi case[43] is a significant example for broadening the scope of human rights protection in Europe. Mrs. Kadi applied to Court of First Instance for annulment of decision taken by EU authorities in accordance with the Council Regulation 881/2002[44] which had imposed restrictive measures against persons and entities associated with the Al-Qaeda and the Taliban. Although the Court of First Instance has refused the application, ECJ overruled the judgment on the basis of violation of right to defence and right to be heard. Court ruled that measures incompatible with respect for human rights are not acceptable in the EU. "Even though the ECJ emphasized that it had no authority to call into question the lawfulness of UN Security Council resolutions, this judgment leaves a wide range of interpretations regarding the interplay between international law and EU law."[45] This judgment is unique because, ECJ ignored the Security Council resolutions and the resolution enacted by EU on the basis of violation of human rights.

For concluding remarks, judicial protection gave momentum in protection of human rights internationally or regionally. Judgments and the follow up procedure help effectively implementation of rights and obligations in domestic legal systems. This gradually strengthens the legal position of human rights and creates an incremental change.

CONCLUSION

The landscape of human rights is under threat not from overt assaults but from a gradual erosion through isolated incidents and normalized practices, as noted by scholars worldwide. Incidents such as bomb attacks, civil wars, and post-9/11 security measures resembling enemy criminal law policies have posed challenges to basic rights like the right to life and liberty, exemplified by violations in places like Guantanamo and Abu Ghraib. This has led to a shift in the balance between rights and security, raising concerns about the survival of human rights in a changing political landscape.

Surveillance technologies and the rise of authoritarian leaders further compound these challenges, blurring lines between security measures and privacy rights.

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43 Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities) European Court of Justice, Joined cases C-402/05 P and C-415/05 P, 03/09/2008.

44 Imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, Council Regulation (EC) No 881/2002, 29/05/2002, Official Journal L 139.

45 Gabor Halmai, *Perspectives on Global Constitutionalism: The Use of Foreign and International Law* (Eleven International Publishing 2014) 255.

Minority and marginalized groups suffer disproportionately from weakening human rights standards, evidenced by discriminatory policies and systematic persecution. However, mechanisms like the United Nations Human Rights Council and regional courts offer avenues for accountability.

The post-9/11 era has sparked debates about the legitimacy of measures like torture and preventive detention, with scholars like Michael Ignatieff suggesting the "end of human rights" in light of security concerns. Yet, historical trends and ongoing advancements in technology suggest otherwise. Human rights have evolved through critical junctures driven by political decisions, judicial protections, and the activism of NGOs, leading to incremental changes and broadening of protections.

Despite challenges such as the gap between rhetoric and reality and the nature of international law, human rights continue to be a vital global concern. Judicial protections at the international and regional levels have played a significant role in expanding rights and ensuring accountability. The history of human rights suggests a trajectory of progress rather than decline, driven by political actions, court decisions, and incremental changes. As such, the idea of the "end of human rights" remains contested and contradicted by historical trends and ongoing efforts to uphold these fundamental principles.

Ongoing debate about the end of the human rights and its future actually is an illusion. There are reasonable factors creating such kind of an illusion. First, different understanding of human rights contemporarily compels us to set limits and define the scope of rights and obligation which is I preferred to name "balancing effect". Also "observance of human rights has improved almost universally over the last 50 years, even in authoritarian countries."[46] Such transparency makes more visible the human rights violations all over the world. There is also lack adequate capacity or unwillingness of the governments for implementation. Thus, both reasons again strengthen that illusion.

The developing history of human rights indicated a different reality. The scope of protection is becoming wider and wider on the basis of political decisions from time to time and judicial review by gradually. Political decisions create critical junctures and judgments create incremental changes. Both contribute implementation and protection of human rights regionally or domestically.

[46] Calder (n 43) 31.

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