Kurdish Diaspora Confederation - Diakurd

Legal Petition Regarding the Treaty of Lausanne

A Legal Petition Concerning the Treaty of Lausanne and the Right to Self-Determination of Kurds on its 100th Anniversary!

TO THE COUNCİL OF STATE PRESİDENCY
TO BE SENT TO
DİYARBAKIR DUTY ADMİNİSTRATİVE COURT PRESİDENCY

PLAINTIFF : DIAKURD

COUNSEL: Lawyer Hişyar ÖZALP and Lawyer Rıdvan DALMIŞ

DEFENDANT: Republic of Turkey Presidency

ACTION SOUGHT TO BE ANNULLED:

Implicit rejection of the administrative application dated 2.5.2023

DATE OF REJECTION: 8.6.2023 (the date assumed to be the expiration of the 30-day response period and the implicit rejection)

SUBJECT OF THE CASE: A petition requesting the annulment of the implicit rejection decision.

EXPLANATIONS: The client mentioned above, with the name and Turkish Republic identification number provided, is an individual belonging to the Kurdish people who hold the citizenship of the Republic of Turkey. On 2.5.2023, our client submitted an application to the defendant administration, requesting the exercise of the right to self-determination for the Kurdish people within the citizenship of the Republic of Turkey, as violated by the Republic of Turkey state starting with the Treaty of Lausanne and further governed by certain international agreements that have been breached by the Republic of Turkey, and which are also ratified by itself. The client presented the factual events and legal reasons to support this claim. The defendant administration received the application on 8.5.2023 but implicitly rejected it by remaining silent within the legal response period of 30 days. The material events on which the plaintiff relies and the legal reasons for annulment are presented below in sequence.

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1) THE PARTY IN QUESTION HAS NOT ALLOWED THE KURDISH PEOPLE TO EXERCISE THEIR RIGHT TO SELF-DETERMINATION. THE ETHNIC, LINGUISTIC, HISTORICAL, AND CULTURAL INTEGRITY OF THE KURDS TAKES PRECEDENCE OVER THE RIGHTS OF A STATE THAT DOES NOT REPRESENT THEM AND ENFORCES SYSTEMATIC OPPRESSION AND ASSIMILATION.UNDER THESE CIRCUMSTANCES AND AS A LAST RESORT KURDS CAN RESORT TO EXTERNAL SELF-DETERMINATION.

At the end of World War I, the victorious Allied Powers signed peace treaties with the defeated nations. In this context, agreements were implemented with Germany through the Treaty of *Versailles*, Austria through the *Saint-Germain* Treaty, Bulgaria through the *Neuilly* Treaty, and Hungary through the *Trianon Treaty*, respectively. Although an agreement was reached with the Ottoman Empire in the *Sevres* Treaty, it was not enforced by the Allied Powers due to various reasons. After the dissolution of the Ottoman Empire, there was a need to reach an agreement regarding the establishment of borders and other matters with Turkey. An agreement was reached on July 24, 1923, between the British Empire, France, Italy, Japan, Greece, Romania, the Kingdom of Serbs, Croats, and Slovenes, and Turkey through the Treaty of Lausanne to resolve disputes on designated issues.

The agreement accepted in Lausanne has resulted in the confiscation of all rights of the Kurds as a nation. After World War I, many new independent states emerged in Eastern Europe and the Middle East along with the aforementioned agreements, and several mandated states that would later become independent, while the Kurdish people were deprived of this right. However, Kurds have historically held power in their Kurdistan region for centuries, sometimes as an independent state and sometimes autonomously. An independent Kurdistan deserved a place on the changed world map after World War I, just as much as the other newly established states. Through this agreement, it can be said that the Kurdish people were intended to be condemned to extinction as a result of decisions made by global powers for their own interests.

While the Kurds were condemned to such extinction in Lausanne, they were also deprived of political representation. The Kurds' land was divided, and through a series of agreements, newly established states like Turkey, Iraq, and Syria gained sovereignty, while the Kurds were denied the right to speak for themselves. Furthermore, even though new states were established based on the right to self-determination, Kurds were not given the opportunity to exercise this right. The reasons for this deprivation of rights were not even discussed, and Kurds were treated as serfs whose land was bought and sold, changing hands.

In fact, along with the delegations of other signatory states, the Turkish delegation at Lausanne was well aware that the absence of Kurdish representation rendered the agreement legally and politically void. Therefore, during discussions about the Mosul issue, İsmet İnönü emphasized their representation of the Kurds with the following words: *"History shows that the Kurds willingly came under Turkish rule and tied their fate to that of Turkey. The Government of the Grand National Assembly of Turkey is the government not only of the Turks but also of the Kurds, because the real and legitimate representatives of the Kurds are in the Assembly, and they participate in the country's government and administration to the same extent as the representatives of the Turks."* With these words entered into the minutes of the Lausanne negotiations, İnönü conveyed that Kurds exercised their right to self-determination by joining Turkey and that they had equal representation and rights in Turkey's political decision-making and governance processes. It is known that the use of the right to self-determination, the right to determine one's own destiny, is an indisputable rule of international law, to be exercised through the clear expression of the will of the majority population in a country.

On the other hand, İnönü's words actually contained a promise that they would jointly govern the newly established Turkish state. However, after the agreement, these promises would be forgotten, and the newborn state would be exclusively claimed by a single ethnic group.

Yet, Kurds have never used these rights to join Turkey in any way. The Turkish delegation's claims are contrary to truth and the sense of justice. The assertion that Kurds were represented in the Turkish National Assembly, and even shared in governance, is baseless. It is beyond dispute that the Kurdish deputies in the assembly at that time did not enter the parliament through the will and desire of the people, and that they did not represent them. In Kurdistan, no free elections were held in which the Kurdish people participated, nor was there a plebiscite about whether they wanted to join Turkey or not. The so-called Kurdish deputies were appointed by ruling authorities. Given the fact that Kurds were not represented at Lausanne, the claim that these powers were transferred to the Turkish delegation is invalid. Making a decision that would determine the fate of a people, divide the Kurdish community, without consulting the entire Kurdish population or creating an impression of relative legitimacy through certain individuals and groups, contradicts the principle *"Nemo plus iuris ad alium transferre potest quam ipse habet"* - no one can transfer more rights than they possess themselves. Such an action is, in fact, null and void.

Political non-representation and exclusion from political decision-making processes led the Turkish delegation and other signatory states that imprisoned the Turkish Delegation and the Kurdish people to understand that it gave rise to the right of self-determination and, consequently, the right to secession. Although the British Delegation stated that the Kurds in the Turkish Assembly did not represent the Kurdish people and posed valid questions, they did so only as part of their plans related to Mosul, forcing the newly established states to join under their sovereignty and boundaries, thus participating in the deprivation of Kurdish rights.

During the discussions on the political representation of Kurds in the Treaty of Lausanne, Mustafa Kemal, in days when this issue was debated, once again brought up the project of granting autonomy to the Kurds with the following words: *"Therefore, rather than envisioning a separate Kurdistan, according to our Fundamental Law, a kind of local autonomy will already be formed. Then, whichever province's inhabitants are Kurds, they will govern themselves as village heads. Furthermore, when it comes to the people of Turkey, they should also be included. If they are not included, they will always find an issue of their own. Now, the Grand National Assembly of Turkey is composed of delegates of both Kurds and Turks, and these two elements have unified their interests and destinies."* Mustafa Kemal's promise of autonomy and his statement "Kurds and Turks united their destinies in the Assembly" were made to prevent Kurds from exercising their right to self-determination in a political environment where borders were being redrawn, to keep the *"Kurdish deputies"* he had gathered around him under control with these promises, and to prevent the realization of the Kurds' right to determine their destiny freely.

Shortly after the signing of the Treaty of Lausanne, Turkey declared its establishment as a republic. From this point on, instead of recognizing Kurdish rights, their very existence was denied. The 1924 constitution accepted that everyone living in Turkey was Turkish, and a policy of massacre, exile, and assimilation that would last for years began. The Kurdish deputies presented as legitimate representatives in Lausanne were removed from the Assembly; even some individuals like Yusuf Ziya Bey and Hasan Hayri Bey were executed. The Kurdish language and Kurdish clothing were banned.

The following quote from the *"White Book"* published by the General Staff summarizes the approach of the dominant rulers of the new state towards the Kurds:

"In the high parts of the mountains, there were snows that never melted in summer and winter. When the sun shone, the surface would be covered with a glassy, shiny layer of ice. It would freeze when the sun came out, and the surface was as hard as glass while the bottom was soft. When you walked on this snow, the place where your foot touched would sink inwards, making a sound like 'kırt-kürt'. The reason Eastern Turkmen were called Kurds was this. What the separatists called Kurds was actually the sound made by the feet of Turks living in the high plateaus and snowy regions when walking on the snow."

In 1925, the *"Eastern Reform Plan"* was put into effect, which aimed to systematically assimilate the Kurds. The use of Kurdish, whether in public or private spaces, was prohibited to fragment the cultural and linguistic integrity of the Kurds and to eventually eliminate it in the long term. According to the plan:

Article-14) Those who use a language other than Turkish in government and municipal offices and other institutions and organizations, schools, markets, and bazaars in the provinces and districts of Malatya, Elazığ, Diyarbakır, Bitlis, Van, Muş, Urfa, Ergani, Hozat, Erciş, Adilcevaz, Ahlat, Palu, Çarsancak, Çemişkezek, Ovacık, Hısn-ı Mansur (Adıyaman), Besni, Arga, Hekimhan, Birecik, and Çermik will be accused of disobeying government and municipal orders and will be punished.

Article-17) The Kurdish people living scattered in some parts of our provinces west of the Euphrates must definitely be forbidden to speak Kurdish, and importance should be given to girl schools to ensure that women speak Turkish.

According to the same plan, even the appointment of Kurds to secondary positions was prohibited. For the eastern side of the Euphrates, an entirely different administrative entity called *"General Inspectorate"* was created, which didn't have a place in Turkey's administrative structure and was equivalent to colonial governorships of European imperialist states in Africa and Asia. General Inspectorates were not an administrative body in terms of establishing and providing public services. They were more of military governors who governed the region with martial law laws declared for unlimited periods in official documents, but in reality, they acted as they pleased. Moreover, after this date, governing the region with martial law and a state of emergency separate from Turkey's other regions became a routine administrative practice, and this situation lasted until November 2002. Therefore, for almost more than 80 years, the Kurdistan region was administered using colonial governorship methods outside the standard administrative organization and implementation. Although General Inspectorates were abolished on June 19, 1952, the ban on speaking Kurdish continued until 1991, and the ban on Kurdish publications continued until March 8, 2006. The ban on making Kurdish defense in courts persisted until January 24, 2013, despite the clear provision of Article 39/5 of the Treaty of Lausanne. The ban on giving Kurdish names to children, with the exception of not using certain sounds unique to Kurdish (q, w, x), became possible after 2014.

Throughout the 1950s, all place and village names containing the word "Kurd" were changed "to prevent them from promoting separatism in their locations." In 1952, the *"Special Commission for Changing Names"* was established under the Ministry of Interior Affairs. This commission changed the names of thousands of settlements, topographic features, and geographic names to random Turkish names. The practice of changing Kurdish place names to their Turkish equivalents continued throughout the 1980s. Except for those overlooked, no place or

topographic feature that didn't receive a Turkish name was left. For instance, Eruh's Paris village was changed to Üzümlü (Grapevine), and Cizre's Babil village was changed to Kebeli. However, these ancient names were valuable geographical references. Being consistent and accurate when referring to a location is essential in daily life to avoid confusion. A toponymist determines official geographical names using established local principles and methods. They consult maps, local history, and also engage with the locals to determine the current local usage. This way, through place names in a region, they identify ethnic settlement patterns, detect migration movements, and preserve the local culture. Thus, the policy of assimilation expanded to encompass geography. These actions committed a crime against toponomy, a scientific field. When changing names, aside from Turkification, it is still not clear which criteria were taken into account. The policy of imposing names is not a practice of the past. As recently as 2022, the name of Diyarbakır's *"Kıtılbıl"* neighborhood was changed to *"Fetih"* without consulting its residents.

At the time of the signing of the Treaty of Lausanne, we had indicated that the Kurds had the right to self-determination. However, not only the prevention of its implementation, but also the state practices committed against the Kurds after the treaty, which constitute crimes against humanity, make it essential for the realization of the right to self-determination for the Kurds as a last resort.

Indeed, the systematic policy of assimilation that ignores and denies the Kurds is still fully in effect. The denial and negation are enshrined in the constitution. Article 66 of the Constitution states, *"Everyone bound to the Turkish state through the bond of citizenship is a Turk."* This establishes a citizenship standard, implying that being Turkish is the standard, and those who do not conform to this standard (those who don't consider themselves Turkish) cannot be seen as citizens, which is legally established. In reality, Turks, like Arabs, Japanese, English, and Kurds, are an ethnicity before being a nation. The term *"Atatürk nationalism"* does not suffice to cover the fact that it's a broad umbrella identity representing all ethnic elements in Turkey and that it doesn't deny other peoples outside of the Turkish population. Moreover, the emphasis on this perspective is dominant throughout the constitution and laws. The right to citizenship, for instance, the right to receive education in one's native language, is solely assigned to a specific ethnic group, while non-Turks are entirely excluded from public services and equal participation, highlighting ethnic discrimination. This can also be understood from the annual number of Kurdish language teachers appointed by the Ministry of National Education. Despite hundreds of thousands of applications each year, the state intentionally keeps the number of appointed teachers at a symbolic level to prevent the implementation of the alleged right to Kurdish language education.

If a right cannot be realized, it is not a right. The promises made by İsmet İnönü regarding the joint governance of Turks and Kurds in Lausanne, which we previously shared, have not been fulfilled. Kurds still lack political representation within the state.

Everyone who becomes a member of the Grand National Assembly of Turkey is obliged to participate as a Turk and act accordingly. It is impossible for Kurds to be involved in processes of representation and decision-making with their own identity. The right to seek the preservation of territorial integrity can only be applicable to states that acknowledge the political rights of all their inhabitants and allow them to develop economically, socially, and

culturally. In other words, the greatest assurance that the right to self-determination of a people won't lead to the creation of a separate state is for them to live in countries where the administration recognizes their right to self-determination in its intrinsic sense. In cases where these conditions are not met, the right to self-determination in an intrinsic sense might transform into a right to external self-determination. Therefore, a state that oppresses and uses violence against a minority group within its borders will increasingly struggle to deny the right of that community to establish a separate state if it constitutes a majority and has its political representatives.

In the case of colonized peoples and those under occupation, there is a consensus both in international relations and doctrine that they have the right to determine their own future in an external sense. Similarly, the idea that minority groups possessing the status of a people will be entitled to establish a separate state if they face significant pressure from the central government is gaining traction. The process leading to the independence of Kosovo is a clear example of this. These conditions can also easily be applied to East Turkestan under China's control. Looking at the situation from this perspective, it can be argued that for a long time, the Muslim peoples of Kashmir and Chechnya, who have lived under the oppression and persecution of their respective states and security forces, have the right to establish their own independent states, as they form the majority in their regions and possess distinct linguistic, religious, and ethnic identities.

The reason for the existence and ultimate goal of a modern state is not merely to sustain its own existence. If that were the case, authoritarian or totalitarian regimes where the state exerts dominance over the people could be considered normal. On the contrary, the raison d'être of a state is to ensure or at least contribute to the prosperous, peaceful, satisfying, and free lives of its citizens. The right of peoples to determine their own future confirms the state's existence for the sake of the nation. Therefore, the relationship between the state and individuals, as well as societal groups, must be shaped within the framework of human rights and democracy today. The first step in this process is the establishment of state-society boundaries on the basis of equality. Within its internal borders, the state must act rationally, consistently, and impartially. Being impartial and rational means that ethnic, religious, or racial criteria should not be decisive in state-citizen relationships. Otherwise, a sovereignty crisis emerges between the state and minority citizens. Inevitably, a crisis of sovereignty arises when services like citizenship practices and education are based on ethnic factors, as it implies that the citizenship institution is not functioning properly. This is precisely why the rule stated in Article 66 of the constitution, such as *“everyone is Turkish,”* is an irrational, disconnected from reality, inconsistent, and a product of the racist atmosphere of the 1930s, attempting to deny the legal existence of minorities through an imposed narrative. Kurds have been alienated as a result.

Today, Kurds are treated as foreigners in their homeland. The project's failure to build a national identity, especially by imposing citizenship and national identity based on primitive principles like blood relations, rather than constructing a national identity that respects the differences of minorities, has led to the current situation. Due to these reasons, the relationship between the state, Kurds, and the geographical region they inhabit has faced serious challenges. Ethnic identity being used as a sociopolitical tool has rendered the citizenship bond between the state

and Kurdish citizens dysfunctional. Consequently, building a national identity has become nearly impossible.

In this context, tension between the right to self-determination and the principles of territorial integrity may arise. However, the principle of territorial integrity is not a carte blanche for tyranny. States cannot exploit their citizens. Territorial integrity and sovereignty are conditional. States that commit serious human rights violations against minority citizens or implement systematic assimilation policies that disrupt the linguistic and cultural heritage accumulated over thousands of years lose their legitimacy and the privilege of sovereignty over the exploited minority. Law, whether under the pretext of territorial integrity or sovereignty, cannot allow such abuse.

Conversely, states that respect their minorities, allow them to exercise their rights, and preserve their languages and cultures for future generations while providing equal resources and services to all ethnic groups, establish a functional and inclusive social contract, and act justly and equitably, have a sacred commitment to territorial integrity and sovereignty. The right to self-determination is an exit strategy against all forms of tyranny. The principle of territorial integrity is not a shield for preventing systematic violations against minorities and inhibiting the use of internal self-determination. If a state engages in systematic oppression or assimilation policies against a minority, the legitimacy of that state is compromised. Abstract regulations, like Article 10 of the Constitution that bans discrimination, are insufficient to prove the absence of ethnic discrimination. On the contrary, oppressive practices and/or systematic assimilation policies demonstrate unequal treatment and ethnic discrimination. Using state funds and apparatus to maintain inequality and discrimination exacerbates the situation. Furthermore, events like the *"Dersim operations"*, the use of chemical weapons against the population under the guise of military maneuvers, separating children from their families and giving them to foreign families, mass executions of civilians, systematic evacuation and resettlement of villages, even if they belong to the past, meet the criteria for systematic oppression and serious human rights violations.

Hence, if a minority a) fits the definition of a people, b) experiences discrimination, systematic oppression, or assimilation or faces such a threat, c) is prevented from using internal self-determination, d) wishes to exercise external self-determination of its own free will, and e) demonstrates the capacity to respect the basic human rights of other minorities and adhere to jus cogens norms, then it can exercise the right to external self-determination, namely the right to secession.

2) THE INTERNATIONAL LAW THAT TURKEY IS A PARTY TO RECOGNIZES THE RIGHT TO SELF-DETERMINATION OF PEOPLES.

The preamble of the Charter of the United Nations is as follows: *"We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better*

standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims. Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations."

Article 1(2) of the Charter of the United Nations states the purpose of the United Nations as follows: *"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."*

Article 55 of the Charter, titled *"International Economic and Social Cooperation," also addresses the right to self-determination: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."*

United Nations General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources emphasizes the economic dimension of the right to self-determination.

Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights is formulated as follows: *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*

The General Declaration on Friendly Relations among States, adopted by the UN General Assembly in 1970, also regulates this right, asserting that *"the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law"* and that its effective implementation, based on the principle of sovereign equality, is of great importance for the development of friendly relations among states.

The 64th Article of the "Vienna Convention on the Law of Treaties" dated May 22, 1969, titled *"Emergence of a New Peremptory Norm of General International Law,"* states: *"If a new peremptory norm of general international law emerges, any existing treaty conflicting with this norm becomes null and void and terminates."*

As mentioned above, Articles 1(2) and 55 of the UN Charter refer to the principle of *"equality of nations and self-determination of peoples."* In addition to these articles, Articles 73 and 76 of the same treaty concerning trusteeship regimes mention the right of colonial peoples to self-government. The absence of a mention of the right to self-determination in these last two

articles actually shows that, contrary to some claims, the right to self-determination of peoples cannot be limited solely to the context of colonialism.

About twenty years after the adoption of the UN Charter, the twin human rights treaties adopted in 1966, both of which came into force in 1976, expressed the right to self-determination. Thus, the right to self-determination, a stronger commitment compared to the concept of rights, has provided stronger guarantees to its recipients. The "International Covenant on Civil and Political Rights" and the *"International Covenant on Economic, Social and Cultural Rights"* formulated this right as follows: *"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."*

Based on the above description, it can be said that the right to self-determination of peoples is not a one-time right, but rather a living, dynamic right that needs to be continually renewed and strengthened. This right, in a way, also confirms the principle of democratic governance in a collective sense.

The third paragraph of Article 1 of the 1966 twin treaties speaks of the recognition of the right to self-determination for peoples living in non-self-governing or trust territories. The separate mention of this issue indicates that this right can actually be applied in *"non-colonial"* contexts as well. Otherwise, it could have been argued that this right had expired due to the end of the colonial era. The right to self-determination remains one of the fundamental building blocks of international law and human rights today, with both political and economic dimensions.

The preamble of the UN founding agreement stating *"We the peoples of the United Nations determined to save succeeding generations from the scourge of war"* and the phrase *"All peoples have the right to self-determination"* in Article 1.1 of the 1966 human rights treaties emphasize that the primary reason for human rights and international solidarity is to highlight that sovereignty lies not in the state but in the people, and that the source of legitimacy is the people. Therefore, it is no coincidence that the right to self-determination occupies the first Article of the twin treaties. According to Bedjaoui, the right to self-determination in the hierarchy of international legal norms is a fundamental condition that underlies other principles guiding the international community. It is considered a peremptory norm within the jus cogens category, which means that norms conflicting with it are prohibited. As a result, all other political and civil rights are built upon this right, and in its absence, rights such as freedom of expression, association, economic freedoms, the right to life, prohibition of torture, fair trial, and property rights become fragile or lose their meaning.

As mentioned before, the right to self-determination also has an economic dimension: the principle of permanent sovereignty over natural resources. This principle, closely related to the right to economic development, was first introduced by a United Nations General Assembly resolution in 1962. According to this principle, which envisages a state's continuous sovereignty over its natural resources, the natural resources and riches of a people, in the sense of all citizens of a state, should be utilized for the welfare and economic development of that people. The same principle is reiterated in Article 1(2) of the 1966 *"International Covenant on Civil and Political Rights"* and in the *"International Covenant on Economic, Social and Cultural Rights"* which came into effect in the same year:

"All peoples, for their own ends, freely dispose of their natural wealth and resources, without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

Given that Turkey is a party to this covenant, the binding nature of this document should be acknowledged. Therefore, the legal weight of this provision cannot be denied.

As seen, the emphasis here is on the utilization of a country's natural resources and riches for the benefit of the people living in that country, rather than for the interests of foreign interest groups. In this context, it is of great importance that international trade and economic cooperation do not transform into economic exploitation. Thus, the right to self-determination of peoples, both politically and economically, is seen as placing the collective interests and priorities of all the people in a country against political and economic imperialism, making it an integral human right on the international legal agenda.

The question of why a community of people wishes to determine its own future arises as an important issue. To address this, one must look at the common elements that define this community possessing the status of "people." In fact, these common elements can vary depending on the situation and circumstances.

Sometimes, a common language takes precedence; at other times, it's a shared religion, or a sense of shared identity. The factors that underpin the struggle for independence for the Tibetan people, for example, could be distinct from those that form the basis of Taiwan's claims. Social groups aiming to preserve their identity primarily share a common culture. This shared culture leads individuals belonging to that group to resist the imposition of a foreign culture. In this regard, the desire for cultural autonomy has been one of the most motivating factors for people from the past to the present. This desire and pursuit take a particular form in the modern era as the right to self-determination. The political aspect of the matter is just as important as the cultural aspect. The ability for a people to determine their own future entails having a say in the selection of the government that will govern them, monitoring that government, and actively participating in the governance process.

Therefore, as emphasized by Klabbers, the most important reason and function of the right to self-determination today is to ensure the participation of a people in the decision-making process regarding aspects that affect their future. In this aspect, the right to self-determination has manifested as a procedural right.

3) THE RIGHT TO SELF-DETERMINATION IS ALSO FOR NON-COLONIZED PEOPLES. THERE ARE NATIONS THAT, ALTHOUGH NOT COLONIZED, HAVE BECOME STATES BY EXERCISING THE RIGHT TO SELF-DETERMINATION.

Many examples like Bangladesh, Eritrea, Darfur, and Kosovo have rendered claims that self-determination only applies to colonies meaningless. In 1971, Bangladesh (East Pakistan), which had no territorial connection with the part of Pakistan it separated from, gained independence with the support of India. The international community recognized this separation, and Bangladesh was admitted to the UN in 1974. Another notable example is Eritrea. Having been an Italian colony from 1890 to 1941 and under British rule from 1941, Eritrea was federated to

Ethiopia in 1952. Ethiopia unlawfully annexed it in 1962, leading to armed struggle. Eritrea declared independence in May 1993 through a referendum, and both Ethiopia and the UN recognized its statehood. The justification for this separation was self-determination, although Eritrea's case did not fit the colonial definition due to its proximity to Ethiopia. However, the lack of realization of internal self-determination, involving separation from governments that discriminate based on race, religion, and color and fail to represent their people, formed the legal basis for the secession. Additionally, the violation of the established sovereignty right in this case (as a federated state) was at issue, as the administration aimed to assimilate the Eritreans into the dominant Amharic community. Furthermore, after a military coup in 1991, there was no stable government in the country. Similarly, Quebec and Scotland, without colonial status, exercised their self-determination rights against the dominant states, Canada and the United Kingdom, respectively.

Both the UN Charter and the mentioned resolutions, as well as the *"Twin Covenants,"* do not stipulate colonial status as a requirement. They state that *"peoples under foreign domination have the right to this self-determination."* For a people to exercise the right to self-determination, it is sufficient that they are a *"foreign"* group or people dominated by the ruling population within the borders of the state, provided the other conditions are met.

Despite not being legally in a colonial status and more closely fitting the *"adjacent colony"* definition in doctrine, all of these states have become independent by exercising the right to self-determination.

4) IN THE ABSENCE OF THE APPLICATION OF THE RIGHT TO INTERNAL SELF-DETERMINATION, THE RIGHT TO EXTERNAL SELF DETERMINATION ARISES. THE TERRITORIAL INTEGRITY OF STATES THAT DO NOT REPRESENT MINORITY POPULATIONS, DO NOT REFLECT THEIR ETHNIC AND LINGUISTIC CHARACTERISTICS IN THE PUBLIC SPHERE, AND APPLY SYSTEMATIC ASSIMILATION AND OPPRESSION, IS NOT WORTH PRESERVING. THE RIGHT TO SOVEREIGNTY OVER THE TERRITORY IS SUBJECT TO THE WILL OF THE PEOPLE LIVING THERE.

The right to self-determination is closely related to the concept of popular sovereignty. The state does not possess inherent existence; its entire legitimacy stems from the consent of the people. The population living in a specific territory must decide about its future through their free will. Following World War I, the newly established states on the Ottoman Empire's territories and the existing Turkish Republic were considered within the framework of the right to self-determination of peoples. Thus, it was acknowledged that the Ottoman Sultan, for example, had no legitimate authority over the people of Jordan, considering that they had no historical, geographical, cultural, or linguistic connections and that he could not rule against the consent of the people.

The *"Declaration on Friendly Relations Among States"* adopted by the UN General Assembly in 1970 provides significant insights into understanding the content of the right to self-determination and this case. The drafting style of the section regulating the right to self-determination establishes that ethnic or religious minorities can also benefit from this right. In

other words, the use of this right could apply in non-colonial contexts as well. Indeed, in a paragraph within the declaration concerning the right of peoples to determine their own destiny, it is stated that a minority group with the capacity to be considered as "people" must have the precondition that the governing power representing the entirety of the people, or rather, having the ability to reflect the historical, cultural, and linguistic values of the minority alongside the majority in the public sphere and to implement them in life.

"The provisions of the preceding paragraphs make it clear that the behavior that completely or partially eliminates or impairs the territorial integrity or political unity of sovereign and independent states, representing all citizens living in a country without making any distinction based on race, faith, or color, and having a government in accordance with the principle of equality of nations and their right to determine their own future, or behavior that promotes such conduct, cannot be understood as permissible."

As is evident from the paragraph above, the exercise of the right to self-determination has been restricted, and states dedicated to the equality and free determination of the peoples they govern, without discriminating among them based on race, language, religion, or any other factor, hold the territorial integrity of these states above any debate. Additionally, states that exert political pressure of one ethnic group over other ethnic groups cannot be legitimate; thus, the violated minority's right to self-determination is affirmed in this document. The Declaration of Friendly Relations implies both internal and external self-determination concepts, thereby limiting the principle of sovereignty and territorial integrity. This limitation is the recognition of the right of the minority, which is a citizenry of the state, to freely determine their own destiny. Moreover, the declaration suggests that citizens may not belong to a single homogenous group, implying the possibility of diverse populations. The notion that a state consists of only one ethnic group is mostly a myth.

The exercise of sovereignty must come with responsibility. Forcing citizens to construct a nation under irrational laws or imposing an identity that doesn't reflect them, under any pretext, is reminiscent of the archaic politics of Nazi and Fascist regimes in the 1930s. Former UN Secretary-General Butros Ghali stated, *"Absolute and exclusive sovereignty is a thing of the past; in fact, this theory never really coexisted with reality."* Moreover, the concept of sovereignty itself is complex. The classical absolutist notion of sovereignty is outdated and unacceptable. Kofi Annan's words are significant in this regard: *"Sovereignty never gives governments the right to abolish human rights and dignity. Sovereignty brings not only power but also responsibility."* It should be noted that sovereignty does not imply authority over minorities or individual citizens. The state does not own the minorities or its individuals; rather, these citizens inherently retain their rights and do not relinquish them to the state."

At this point, the concepts of territorial integrity and the right to self-determination are part of international law, and they are not concerned with peoples and individuals, as one might think that the actors of international law are states and international organizations. However, the International Court of Justice, in its *"Western Sahara Advisory Opinion,"* has interpreted that the right to self-determination is related to the relationship with the state of the relevant people, rather than just inter-state relations. In the same decision, the International Court of Justice emphasized that within a state, there can be multiple peoples, each with the right to self-

determination, and that internal self-determination is appropriate as long as it is the free choice of the people.

In this regard, Cassese states, *"A racial or religious group may attempt secession, a form of external self-determination, when internal self-determination is absolutely unattainable. Extreme or unremitting persecution and the absence of a reasonable hope of peaceful opposition can legitimize secession. When a racial or religious group has failed or is doomed to fail in all efforts to achieve internal self-determination, the most radical form of external self-determination, secession, can thus be implemented."*

Furthermore, the "Vienna Declaration" that emerged from the 1993 UN World Conference on Human Rights repeatedly emphasized that a government must represent all the people of the country. The Vienna Declaration states that the right to self-determination cannot be invoked against governments that represent all the people of the country without discrimination. Therefore, the 1993 Vienna Declaration expanded the right to self-determination. Accordingly, this right will be invoked against a government that is not a representative of the entirety of its people, and this people can be excluded from political representation not only based on race, belief, and color, as in the 1970 Declaration, but also due to other characteristic features.

As evident from international legal documents, doctrines, and practices, when examining the situation, the right to internal self-determination is not applied. In other words, a people who are different from the dominant people ethnically, historically, linguistically, and culturally, and who constitute a majority in their own territory, can exercise the right to external self-determination.

5) KURDS, ETHNICALLY, LINGUISTICALLY, HISTORICALLY, AND CULTURALLY, ARE A DISTINCT PEOPLE FROM THE TURKISH PEOPLE MENTIONED AS THE DOMINANT ELEMENT IN ARTICLE 66 OF THE CONSTITUTION, AND THEY POSSESS THE RIGHT TO SELF-DETERMINATION.

As stated above, the units that have the right to self-determination are *"peoples."* This is clearly stated in international documents regulating this matter. There is some ambiguity about the content of the concept. Cristescu, in a report prepared for the UN, provides the following definition that brings together different views on the term *"peoples"*:

"The term 'peoples' should be understood to mean all social groups living in a certain region with a common ethnic or other bond, capable of using their right to self-determination, and having a homogeneous mass of people connected by ethnic or other ties. The fact that any social group falls within the definition of peoples does not mean that they will automatically benefit from these rights. This largely depends on their capacity and power to exercise this right."

According to this, it can be argued that minorities should also be considered as *"peoples"* under certain conditions. Among these conditions, the most important factors are: the minority group having a common ethnic or religious identity; being willing to preserve their collective identity; constituting a majority within a certain geography; and entering into organizational structures with representation capacity.

Kurds are an Aryan nation and, together with all their dialects, their language Kurdish belongs to the Indo-European language family's Northwestern Iranian branch. From these perspectives, discussions about Kurds not being part of the Turkish nation due to their cultural heritage, traditions, ethnicity, language, history, geography, and even sectarian differences – except for some frivolous claims – are beyond any consideration. Kurdistan was not *terra nullius* before the Turkish people came to Anatolia. Throughout history, this region has been referred to by names such as *Corduene, Kardukiya, Zozan, and Kurdistan*. Their language, Kurdish, belongs to the Northwestern Iranian class of the Indo-European language family. Kurds are one of the oldest indigenous peoples of the Middle East. During the Battle of Manzikert period, there were Kurdish states like the Shaddadids, Marwanids, and later the Ayyubids. After the wars between the Safavids and the Ottoman Empire, Kurdistan was divided between these two empires. With the alliance agreement made with Ottoman Sultan Yavuz Selim, they joined the Ottoman alliance against the Safavids, but Yavuz Selim respected the Kurdish governments and did not interfere with their autonomous structures. In the last century, however, the unitary states established in place of the Ottoman Empire brutally suppressed the Kurds' every demand for rights and freedoms, depriving them of their national rights.

Today, in Turkey, more than twenty million Kurds are forced to live under a different ethnic identity, far from any administrative, political, and cultural autonomy. Not even a simple Kurdish word is taught to a Kurdish student from elementary school to university. While there are thousands of references to the Turkish ethnicity and people in the national legislation, it is impossible to come across the word "Kurd." The existence of an Ahlat Eyyubid Kurdish cemetery and a Seljuk Turkish cemetery signifies that only the Turkish people are seen as legal entities. Kurdish historical and cultural artifacts are being destroyed or distorted to appear as if they belong to other nations. The Hoşap Castle belonging to the Mirs of Hakkari has been recorded in official records as an Ottoman work.

After the Treaty of Lausanne and the establishment of the Republic of Turkey, a systematic policy has been pursued through laws and practices to eliminate and assimilate Kurdish culture. The decreasing use of the Kurmanji dialect of Kurdish in daily life, its gradual oblivion, and even worse, the inclusion of the Zaza dialect in the United Nations' list of endangered languages are clear evidence of this situation. Buchanan says the following about this; *"if a group cannot preserve its distinct culture or way of social life, it is legitimate to separate."*

6) SELF-DETERMINATION RIGHT IS JUS COGENS AND SUPERSEDES ANY REGULATION THAT VIOLATES THIS RIGHT.

In order for people to exercise their right to self-determination, they need to live as a majority in a specific geographic area. If this condition is not met, the existence of this right cannot be discussed. In light of the explanations above, it can be said that the Kurdish people, who have historical, cultural, and psychological ties among them for thousands of years, constitute the demographic majority in the geography they have been living in for thousands of years, and if the unjust regulations are eliminated, they have the capability to manifest the will for self-determination. Because minorities cannot determine the form of governance or secede on their own, in such a case, the majority would be victimized. Furthermore, if they live in a dispersed

manner, *"external self-determination"* is not practically possible. It's also necessary for this population to possess the will for self-determination.

This is why the international community has attached particular importance to a limited set of rules it believes must be strictly followed, such as the prohibition of the use of force, the prohibition of genocide, the right to self-determination, the prohibition of piracy, the prohibition of crimes against humanity, and human rights principles.

Generally, law aims to establish a mechanism through which rules necessary for a social order can function fairly. Societies have accepted definite, prioritized rules that will be applied primarily to maintain public order, general morality, rights, and freedoms. These rules are referred to as peremptory norms. Just as in domestic law there are rules that legal entities must follow and cannot contract out of, international law also has rules of this nature. These rules are collectively known as jus cogens. In international law, these rules are at the top of the hierarchy of norms, meaning that actions contrary to a rule accepted as jus cogens cannot be performed, and agreements cannot be signed if they go against it. These rules are unbreakable. It's important to note that the number of rules considered as jus cogens is quite small. Although jus cogens traces its origins back to ancient times, it was officially codified in international law through the *"Vienna Convention on the Law of Treaties"* organized by the United Nations in 1969. The VAHS defines the concept of jus cogens as follows:

"Article 53 - Treaties conflicting with a peremptory norm of general international law (jus cogens).

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

The points to be emphasized in the article include that a norm accepted as jus cogens can only be modified by another norm accepted as jus cogens, meaning that even if a provision is a general principle of law, if it does not possess the nature of jus cogens, it will still be void. Additionally, the article mentions the requirement that states as a whole accept and recognize a rule as jus cogens. It's not necessary for all states to accept and recognize it. The acceptance and recognition of the majority is sufficient for a rule to have the nature of jus cogens. However, it shouldn't be understood that states need to come together and vote. The general attitudes of states are sufficient for this meaning to be formed.

The VAHS has also clarified the issue of retroactive effect. If a treaty provision conflicts with a legal norm that will be considered as jus cogens after its entry into force, the treaty will still be considered invalid. For example, a treaty related to the slave trade that was concluded before the prohibition of slave trade was recognized as jus cogens cannot be deemed valid. The relevant treaty is now invalid. The VAHS has regulated this situation as follows:

"Article 64 -Emergence of a new peremptory norm of general international law.

If a new peremptory norm of general international law emerges, any existing treaty which conflicts with that norm becomes void and terminates."

This provision of the contract concerns us closely. Because the right to self-determination began to be recognized as a jus cogens norm after the signing of the Treaty of Lausanne. Just as an agreement regarding the slave trade becomes invalid when the prohibition of slave trade is later recognized as jus cogens, the Treaty of Lausanne, which hinders the self-determination right of the Kurds, has become invalid with the recognition of this right as jus cogens. This situation is related to the jus cogens' reliance on morality and conscience, placing it at the top of the hierarchy of norms.

The UN General Assembly has made several statements about the imperative status of the right to self-determination. For instance, in the preamble of Resolution 1803, the General Assembly emphasized that the self-determination right and principles of equality should be the basis for economic and financial agreements among developed and developing states, individuals, and nations. Additionally, General Assembly Resolution 35/118 rejected any unilateral actions or arrangements by colonial or racist powers that conflict with or ignore the inalienable rights of people under colonial domination or violation. This stance clearly limits the permissible content of agreements by considering the imperative norm status of self-determination and the principle of public order.

The International Law Commission, in its Article 50 commentary from 1966, cited the principle of self-determination as an example of jus cogens and maintained this approach in subsequent works. During the Vienna Conference on the Law of Treaties, some states recognized this principle as jus cogens. The International Court of Justice has decisions and advisory opinions that implicitly consider the self-determination right as jus cogens.

According to authorities like Bedjaoui and Cassese, contemporary international law experts, the right of peoples to determine their own destiny is a paramount provision of international law, a responsibility of erga omnes nature. The International Court of Justice has recognized the self-determination right as an erga omnes norm in numerous judgments and advisory opinions. Today, whether a state guarantees its citizens' right to self-determination has evolved from being within a state's exclusive jurisdiction to becoming an international issue. This right, not merely an abstract provision, can be adapted to concrete situations and is now an integral part of human rights regulations. Its existence is also crucial for safeguarding individual human rights and freedoms, as even the fundamental rights of a population under state oppression would be jeopardized. The International Court of Justice stated in the Western Sahara and East Timor cases that the self-determination right is a claimable right against all and an obligation for states not to violate. (*ICJ, Western Sahara, Advisory Opinion of 16 October 1975, prg. 55; ICJ, Case Concerning East Timor (Portugal v. Australia), Judgment of 30 June 1995, prg. 29)*.

It is indisputable that the right to self-determination is present and is recognized as jus cogens. Another undeniable fact is that the Treaty of Lausanne has eliminated the Kurds' right to self-determination, thereby preventing the establishment of an independent Kurdistan state, which is morally and ethically unacceptable. The fact that the status of the Kurdistan region, which enjoyed broad autonomy for centuries during the Ottoman era, has not been determined by the Kurds and the division of the Kurdish geographical area into four parts have led to problems in various political, cultural, social, and economic areas. The ongoing conflicts underscore the necessity of implementing the right to self-determination for a resolution. Taking into account principles such as good faith, just principles, and the inability to invoke domestic law to evade

international responsibility, it is imperative for the court to address the issue of the Kurds' Right to Self-Determination through a respectable application.

MATERIAL EVIDENCE: My client's application dated 02.05.2023, notification paper, records related to the 1938 Dersim maneuvers, Ministry of National Education's national education policy and textbooks, Sevres Treaty and Treaty of Lausanne and meeting minutes, Records of the Name Change Specialization Board, white paper published by the General Staff, Eastern Reform Plan, and other evidence (We request that these be produced)

LEGAL GROUNDS: UN Charter, United Nations International Covenant on Civil and Political Rights, United Nations International Covenant on Economic, Social and Cultural Rights, UN General Assembly's 1970 *"Declaration of Friendly Relations Among States,"* ECHR and its additional protocols, Constitution of the Republic of Turkey, and all legislation.

CONCLUSION AND REQUEST: Based on the aforementioned reasons, we respectfully request the CANCELLATION of the implicit rejection of my client's administrative application dated 02.05.2023, and the granting of the right to self-determination to the Kurdish nation, of which the plaintiff is a member and which is a citizen of the Republic of Turkey, in accordance with the United Nations Charter, the United Nations International Covenant on Civil and Political Rights, and the United Nations International Covenant on Economic, Social and Cultural Rights.

Yours sincerely,

AMED (DIYARBAKIR) 02.07.2023

Lawyer Hişyar ÖZALP Lawyer Rıdvan DALMIŞ