

Negative and Positive Freedom: The Case of Turkey

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Abstract: The meaning of the concept of freedom has constantly changed in history. In Ancient Greece, freedom referred to making a choice and doing something willingly; Hannah Arendt conceptualized it as a necessary discovery made by people in historical periods when the conditions for manifesting the idea of searching the same concept within oneself as an action were insufficient. Today, the concept of freedom has evolved into a dual meaning as negative and positive, shaped by the expressions of Isaiah Berlin. In this sense, the freedoms that we call classical freedoms, which the individual acquires because of being human, without considering the differences in religion, language, gender, and race, are evaluated in the context of negative freedoms. The basis of this understanding is the absence of pressure and coercion from the environment in which the individual lives rather than the creation of surplus value in the individual by external influence. However, with the deterioration of the freedom concept, the gains included in negative freedom have become a problem that the state needs to solve. The need for state intervention in creating a positive effect on the individual has emerged. The concept of positive freedom that emerged in this sense reveals itself in a structure that requires more than the intervention of others; it requires that individuals have control over their selves and that they have an active role in this dominance. Proponents of positive freedom argue that freedom means the individual dominates their own passions, desires, and all obstacles to self-realization. In order to achieve this, the state must firmly stand by the individual

regarding collective freedoms. In this context, since the discussions on the concept of rights and freedoms in Turkey spread to negative and positive areas of freedom, this paper aims to show that presenting the concept with a single definition of freedom would be challenging. The re-reading has shown that the rights and freedoms in Turkey are derived from the concept of both positive and negative individual rights. However, it has been observed that the framers of the Constitution limited the fundamental rights and freedoms based on the idea that there should be a limit to the individual's rights and covered it in the necessary sections in the Constitution to ensure that the fundamental rights and freedoms could not be abused.

1. Introduction

Being free means that an individual has the opportunity to develop themselves in a way that will take their qualities to the next level. These opportunities can be possessed in a free society that can direct the rules of the environment and social structure in which they live in line with their interests and have all the prerequisites for development. Achieving this requires dominating the imperatives rather than resisting them. On the other hand, dominance requires accepting the existence of the whole set of rules of the environment and the society in which one lives, recognizing and controlling them, and benefitting from them in line with one's interests. On the other hand, by using their mind, human beings live in a world where they are only in a passive position as objects and can perceive a sense of freedom with the decisions they make within the social structure. Humankind shapes their freedom in a way determined within the framework of their individuality, being aware of the social structure and nature's limitations.¹

In the words of Aristotle, human is a social animal,² and other individuals also have rights in the social structure where the individual is socialized. The natural outcome of this acceptance is mutual respect among the individuals in society. However, there was no consensus about the approach and definition of the concept of freedom for each individual in

¹ Orhan Hançerlioğlu, *Felsefe Sözlüğü* (İstanbul: Remzi Kitabevi, 1982), 323–4.

² Aristoteles, *Metafizik* (İstanbul: Divan Kitap, 2017), 1253.

society; therefore, preserving the continuity of the concept has been under the protection of the state in the historical process. Based on this idea, one of the reasons for the existence of the concept of the state is “freedom”.

According to the realist approach, a higher power is required to eliminate individuals’ inequality and intervene in possible injustices. Naturally, freedom cannot exist in the absence of a higher power. Humans, with a selfish nature, will think of their own interests if they have unlimited freedom. This thought brings us to the following point: freedom itself must be limited to have freedom.³ In the final analysis regarding this basic idea, the concept of freedom in the social structure causes the individual’s right to behave and act as they wish to disappear. Individual freedom is tied to obeying the laws. An order in which freedom spreads to all segments can occur in civilized societies, with the understanding of freedom based on obeying the laws.⁴

For the understanding of freedom to dominate society, first of all, the concept of an individual’s positive and negative rights, derived from negative and positive freedom provided and guaranteed by the state, should be explained. When the subject is considered in this context, it is undeniable that the state’s intervention is needed when the concept of rights is in question.

In this circumstances, the main subject of our study is to examine whether the Constitution of the Republic of Turkey guarantees the rights and freedoms of the individual. At the same time, if problems arise from the Constitution in ensuring this guarantee, this paper will attempt to reveal these problems. Since the concept of freedom will be discussed in more detail at a later point, it is appropriate first to examine the evolution of the idea of freedom in the historical process, which will reveal the concept of rights.

2. Theoretical Framework

Having a preference is to make a choice willingly and knowingly. To do something willingly means that the initiator of the action is the maker. In this case, the individual has the opportunity to act voluntarily, not by

³ David Daiches Raphael, *Problems of Political Philosophy* (London and Hong Kong: Macmillan Press, 1990), 56.

⁴ Timuçin Afşar, *Felsefe Sözlüğü* (İstanbul: İnsancıl Yayınları, 1998), 239.

force or ignorance. The individual who has these possibilities is the one who already has freedom.⁵ Aristotle described a free individual as someone who evaluates what will happen before and after an action in their mind and makes a choice. On the other hand, freedom is shaped by the individual's ability to do what they do within their power and ability.⁶

Suppose a man does not interfere in the affairs of others and acts as he thinks and wills in matters which concern only himself. In that case, it must be recognized that the reasons which require freedom of thought also require the freedom to put those thoughts into practice unhindered, to one's advantage or detriment.⁷ Mill's position is that only minimal restrictions can be placed on an individual's freedom, only to prevent harm to others.⁸

Arendt stated that the confusion of freedom with liberty in the modern period creates problems in revealing the true meaning of freedom. It is because, in the modern era, liberty is more important than freedom. Therefore, freedom has been transformed into an insignificant intermediate concept under liberty. In this thought, the concept of liberty is synonymous with "freedom". It is understood as the ability to act without restriction within the framework of the law, which evokes the meaning of not limiting the acting ability of human behavior. This approach leads us to the idea that an individual under pressure cannot be free. From this point of view, it can be stated that freedom has a political meaning and is a concept that requires the individual's participation in public issues and problems and their engagement in the public sphere.⁹

On the other hand, Immanuel Kant did not address the concept of freedom only in the context of individual freedoms. However, he stated that human beings transform into social beings due to socialization and bear the responsibility for the consequences of their decisions. Humans must have goals other than happiness in life, and Kant defines them as duties and calls them goodwill.¹⁰ In this case, human freedom is described as the indi-

⁵ Kevin M. Staley, "God's Personal Freedom: A Response to Katherine Rogers," *Saint Anselm Journal*, 1:1 (Fall 2003): 9–16.

⁶ Aristoteles, *Nikhomakhosâ Etik* (Ankara: Ayraç Yayınları, 1997), 1113.

⁷ John Stuart Mill, *Hürriyet Üstüne* (Ankara: Liberal Düşünce Topluluğu, 2003), 114.

⁸ Andrew Heywood, *Siyasî İdeolojiler* (Ankara: BB101 Yayınları, 2016), 52.

⁹ Hannah Arendt, *Devrim Üzerine* (İstanbul: İletişim Yayınları, 2012), 40.

¹⁰ Macit Gökberk, *Felsefe Tarihi* (İstanbul: Remzi Kitabevi, 2000), 363.

vidual's ability to make choices in a world with laws determined by society and nature. Therefore, the structure in which the individual will only keep themselves in the forefront in a selfish way is removed, and it is ensured that they start to want the good things that they wish for all individuals in society.¹¹ Thus, each individual in the society enjoys their freedom in a way that does not disrupt the existing social order. In other words, freedom is based on moral law. According to Kant, the morality of the individual's actions necessitates that they are not performed because of the love or inclination they will create but from respect for the law and duty.¹²

The idea that some freedoms existed before the concept of the state and that free individuals formed the state by combining their will emerges as the dominant thought within the framework of the social contract and natural law concepts. As a result of this thought, the most critical function of the state is to ensure the freedom of the individuals under its rule, which is considered legitimate as long as it fulfils this function. The individuals perceive themselves as having unlimited freedom in the face of the state they have created with their free will. The emergence of this idea lies at the core of the 1789 French Declaration of the Rights of Man and of the Citizen, which states that individuals can use their innate freedoms as they wish without any restrictions: freedom has an absolute, limitless nature, and the only limit is the freedom of other individuals.¹³ However, in today's democracies, freedom is no longer a concept that can be used by the individual who owns it, and it has been turned into a social notion. In other words, today, freedom is still important for the individual, but the fact that the individual is a social being is not ignored.¹⁴ This understanding of freedom was adopted with the Revolutions of 1848 in the historical process; afterwards, the principle of individuals using their freedom in a balanced way while living in society began to settle.¹⁵

According to Kant, freedom occurs in two stages: positive and negative conceptuality. The concept of negative freedom emphasizes that

¹¹ Aristoteles, *Nikhomakhos'a*, 1113.

¹² Immanuel Kant, *Pratik Akılın Eleştirisi* (Ankara: Türk Felsefe Kurumu Yayınları, 2009), 90.

¹³ John Stuart Mill, *On Liberty* (Ontario: Batoche Books Limited, 2001), 52–3.

¹⁴ Ömer Anayurt, *Türk Anayasa Hukukunda Toplanma Hürriyeti* (İstanbul: Kazancı Hukuk yayınları, 1998), 132.

¹⁵ İlhan Akın, *Kamu Hukuku* (İstanbul: Beta Yayınları, 1987), 398.

the individual's choice is free from desire and wish. The individuals living in a world where they cannot determine the causes and consequences are exposed to heteronomy in the field of objects. However, the will of a thinking individual is defined by the mind arising from their freedom, which has already been born from the mind itself, not by natural causality. The emerging will is independent of foreign matter, and according to Kant, this state of independence emerges as negative freedom.¹⁶ However, Kant does not consider the definition of negative freedom sufficient because he believes that what will set the individual free must be determined by the moral law guided by the mind. As a result, he introduces the concept of positive freedom, which is not based on a foreign cause but on the moral law that originates from the individual's mind. In Kant's own words, "the self-legislation of purely practical mind is freedom in a positive sense."¹⁷ In the Kantian concept of positive freedom, the will that puts the individual into action becomes the cause that creates the effect. According to Kant, autonomy, the basis of the individual's value, emerges when the individual determines the law that puts them into action.¹⁸

For Isaiah Berlin, freedom is embodied as the distinction between negative and positive freedom concepts. Negative freedom in the political sense answers the question: "What is the space in which the subject should be free to do what they can do or be what they can be without the interference of other people?" The answer sought in the concept of positive freedom is, "What or who is the source of control or interference that can determine whether someone does this or that?"¹⁹

As expressed by Berlin to answer the questions mentioned above, the concept of negative freedom includes the domination of the individual on their body and mental structure. It is the individual's dominance over their personal property and immediate environment. In other words, it implies the absence of interference; no one interferes with the acts and actions of the individual, the individual's ability to make their choices without

¹⁶ Bedia Akarsu, *Ahlak Öğretileri* (İstanbul: Remzi Yayınevi, 1982), 187.

¹⁷ Kant, *Pratik*, 38.

¹⁸ Immanuel Kant, *Ahlak Metafiziğinin Temellendirilmesi* (Ankara: Türk Felsefe Kurumu Yayınları, 2013), 53–68.

¹⁹ Isaiah Berlin, "Two Concepts of Liberty," *Liberal Düşünce* 12, no. 45 (2007): 61–2.

being forced or hindered in any way.²⁰ On the other hand, the concept of positive freedom requires more than the intervention of others. Individuals should control themselves and actively participate in this dominance.²¹ It refers to the individual's ability to make their own choices and realize their own will. From this perspective, when it is defined as the freedom to do something with their own will by the advocates of positive freedom, rather than being privileged from being under control or being interfered with by the advocates of positive freedom, it indicates the domination of the individuals over themselves.

3. Discussion on the Relationship between Rights and Freedom

The concept of right comes to the fore in the historical conceptualization of freedom. For example, human rights are natural rights necessary for the individual to establish their existence as a human. The rights to dignity and decent living conditions are acquired while the individual is in the mother's womb.²² In some democratic societies, the realization and maintenance of human rights are the main reasons for the state's existence. Rights vary according to their content and the authority by which they are protected.

The most common method used in classifying fundamental rights and freedoms is the "Jellinek Grouping", developed by Georg Jellinek. Accordingly, fundamental rights and freedoms are divided into three groups: negative rights, positive rights, and active rights.²³ Negative rights (*status negativus*) are individuals' rights that are inviolable by the state and set the limits for using these rights. These rights are also called "protective rights" because they protect the individual against the state. Due to their nature, they impose an obligation on the state to respect individuals' rights and not infringe on them.²⁴ On the other hand, positive rights (*status positivus*) are the rights that individuals demand from the state. Active rights

²⁰ Fatmagül Berktaş, "Hannah Arendt: Bir İnci Avcısı," in *Metafizik ve Politika*, eds. Sanem Yazıcıoğlu Öge, Önay Sözer, and Fiona Tomkinson (İstanbul: Boğaziçi Üniv. Yayınları, 2002), 255–72.

²¹ Philip Pettit, *Cumhuriyetçilik* (İstanbul: Ayrıntı Yayınları, 1998), 37–8.

²² Andrew Burrows, *English Private Law* (Oxford University Press, 2013), 939.

²³ Georg Jellinek, *L'Etat Moderne et son droit*, vol. 2 (Paris: Girard et Brière, 1913), 51–7.

²⁴ Kemal Gözler, *Anayasa Hukukunun Genel Esasları* (Bursa: Ekin Yayınları, 2000), 203.

(*status activus*) are the rights that enable an individual to participate in state government.²⁵

Despite the classifications and distinctions made on fundamental rights, the integrity of freedoms or rights should be considered as a whole. “Individuals can be free only when they possess all fundamental rights and freedoms. For an individual to be free, first of all, they undoubtedly must have negative rights, that is, individual rights.”²⁶ Individuals with negative rights are protected against the state through their inviolable rights, which means the individual’s freedom. For an individual who cannot meet their shelter and nutrition needs, having these rights will be meaningless compared to someone who maintains their living standards under normal conditions because the individual has not yet reached out to the state to meet their basic needs. Therefore, an individual should also have political rights through positive rights, that is, social rights.²⁷

The right to do something means that the individual cannot and should not be prevented from doing it. Because of this, other individuals’ freedom of action is restricted due to the avoidance obligation imposed on them.²⁸ Indeed, every right limits the freedom of another. To have a right means to have a just reason to restrict another’s freedom or even to determine how they should act.²⁹ According to Kuçuradi,³⁰ who sees freedom as the legal guarantee of rights, freedoms emerge with the recognition of fundamental rights by positive law, and fundamental freedoms constitute the legal guarantee of fundamental rights. As a natural consequence, social freedoms will be available in a country to the extent to which these guarantees are found.

Regarding the concept of negative and positive rights in Turkey, the first part of the second section of the Turkish Constitution determines

²⁵ Anayurt, *Türk*, 69.

²⁶ Munci Kapani, *Kamu Hürriyetleri* (Ankara: Yetkin Yayınları, 1993), 6–7.

²⁷ Mehmet Akad, *Genel Kamu Hukuku* (İstanbul: Der Yayınları, 2016), 1.

²⁸ Barry Gower, “Understanding Rights: An Analysis of A Problem,” in *Human Rights*, ed. Frank Ernest Dowrick (Westmead: Teakfield, 1979), 55–8.

²⁹ Herbert Lionel Adolphus Hart, “Are There Any Natural Right?,” in *Theories of Rights*, ed. Herbert Lionel Adolphus Hart (New York: Oxford University Press, 1992), 82.

³⁰ Ioanna Kuçuradi, “World Problems’ From The View-point of Human Rights,” in *Philosophy Facing World Problems*, eds. İoanna Kuçuradi and Nurdan Sümer (Ankara: Philosophical Society of Turkey, 1998), 70.

the “Fundamental Rights and Duties” and their nature and limitations. In this context, according to Article 12 of the Constitution, “Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable. Fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and others.”

The concept of “negative freedoms”, one of the fundamental rights and freedoms of individuals, is widely included in the second part of the second section under the title of “rights and duties of the individual” and guaranteed by the Constitution. In this context, the following matters are guaranteed and secured:

- personal inviolability, material and spiritual entity of the individual;
- the prohibition of forced labor;
- personal liberty and security;
- privacy and protection of private life;
- freedom of residence and movement;
- freedom of religion and conscience;
- freedom of thought and opinion;
- freedom of expression and dissemination of thought;
- freedom of science and arts;
- provisions on press and publication;
- rights and freedoms of assembly;
- right of property;
- provisions relating to the protection of rights;
- right to prove an allegation;
- protection of fundamental rights and freedoms.

Articles 17–40³¹ of the Constitution and rights and freedoms are negative rights and impose a negative attitude on the state, the duty of not interfering and “not shadowing”. Since these rights are supposed to protect the individual against the state and society, they are also called “protective rights”. These rights are gathered under the title of “rights and duties of the individual” in the Constitution; therefore, they can also be called “personal rights” in short.

³¹ Constitution of the Republic of Turkey, 18.10.1982 with Law No. 2709.

The same guarantee of individuals' fundamental rights and freedoms within the scope of "positive freedoms" has been extensively covered in the third part of the second section of the Constitution under the title of "rights and duties of the individual". In this context, the following are guaranteed and secured:

- protection of the family and child rights;
- the right and duty of training and education;
- public interest;
- freedom to work and conclude contracts;
- provisions related to labor;
- collective bargaining, right to strike and lockout;
- health, environment, and housing;
- youth and sports;
- right to social security;
- conservation of historical, cultural, and natural wealth;
- protection of art and the artist;
- the extent of social and economic rights.

Positive rights in the Constitution (Article 41–65)³² outlined above are the rights that allow individuals to request a positive behavior, service, or help from the state. Such rights are also called "right to demand" because they impose specific duties on the state in the social field and entitle the individual to request something from the state. As the majority of these rights are related to the social and economic spheres, and the title of the section of the Constitution regulating them is "social and economic rights and duties", and these rights are the results of the social state understanding, they are also called "social rights" in short.

In addition, based on the idea that there should be a limit to the individual's rights, the following points are guaranteed in Part 2 (Fundamental Rights and Duties), Section 1 (General Provisions) of the Constitution:

- limitation of basic rights and freedoms;
- non-abuse of fundamental rights and freedoms.

³² Ibid.

4. The Concept of Fundamental Rights in the Turkish Constitution

Regarding the positive and negative rights in the Constitution of the Republic of Turkey³³ in terms of their content, the negative rights are covered as follows.

According to the personal inviolability, material, and spiritual entity of the individual (Article 17), everyone has the right to life and protect and develop their material and spiritual entity. The law guarantees that the individual's physical integrity may not be violated except under medical necessity and in cases prescribed by law. They may not be subject to scientific or medical experiments without their consent. No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity. The prohibition of forced labor (Article 18) states that no one may be required to perform forced labor. Unpaid compulsory work is prohibited.

Personal liberty and security (Article 19) guarantees that everyone has the right to enjoy personal liberty and security. No one may be deprived of their liberty except in the following cases where procedure and conditions are prescribed by law: execution of sentences restricting liberty and the implementation of security measures decided by courts, apprehension or detention of a person as a result of a court order or as a result of an obligation upon him designated by law; execution of an order for the educational supervision of a minor or for bringing him before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education, or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant, or a person spreading contagious diseases, when such persons constitute a danger to the public; apprehension or detention of a person who enters or attempts to enter illegally into the country or concerning whom a deportation or extradition order has been issued.

Privacy of the individual's life (Article 20) guarantees that everyone has the right to demand respect for their private and family life. Privacy of individual and family life may not be violated. In this context, the inviolability of residence and freedom of communication is also included, along with private life. Freedom of residence and movement (Article 23) guarantees

³³ Ibid.

everyone the right to freedom of residence and movement. Freedom of religion and conscience (Article 24) ensures everyone has the right to freedom of conscience, religious belief, and conviction. Acts of worship, religious services, and ceremonies may be conducted freely, provided they are not exercised to violate the indivisible integrity of the State with its territory and nation, endanger the existence of the democratic and secular republic based on human rights. No one may be compelled to worship, participate in religious ceremonies and rites, reveal religious beliefs and convictions, or be blamed or accused because of their religious beliefs and convictions.

Freedom of thought and opinion (Article 25) guarantees everyone the right to freedom of thought and opinion. No one may be compelled to reveal their thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of their thoughts and opinions. Freedom of expression and dissemination of thought (Article 26) expresses that everyone has the right to express and disseminate their thought and opinions by speech, in writing or pictures, or through other media, individually or collectively. Freedom of science and arts (Article 27) states that everyone has the right to study and teach freely, explain and disseminate science and arts, and conduct research in these fields. Freedom of the press (Article 28) states that the press is free and may not be censored. Establishing a printing house may not be subject to prior permission and the deposit of a financial guarantee. The State shall take the necessary measures to ensure the freedom of the press and freedom of information.

Rights and freedoms of assembly (Article 33) states that everyone has the right to form associations without prior permission and is free to become a member or withdraw from their membership. No one may be compelled to become or remain a member of an association. The right to hold meetings and demonstration marches (Article 34) guarantees that everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right of property (Article 35) guarantees everyone the right to own and inherit property. These rights may be limited by law only because of public interest. The exercise of the right to own property may not be in contravention of the public interest.

Regarding the provisions relating to the protection of rights, the freedom to claim rights (Article 36) guarantees that everyone has the right to litigation, either as a plaintiff or defendant, before the courts through lawful

means and procedure. No court may refuse to hear a case within its jurisdiction. The guarantee of a lawful judge (Article 37) states that no one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would remove a person from the jurisdiction of their legally designated court may not be established. Principles relating to offences and penalties (Article 38) guarantee that no one may be punished for any act which did not constitute a criminal offence under the law in force at the time it was committed; no one may be given a heavier penalty for an offence than the penalty applicable at the time when the offence was committed.

The right to prove an allegation (Article 39) guarantees that the defendant has the right to prove the allegations in libel and defamation suits involving allegations against persons in the public service in connection with their functions or services. Protection of fundamental rights and freedoms (Article 40) guarantees that anyone whose constitutional rights and freedoms are violated has the right to request prompt access to competent authorities.

Regarding the positive rights in the Constitution of the Republic of Turkey:

Protection of the family and the child's rights (Article 41) states that the family is the foundation of Turkish society and is based on equality between spouses. The State shall take the necessary measures and establish the organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and application.

Right and duty of training and education (Article 42) determines the form of education and training, stating that no one may be deprived of the right to learning and education. The scope of the right to education shall be defined and regulated by law. Training and education shall be conducted under the supervision and control of the State, in the light of contemporary science, in line with the principles and reforms of Atatürk. Institutions of training and education contravening these provisions shall not be established.

Utilization of the coasts (Article 43) among public interest states that the coasts are under the sovereignty and at the disposal of the State. Public interest shall be prioritized in utilizing the sea coast, lake shores or river

banks, and the coastal strip along the sea and lakes. Regarding land ownership (Article 44), the State shall take the necessary measures to maintain and develop efficient land cultivation, prevent its loss through erosion, and provide land to farmers with insufficient or no land. For this purpose, the law may define the size of appropriate land units according to different agricultural regions and types of farming. Lands distributed for this purpose may neither be divided nor be transferred to others, except through inheritance. They shall be cultivated only by farmers, to whom they have been distributed, and their heirs. The principles relating to the recovery by the State of the land thus distributed in the event of loss of these conditions shall be prescribed by law. Regarding the protection of agriculture, animal husbandry, and persons engaged in these activities (Article 45), the State shall assist farmers and livestock breeders in acquiring machinery, equipment, and other inputs in order to prevent improper use and destruction of agricultural land, meadows, and pastures and to increase crops and livestock production according to the principles of agricultural planning. Expropriation (Article 46) entitles the state and public corporations, where the public interest requires it, to expropriate privately owned real estate wholly or in part or impose administrative servitude on it according to the principles and procedures prescribed by law, provided that compensation is paid in advance. Nationalization and privatization, as the last item in the expropriation article within the scope of positive rights (Article 47), states that private enterprises performing public service may be nationalized when the exigencies require this of public interest. As seen in an article such as expropriation, which requires the state's intervention in individual rights and freedoms, creating social benefit emerges as the primary objective.

Freedom to work and conclude contracts (Article 48) ensures that everyone has the freedom to work and conclude contracts in the field of their choice. The establishment of private enterprises is free.

Regarding provisions relating to labor, rights, and duty to work (Article 49), work is everyone's right and duty. The State shall take the necessary measures to raise workers' standard of living, protect them by improving the general conditions of labor, promote labor, and create suitable economic conditions to prevent unemployment. According to working conditions and the right to rest and leisure (Article 50), no one may be required to perform work unsuited to their age, sex, and capacity. Minors, women, and

persons with physical or mental disabilities shall enjoy special protection concerning working conditions. The right to organize labor unions (Article 51) provides workers and employers the right to form labor unions and employers' associations, and higher organizations, without prior permission, to safeguard and develop their economic and social rights and the interests of their members in their labor relations. Everyone shall be free to become a member of or withdraw from membership in a union. Regarding collective bargaining, the right to strike and lockout, and the right of collective bargaining (Article 53), workers and employers have the right to conclude collective bargaining agreements reciprocally to regulate their economic and social position and work conditions. The right to strike and lockout (Article 54) gives workers the right to strike if a dispute arises during the collective bargaining process; procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of both actions and any exceptions to which they are subject to be regulated by law. However, the provision: "The right to strike, and lockout may not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and a manner damaging national wealth" is added considering the commonwealth.

Regarding the guarantee of a fair wage (Article 55), wages shall be paid in return for work. The State shall take the necessary measures to ensure that workers earn a fair wage suitable for their work and enjoy other social benefits. The country's economic and social conditions shall be considered in determining the minimum wage.

Regarding health services and conservation of the environment (Article 56) under Health, the Environment, and Housing, everyone has the right to live in a healthy, balanced environment. It is the duty of the State and the citizens to improve the natural environment and prevent environmental pollution. With the right to housing (Article 57), the state shall take measures to meet the housing needs within the framework of a plan that takes into account the characteristics of cities and environmental conditions and supports community housing projects.

Regarding the protection of youth (Article 58), under Youth and Sports, the State shall take measures to ensure the training and development of youth to whose keeping our State, independence, and our Republic are entrusted, in the light of contemporary science, in line with the principles and

reforms of Atatürk, and opposition to ideas aiming at the destruction of the indivisible integrity of the State with its territory and nation; regarding the development and strengthening of Sports (Article 59), the State shall take measures to develop the physical and mental health of Turkish citizens of all ages, and encourage the spread of sports among the masses. The State shall protect successful athletes.

Regarding the right to social security under Social Security Rights (Article 60), everyone has the right to social security. The State shall take the necessary measures and establish an organization to provide social security. Within the scope of persons requiring special protection in the field of social security (Article 61), the State shall protect the widows and orphans of those killed in war and the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living. Regarding Turkish nationals working abroad (Article 62), the State shall take the necessary measures to ensure family unity, the education of the children, the cultural needs, and the social security of Turkish nationals working abroad. It shall take the necessary measures to safeguard their ties with the country and to help them on their return home.

With the conservation of historical, cultural, and natural wealth (Article 63), the State shall ensure the conservation of the historical, cultural, and natural assets and wealth and take supporting and promoting measures towards this end. Any limitations to be imposed on such assets and wealth which are privately owned and the compensation and exemptions to be accorded to the owners of such, as a result of these limitations, shall be regulated by law.

With the protection of arts and artists (Article 64), the State shall protect artistic activities and artists. The State shall take the necessary measures to protect, promote and support works of art and artists and encourage the spread of art appreciation. The extent of social and economic rights (Article 65) states that the State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the limits of its financial resources, considering the maintenance of economic stability.

It should be noted that the sections on fundamental rights and freedoms were designed in response to liberal constitutionalism, which seeks to protect the individual from political power. Within this understanding,

the instinct to protect the state against society and the individual, and sometimes the society against the individual, is clearly dominant.

However, considering that there should be a limit to the individual's rights, Article 13 of the Constitution states that:

Fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, to safeguard the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest public morals and public health, and also for specific reasons outlined in the relevant articles of the Constitution. General and specific grounds for restrictions of fundamental rights and freedoms may not conflict with the requirements of the democratic order of society, the secular Republic, and the principle of proportionality.

Thus, the Constitution paves the way for the limitations made/to be made on the individual's rights and determines the boundary of this limitation.

Again, it is stated within the scope of Article 14 of the Constitution, in order to prevent the abuse of the rights guaranteed by the individuals through the Constitution,

None of the rights and freedoms embodied in the Constitution may be exercised to violate the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish State and Republic, of destroying fundamental rights and freedoms, of placing the government of the State under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination based on language, race, religion or sect, or of establishing by any other means a system of government based on these concepts and ideas. Sanctions to be applied against those who violate these prohibitions and those who incite and provoke others to the same end shall be determined by law.

The aim here is to refrain from sacrificing the state's general principles and foundations for individual rights.

5. Conclusion

Individual freedoms, closely related to economic freedom, have begun to be interpreted in a way that the state should produce solutions/actively

intervene as a higher power in the face of the problems faced by liberal thought.³⁴ The understanding of liberal freedoms is also divided into two different channels in this context. The first one makes sense of itself through the absence of oppression, and the other may impose some obligations on other individuals or the state. Although negative and positive freedom concepts are the products of different structural and intellectual processes, they do not have to be in an existential opposition, as Berlin emphasized. The reason is that political and civil rights, which result from the negative conception of freedom, are established and used in society, and individuals need the positive exercise of power by the state to benefit from these rights.

If we examine the section of the Constitution of the Republic of Turkey devoted to the concept of rights, we will see that it includes both negative and positive freedoms. This portrayal of the concept of freedom imposes negative functions on the concept by limiting the practical sphere of the instrument of power, which we call the state;³⁵ it also includes the positive functions that protect the right of the individual to make demands from the state.

In addition, the Constitution of the Republic of Turkey, as a regime of freedoms, has limited the rights of freedom within a rigid and strict set of rules in Articles 13–14, which is conducive to creating a potential danger that the practices of the legislature and the executive will reinforce the reactionary behavior of the constitution makers.

It exposes fundamental rights and freedoms to the arbitrary exercise of the legislator through a general limitation provision (Article 13) that is broad in content, and it also exposes them to a second limitation through the specific limitation grounds contained in the articles to which they belong. Article 14 of the Constitution creates an additional safety measure for the possibility of abuse of fundamental rights and freedoms, undermining the accessibility of fundamental rights and freedoms within a democratic, pluralistic social structure under the 1982 Constitution.

Setting the grounds for restriction within the framework of concepts such as “national sovereignty, national security, public safety, public order,

³⁴ Norman Barry, *Modern Siyaset Teorisi* (Ankara: Liberte Yayınları, 2018), 2.

³⁵ Terry Caslin, “Ekonomi ve Devlet,” in *Liberalizm, Refah Devleti, Eleştiriler*, ed. Kemali Saybaşılı (İstanbul: Bağlam Yayınları, 1993), 293.

public interest, public morality, public health, etc.”, the meaning of which is arbitrary and can be interpreted in any way, expands the discretion of political decision-making bodies. At the same time, the decisions of the administrative courts and the Constitutional Court, which are tasked with protecting the individual, the supremacy of law, and the Constitution against judicial and administrative actions, will inevitably be subject to political fluctuations.

The definition of fundamental rights and the category of fundamental rights in the 1982 Constitution are formed according to the principles of modern constitutionalism; however, when it comes to the limitation of fundamental rights and freedoms, the 1982 Constitution introduced extensive grounds, means, and methods of limitation. Thus, the exercise of freedoms is left to the discretion and mercy of the political powers; the constitutional judicial system, the activation of which is subject to demanding conditions, is weak and insufficient to prevent violations. And individuals can be free only within the framework established by laws or governments.

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