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INTERNATIONAL CONFERENCE ON LEGAL PRACTICES

April 28-29, 2025 / Konya, Türkiye

(THE PROCEEDINGS BOOK)

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Prof. Dr. Alper UYUMAZ
Res. Assist. Dr. Gökçe ALTINEL
Res. Assist. Mehmet Cemil TÜRK
Res. Assist. Özge PAŞAOĞLU

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-OPENING SPEECH-

Date: 28.04.2025
Ankara time: 14:00-14:20

Prof. Dr. Alper UYUMAZ
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Date: 28.04.2025

ANKARA Local Time: 09^{30}-11^{00}

In-person Session-1

Head of the Session: Berrin AKBULUT

Autors	University	Title
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Alper UYUMAZ	*Selcuk University*	SETTLEMENT OF SPOUSES' RECEIVABLES ARISING FROM PROPERTY REGIME IN THE LIGHT OF JUDICIAL DECISIONS
Mehmet Cemil TÜRK	*Selçuk University*	THE INSURER'S OBLIGATION TO ISSUE A POLICY UNDER TURKISH LAW IN LIGHT OF THE DECISIONS OF THE COURT OF CASSATION
Sinan Sami AKKURT	*Selcuk University*	EUROPEAN UNION ARTIFICIAL INTELLIGENCE LAW AND COMPARATIVE PERSPECTIVES
Gokce ALTINEL	*Selcuk University*	REASONABLE PERSON STANDARD: THEORY AND PRACTICE

Date: 28.04.2025

ANKARA Local Time: 11^{00}-12^{30}

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Head of the Session: Alper UYUMAZ

Autors	University	Title
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Ekrem KAVAK	*Selcuk University*	TÜRKİYE'S COMPLIANCE PROBLEM WITH THE INTERNATIONAL CRIMINAL COURT IN THE CONTEXT OF CRIMES AGAINST HUMANITY
Elif ŞAHİN	*Selcuk University*	VICTIMHOOD IN MIGRANT SMUGGLING: CONCEPTUAL AMBIGUITIES AND A CRIMINAL LAW PERSPECTIVE
Berrin AKBULUT	*Selcuk University*	APPLICATION IN TERMS OF TIME IN CRIMINAL PROCEEDINGS
Berrin AKBULUT	*Selcuk University*	THE SUSPECT AND THE ACCUSED IN CRIMINAL PROCEDURE LAW

Date: 28.04.2025

ANKARA Local Time: 14[20]-16[20]

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Head of the Session: Ticen Azize ÖZRAŞIT

Autors	University	Title
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Ticen Azize ÖZRAŞIT	*Cyprus International University*	EVALUATING THE EFFICIENCY OF CASE MANAGEMENT REFORMS IN CIVIL PROCEEDINGS: A COMPARATIVE ANALYSIS OF ENGLISH AND TURKISH JURISDICTIONS
Samet TATAR Başak Ezgi DEVECIOĞLU ARAS	*Ankara Yıldırım Beyazıt University*	REGULATING CRYPTO-ASSETS DURING THE WEB 3.0 AGE: A CRITICAL EXAMINATION OF THE MICA FRAMEWORK AND ITS IMPACT ON TÜRKİYE
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Date: 28.04.2025

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Date: 28.04.2025

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Date: 28.04.2025

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PHOTO GALLERY


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&
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Selcuk University Faculty of Law Civil Law Department
www.sinansamiakkurt.com

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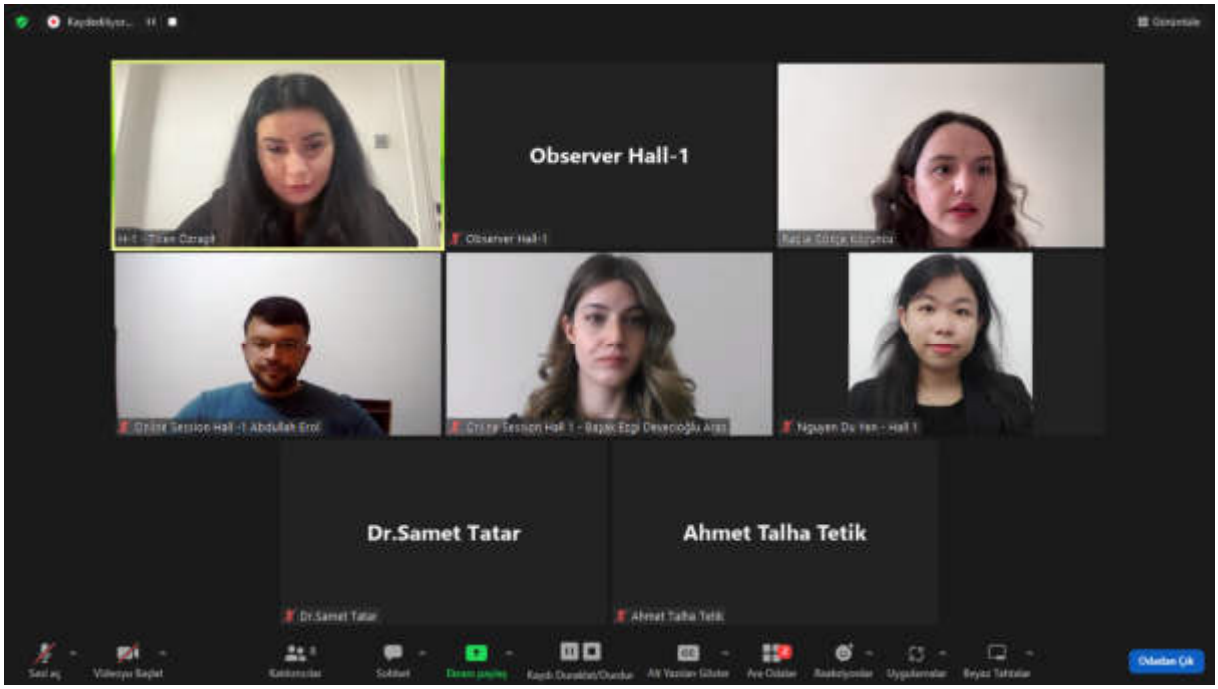
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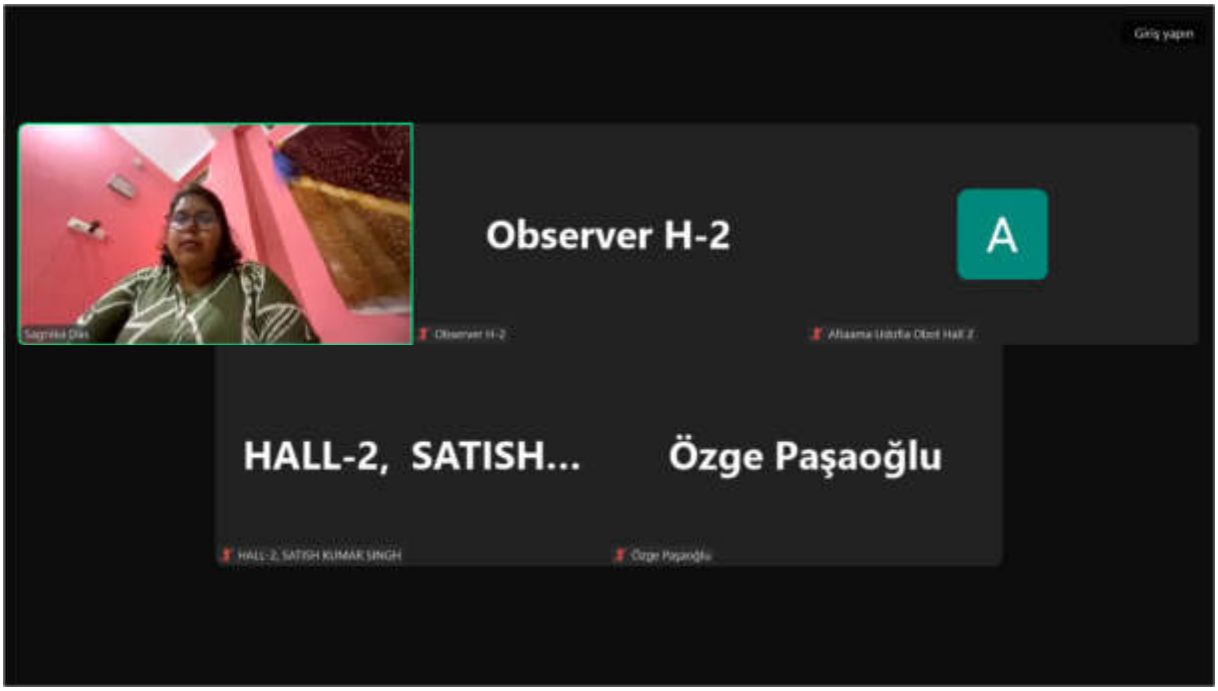
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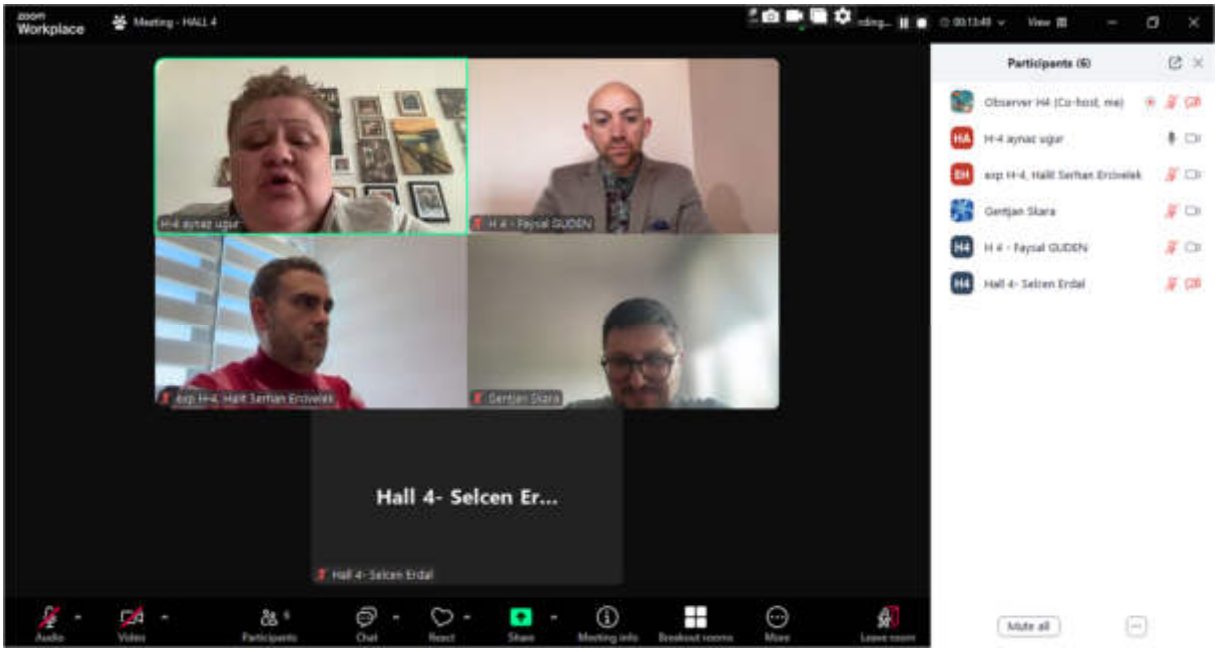
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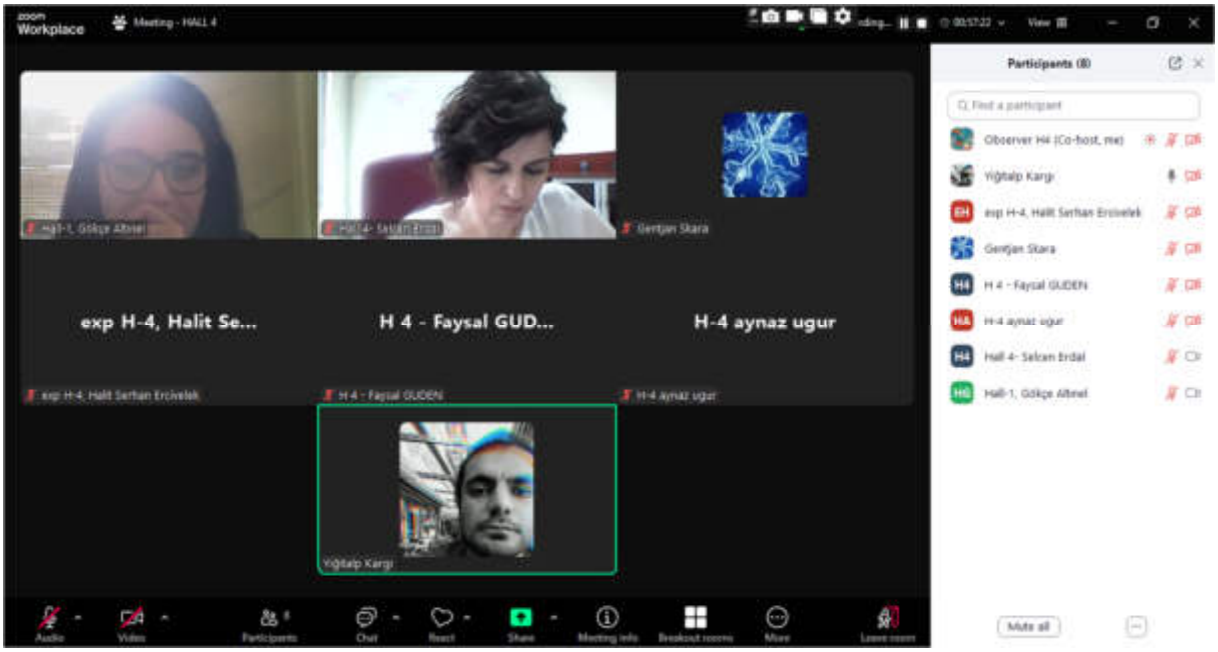
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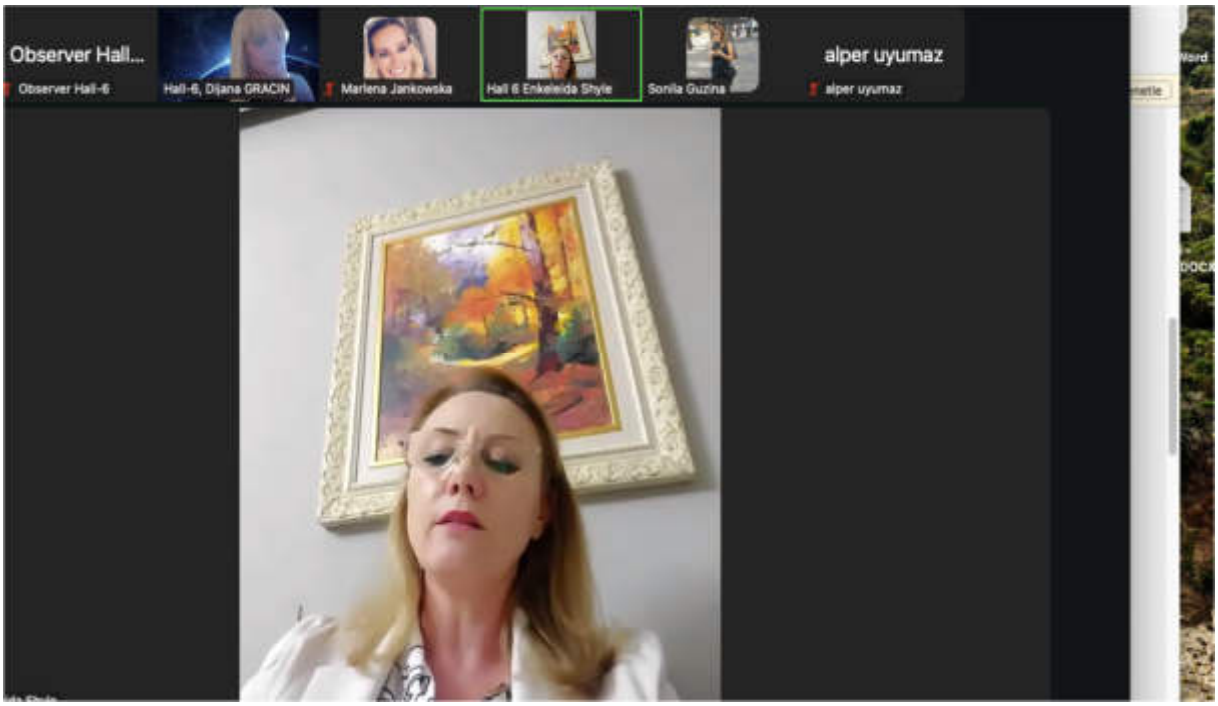
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APPLICATION OF CMR ARTICLE 17/2 IN TURKISH LAW: AN EVALUATION ON A CASE STUDY

Prof. Dr. Alper UYUMAZ
Selçuk University, Faculty of Law, Department of Civil Law
ORCID: 0000-0001-8479-4642

Abstract
In the CMR (Convention Merchandise Routier), the responsibility of the carrier is regulated in the 17th and following articles. CMR is an international convention that standardizes the rules in international road transport and determines the responsibilities of the carrier. This convention was written in Geneva in 1978 and sent to the states of the world for signature by the United Nations in 1979. Turkey signed this convention in 1995 and started to carry out international road transportation under the obligations of this convention. Inspired by the CMR, HGB (German Commercial Code) includes provisions on the liability of the carrier, and the subject is regulated in Article 425 et seq. of the HGB. The Turkish legislator also adopted these provisions from the German Commercial Code into the Turkish Commercial Code (TCC. Art. 875 et seq.). Article 876 of the TCC, which is a special provision of Article 17/2 of the CMR, reads as follows "The carrier shall be released from liability if the loss, damage or delay is caused by causes which the carrier could not have avoided or prevented, despite exercising the utmost care". This is how the abstract rule of law is regulated. So how should this rule be applied to the case? How should the limits of liability be determined? In the case study, the carrier has concluded a transportation contract with the sender with delivery to the address. The thing to be transported is animal vaccines and its value is quite high. The consignee is a district municipality in Turkey. The vaccines, which were sent from Konya to Adana in two batches, were delivered from the carrier's branch to two persons who presented themselves as municipality employees and presented their identity cards without being authorized to deliver them. In this paper, the liability of the carrier and the limit of responsibility is analysed by evaluating a case study.
Keywords: Responsibility of carrier, TCC Art. 876; CMR Art. 17/2; limit of carrier's responsibility

Introduction

In this study, the concept of utmost care in Art. 876 of the TCC which is accepted as the Turkish equivalent of an international convention as Art. 17/2 of the CMR is evaluated[1]. Article 876 of the TCC states that "If the loss, damage or delay is caused by causes which the carrier could not have avoided or prevented despite exercising the utmost care, the carrier shall be released from liability" [2]. In the following, the scope and limits of the carrier's duty of care imposed by law under the contract of carriage are evaluated through a concrete dispute.

[1] The regulation in Art. 17/2 of the CMR is based on the text of the CIM (the International Convention Concerning the Carriage of Goods by Rail) as amended in 1952. For more information on the historical development of the CIM provision, see Aydın, A. (2006). *Cmr'ye göre taşıyıcının zıya, hasar ve gecikmeden doğan sorumluluğu*. İstanbul: Arıkan, p. 67 ff.

[2] Regarding this provision, it is stated that it may also be applicable to auxiliary persons, see İren, O. (2021). *CMR hükümleri uyarınca taşıyıcının yardımcı kişilerden doğan sorumluluğu ve taşıyıcılar arası rücu ilişkileri (Order No. 31013459)*. Available from ProQuest Dissertations & Theses Global. (2901979448). Retrieved from https://www.proquest.com/dissertations-theses/cmr-hükümleri-uyarınca-taşıyıcının-yardımcı/docview/2901979448/se-2, p. 76-77.

In this study, no evaluation other than the scope and limits of the duty of care has been made. In this context, the hypothesis of the research is that the carrier's duty of care is a liability that has the characteristics of strict liability. In other words, under Turkish Law, the carrier's liability under Art. 876 TCC should be considered as a faultless liability independent of fault. The carrier's liability is in the nature of a “duty of care” (ordinary causation liability) for which proof of salvation can be brought.

Determining the case study

The legal dispute in the concrete case (a case in the Istanbul Commercial Court[3]) arose due to the transportation of various medical drugs worth about 1.000.000 TL, which were sold by the sender X, which operates as a veterinary pharmaceutical warehouse in Konya, to Ceyhan Municipality by the carrier Y to be delivered to the buyer in accordance with the contract between the parties.

The dispute is whether the persons to whom the medicines were delivered were persons on behalf of the authorized consignee. According to the claimant's allegation, the medicines were received from the defendant's Ceyhan Branch located in Ceyhan District of Adana Province by third parties who were not authorized by the recipient, although the delivery to the address was agreed in the transportation agreement.

The defendant's attorney claimed that the delivery was made to an authorized person who introduced himself as a municipality employee and presented his identity card as a municipality employee to the defendant's personnel. The defendant also claims that the persons who came to the delivery were asked for an identity document showing that they worked in the municipality, and that these persons came with vehicles bearing the name and signs of the municipality, and that when all these are evaluated together, they did not have any fault and careless behavior.

Legal provisions relevant to the dispute

The dispute in the present case is governed by the provisions of Articles 856-893 of the Fourth Book of the Turkish Commercial Code No. 6102, entitled "Carriage of Goods". Among these provisions, since the dispute concerns the liability of the carrier, Article 875 of the TCC should be applied first. According to Article 875/1 of the TCC, "the carrier shall be liable for the loss of, damage to or delay in delivery of the goods during the period from the acceptance of the goods for carriage until their delivery". Apart from this provision, Article 876/1 of the TCC, which determines the extent of the carrier's liability, is also directly related to the dispute at issue. According to Article 876/1 of the TCC, "the carrier shall be exonerated from liability if the loss, damage or delay is due to causes which the carrier could not have avoided or the consequences of which he could not have prevented despite the exercise of all due care". Article 879/1 of the TCC is another provision relevant to the subject matter of the dispute. According to this provision, "the carrier shall be responsible for the acts and omissions of, a) his own servants; b) the persons whom he employs for the performance of the carriage, as if they were his own acts and omissions".

[3] This dispute is taken from a case filed with the 12th Istanbul Commercial Court in 2022 and is still pending before the court. Due to the principles of commercial confidentiality and personal data protection, no further information on the case can be provided.

In addition, with article 886 of the TCC, the legislator has abolished this principle of limited liability in cases of negligent and reckless behavior of the carrier and has made the carrier fully liable[4]. In other words, the rule of liability is the limited liability of the carrier, and the exception is the full liability. Indeed, according to article 886 of the TCC, "(1) The carrier or the persons referred to in article 879 who are proved to have caused the damage by an act or omission committed intentionally or recklessly and with knowledge of the possibility of such damage, shall not benefit from the exemptions from liability and limitations of liability provided for in this Part".

Legal assessments and determinations on the case study

In the context of the above explanations, in order to resolve the dispute in the concrete case, it should first be clarified how the deliveries made by the employees of the Ceyhan branch of the defendant transport company to persons who are not authorized by the municipality should be evaluated in the event that these persons are employees of the municipality but are not authorized by the municipality in this respect. In the concrete case, according to Article 875 of the TCC, the defendant is liable for the loss, damage or delay in the delivery of the goods during the period from the receipt of the goods for transportation until the delivery of the goods. In this case, delivery of the goods to the wrong person is considered as loss of the goods for the purposes of this article. This issue is dealt with separately below.

In fact, the CMR (Convention Merchandise Routier), which is the origin of this article, regulates the carrier's responsibility in the 17th and following articles. The CMR is an international convention that standardizes the rules of international road transport and defines the carrier's responsibilities. This convention was drawn up in Geneva in 1978 and sent to the countries of the world for signature by the United Nations in 1979. Turkey also signed this convention in 1995 and started to carry out international road transport under the obligations of this convention. Inspired by the CMR, the German Commercial Code (HGB[5]) contains provisions on the liability of the carrier and the subject is regulated in Articles 425 et seq. of the HGB. The Turkish legislator has also incorporated these provisions from the German Commercial Code into Turkish law[6].

Although the carrier is generally liable under Art. 875 of the TCC, the carrier's liability is not absolute. The law allows the carrier to be exempted from liability under certain conditions. In this respect, the carrier may rely on the general and special grounds set forth in the TCC. The general grounds for relieving the carrier of liability are set out in Article 876 of the TCC.

[4] For more information on the concept of "recklessly and with knowledge that such damage" in Turkish law, see Yüce, A. A. (2012). CMR ve TTK'da taşıyıcının sorumluluğu ile kast ve kasta eşdeğer kusurunun sorumluluğa etkisi. *Erciyes Üniversitesi Hukuk Fakültesi Dergisi*, 7(3-4), p. 187-188; Varol, G. (2019). *Kara yolunda yapılan eşya taşımalarında taşıyıcının 6102 sayılı Türk Ticaret Kanunu ve CMR konvansiyonu kapsamında kayıp veya hasardan kaynaklanan sorumluluğu.* Retrieved from https://acikerisim.ticaret.edu.tr/items/b82563c0-1f69-4bb2-82d6-74c7547b419c, p. 166; Sadegönül, İ. (2022). *CMR konvansiyonu uyarınca taşıyıcının yükün kayıp veya hasarından sorumlu olmadığı haller (Order No. 30822990)*. Available from ProQuest Dissertations & Theses Global. (2925079705). Retrieved from https://www.proquest.com/dissertations-theses/cmr-konvansiyonu-uyarınca-taşıyıcının-yükün-kayıp/d ocview/2925079705/se-2, p. 78-79.

[5] Handelsgesetzbuch, see https://www.gesetze-im-internet.de/englisch_hgb/.

[6] Yüce, A. A. (2019). Karayolu Taşımalarında Taşıyıcının Zıya, Hasar ve Gecikmeden Doğan Sorumluluktan Kurtulmasında Özel Sebepler. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, 25*(1), 360-387, p. 361.

According to Article 876 of the TCC, the carrier is relieved of liability if the loss, damage or delay was caused by causes which the carrier could not have avoided or prevented despite the exercise of all due care. The special causes which may relieve the carrier of liability are regulated in Article 878 of the TCC.

However, the reasons set out in that article are not applicable to this dispute, as is clear from the provision. Therefore, in the concrete case, it should be discussed whether the delivery made by the employees of the Ceyhan branch of the carrier to persons who are not authorized to deliver is a violation of the obligation to exercise due care under Article 876 of the TCC. If the act of delivery falls within the scope of this article, the carrier is liable. If the act does not constitute a breach of the duty of care under this article, the carrier shall not be liable.

The burden of proof shall be on the carrier who seeks to avoid liability by invoking general grounds. In accordance with Article 876 of the TCC, it must be proved that the loss, damage or delay was caused by a circumstance which could not have been avoided and the consequences of which could not have been prevented despite the exercise of all due care. The same provision is also contained in the Model Commercial Code[7].

At this point, the level and scope of liability under Art. 876 TCC should be explained in more detail. The rule of utmost care (grösste Sorgfalt) in Art. 876 TCC with regard to the carrier's liability is based on the connection established by the German Federal Supreme Court in the 1960s between the inevitable and unavoidable event under Art. 17/II of the CMR and the unavoidable event under Art. 7/II of the German Road Traffic Act. Like the German Federal Court, the Austrian Supreme Court also accepted the carrier's duty of care under Art. 17/II CMR, and this acceptance has influenced English case law. The principles adopted following the jurisprudence established by the Supreme Court decisions were codified in the German transport law reform of 1998. In Turkish law, the principle of due diligence under Art. 426 HGB was transposed into TCC Art. 876[8].

According to the doctrine, the principle adopted in the expression "utmost care" in Article 876 of the TCC is that an ideal carrier should take all measures, whether atypical or not, which are feasible, reasonable, and which could be expected of a very prudent and diligent carrier. The limit of the care and diligence required of the carrier to fulfil his duty of care extends to situations where the measures to be taken and the course of action to be followed are, on the face of it, totally intolerable, absurd and therefore not to be expected. In this respect, the objective diligence required by Article 876 of the TCC goes beyond that which may reasonably be expected of a carrier who is not only prudent but also circumspect and prudent[9].

In comparative law, in Germany, where the provision originated, the German Federal Court, in its decision of 05.06.1981, defined the degree of care of the carrier as the highest reasonable care to be exercised by a "very prudent carrier"[10].

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[7] See HGB § 426; Yüce, 2019, p. 382-383.

[8] Yüce, 2019, p. 383; Türkel, D. T. (2020). Taşıyıcının en yüksek özeni üzerine bir inceleme (TTK m. 876). *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, 22*(1), 255-320, p. 255.

[9] Clarke, M. A. (2009). *International carriage of goods by road: CMR* (5th Ed.). London: Informa Law from Routledge, p. 232; Türkel, p. 255; Kara, H. (2021). Yargıtay kararlarına göre CMR sözleşmesinin uygulanma esasları ve eşyanın taşınmasında hasar, zıya ve gecikmeden doğan sorumluluk. *Regesta Journal of Commercial Law 6*(1), p. 97-98.

[10] Türkel, p. 259, fn. 10. According to the court decision, the carrier can avoid liability by proving that even a prudent carrier could not have prevented the damage and that the damage in question was unavoidable even with the exercise of the utmost care (BGH, 5.6.1981, I ZR 92/79, see https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=05.06.1981&Aktenzeichen= I %20ZR%2092/79).

Besides, the Austrian Supreme Court, in its judgments of 16 March 1977 and 29 June 1983, introduced the criterion of "the greatest reasonable care[11]. Here, the issue can also be addressed in terms of English Law. In English law, the rule of utmost care was analyzed in the case of “Silber v. Islander Trucking”. According to the court decision, the criterion set by Art. 17/ II of the CMR for the carrier falls somewhere between an obligation to take every conceivable measure, even if excessive, within the limits of the law, and an obligation that does not expect anything more than acting reasonably in accordance with current practice. The exercise of reasonable care is not sufficient to release the carrier from liability. The expression “cannot avoid” in Art. 17 II of the CMR should be understood as “cannot avoid despite the exercise of the utmost care”[12].

In short, the criterion of the duty of care in this provision, which is the predecessor of the provision in Turkish law, has been confirmed by the supreme courts of international law (German, Austrian and English) as the highest degree of reasonable care (common sense) deemed necessary for the carrier to avoid liability[13].

When analyzing the issue in terms of Turkish law, it should be noted that the situation is no different in the practice of the Court of Cassation. In its decision dated 30.6.2014 and numbered E. 2014/6491, K. 2014/12550), the 11th Civil Chamber of the Court of Cassation stated that "... according to Article 17/2 of the CMR, if the loss, damage or delay... if the loss, damage or delay is caused by circumstances which the carrier could not have prevented, the Convention provides for liability for fault with a reversal of the burden of proof, the carrier can only be relieved of liability by proving that the damage occurred despite the exercise of the utmost care, the defendant did not raise any defense in this respect, (...) it was decided to recover the compensation from the defendant. The defendant's lawyer appealed against the decision. Since the information and documents in the case file, the discussion and evaluation of the evidence relied on in the reasoning of the court decision do not contain anything contrary to the procedure and the law, the other objections of the defendant's lawyer, which are not covered by the following paragraph, are not relevant...". In other words, the Court of Cassation ruled that the carrier has the highest duty of care and that the burden of proof lies with the carrier[14].

In the doctrine, when the opinions on this subject are examined, it is stated that the highest degree of care is required, beyond that of a prudent merchant, even beyond the care and diligence expected of a prudent carrier[15]. Moreover, the doctrine states that the carrier's duty of care as a prudent businessman already covers the criterion of the highest degree of care, without even requiring this highest degree of care.

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[11] Türkel, p. 259.

[12] Clarke, p. 232; Türkel, p. 259. Court decision as follows: “*CMR 17/2 sets a standard which is somewhere between, on the one hand, a requirement to take every conceivable precaution, however extreme, within the limits of the law, and, on the other hand, a duty to do no more than act reasonably in accordance with prudent current practice*”. See Chan, F. W., Ng, J. J., & Tai, S. K. (2015*). Shipping and logistics law: principles and practice in Hong Kong*. Hong Kong University Press, p. 314.

[13] Also see Yeşilova E. (2004). *Taşıyıcının CMR hükümlerine göre yardımcı şahıslarının ve müteakip taşıyıcıların eylemlerinden doğan sorumluluğu (CMR madde 3, 34 vd.)*. Ankara: Seçkin.

[14] Also see Court of Cassation, 11. HD, 09.2018, E. 2017/932, K. 2018/5615; 11. HD., 20.4.2000, E. 2000/2114, K. 2000/3241, www.lexpera.com.tr.

[15] Sabih A. (1982). *Karada yapılan eşya taşımalarında taşıyıcının sorumluluğu*, Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü, p. 44; Yürük-Yeniocak, D. (2019). *Cmr hükümleri uyarınca taşıyıcının sorumluluktan kurtulması*, Ankara: Yetkin, p. 83.

According to Gümüş, the prudent businessman criterion "is almost equivalent to the highest degree of care and in a sense transforms the contractual liability of the merchant from fault liability based on the presumption of fault to causation liability based on the breach of an objective duty as a state of strict liability[16].

Therefore, about the objective duty of care imposed on the carrier by Article 876 of the TCC, liability should be determined by reference to the "ideal carrier", and the care to be exercised by such a carrier should be considered as the "utmost care" to be exercised by a "very prudent" carrier. Here, the objective duty of care is reinforced in two respects: First, the carrier must be not only prudent/cautious, but very prudent/cautious. Secondly, it should be noted that the carrier must not only take "reasonable" and "average" care, but also the "highest reasonable care" that can be expected of him. As mentioned above, this formula, which is used in court decisions according to Art. 17/ II CMR, together with the expression "utmost care", is specified in § 476 HGB and subsequently in Art. 876 TCC[17]. Accordingly, the ideal carrier is one who could move quickly, accurately and smoothly, with great care, caution and skill, above and beyond the usual and average[18]. In other words, the ideal carrier should also use "all means at his disposal" to avoid situations that may create hazards and risks, and to take the necessary measures to prevent the damage caused by them. The carrier must make every effort to prevent damage. In other words, the diligence of a careful, reasonable or prudent carrier will not be sufficient in this respect, it will be incomplete[19].

There is, of course, a limit to the efforts that the carrier must make to fulfil its duty of care. According to German doctrine, the measures to be taken under the duty of care should be such that they do not lead the carrier to economic ruin[20]. In other words, the carrier must take every precaution that does not lead to economic ruin. Thus, the limit of the diligence required of the carrier to fulfil his duty of care extends even to situations where the measures and actions to be taken are, at first sight, "totally intolerable", "absurd" and therefore not to be expected. Moreover, the carrier's duty to exercise the utmost care may, in some cases, require him to act in an "atypical" manner, that is, in a manner that deviates from the average practice in the transport industry[21].

The value of the goods carried also affects the degree of care to be shown by the carrier. Accordingly, both the value of the goods known to the carrier and the dangers arising from the nature of the goods will cause the protective measures to be much more than normal care.

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[16] Gümüş, M. A. (2001). *Türk-İsviçre borçlar hukukunda vekilin özen borcu*, İstanbul: Beta, p. 322 ff.

[17] Türkel, p. 278.

[18] Türkel, p. 278.

[19] Türkel, p. 278-279. Also see Arkan, S. (1987). *Demiryoluyla yapılan uluslararası eşya taşımaları,* Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayınları, p. 102; Kaya, A. (1998). Kara yolu ile eşya taşınmasına ilişkin uluslararası sözleşme'nin (CMR) uygulama şartları ve öngörülen sorumluluğun esasları. *Prof. Dr. Oğuz İmregün'e Armağan*, İstanbul: İstanbul Üniversitesi Hukuk Fakültesi Yayınları, p. 324; Erdil, E. (2020). *Karayolu ile uluslararası eşya taşıma hukuku – içtihatlı CMR konvansiyonu şerhi* (3rd Ed.), İstanbul: Seçkin, p. 220.

[20] Heuer, K. (1975). *Die haftung des Frachtführers nach dem übereinkommen über den beförderungsvertrag im internationalen straengüterverkehr (CMR)* (Diss.). Hamburg, p. 55.

[21] Türkel, p. 281. Also see Can, M. (2017). *CMR ve Alman ticaret kanunu ile mukayeseli olarak türk taşıma hukuku genel esasları* (Volume I). Ankara: İmaj, p. 90.

In practice, easily breakable and damaged digital products, mobile phones, sound systems, computer memory (hard disk), antiques, cigarettes, alcohol, and, as in the case in question, medical drugs can be given as examples of items that increase the carrier's already extremely high duty of care[22]. Because, in the case, the monetary value of the medical drug carried is also quite high compared to an ordinary item, which can be expressed as a criterion that significantly increases the duty of care. The monetary value of these products increases the risk of them being obtained illegally by unauthorized persons through theft or fraud, by presenting themselves as authorized. This further increases the sensitivity of the carrier in delivering them to the authorized person, in other words, the already high duty of care in this regard. In the case, it is the case that medical drugs with a high market value are obtained by malicious persons by taking advantage of the carrier's failure to show the necessary care and attention (by presenting himself as authorized and defrauding the carrier).

In addition, technological developments and innovations that have occurred over time and are currently available increase the measures that the carrier must take to show the utmost care and give them new forms. The development of technology and knowledge, on the one hand, facilitates the performance of the transportation activity, and on the other hand, increases the degree of care imposed on the carrier. For example, the carrier could easily find the transported and the responsible parties in cases of theft, robbery or unauthorized delivery by placing a tracking device on the valuables he carries within the scope of the duty of care imposed on him[23]. Undoubtedly, the highest degree of care cannot in any way oblige the carrier to take unlawful measures. The measures and precautions it takes must be in accordance with the law[24].

Considering all these explanations, the irretrievable delivery of the drugs carried by the carrier to a third party who is not the consignee or representative at the destination should be considered as total loss of the goods. Therefore, the carrier is responsible for the breach of his duty of care for the goods. Because the carrier should reliably determine with all conceivable and applicable measures that the person he is addressing at the time of delivery is authorized to deliver the goods. In the event, the carrier should have been sure that he had spoken to the real sender or his authorized representative. According to the characteristics of the concrete case, the first and primary precautions that come to mind and that the carrier should take for the utmost care are to check the identity of the goods in a suspicious manner, if the sender is represented, to ask for the representation documents, if they are presented, to carefully check whether these documents are original copies, if no such document has been issued, to examine the events that suggest the existence of the representation very carefully without overlooking any suspicion. In other words, within the scope of the highest duty of care, the carrier should not have deemed it sufficient for those who were not authorized to receive the goods on behalf of the municipality to present only an identity document indicating that they were municipal employees. The simplest measure can be expressed as calling the receiving municipality by phone to confirm the situation. If the carrier had taken such an initiative, this behavior would have caused the carrier to be even more suspicious of the situation, as it would have caused panic among those who came to receive the drugs with malicious intentions. Thus, delivery to an unauthorized person would not have been possible.

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[22] For the determination that alcohol, cigarettes, electronic devices and popular textiles pose a particular risk of theft see. Köln OLG (Regional High Court), 3.12.1998, 12 U 121/97, N. 19 (openJur 2011/78316), citation in transit Türkel, p. 283, fn. 117.

[23] Türkel, p. 288.

[24] Clarke, p. 235-239; Türkel, p. 288. For detailed explanations about Italian practice, see Šker, T. (2003). Analysis of road carriers' liability for robbery of cargo according to CMR convention. *Promet-Traffic&Transportation, 15*(6), 372.

The carrier could have prevented the harmful outcome by taking a few minutes and taking this simple and rational precaution that would not have brought him any additional burden.
In addition, if the carrier had examined the records of the municipality, which is a public legal entity with shipment records, through its own system and infrastructure, it could have learned the persons authorized to deliver, the form of previous deliveries and many other details. The main basis of the carrier's defense in the file is that the delivery was made to people who were municipal employees and presented their IDs in this regard. However, according to the normal course of life and the rules of logic, just working at the municipality, although it provides some security, does not mean being authorized to receive cargo deliveries. Because, the carrier should have foreseen that the municipality, which is a large public institution with hundreds of employees, could have special authorized personnel in each field of activity. It is unacceptable that the delivery of the transported goods, the storage and protection of which requires special attention, could be made to every municipal employee.
It should be added that, according to the agreement between the sender and the carrier, the shipment was accepted with the record of delivery to the address. Since the "record of delivery to the address" included in the carriage contract between the parties was added by the parties to the contract, it includes a primary performance obligation on the part of the carrier. In other words, for the delivery to be made by the carrier in a complete and full manner as per the agreement between the parties, the shipment should have been delivered to the address of the recipient municipality[25]. In the concrete case, the delivery made from the branch is contrary to the contract and causes the defendant to be attributed a fault. Because the condition of delivery to the address agreed upon between the parties can only be eliminated with the will of the party. Unless the plaintiff has an explicit request in this direction, the delivery made from the branch to an unauthorized person can be shown as another violation of the carrier's high duty of care. In this respect, it is also possible to evaluate the carrier's action within the scope of Article 886 of the TCC. In other words, this gross negligence of the carrier, which exceeds slight negligence, can be evaluated as a reckless act within the scope of strict liability and the highest duty of care, and the carrier's obligations under Article 886 of the TCC. It may eliminate the limited liability in question under Article 882. In German law, the mere presence of an unauthorized person to whom the goods are delivered at the addressee's residence or workplace is not considered sufficient for proper delivery[26]. Therefore, the fact that the persons to whom the goods are delivered are municipality employees does not mean that the highest care sought from the carrier and all the above-mentioned measures have been taken in delivering the goods to the right person and will be considered as a reckless act.
In short, the liability of the carrier, which was first adopted in German law and then in Turkish law with the CMR convention, has been shaped as a strict liability independent of fault in terms of Turkish law. Indeed, the fact that fault is not included in the wording of Article 876 of the TCC also constitutes an argument in favor of strict liability. In other words, the liability of the carrier is a type of strict liability that holds the carrier responsible unless it is proven that all necessary care was taken, and the harmful result could not be prevented[27]. The ideal carrier, who is based on the highest level of care, must take all measures, regardless of whether they are applicable, reasonable or atypical, expected from a very prudent and cautious carrier.

[25] Arkan, 1982, s. 55; Uyaroğlu, O. (2022). CMR'ye göre taşıyıcının eşyanın kaybı ve hasarından doğan zararlardan sorumluluğu. *Türkiye Adalet Akademisi Dergisi,* 51, p. 545.
[26] Türkel, p. 302.
[27] Türkel, p. 309.

The limit of the effort that the carrier must show to fulfill its duty of care extends to situations where the measures to be taken and the course of action are, at first sight, completely intolerable, absurd and therefore unexpectable. In this respect, the objective care sought by Article 876 of the TCC is more severe than the obligation of the merchant to act prudently and cautiously, in other words, the obligation to act like a prudent businessman in Article 18/II of the TCC.

However, the carrier will only be able to escape liability by providing "evidence of escape" under Article 876 of the TCC. In other words, if the carrier has taken all possible precautions and care that it could have taken within the scope of the highest duty of care imposed on it, within the rules of reason and logic, but has proven that it still could not prevent the harmful outcome, then it will be exempt from liability.

Conclusion

Considering the above information, the following conclusions have been reached:

1. According to the provision of Article 876 of the TCC in terms of Turkish Law, the carrier's liability has been shaped as a strict liability independent of fault. The ideal carrier, which is based on the highest level of care, must take all measures, regardless of whether they are applicable and reasonable-atypical, expected from a very prudent and cautious carrier. The limit of the effort that the carrier must show to fulfill its duty of care extends to situations where the measures to be taken and the course of action are completely intolerable, absurd and therefore unexpected at first sight.

2. In the face of this clear determination adopted in doctrine, comparative law and Turkish law, the failure of the carrier, who could have determined the situation of unauthorized persons with a phone call and a few detailed questions, to take this foreseeable, reasonable and logical, simple measure falls short of the obligation of a prudent merchant, let alone the highest duty of care. For this reason, the action is in accordance with Article 876 of the TCC. It is considered that this may be a reckless behavior within the meaning of Article 886.

3. According to this acceptance, when the carrier's behavior contrary to the highest duty of care sought in the law is evaluated together with Article 886 of the TCC, it should be stated that the sender will be liable for damages arising from the loss and Article 882 of the TCC cannot be applied in the case.

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SETTLEMENT OF SPOUSES' RECEIVABLES ARISING FROM PROPERTY REGIME IN THE LIGHT OF JUDICIAL DECISIONS

Prof. Dr. Alper UYUMAZ
Selçuk University, Faculty of Law, Department of Civil Law
ORCID: 0000-0001-8479-4642

Abstract
Article 236 of the Turkish Civil Code (TCC) stipulates that each spouse or their heirs is entitled to half of the residual value belonging to the other spouse, and the next sentence stipulates that the receivable shall be exchanged. According to the express provision here, the set-off arises from the provision of the law. In other words, this provision on set-off differs from the general provisions of the Turkish Code of Obligations (TCO), namely article 122 et seq. In the case of voluntary set-off, the right holder must claim the set-off by a unilateral declaration of will for the set-off to be legally effective and to terminate the debt in the amount of the set-off claim. However, pursuant to article 236 of the TCC, it is not necessary to assert the set-off by a declaration of will. In other words, if there are mutual claims of the spouses because of the settlement of the property regime, the court will automatically carry out the settlement without a declaration of will. However, if we look at the practice, we see that the Turkish Court of Cassation (Yargıtay) initially applied this provision as it should be but later changed its jurisprudence and decided that the settlement cannot be realised, even if there is a request, unless there is a duly filed and paid lawsuit fees. Undoubtedly, it can be argued that the previous jurisprudence is correct in accordance with the law and the principle of procedural economy. According to this acceptance, in practice the principle of universal liquidation, i.e. bilateral liquidation, should be accepted without any further conditions.
Keywords: Settlement of receivables of spouses, clearing of receivables of spouses, offsetting of receivables, receivables arising from property regime.

Introduction

Under Turkish law, if one spouse has a receivable against the other spouse because of the liquidation of the marital property regime, this receivable must be satisfied. If the creditor spouse owes the other spouse for another reason, the set-off of these receivables are also possible under the general rules of the law of obligations. However, the legislature has adopted the principle of legal liquidation by introducing a special provision for the liquidation of the property regime. According to article 236/1 of the TCC “Each spouse or their heirs are entitled to half of the residual value to the other spouse. Receivable are offset”.
Pursuant to article 236/1 of the TCC, each spouse or their heirs are entitled to half of the value remaining to the other spouse, subject to the conditions of the case, and mutual receivables shall be offset. For exchange to be possible, the spouses must be owed claim by each other at the end of the liquidation calculation. Contrary to the general set-off rule, it is not necessary for one of the spouses to raise the set-off defence. The reason is that this is a legally required exchange and no request is necessary.
According to this acceptance, no separate liquidation petition is required for this comprehensive liquidation and exchange. However, according to the current view of the Turkish Court of Cassation, the defendant's mere assertion of the claim is insufficient in response to the plaintiff's request for the liquidation of the property regime; a counterclaim must also be filed. If these conditions are met, the court must automatically consider the legal liquidation in accordance with article 236/1 of the TCC.

Regardless of the rule set forth in article 236 of the TCC, the existence of a mutual claim for legal set-off is a prerequisite for legal set-off. However, according to the Court of Cassation, even if the plaintiff files a lawsuit for the liquidation of the property regime, if the defendant does not file a counterclaim for liquidation, the judge cannot automatically apply legal set-off and cumulative liquidation. Yet, the law does not require such a condition. While the High Court previously did not consider such a condition necessary, it now does so in its recent case law. However, if the defendant spouse also demands cumulative liquidation, how legally valid would it be to file a separate counterclaim in this regard?

At this point, the legal debate examined in this study arises. Essentially, the following questions must be answered: Does article 236/1 of the TCC abolish the principle of dependency of the claim and impose an obligation on the judge to apply cumulative liquidation and set off? Or does this provision merely permit set-off in cases where a claim and counterclaim (lawsuit) are filed? This study seeks to answer these questions by considering the internal case law of the Turkish Court of Cassation.

High court's ruling

From a chronological perspective, the Turkish Court of Cassation has two different opinions regarding the exchange of receivables arising from the liquidation of the spouses' property regime. The first of these, the previous opinion and the current opinion, will be examined below.

Previous opinion

In practice, the High Court had previously adopted the principle of cumulative liquidation for the sake of procedural economy, i.e. the principle of simultaneous liquidation if one spouse's claim for contribution is asserted and the other spouse's claim is challenged[1].

In another decision of the Court of Cassation[2], it was stated that the last sentence of paragraph 236/1 of the TMK contains the mandatory provision "receivables shall be exchanged" and it was stated that, both in doctrine and in practice, it is not obligatory to file a separate action for exchange and it is sufficient to assert it as a defense. However, although the phrase "shall be exchanged" in the last sentence of paragraph 236/1 has the character of a command, for mutual claims to be exchanged, the amount of the claim which the person asserting the defense of exchange seeks to exchange must also be a final, acceptable and enforceable claim.

In other words, it had to be a receivable that was deserved for it to be exchanged. The prevailing opinion in the doctrine, was that it was not enough to simply request a set-off and compensation, and that the contribution claim could not be determined by including the assets subject to the request in the calculation without a duly filed lawsuit or counterclaim regarding the assets registered in the name of the plaintiff[3].

However, the high court reversed this opinion, considering the opinions expressed in the doctrine and the statements made in the defenses.

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[1] Yargıtay, 8. HD., 09.12.2014, E. 2014/10017, K. 2014/22102; 8. HD., 14.01.2014, E. 2013/18689, K. 2014/152 (https://www.lexpera.com.tr).

[2] Yargıtay 8. HD. 07.02.2013, E. 2012/6734, K. 2013/1233 (https://www.lexpera.com.tr).

[3] Kılıçoğlu, A. M. (2014). *Medenî kanun'umuzun aile-miras-eşya hukukuna getirdiği yenilikler* (3rd ed.). Ankara: Turhan, p. 259; Şıpka, S. (2011): *Türk hukukunda edinilmiş mallara katılma rejimi ve uygulamaya ilişkin sorunlar,* İstanbul: Oniki Levha, p. 268.

Current opinion

As a rule, the settlement of the matrimonial property regime is a double settlement. This means that the receivables of both spouses must be calculated and exchanged. However, according to the current case law of the High Court, even if the spouses have receivables against each other arising from the settlement, if the defendant spouse files an independent lawsuit against the plaintiff and pays the court fees and expenses of that lawsuit, the defendant's receivable is subject to exchange. Otherwise, settlement is not possible with respect to the defendant's claims.

The Court of Cassation expressed this view in one of its decisions as follows "...Since the defendant did not request a set-off in its response and did not file a counterclaim in accordance with the procedure, and since the plaintiff did not expressly consent to it, the taxi belonging to the plaintiff, the commercial license plate and the taxi stand belonging to a cooperative outside the scope of the case constitute a violation of procedure and law and constitute grounds for reversal..."[4].

Conclusion

According to article 236/1 of the Turkish Civil Code, each spouse or, depending on the circumstances of the case, the heirs of the deceased spouse are entitled to half of the residual value of the other spouse's estate, and any mutual receivables must be offset. For such an offset to be possible, the settlement account must show that each spouse has a separate residual value and a separate share in the estate[5].

This is because offset is a legal institution that extinguishes a debt by ensuring that the person with the greater claim becomes the creditor through the mutual set-off of receivables of the same type and due date, based on the residual value[6]. However, unlike the general exchange declaration, it is not necessary for one of the spouses to assert the exchange claim here. This is because the exchange in question is required by law and does not require a counterclaim[7].

In practice, the Court of Cassation's requirement that a separate request for legal set-off be made and that the plaintiff file a counterclaim for the liquidation of the property regime and request liquidation as a condition for legal set-off is open to criticism. Because, according to article 236/1 of the Turkish Civil Code, the court must consider the legal set-off on its own initiative.

Undoubtedly, although statutory set-off is required under article 236 of the Turkish Civil Code, this is subject to the condition that a bilateral settlement is involved. If the defendant has not filed a counterclaim for settlement despite the plaintiff's action for settlement of the property regime, it has been argued that the court should, contrary to the High Court's view, order statutory set-off ex officio; however, the way this should be done must be discussed.

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[4] Yargıtay 8. HD., 19.09.2017, E. 2016/8278, K. 2017/11045 (https://www.lexpera.com.tr).

[5] Hausheer, H., Reusser, R. & Geiser, T. (1992). *Berner kommentar, kommentar zum Schweizerischen privatrecht: das familienrecht, das eherecht, das güterrecht der ehegatten, allgemeine vorschriften, art. 181-195a Zgb, der ordentliche güterstand der errungenschaftsbeteilung, art.196-220 Zgb, band ii, 1. abteilung, 3. teilband 1. unterteilband*, Bern: Stämpfli, Art. 215, N. 3; Zeytin, Z. (2020): *Edinilmiş mallara katılma rejimi ve tasfiyesi* (4th ed.). Ankara: Seçkin, p. 337; Şıpka (2011), p. 267.

[6] Eren, F. (2019. *Borçlar hukuku genel hükümler* (24th ed.). Ankara: Yetkin, p. 1425; Oğuzman, M. K. & Öz, M. T. (2022). *Borçlar hukuku genel hükümler, vol.1* (20th ed.). İstanbul: Filiz, p. 591.

[7] Öztan, B. (2015). *Aile hukuku* (6th ed.). Ankara: Turhan, p. 535; Zeytin (2020), p. 337; Şıpka (2011), s. 267-268.

Without disregarding the principles of disposition and adherence to claims, which are fundamental to civil procedure law, it may be suggested that the judge should ask the defendant whether they wish to exercise their right against the plaintiff in accordance with the mandatory set-off ruling. If the defendant wishes to exercise their right, they should be requested to assert their claim, or the claim may be recorded in the minutes. Thus, set off may be affected without the need for a counterclaim. If the defendant does not claim the debt or request set-off, it may be considered that they have waived their right. This prevents the spouses from facing each other again in court for the same reason after a long period of time[8]. It should be noted that, pursuant to article 236/1 of the Turkish Civil Code, the statutory set-off does not eliminate the right to set-off provided for in the general provisions of article 188 et seq. of the Turkish Code of Obligations.

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THE INSURER'S OBLIGATION TO ISSUE A POLICY UNDER TURKISH LAW IN LIGHT OF THE DECISIONS OF THE COURT OF CASSATION

Research Assistant Mehmet Cemil TÜRK
Selçuk University, Faculty of Law, Department of Commercial Law
ORCID: 0000-0002-3503-1523

Abstract
The insurer's obligation to issue an insurance policy is explicitly governed by Turkish law. Pursuant to Article 1424/1 of the Turkish Commercial Code (TCC) No. 6102 of 2011, the insurer is required to issue and deliver a policy, signed by an authorised representative, within twenty-four hours of the conclusion of the insurance contract if the contract is entered into directly by the insurer or its agent. In other cases – such as where the contract is concluded through an intermediary – the statutory deadline extends to fifteen days. Failure to fulfil this obligation may give rise to liability for damages. Nonetheless, practical uncertainties persist, particularly regarding the commencement of these time limits and the evidentiary standard required to establish damages resulting from delayed delivery.
Article 1425 of the Turkish Commercial Code regulates the mandatory content of insurance policies. However, ambiguities remain as to whether an unsigned policy or one lacking certain elements may still be considered legally valid. In this regard, the Turkish Court of Cassation has held that the absence of the policyholder's signature does not invalidate the policy if the mutual intention of the parties is otherwise evident. This approach reflects the primacy of substance over form. Furthermore, the growing use of electronic insurance policies challenges traditional interpretations of "*issuance*" and "*delivery*", which are not yet fully addressed within the existing legislative framework.
This study examines the legal nature of the insurer's obligation to issue a policy, the implications of non-performance, and the evolving concept of "*policy issuance*" under Turkish insurance law. Particular emphasis is placed on Articles 1424 and 1425 of the Turkish Commercial Code and the relevant jurisprudence of the Turkish Court of Cassation. A deductive methodology is employed: the discussion begins with doctrinal analysis, followed by a review of case law, and concludes with a critical evaluation of judicial reasoning in the context of contemporary insurance theory and legal doctrine.
Keywords: Obligation to Issue a Policy; Policy Issuance; Legal Nature of Insurance Policy; Court of Cassation Jurisprudence; Turkish Insurance Law.

Introduction

In insurance law, the mere conclusion of the insurance contract does not, as a rule, automatically trigger the insurer's liability. For liability to commence, the insurer must deliver the insurance policy to the policyholder within the timeframe prescribed by law, and the policyholder, in turn, must pay the full premium or, where applicable, the first instalment (Article 1431/1 of TCC). In this respect, the insurance policy plays a significant role in determining the maturity date of the premium payment obligation and, consequently, the starting point of the insurer's liability.
The insurer's obligation to issue an insurance policy is regulated under Articles 1424 and 1425 of the Turkish Commercial Code No. 6102. The legislature first sets out the general obligation to issue the policy and subsequently provides rules concerning its content. When examined in detail, these provisions reveal that the legislature refrains from setting out specific rules regarding the form of the policy. Likewise, the Code does not contain a clear determination of the legal nature of the policy.

The statutory provisions concerning the insurer's obligation to issue the policy do not provide clarity as to the meaning of issuance or the legal nature of this obligation. Furthermore, although Article 1424/1 of the Turkish Commercial Code No. 6102 holds the insurer liable for damages arising from delayed delivery, it remains silent on the consequences of non-delivery.
These issues are highly significant in practice, particularly with respect to the maturity of the premium obligation and the commencement of the insurer's liability. However, they also give rise to considerable uncertainty. This study examines these practically important questions in light of the decisions of the Turkish Court of Cassation. A deductive methodology is adopted. The discussion begins by presenting doctrinal views on the matter and proceeds to examine the relevant case law.
The decision to present and write this paper in English is intentional. In a world where international trade continues to expand rapidly, insurance law has likewise taken on a cross-border dimension. The paper has been prepared and presented in English to ensure accessibility for foreign academics, investors, and all others interested in the topic.

I. Insurance Policy

A. Form and Issuance

The Turkish Commercial Code No. 6102 does not contain a specific provision prescribing the formal requirements for insurance policies. However, Articles 1424 and 1425 of the Turkish Commercial Code No. 6102 contain provisions that implicitly refer to the formal characteristics of the policy. The first such provision is Article 1424/1, which stipulates that the policy must bear the signature of an authorised person. Another is found in Article 1425/1, which requires that the policy be issued "*in a clear and easily legible manner*". Additionally, Article 1425/2 refers to "*the said document*", encompassing both the policy and its endorsements, thereby implicitly addressing its form.
A definition of "*document*" under Turkish law is found in Article 199 of the Code of Civil Procedure (CCP) No. 6100 of 2011. This provision defines documents as written or printed texts, deeds, diagrams, plans, sketches, photographs, films, audiovisual recordings, or electronic data and similar information carriers that are suitable for proving disputed facts. The official justification of Article 199 of CCP also emphasises that a document functions as an information carrier (see *Hukuk Muhakemeleri Kanunu Tasarısı ve Adalet Komisyonu Raporu (1/574)*, Term: 23, Legislative Year: 3, Serial No. 393, p. 63). From this perspective, an insurance policy may be characterised as a document functioning as an information carrier.
In light of the above provisions, an insurance policy can be described as a written document signed by an authorised person and issued in a clear and easily legible format. The person authorised to sign the policy may be either the insurer or an agent authorised to conclude contracts on behalf of the insurer (Kender, 2015, p. 179). There is no requirement for the signature to be notarised (Kender, 2015, p. 179). Moreover, pursuant to Article 1526/2 of the Turkish Commercial Code No. 6102, the signature need not be handwritten. It may be affixed by mechanical or electronic means, such as facsimile printing, stamp, symbol, or any other method.
As the policy serves as evidence of the existence of the insurance contract, it is sufficient for it to bear only the signature of the insurer (Can, 2009, p. 257; Demir, 2023, p. 253). This issue has frequently been the subject of decisions by the Court of Cassation, which has consistently held that the absence of the policyholder's signature does not affect the validity of the contract, provided that the mutual intent of the parties can be established (See: Court of Cassation 11th Civil Chamber, 18 December 2013, Case No. 2013/9694, Decision No. 2013/23165, Lexpera, accessed: 10 May 2025; Court of Cassation 11th Civil Chamber, 19

February 2014, Case No. 2014/1451, Decision No. 2014/2891, Lexpera, accessed: 10 May 2025).

B. Content

Under the former Turkish Commercial Code No. 6762 of 1956, the content of insurance policies was governed in detail. Article 1266 of the former Turkish Commercial Code No. 6762 set out the mandatory elements that both the insurance policy and the interim certificate were required to contain. These detailed provisions were not incorporated into the current Turkish Commercial Code No. 6102. Instead, Article 1425/1 of the Turkish Commercial Code No. 6102 provides that "*the insurance policy shall include the rights of the parties, provisions concerning default, and the general and, if applicable, special terms and conditions, and shall be drawn up in a clear and easily legible manner*". Accordingly, the policy must at a minimum contain the rights and obligations of the parties, provisions relating to default, and the applicable general and special terms and conditions. Nonetheless, even in the absence of these elements, the policy may still serve as an evidentiary instrument (Ayhan, Çağlar, & Özdamar, 2020, p. 166). If the content of the policy or its annexes deviates from the original proposal or the agreed terms, and the deviating provisions are to the detriment of the policyholder, the insured, or the beneficiary, those provisions shall be deemed invalid (Article 1425/1 of TCC).

Unless otherwise provided by law, any amendment to the general terms that benefits the policyholder, the insured, or the beneficiary shall take effect immediately and directly (Article 1425/3 of TCC). However, if the amendment requires the payment of an additional premium, the insurer may demand the difference within eight days. If the policyholder does not accept the additional premium within that period, the contract continues under the previous general terms.

C. The Legal Nature of the Insurance Policy

Neither the former Turkish Commercial Code No. 6762 nor the current Turkish Commercial Code No. 6102 contains a specific provision that explicitly defines the legal nature of the insurance policy. Under the former Turkish Commercial Code No. 6762, a long-standing debate emerged in the doctrine as to whether the insurance policy constituted a negotiable instrument. Article 1265/2 the former Turkish Commercial Code No. 6762 allowed for the issuance of policies and interim certificates to the name, to order, or to bearer upon the policyholder's request. However, Article 1324 the former Turkish Commercial Code No. 6762 prohibited the issuance of life insurance policies to bearer. These provisions led to arguments in favour of recognising both documents as negotiable instruments (Can, 2009, p. 264). Furthermore, the legislative reasoning of the former Turkish Commercial Code No. 6762 stated that the insurer's signature alone was sufficient to grant the policy both evidentiary and negotiable status (*Türk Ticaret Kanunu Lâyihası ve Adliye Encümeni Mazbatası (1/150)*, Term: X, Session: 2, Serial No. 198, p. 59). This statement further complicated the doctrinal debate (Can, 2009, p. 264). The justification of Article 1265, while referring to the policy as an evidentiary document, refrained from classifying it as a negotiable instrument (ibid., p. 419). As a result, various interpretations emerged in the literature (Bozer, 2009, pp. 43–44; Can, 2009, pp. 264–265). The Turkish Commercial Code No. 6102 did not incorporate Articles 1265 and 1324 of the former Turkish Commercial Code No. 6762. However, the justification for Article 1424 of the Turkish Commercial Code No. 6102 indicates that the provisions of Articles 1265 and 1267 of the former Turkish Commercial Code No. 6762 were substantively preserved (*Türk Ticaret Kanunu Tasarısı ve Adalet Komisyonu Raporu (1/324)*, Term: 23, Legislative Year: 2, Serial No. 96, p. 434). Additionally, the general justification of

The Turkish Commercial Code No. 6102 makes clear that the insurance policy lacks the characteristics necessary to be classified as a negotiable instrument (ibid., p. 66). The policy does not, in and of itself, establish a right to claim indemnity or transfer such a right to others (Kender, 2015, p. 186; Kabukçuoğlu Özer, 2014, p. 330). Accordingly, the prevailing view in doctrine is that the insurance policy does not constitute a negotiable instrument under the current legal regime (Kender, 2015, p. 186; Ünan, 2016, p. 244; Kabukçuoğlu Özer, 2014, pp. 330–331; Ayhan et al., 2020, p. 164; Günay, 2025, p. 100; Bozkurt, 2025, p. 100; Demir, 2023, p. 255). Nonetheless, it remains theoretically possible for the policy to be converted into a debt instrument or even a negotiable instrument, provided that certain specific clauses are included (Kender, 2015, pp. 186–187).

The insurance policy and the interim certificate are neither conditions for the formation nor the sole means of proving the existence of the insurance contract. The contract comes into effect before the issuance of these documents (Arseven, 1991, p. 95; Bahtiyar, 1997, p. 90; Kabukçuoğlu Özer, 2014, p. 329; Demir, 2023, p. 255). Their issuance and delivery have no effect on the contract's validity (Court of Cassation Civil General Assembly, 11 November 2020, Case No. 2017/1301, Decision No. 2020/878, Lexpera, accessed: 10 May 2025). In this regard, the policy serves as an evidentiary document attesting to the existence of the insurance relationship (Kender, 2015, p. 184; Ünan, 2016, p. 244; Ayhan et al., 2020, p. 164; Günay, 2025, p. 100; Bozkurt, 2025, p. 100; Konfidan, 2023, p. 112). This interpretation is confirmed in the settled jurisprudence of the Court of Cassation (Court of Cassation Civil General Assembly, 13 September 2023, Case No. 2022/446, Decision No. 2023/802, Lexpera, accessed: 10 May 2025).

However, the policy is not the exclusive means of proof. Article 1424/3 of the Turkish Commercial Code No. 6102 explicitly provides that "*where the policy has not been issued, the contract shall be proved in accordance with general provisions*". These provisions are found in the Code of Civil Procedure (Ünan, 2016, p. 249). Accordingly, the insurance relationship may also be proven by means of interim certificates, commercial books, telegrams, letters, admissions, or similar documentation (Bahtiyar, 1997, p. 90; Demir, 2023, p. 255). In practice, other documents such as premium receipts, payment confirmations, the insurer's internal records, or written correspondence between the parties or their agents may also be used as evidence (Ünan, 2016, p. 249; Akgün, 2017, p. 198, fn. 30).

The Court of Cassation has consistently ruled that, in order to establish the existence of an insurance relationship, expert examination should be conducted on the commercial books of both the insurer and the policyholder (See: Court of Cassation 17th Civil Chamber, 18 March 2019, Case No. 2016/4838, Decision No. 2019/3114, Lexpera, accessed: 10 May 2025; Court of Cassation 17th Civil Chamber, 23 December 2020, Case No. 2019/4477, Decision No. 2020/9011, Lexpera, accessed: 10 May 2025).

D. Temporary Certificate

Following the conclusion of the insurance contract, the insurer is obliged to deliver the policy to the policyholder within the time limits specified by law (Article 1424/1 of TCC). However, the insurer may not always be in a position to provide the policy within these statutory periods. During this interim, the risk may materialise, and the policyholder may seek to ensure coverage. In such circumstances, a temporary certificate may be issued to safeguard the policyholder's interest and establish the insurer's liability (Bozer, 2009, p. 44).

The issuance of a temporary certificate effectively backdates the insurer's liability, such that it does not commence from the date of premium payment or first instalment, but rather from the moment the temporary certificate is issued (Bozer, 2009, p. 44). This mechanism is

particularly important when the contract has been concluded but the formal policy has not yet been delivered.

Notably, the issuance of a temporary certificate is not a mandatory legal obligation under the Turkish Commercial Code No. 6102 (*Türk Ticaret Kanunu Tasarısı ve Adalet Komisyonu Raporu (1/324)*, Term: 23, Legislative Year: 2, Serial No. 96, p. 435). From a legal perspective, the temporary certificate does not differ in nature from the insurance policy itself (ibid.). Accordingly, the insurer may, instead of issuing a temporary certificate, choose to provide a formally executed policy covering the period until final acceptance of the contract (ibid.).

II. The Insurer's Obligation to Issue a Policy

A. Issuance of the Policy

Where the insurance contract is concluded directly by the insurer or its agent, the insurer is obliged to issue and deliver a policy signed by an authorised person within twenty-four hours from the conclusion of the contract (Article 1424/1 of TCC). In other cases – such as those concluded through a broker or intermediary – the insurer must provide the policy within fifteen days. If the insurer is not ready to deliver the policy within the applicable time period, it may issue a temporary certificate instead (Bozer, 2009, p. 44; Bozkurt, 2025, p. 102).

The term "*in other cases*" is not explicitly defined in the text of the law. However, the justification of Article 1424 explains that the phrase was preferred over a reference to specific intermediaries (such as brokers), in order to also include contracts concluded via insurance intermediaries or brokerage agencies (*Türk Ticaret Kanunu Tasarısı ve Adalet Komisyonu Raporu (1/324)*, Term: 23, Legislative Year: 2, Serial No. 96, p. 435). In line with this justification, scholars interpret "*other cases*" to refer to contracts concluded through brokers or intermediary agents (Kender, 2015, p. 179; Ayhan et al., 2020, p. 165; Günay, 2025, p. 105; contra Ünan, 2016, p. 245; Taşkın, 2019, p. 204).

The manner in which the contract is concluded – whether orally or in writing – has no bearing on the insurer's obligation to issue the policy. Even where the contract has been concluded orally, the insurer is still required to issue the policy (Arseven, 1991, p. 95). What matters is whether the risk materialises during or after the statutory period. The law places this obligation on the insurer to encourage timely and attentive performance (Bozkurt, 2025, p. 103).

The obligation to issue the policy constitutes a contractual duty on the part of the insurer (Ünan, 2016, p. 246). However, the insurer does not begin to bear risk merely by issuing the policy. Rather, by delivering the policy, the insurer fulfils an ancillary obligation that forms part of the overall contractual relationship (Kaner, 2021, p. 15). It is not a principal obligation, but a supplementary one (Kender, 2015, p. 179; Bozkurt, 2025, p. 100). This classification is confirmed by the Court of Cassation (See: Court of Cassation Civil General Assembly, 11 November 2020, Case No. 2017/1301, Decision No. 2020/878, Lexpera, accessed: 10 May 2025; Court of Cassation Civil General Assembly, 13 September 2023, Case No. 2022/446, Decision No. 2023/802, Lexpera, accessed: 10 May 2025).

Since the obligation to issue the policy is one that must be performed at the place of the policyholder, it qualifies as an obligation to deliver. Therefore, the policy must be delivered at the policyholder's place of residence (Kabukçuoğlu Özer, 2014, pp. 328–329; Demir, 2023, p. 253). The Court of Cassation has repeatedly held that the insurer is required to deliver the signed policy to the policyholder (See: Court of Cassation 17th Civil Chamber, 6 May 2014, Case No. 2014/7869, Decision No. 2014/7121, Lexpera, accessed: 10 May 2025; Court of Cassation 17th Civil Chamber, 11 March 2019, Case No. 2018/3885, Decision No. 2019/2753, Lexpera, accessed: 10 May 2025; Court of Cassation 17th Civil Chamber, 18

March 2019, Case No. 2016/4838, Decision No. 2019/3114, Lexpera, accessed: 10 May 2025; Court of Cassation 17th Civil Chamber, 16 February 2021, Case No. 2019/5299, Decision No. 2021/1399, Lexpera, accessed: 10 May 2025). The burden of proof that the policy has been delivered lies with the insurer (Court of Cassation 17th Civil Chamber, 24 October 2019, Case No. 2016/13711, Decision No. 2019/9963, Lexpera, accessed: 10 May 2025).
Delivery is a factual matter and may be proved by any type of evidence (Ünan, 2016, p. 246). The Court has also held that it is not necessary for the insurer to serve a formal notice via notary public to the policyholder in order to be discharged from this obligation (Court of Cassation 11th Civil Chamber, 26 January 1982, Case No. 1982/74, Decision No. 1982/1125, Moroğlu & Kendigelen, 2014, pp. 986-987).
The policy is delivered to the policyholder. If there are multiple policyholders, it must be delivered to the joint representative, or, in the absence thereof, to all policyholders jointly (Ünan, 2016, p. 248). Although the number of copies to be issued is not specified by law, it is common practice to prepare three copies – one for the insurer, one for the policyholder, and one for the intermediary (Kender, 2015, p. 179). Where discrepancies exist between these copies, preference is given to the one held by the policyholder (Kender, 2015, p. 184; Akgün, 2017, p. 200).
The concept of "*delivery*" refers to the transfer of possession (Kabukçuoğlu Özer, 2014, p. 328). In one case, the Court of Cassation Civil General Assembly held that sending a notice containing the policy number, premium amount, and due date constituted effective delivery (See: Court of Cassation Civil General Assembly, 12 November 1997, Case No. 1997/705, Decision No. 1997/910, Moroğlu & Kendigelen, 2014, p. 986).
In insurance law, the conclusion of the contract does not, as a rule, trigger the insurer's liability (See: Court of Cassation 17th Civil Chamber, 11 March 2019, Case No. 2018/3885, Decision No. 2019/2753, Lexpera, accessed: 10 May 2025; Court of Cassation 17th Civil Chamber, 3 February 2021, Case No. 2019/6164, Decision No. 2021/665, Lexpera, accessed: 10 May 2025).
If the policy is delivered within the statutory time period, the policyholder is obliged to pay the full premium or, where agreed, the first instalment (Article 1431/1 of TCC). The insurer's liability commences only upon such payment (Article 1421/1 of TCC). Thus, any delay in issuing the policy may also delay the commencement of the insurer's risk coverage (Ünan, 2016, p. 245).

B. Consequences of Non-Performance

The insurer's liability for damages arising from late delivery of the policy is expressly regulated under Article 1424/1 of the Turkish Commercial Code No. 6102. The obligation to issue the policy is a contractual duty, and failure to perform this duty – whether by omission or delay – may result in liability (Ünan, 2016, p. 246). Various scenarios must be considered in this context.
In the first scenario, the risk materialises within the statutory timeframe – either the twenty-four-hour or fifteen-day period – during which the insurer has not yet issued the policy. In such a case, the insurer bears no liability, as the premium has not yet been paid (Article 1431/1 of TCC) and therefore the insurer's obligation to provide coverage has not commenced (Article 1421/1 of TCC) (Can, 2009, p. 267). Accordingly, the policyholder may not claim compensation for either expectation damages or reliance losses (ibid.). One must also examine whether the insurer could be held liable for *culpa in contrahendo* in instances where the risk occurs during the period in which the policyholder is bound by their proposal. Absent any culpable conduct by the insurer, no such liability arises (ibid.).

In the second scenario, the statutory period expires and the policy still has not been issued. In this case, the insurer is in default and the policyholder may terminate the contract (Can, 2009, p. 266; Demir, 2023, p. 253). If the policyholder suffers loss as a result, the insurer is liable to compensate for it. The type of damages to be compensated – reliance or expectation – depends on whether the risk has materialised (Can, 2009, p. 266).

If the policy has not been issued and the risk has not yet materialised, the policyholder may choose to terminate the contract and conclude a new one with another insurer. In such cases, the policyholder may claim compensation for reliance losses incurred due to the termination and re-contracting process (Can, 2009, p. 267; Kabukçuoğlu Özer, 2014, p. 334; Demir, 2023, p. 253; Bozkurt, 2025, p. 102). This view is well-established in the case law (See: Court of Cassation 11th Civil Chamber, 26 January 1982, Case No. 1982/74, Decision No. 1982/1125, Moroğlu & Kendigelen, 2014, pp. 986–987).

Since no premium was paid under the first contract, coverage had not commenced, and therefore the second insurance contract does not constitute double insurance (Ünan, 2016, p. 247). The indemnity paid in such cases is not insurance indemnity, but contractual damages (Arseven, 1991, p. 95).

If the risk occurs after the expiry of the statutory period but before the end of a reasonable time in which a new policy could have been arranged, the insurer may be held liable for expectation damages (Can, 2009, p. 267; Kabukçuoğlu Özer, 2014, p. 335; Demir, 2023, p. 253). This position is also supported by case law (See: Court of Cassation 11th Civil Chamber, 26 January 1982, Case No. 1982/74, Decision No. 1982/1125, Moroğlu & Kendigelen, 2014, pp. 986–987).

In such cases, the policyholder is entitled to claim the value of the lost insurance coverage as damages. However, the compensation payable by the insurer may not exceed the amount that would have been due under the insurance contract (Can, 2009, p. 268; Demir, 2023, p. 253). Moreover, any unpaid premium amount shall be deducted from the damages (ibid.).

If the risk materialises after the expiry of a reasonable time within which the policyholder could have contracted with another insurer, then only reliance damages may be claimed (Can, 2009, p. 268). In one decision, the Court of Cassation held that fifteen days of inaction by the policyholder without any alternative measures constituted a failure to act within a reasonable time, thereby precluding any claim for expectation damages (See: Court of Cassation 11th Civil Chamber, 26 January 1982, Case No. 1982/74, Decision No. 1982/1125, Moroğlu & Kendigelen, 2014, pp. 986–987).

Where the insurer is held liable, it may have a right of recourse against its intermediary depending on their internal legal relationship (Kender, 2015, p. 179). In addition, since this is a time-sensitive obligation, there is no requirement to grant an additional period of performance (Kabukçuoğlu Özer, 2014, p. 335; Bozkurt, 2025, p. 102; Demir, 2023, p. 253).

Conclusion

Under Turkish insurance law, the conclusion of an insurance contract does not, as a rule, automatically trigger the insurer's liability. For such liability to commence, the insurer must deliver the insurance policy to the policyholder within the period prescribed by law, and the policyholder must, in return, pay the premium or the first instalment (Article 1431/1 of TCC). In this context, the insurance policy plays a crucial role in determining the maturity of the premium payment obligation and, accordingly, the point at which the insurer's liability begins.

The insurance policy is a document issued by the insurer in a clear and legible manner, serving as evidence of the insurance contract. As it functions as a document of proof, it is

sufficient for the policy to bear only the insurer's signature; the policyholder's signature is not required.

In terms of its legal nature, the insurance policy is an evidentiary instrument and does not qualify as a negotiable instrument. However, depending on the agreement between the parties, it may be issued in a form that meets the requirements of a negotiable instrument. Moreover, the insurance policy is not the sole means of proving the insurance contract. The existence of the contract may also be proven in accordance with general provisions. In practice, instruments such as temporary certificates, commercial books, telegrams, letters, and admissions are frequently used for this purpose.

Unless the policy includes an express record of premium collection, it does not serve as a receipt. Therefore, the policyholder's claim to have made payment merely based on possession of the policy is only valid in cases where the policy includes such a record – such as in compulsory motor third-party liability insurance policies.

Where the insurance contract is concluded directly by the insurer or its agent, the insurer is obliged to deliver a policy signed by an authorised person to the policyholder within twenty-four hours. In other cases, this period is fifteen days (Article 1424/1 of TCC). If the insurer is not prepared to deliver the policy within the applicable timeframe, a temporary certificate may be issued in its place. The issuance of the policy constitutes one of the insurer's contractual obligations. However, the mere act of delivery does not initiate the insurer's liability; rather, it is the performance of an ancillary obligation supporting the undertaking to bear risk. This obligation, in legal terms, is not a primary duty but a secondary one.

Since the obligation to deliver the policy qualifies as a duty to deliver a physical item, it must be performed at the policyholder's place of residence. As a rule, the burden of proof concerning the delivery of the policy lies with the insurer. Delivery is a factual matter and may be proven by any kind of evidence.

The policy must be delivered to the policyholder. The concept of delivery here refers to the transfer of possession. Where there is more than one policyholder, the policy must be delivered to their joint representative or, in the absence of such representation, to all of them jointly. While the number of copies is not regulated by law, if multiple copies are issued and there are discrepancies among them, preference shall be given to the copy held by the policyholder.

The insurer is liable for any damages arising from the late delivery of the policy. Furthermore, in cases where the policy is not delivered within the prescribed period and the risk materialises, the insurer may, depending on the circumstances, be held liable for either reliance or expectation damages.

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EU ARTIFICIAL INTELLIGENCE ACT AND COMPARATIVE PERSPECTIVES

Assoc. Prof. Dr. Sinan Sami AKKURT
Selcuk University, Faculty of Law Civil Law Department
ORCID: 0000-0002-9421-2412

Abstract
Today, artificial intelligence (AI) technologies are revolutionising health, education, finance, security and many other areas. These technologies stand out with their potential to solve complex problems that exceed human capabilities, increase automation and optimise efficiency. However, legal regulations lag behind this rapid technological progress and this situation poses significant risks in terms of human rights, data security, ethics and social justice. In particular, the autonomous decision-making capabilities of AI systems lead to serious legal debates on the responsibility, control and transparency of these systems.
This study examines international approaches to the legal regulation of AI in a comparative perspective and centres on the risk-based model of the European Union (EU) Artificial Intelligence Law. The EU Artificial Intelligence Act is a text that entered into force in 2024 and is considered as the world's first comprehensive AI regulation. This law categorises AI systems as ‘prohibited’, ‘high risk’, ‘limited risk’ and ‘minimum risk’, and provides different obligations and oversight mechanisms for each category.
The study analyses in detail the existing regulations in Türkiye, the US, China and the UK and discusses the EU's role in setting global standards and what these regulations mean for other countries. For example, although Türkiye's National Artificial Intelligence Strategy (2021) and the Law on the Protection of Personal Data (KVKK) have taken some basic steps in determining the ethical and legal framework of AI, there is not yet a comprehensive AI law. In the US, the principles of transparency, fairness and accountability have been emphasised with the ‘Draft Artificial Intelligence Bill of Rights’ (2022). While China aims for economic and military leadership with its ‘Next Generation Artificial Intelligence Development Plan’ (2017), the UK prioritises its national regulations by following a path independent from the EU after Brexit.
The risk-based approach of the EU Artificial Intelligence Law aims to strike a balance between promoting innovation and protecting fundamental rights, while imposing strict rules on the use of AI systems. However, this regulation is also subject to criticisms such as compliance costs, especially on SMEs, and the risk of flexible interpretation of ambiguous terms.
While addressing the fundamental rights, ethical and security dimensions of AI, the study provides recommendations on how the balance between law and technology can be achieved. In particular, recommendations such as harmonisation of ethical standards through international cooperation mechanisms and periodic updating of dynamic risk categories can contribute to the responsible and sustainable development of AI.
Keywords: Artificial Intelligence, EU Artificial Intelligence Law, Risk-Based Approach, Ethical Principles, Global Regulations, Data Security, Human Rights.

1. Introduction
Artificial intelligence (AI) is recognized as one of the most transformative technologies of the 21st century. Sub-disciplines such as machine learning, deep learning and natural language processing reveal the potential of AI to solve complex problems and surpass human abilities. However, current legal regulations lag behind this rapid technological progress and significant risks arise in terms of human rights, data security, ethics and social justice.

In particular, the autonomous decision-making capabilities of AI systems lead to serious legal debates on the responsibility and supervision of these systems.
In this study, especially the risk-based approach of the European Union (EU) Artificial Intelligence Law will be taken as a model and various legal regulations on AI will be examined in a comparative perspective. In this context, the existing regulations in Türkiye, the United States of America (USA), China and the United Kingdom (UK) will be analysed in general terms and the role of the EU in setting regional standards and the importance of these regulations in terms of Türkiye's vision will be emphasised. In the conclusion, an attempt will be made to suggest how a reasonable balance can be achieved between legal requirements and technological developments while preparing AI regulations.

2. Artificial Intelligence and It's Development

2.1. Concepts of Intelligence and Artificial Intelligence

Intelligence is considered a multidimensional concept in psychology. Howard Gardner's 'Theory of Multiple Intelligences' (1983) emphasises that human intelligence is multidimensional by identifying eight different dimensions of intelligence. Artificial intelligence, on the other hand, is generally defined along the axis of 'learning', 'autonomous decision making', 'problem solving' and 'inference/interpretation ability' of an information system (EU Artificial Intelligence Act, Art. 3. See also Akkurt, 2019 for definitions). The historical development of AI has been marked by milestones such as the Turing Test (1950) and ELIZA (1966). Today, deep learning models such as GPT-4 and DeepSeek are pushing the boundaries of AI.

2.2. Types of AI and Technological Infrastructure

Artificial intelligence is divided into strong and weak AI. In this sense, weak AI (e.g. Siri, etc.) focuses on specific tasks, while strong AI (e.g. GPT-4, DeepSeek, Claude, etc.) aims at human-like cognitive abilities such as initiative and deep learning (Bruhn & Hadwhich, 2021).
In the field of deep learning, studies are being carried out on human-controlled supervised learning or unsupervised learning methods (algorithms) that can be performed freely and spontaneously by AI. While supervised learning is trained on data labelled by humans, unsupervised learning discovers patterns in the data on its own. The preferences between supervised learning (AlphaGo) and unsupervised learning shape the legal liability arising from autonomous AI actions; in other words, the differences between supervised learning (AlphaGo) and unsupervised learning affect the legal liability arising from AI actions in different legal systems (Hoeren et al., 2024).

3. Overview of Various AI Regulations from a Comparative Law Perspective

3.1. Türkiye

Türkiye aims to determine the ethical and legal framework of AI with the 'National Artificial Intelligence Strategy (Strategy)' published in 2021. The Strategy envisages the use of AI for the benefit of society, its development within ethical and legal frameworks, and its harmonisation with existing data protection regulations. (Gözübüyük, 2021). Although the legal framework of artificial intelligence in Türkiye has not yet been fully established with an individual artificial intelligence law, the process of adapting the existing legislation to regulate artificial intelligence applications continues, and concrete problems are tried to be solved by general legal regulations such as the TCO, TCC, TCC, and TCC, especially the KVKK.

In terms of legal integration on AI, the current situation in Türkiye is criticised in terms of the lack of a comprehensive AI law, the regulations on the subject and the fact that individual solutions are largely based on general law norms (Kasap, 2022).

3.2. United States of America

The US emphasised the principles of transparency, fairness and accountability with the "Artificial Intelligence Bill of Rights" published in 2022. In addition, the US Federal Trade Commission (FTC) stated that it aims to prevent algorithmic discrimination in AI and to protect consumer rights (Blueprint for an AI Bill of Rights, 2022).
Apart from the Artificial Intelligence Bill of Rights, there are also specific federal regulations in US law for autonomous vehicles and the healthcare sector (Sheehan, 2023).

3.3. China

China's "Next Generation Artificial Intelligence Development Plan" published in 2017 focuses on economic and military leadership goals. In the ‘ethical principles’ published in 2019, the concept of ‘Responsible AI’ is emphasised and the basic principles established in terms of AI activities are set forth (Governance Principles for the New Generation Artificial Intelligence, 2019).
Criticisms of these regulations in China focus on the fact that the surveillance technologies permitted carry the risk of human rights violations (Sheehan, 2023).

3.4. United Kingdom

With the National AI Strategy published in 2021, the United Kingdom aims to balance GDPR-compliant data protection and innovation. However, in the UK, a post-Brexit path independent of the EU is being followed on AI and national regulations are prioritised (UK National AI Strategy, 2021).

4. European Union: Artificial Intelligence Act and Risk-Based Model

4.1. Basic Principles and Scope

The EU Artificial Intelligence Act (EU AI Act, 2024) is the world's first comprehensive AI regulation that aims to balance technological developments with the protection of fundamental rights. The Act adopts a risk-based approach and categorises AI systems into the following four categories according to the risk criterion.

A. Prohibited Applications

- **Manipulation Techniques:** Subliminal interaction or systems targeting vulnerable groups (e.g., algorithms that lead children to gaming addiction),
- **Real-Time Biometric Identification:** Use of facial recognition systems in public spaces, except for exceptional permissions for "serious offences" such as terrorism or human trafficking (Art. 5/II),
- **Emotion Recognition Systems:** Systems capable of emotional analysis are prohibited in workplaces or educational institutions, except for medical purposes.

B. High Risk Systems

- **Critical Infrastructure Management:** AI used in areas such as energy grids or transport systems,
- **Education and Employment:** Algorithms that evaluate student performance or manage recruitment processes (Annex III),
- **Medical Diagnostic Tools:** Systems that diagnose disease or recommend treatment are categorised as high risk.

C. Limited Risk Systems

- **Chatbots:** For these, users are required to clearly indicate that they are interacting with an AI (Art. 50).

D. Minimum Risk Systems

- **Spam Filters:** No additional obligation is imposed for such simple applications.
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4.2. Obligations for High Risk Systems

Strict rules are stipulated for AI systems in the high risk category. Accordingly, systems should be open to human intervention and designed in such a way that operators can provide 'effective control'. For example, a medical diagnostic tool cannot override the doctor's final judgement. Control mechanisms should make the decision processes of the algorithm transparent and prevent the 'black box' effect (Art. 14).

Training datasets must be free from representativeness, diversity and bias. For example, face recognition systems should recognise different ethnicities with equal accuracy. Providers must retain documentation detailing the system's design, training process and risk assessment for 10 years (Art. 8-10).

High-risk systems must be tested by EU accredited organisations and CE marked. The performance of the systems should be regularly monitored and reported during use (Art. 40-49).

4.3. Rules for Limited or Minimum Risk (General Purpose) Models

Special rules are also introduced for general purpose AI systems such as large language models (LLM). Accordingly, models with processing capacity above 10^25 FLOP (floating point operations) (e.g., GPT-4) are subject to additional testing. Model providers should perform 'red teaming' tests against cyber-attacks (Art. 55).

Open source models are exempted from the documentation obligation if they make their technical documentation publicly available. However, models that carry systemic risk cannot benefit from this exception (Art. 53).

4.4. Criticisms and Implementation Challenges

The EU Artificial Intelligence Law is criticised in some circles as "stifling technological innovation". In fact, it is stated that compliance costs may force small-scale companies and give an advantage to non-EU competitors (Ashkar & Schröder, 2024).

The risk of flexible interpretation of concepts such as 'high risk' and 'systemic risk' may lead to legal uncertainties (Dienes, 2024).

Third country companies wishing to enter the EU market face costly harmonisation processes. For example, a China-based AI provider has to appoint a representative in Europe to operate in the EU (Art. 2/f).

4.5. Global Impact of the EU

The EU Artificial Intelligence Law has the potential to shape global standards with the "Brussels Effect". Such that; global companies such as Google and Meta adapt all their operations to these rules in order to access the EU market. In addition, the EU is lobbying for the adoption of AI ethical principles in platforms such as OECD and G7.

5. Conclusion and Recommendations

The EU Artificial Intelligence Law aims to balance law and technology by creating a model on a global scale. However, the challenges of trying to protect fundamental rights while encouraging technological innovation are obvious. It is suggested that Türkiye, as a regional country with a vision of the EU, should update its national legislation in a balanced manner by modelling the EU's risk-based approach, and by adhering as much as possible to the ethical and data protection-oriented approach as emphasised in the National Artificial Intelligence Strategy Document, but without imposing strict regulatory barriers to the technological progress of AI. Furthermore, it is considered to be of critical importance to pay attention to the harmonisation of comparative ethical standards in the field of AI through international cooperation mechanisms while carrying out legislative studies.

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REASONABLE PERSON STANDARD: THEORY AND PRACTICE

Research Assistant Gokce ALTINEL
Selcuk University, Faculty of Law, Department of Public Law
ORCID: 0000-0003-3154-0387

Abstract
The reasonable person standard, which is one of the basic legal tools used in liability law, can be evaluated both theoretically in terms of justification and practically in terms of determining the meaning that emerges in legal practice. In recent years, studies that emphasize the importance of analyzing the meanings that ordinary people attribute to the basic concepts used in the field of law, called experimental jurisprudence, have put forward remarkable analyses on the standard. Especially in Common Law, the meaning that ordinary people attribute to the standard in terms of jury evaluations is opened to discussion. Although the studies on the standard are mostly centered on Common Law, there is a need to clarify the meaning of the standard by examining both the grounding of the standard and the application of the standard in Civil Law. Because of its orientation towards justice, law requires the theoretical justification of such standards, i.e. a clear statement of its presuppositions about what ought to be. At the same time, in terms of law's claim to guide and regulate human behavior, it is necessary to reveal what is in terms of the standard and to investigate it through practice. In this context, it is necessary to examine the theoretical underpinnings of the standard, as well as the understanding of the standard that emerges from legal practice. This study aims to reveal the theoretical approach used to justify the standard as well as the meaning attributed to the standard in practice. In the light of the data obtained, it is aimed to evaluate reasonableness in Turkish law and to briefly convey current discussions on the concept of reasonableness.
Keywords: Reasonableness- Reasonable Person Standard- Ordinary People-Experimental Jurisprudence

Introduction

The function of the reasonable person standard in the field of law can be expressed as creating a criterion for understanding and evaluating a person's behavior and decisions, as well as guiding his or her behavior. Despite its central role in the field of law, the reasonable person standard is often inadequately addressed in terms of its historical development and philosophical foundations. Starting from ancient Greek thinkers Plato and Aristotle to modern philosophers such as Hume and Kant, it can be seen that many thinkers have dealt with the concept of reasonableness in terms of virtue, human nature and ethics . Discussions on the nature of reasonableness are often expressed in close relation to the concept of rationality. From time to time, reasonableness is used synonymously with rationality, and from time to time these two concepts are interpreted to mean different things (Sibley, 1953) . In political philosophy, the idea of reasonableness is also used as a fundamental concept in social contractarian thought in order to protect the individual's own interests and to unify their desire to create a common order (Rawls, 1995). Reasonableness can be considered from political, philosophical and moral perspectives (Bongiovanni et al., 2009). In this context, it is quite difficult to present the concept of reasonableness with a single approach and definition.

For the aforementioned reasons, while it is possible to easily provide a definition of the reasonable person standard as an evaluation criterion in liability law, it is quite difficult to determine the meaning of reasonableness, which is the basic concept of the standard. In order to clarify the meaning of the reasonable person standard, it is necessary to look at the historical roots of the standard, to review the theories on its justification and to examine how it is interpreted in practice.
For the reasons explained belove, this study will first provide a brief summary of the historical roots of the reasonable person standard, then it will include the approaches to the justification of the reasonable person standard, try to interpret the approach of judicial decisions in Turkish law, and in the light of the information provided in the last section, it will try to make some predictions on the future of the concept of reasonable person standard.

Materials and Methods

In the examination of the reasonable person standard, academic books, articles and court decisions will be used as the main sources. First of all, a short summary will be presented regarding the historical development of the reasonable person standard. The emergence of the reasonable person standard in different legal systems will be examined by looking at the historical development of the reasonable person standard and the common points regarding the standard in different legal systems today will be emphasized. A general summary will be presented regarding the basic approaches accepted in terms of the foundation of the reasonable person standard. And finally, based on the historical development and different approaches to justification, it will be tried to make evaluations on the theory and practice of the reasonable person standard in the Turkish legal system.

Historical Development Process of the Concept of Reasonable Person Standard

Just as humanity has a history, in similar way concepts have a history. Concepts cannot resist the dominant power of time and change, but they always carry traces of the conditions that gave rise to them, even in partial amounts. Therefore, when analyzing a concept, one cannot be indifferent to the historical events that led to its emergence . Looking at the historical foundations of the reasonable person standard can help us understand debates about its meaning and function today. It is observed that practices similar to the reasonable person standard have been used under different names in different legal systems throughout the historical process. Although it is considered as a concept developed in the practice of common law, traces of the idea of a model character reflecting the perspective of what is reasonable and good, similar to the reasonable person standard, can be seen in the oldest historical documents of humanity. The concepts of 'geru maa' (the silent person) in Ancient Egypt, 'ho spoudaios' (the determined person) in Ancient Greece and 'paterfamilias' (the father of the family) in Ancient Rome can be examined as the first examples of concepts similar to the reasonable person standard in human history (Jeutner, 2024). The problems, tensions and difficulties that arose with the application of all three concepts at the time they were used are similar to those that the law faces today with regard to the reasonable person standard. While in Ancient Egypt and Ancient Greece the general function of the standard was to serve as a social role model, in Rome the standard was used more intensively in the field of law. Over time, the standard came to be used to determine whether due care had been exercised in determining legal liability. Roman law and its later uses are directly linked to the behavior of the property owning class. In the process of constructing social and legal norms, the traditions and experiences of the lower classes were not considered worthy of consideration. The standard is also patriarchal in nature. Likewise, the interpreters of the concept of paterfamilias are predominantly male members of society(Saller, 1999).

For the reasons stated, the drafters of the German Civil Code of 1900 decided to replace the term paterfamilias with a general standard of care. Before the amendment, German law used their own version of paterfamilias, 'der ordentliche Hausvater'. After the amendment, the relevant article was amended as 'a negligent person is a person who fails to exercise reasonable care'. It has been amended as follows. Thus, the standard is not intended to be applied to a minority of fathers running the household, but rather to the average of all citizens. The German example has shown that it is possible to express the reasonable person standard in an abstract and non-personalized formula . The development of the reasonable person standard in Common law countries is somewhat different. In the 1856 case of Blyhth v Birmingham Waterworks, the Exchequer Court used the term 'reasonable man' in its reasoning. This case is the first case in Common law countries to explicitly use the reasonable man standard, a derivative of the reasonable man standard, as a tool to be used in determining civil liability. It is accepted that the use of the reasonable man standard in Common law countries emerged in a particular place and time, in the social emergence triggered by the industrial revolution, and the sentimentalist understanding rising with the industrial Scottish enlightenment . In 1781, in a tacit reference to the Roman law concept of paterfamilias, Judge Sir William Jones argued that the standard of care should be defined as 'any prudent person capable of managing a family'. In 1837, in Vaughan v Menslove, the court held that the defendant was liable for damages for failing to act as 'a man of ordinary prudence' would have acted when assessing whether the defendant was negligent in stacking bales of hay, causing his neighbor's house to burn down (Jeutner, 2024). Finally, Baron Elderson explicitly used the term 'reasonable man' in Blyhth v Birmingham Waterworks in 1856. In 1850, it was accepted in the British Parliament that all words denoting the masculine gender would also include women, unless otherwise provided by law(Interpretation Act 1978). In the following period, the concept was changed to reasonable person and started to be used.

To summarize the historical development of the reasonable person standard, the personalized standard of care that emerged in Common law countries is different from the standard of care expressed in abstract terms in German law in 1900. The main reason for this difference is considered to be the ideas contained in the industrial revolution and the Scottish enlightenment. Although the reasonable person standard has passed through different historical stages in different societies, it has been widely accepted as a standard used in the field of law both in countries following the Common law countries legal tradition and in countries following the Civil law countries legal tradition

Approaches to the Justification of the Reasonable Person Standard

Approaches to the justification of the concept of reasonable person standard can be expressed under three categories: normativity, positivity and hybrid approaches (Miller&Perry, 2012). According to Miller and Perry, the main problem with the reasonable person standard is whether the concept of reasonable person being is a normative or a positive concept . Reasonable person is a legal concept that can be justified from different contexts. The primary question is always whether the content should be normative or positive. Those who argue for a normative approach to the reasonable man standard generally state that the standard should be grounded in an ethical theory. If the standard is to be explained on the basis of a normative ethical theory, it is necessary to discuss which ethical theory should be chosen. We can say that ethical theories including welfare maximization, equal freedom and feminist ethics of care approaches stand out in this context.

These views are criticized by pointing to the practical difficulties that may arise when we resort to normative definitions. In line with the criticisms, it has been argued that the standard can be based on a positivist approach based on the idea that the characteristics of reasonable people can be deduced by observation .
If the standard is grounded in a positivist approach, debates have arisen as to the extent to which it is appropriate to use the statistical information obtained to justify the rule of law. Miler and Perry put forward and defend the thesis that normative definitions are categorically preferable to positive definitions, since the latter are, according to Miller and Perry, logically unacceptable, while the former can only partially be recognized as raising manageable practical problems. Although Miller and Perry focus their analysis on the reasonable person standard in torts, they argue that their conclusions are far-reaching and would be useful in other areas of law as well .
The experimental jurisprudence, which can be included within the hybrid approaches, argues that the ongoing debate can be resolved through the data obtained by investigating the meaning that ordinary people attribute to the standard in practice, as well as the normative justification of the reasonable person standard (Tobia, 2022). Tobia defines his approach, referred to as 'Experimental jurisprudence', as a science that addresses legal questions with empirical data, usually data derived from experiments. It deals with descriptive questions about legal concepts and interpretation about what the law is as well as normative questions about what the law ought to be.It can be defined as the explanation of legal concepts and normative theory from within the context of the legal framework. Kevin Tobia has explicitly adopted a hybrid theory approach to the reasonable person standard and discussed it in detail (Tobia, 2018). If the standard is explained with a hybrid approach, the problem arises as to how to determine which qualities of a reasonable person are fixed and objective and which are subjective, and how to establish the relationship between them.

Reasonable person standard in Turkish Law

In the light of the above explanations on the reasonable person standard, we have stated that the standard can be addressed with a normative approach that points to what should be, as well as with a positivist approach based on statistics obtained from what is. Finally, we have mentioned the idea of experiential legal philosophy, which deals with what is and what should be together and aims to clarify the meaning of the reasonable person standard through the connection it establishes between these two. After the above-mentioned historical development and the types of justification, it is now possible to identify the tendency in Turkish law as to which of the normative and positive definitions is given precedence. It can be said that it is possible to make interpretations with an experiential legal philosophy approach through surveys and similar researches to be conducted with the participation of ordinary people. Since we do not yet have a study on experimential legal philosophy centering on the reasonable person standard in Turkish law, we will not comment on this approach. An attempt will be made to comment on positive and normative approaches.
In the Turkish legal system, expressions related to reasonableness are found throughout the legislation and are used with expressions such as reasonable time, reasonable cause, reasonable justification, reasonable regulation, reasonable cause, reasonable doubt, reasonable level, reasonable amount, reasonable discount, reasonable measures, reasonable alternative suggestions, unreasonable risk etc (Sinerji, 2025). Although these expressions on reasonableness are not directly used as an adjective to qualify human beings, they aim to develop a criterion for human behaviour. And they justify the standard to measure human behaviour on the basis of reasonableness. In doing so, court judgements often do not raise arguments about reasonableness.

They do not go beyond determining that a certain behaviour is reasonable. For example, while the reasonable person standard is stated as a tool for determining liability as a reflection of the rule of honesty in liability law in the field of Turkish private law (Eren,2013;Tandoğan,2010), it is seen that the expressions of a person who shows reasonable behaviour or a person of normal intelligence or a normal person are frequently used in Turkish court decisions instead of the reasonable person standard(Sinerji, 2025). Human behaviour, which is expressed as reasonable behaviour and the manifestation of a normal intelligence, and the evaluation made on these behaviours are essentially reflections of the reasonable person standard that makes it possible to impose liability on the person. Their function in practice is similar. Based on the specified criteria, the behaviour of persons is evaluated and it is decided whether responsibility can be attributed to the person.
In the references made by the court of appeal decisions to the reasonable person standard, it is observed that the court decisions refer to definitions related to rationality. While there are explanations of the standard on the basis of a normative approach in the doctrine, i.e. the standard of a reasonable person as an ideal type or as an abstract concept (Eren,2013;Tandoğan,2010), it can be said that statistical, in other words, positive approaches are common in practice (Sinerji, 2025).

Revisiting the Concept of the Reasonable Person Standard or Building a New Standard
The debate on the use of the reasonable man standard in liability law has been increasing in recent years. Recent studies on the reasonable person standard, especially the data put forward by feminist theorists in the context of certain cases in tort law and criminal law(Dimock, 2008), as well as egalitarian ideas that propose the construction of a new standard instead of the reasonable person standard(Moran, 2003), make it clear that this concept should be revised . In this context, analyzing the reasonable person standard from a historical, theoretical and practical perspective has a particular importance.

Findings and Discussion
Reasonable person standard, which is often contextualized as the meaning that the general society attributes to a certain behavior, is often far from containing data on how judges obtain the understanding of the majority of the society. In this context, the research on judicial decisions necessitates the research and explanation of the meaning attributed to the standard in terms of doctrine and ordinary people, and to guide the judiciary in the light of the data obtained. In order to understand use of reasonable person standard in private and public law, an examination of the decisions of the Court of Appeal helps to identify synonymous expressions used instead of the reasonable person standard, but it is necessary to reveal the meaning attributed to standard by the courts of first instance. Frequently, the Court of Appeal does not interfere with the court of first instance's judgment on reasonable behaviour or normal human behaviour, and in this context it is not possible to understand what basis for the interpretation of the standard is accepted in the decisions of the Court of Appeal. Since the process of determining the reasonableness or normality of behaviour is on the agenda of the courts of first instance, it seems much more appropriate to examine the decisions of the courts of first instance. In this context, in order to foresee the process of assessing the reasonable person standard, it is necessary to analyse the decisions of the courts of first instance with a permission to be obtained. Therefore this study provides a limited framework on the reasonable person standard and to outline some preliminary insights on how the approach in Turkish law can be identified. Without a detailed analysis of the reasonable person standard, it is not possible to identify prejudices, the areas of law in which they are concentrated and their sources.

Unfortunately, Turkish jurisprudence search engines usually provide access to only appellate court judgements. When the reasonable person standard is in question, a preference can be made based on the data presented in the academic literature on which of the decisions of the courts of first instance should be examined .

Conclusion and Recommendations

The aim of this study is to emphasize the importance of analyzing the theory and practice of the reasonable person standard and to present a general picture of the past, present and future of the standard, which is one of the basic tools of liability law. It should be recognized that the concept of the reasonable person standard should be grounded in a normative approach. Due to its orientation towards justice, the legal system is in an obligatory connection with ethical theories and principles. In this context, it is necessary to accept that conducting analyses in connection with ethical theories in the process of justifying the reasonable person standard would be an attitude approaching the ideal of justice. In terms of which ethical approach will provide a more appropriate basis for the justification of the reasonable person standard, it is thought that the research of feminist ethics of care, which is also related to virtue ethics, which has come to the fore in recent years, should be utilized. Unjust practices in relation to the reasonable person standard, which feminist theorists have argued through specific cases in tort law and criminal law, may be helpful for the development of the standard . Understanding the grounding of reasonableness and examining the historical development process can ensure that the discretionary power used by judges in interpreting reasonableness is based on a certain basis and prevent biases from affecting the content of the decision while exercising discretionary power.

In fact, the first analyses of the reasonable person standard have been put forward by research on how the reasonable person standard is handled in jury evaluations in countries that are included in the common law system. The main approach of the empirical philosophy of law on this issue is to provide a picture of how an ordinary person on a jury interprets the reasonable person standard to be taken into account during the jury's deliberations. This insight is also considered to be applicable to civil law countries in because, although there is no institution similar to the jury system in the Civil law countries legal system that requires ordinary people to evaluate the basic concepts of value law, the fact that the standard claims to direct and guide person behavior, the meaning that ordinary people attribute to the standard should be revealed in order to understand the gap between theory and practice. In this way, people who want to develop behavior in accordance with the reasonable person standard can be helped and the detailed explanations that ordinary people need about what the reasonable person standard means can be provided. In this context, experiential legal philosophy argues that not only theoretical research on the reasonable person standard should be conducted, but also research on how ordinary people interpret the reasonable person standard. Experimental Jurisprudence studies about reasonable person standard can be used as a helpful resource to understand how the interaction between the theory and practice of the reasonable person standard takes place and to identify and correct the points where they diverge.The above-mentioned explanations represent a general summary of the approaches to the reasonable person standard. At this stage, it is possible to comment on what the understanding of the reasonable person standard is or could be based on some judicial decisions in Turkish law. Even if there is no direct reference to the use of the reasonable person standard in Turkish judicial decisions, there is an implicit reference to the reasonable person standard in the references to reasonable behaviour or the behaviour of a normal person or the average person in determining liability, and they are essentially the side views of the concept expressed as the reasonable person standard in practice.

International academic studies shows that the discussions on the reasonable person standard mostly related to the determination of damage in tort and the determination of compensation in tort, the meaning attributed to consent, especially in criminal law, especially in the crimes of self-defence, provocation and sexual harassment. Similarly, as in the offence of subjecting to hostile work environment at the workplace, the reasoning on what should be understood as ill-treatment at the workplace requires the determination of what kind of treatment a reasonable person would determine as unfair or ill-treatment at the workplace, and this is one of the areas where the standard of reasonableness is most commonly used (Moran, 2010). In terms of Turkish law, studies to be carried out in the mentioned areas seem to be favourable for clarifying the meaning of the reasonable person standard and discussing whether it fulfils its function.The aim of this paper is essentially to show that theoretical research and practical approaches can be used in a complementary manner and that discussions on the fundamental concepts of law can be addressed from a broader perspective by using different methodological ways. Applied philosophy of law is about investigating the meaning that ordinary people attribute to certain legal concepts and conducting a meaningful analysis of the result. Although the issue of how the thoughts of ordinary people should affect the understanding of the basic concepts of law is controversial, ultimately, legal rules are designed to direct and guide the behavior of ordinary people. In this context, in order for ordinary people to observe the rules of law when performing certain actions and to act in accordance with the rules of law, they need to be able to understand the type of behavior that is signified by the concepts of law.

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MINORITY IN THE TURKISH CRIMINAL LAW SYSTEM

Assoc. Prof. Dr. Murat AYDIN
Selcuk University Faculty of Law, Department of Criminal Law and Criminal Procedure Law
ORCID: 0000-0001-5476-7977

SUMMARY
In order for a person to be judged to be at fault for the act they have committed and to be punished, certain conditions must be met. These are the presence of the ability to culpability, the absence of reasons that remove culpability and the presence of the consciousness of injustice. The ability to culpability is the ability to distinguish right from wrong, right from wrong and to act accordingly. The perpetrator must have had the capacity for fault at the time of committing the act. Minority appears as a reason that both removes and reduces culpability according to age groups. The reason for this is that the power to understand and to want only matures with time and age. In the Turkish Criminal Law system, minority is dealt with in three phases. These are the age groups 0-12 years, 12-15 years, 15-18 years. For misdemeanors, the age limit is set at 15. The Turkish Penal Code recognizes full criminal responsibility after the completion of the age of 18. These age groups are important not only in terms of punishability, but also in terms of criminal procedure and the application of the rules of the law of criminal execution. Today it is widely accepted that children should be treated differently from adults. It is thought that a solution should be found for children without resorting to litigation as much as possible. Minority is important not only for the offender but also for victim. Regarding criminal law, the fact that the victim is a child leads to increased punishment for some crimes. At the same time, if the victim is a child, it may be possible to talk about the existence of some privileges in criminal proceedings.
Keywords: Minority, criminal responsibility, culpability, age groups, criminal law, criminal procedure law, offender, victim.

I- INTRODUCTION
There are three basic elements of crime in the Turkish Criminal Law System. These elements are actus reus, mens rea and unlawfulness. Culpability is not required as an element for the occurrence of the offense. However, culpability is evaluated in terms of its impact on punishment[1]. A perpetrator who has committed an unlawful act in violation of the law and in accordance with the legal definition is punishable[2] The ability to culpability is right from wrong, just from unjust, and acting accordingly. A person who cannot understand the injustice of an act does not have the ability to attribute blame[3]. A person capable of culpability can only act culpably[4].
The legal order does not hold everyone in society responsible for their unlawful actions. Criminal law makes a distinction between people in terms of criminal responsibility. In terms of criminal responsibility, being normal means that the person can distinguish between good and bad and has the ability to behave socially. The person must be capable of understanding and willing[5].

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[4] AKBULUT, 689.
[5] HAKERİ, 360.

In the Turkish Criminal Law System, minority is considered as a condition that eliminates or reduces the ability to fault. This issue is regulated in Article 31 of the Turkish Penal Code. Three groups are identified in the TPC system. These are the 0-12 age group, the 12-15 age group and the 15-18 age group. In this study, the effect of age on punishability, its effect on judicial activities and its effect on the execution of sentences will be discussed.

II-AGE GROUPS REGULATED IN THE TURKISH PENAL CODE AND THEIR CRIMINAL RESPONSIBILITIES

A- IN GENERAL

The reason why the minority reduces or removes the ability to imputability is that the power to understand and to will only reaches maturity with time and with the advancement of age. There is no category of crimes that can only be committed by children in the Turkish Criminal Law System. All crimes can be committed by both children and adults[6].

In the modern era, the perspective that childhood should be evaluated differently from adults has prevailed. It is stated that the threat of punishment does not prevent children from committing crimes. In this respect, it would be appropriate to implement solutions for some crimes committed by children without resorting to judicial prosecution as much as possible. Therefore, with the acceptance that children have responsibilities, the necessity to determine age groups in terms of the provisions to be applied has emerged[7]. The idea that the ability of a minor to distinguish right from wrong, good from bad is also related to his/her physical development has been effective here[8]. It is also stated that the justice system should be systematized by taking into account the needs and interests of the child[9].

According to United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Article 2.2 (a): "*A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult*".

Article 2.3: "*Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:*

(a) To meet the varying needs of juvenile offencers, while protecting their basic rigths;

(b) To meet the need of society"

Article 4.1: "*In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity*" [10].

The Turkish Penal Code recognizes anyone under the age of 18 as a child(TPC 6/1-b).

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[6] HAKERİ, s.361.

[7] AKBULUT, s.696.

[8] KOCA, M. & ÜZÜLMEZ, İ. (2023), Türk Ceza Hukuku Genel Hükümler, (16. b.), 320

[9] SAVAŞÇI TEMİZ B. (2023), "*Çocuk Ceza Adaleti İlkeleri Çerçevesinde 12-15 Yaş Arası Çocukların Cezai Sorumluluğunun Değerlendirilmesi*", İnönü Üniversitesi Hukuk Fakültesi Dergisi, 14 (1), 244-259, 246.

[10] Birleşmiş Milletler Çocuk Adalet Sisteminin Uygulanması Hakkında Asgari Standart Kurallar için bkz. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https:// cocukhaklari.barobirlik.org.tr/dokuman/ mevzuat_uakararlar/cocukadaletsisteminuygulanmasi.pdf Date of Access: 23.02.2025.

The Turkish Penal Code does not specify whether the child becomes an adult before the age of 18 due to marriage or any other reason[11]. The effect of being a child on criminal responsibility is regulated in Article 31 under the title of minority.
The Court of Cassation has stated that the age should be calculated by taking into account the civil registry records in terms of criminal practice. The court emphasized that in order to be considered to have reached a certain age, it is necessary to have lived that age in full, counting months, days and hours. In the case in question, the court determined that the child born on 20.09.1998 was 12 years old on 20.09.2010, but that he was not criminally responsible because he had not reached the age of 12[12].
Regardless of the age group in which the child is found, the act of the child who commits an act that is a crime will continue to be a crime. Here, the fact that they are not punished does not mean that the crime has not occurred, as the legislator has only determined criminal liability.
Unlike adults, the main reason for the principles determined in the punishment/non-punishment of children is stated as the unbalanced structure of children due to their incomplete development[13].
The Child Protection Law also takes a special approach to juvenile delinquency. In this respect, the child who commits a crime is not called a suspect or an accused, but the concept of child dragged into crime is used.

B-0-12 AGE GROUP

According to Turkish Penal Code article 31/1: "*Minors under the age of twelve are exempt from criminal liability. While such minors cannot be prosecuted, security measures in respect of minors may be imposed*"
With this regulation, it becomes clear that the effect of age on the ability of fault will not be investigated regarding children under the age of 12, and that no punishment will be imposed on children who were under the age of 12 at the time of committing the act[14]. It is absolutely recognized by the law that children in this age group are not capable of fault[15]. It is not possible to prove the contrary. Children in this age group may have the ability to perceive the legal meaning and consequences of the act and to direct their behavior. However, the legislator did not ask for this to be investigated and took it for granted that they were not criminally liable[16].
The expression "inability to prosecute" in the law means that not being under 12 years of age is a condition for a lawsuit, and even if a lawsuit is filed by mistake, the lawsuit cannot be continued and a decision of dismissal must be made[17]. Some authors, on the other hand, argue that there should be a decision not to impose a penalty due to the absence of fault[18]. This is justified by the provision in Article 223/3 of the Code of Criminal Procedure.

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[11] AKBULUT B. (2013), "Ceza Mevzuatında Çocuk ve Çocukların Yakalanması, Gözaltına Alınması'', Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, 19 (2), Nur Centel'e Armağan, 541-586, 546.
[12] Y. 14. CD, T. 30.04.2014, E. 2012/7430, K.2014/5878.
[13] SAVAŞÇI TEMİZ, 246.
[14] ÖZGENÇ İ. (2022) Türk Ceza Hukuku Genel Hükümler (18. B), 468;ÖZAR, 116.
[15] AKBULUT, 701; HAKERİ, 362; ARTUK M.E, GÖKCEN A., ALŞAHİN M.E. & ÇAKIR K. (2022), Ceza Hukuku Genel Hükümler (16. B), 620.
[16] AKBULUT, 702; ARTUK, GÖKCEN, ALŞAHİN & ÇAKIR, 620.
[17] AKBULUT, 702. The Court of Cassation also makes this determination.: 6. CD, 16.02.2011, E. 2009/18224, K. 2011/1289.
[18] HAKERİ, 362.

It can be stated that children in this age group will be investigated and may be suspects, since the statement in the law that they cannot be prosecuted and security measures may be applied against them[19].. Article 15 of the Child Protection Law stipulates that an investigation shall be conducted on the child who is dragged into crime and that the investigation shall be carried out personally by the public prosecutor in charge of the juvenile bureau.
According to Article 5/10 of the Regulation on the Procedures and Principles for the Implementation of the Child Protection Law: "Children under the age of twelve and deaf and dumb persons under the age of fifteen at the time of committing the act may be investigated in accordance with the above principles in order to collect evidence of the alleged offenses or to determine whether there are other perpetrators or perpetrators". This regulation stipulates that an investigation is not mandatory.
When deemed necessary, the public prosecutor may request the juvenile judge to apply child-specific security measures (Art. 11, 5 of the JPC) (Art. 15/3 of the JPC). The child's situation, age, the offense committed and the welfare of the child shall be taken into consideration when requesting the application of the measures (Convention on the Rights of the Child Art. 40/last). The Child Protection Law stipulates that a social examination may be conducted before a cautionary decision is taken, and the assessment of the child's personal circumstances is not considered mandatory (Art. 7/2).
Article 19 of the Regulation on Arrest, Detention and Statement Taking limits the powers of arrest and statement taking for children under the age of 12 as follows:
"a) Those who have not attained the age of twelve at the time of committing the act and deaf and dumb persons who have not attained the age of fifteen;
1) Cannot be apprehended for a crime and cannot be used in the detection of crime under any circumstances.
2) Arrest may be made for the purpose of identification and detection of crime. He/she is released immediately after identification. The identified identity and offense shall be immediately notified to the Chief Public Prosecutor's Office by the president or judge of the court as a basis for a cautionary decision".
If children under 12 years of age commit crimes together with adults, their investigations must be conducted separately (Article 17/1 of the PDPL).
Article 4/1-h of the Child Protection Law states that the basic principle of supporting the child's education and learning appropriate to his/her age and development, and the development of his/her personality and social responsibility shall be observed in making and implementing decisions.

C-12-15 AGE GROUP
According to TPC article 31/2: "*Where a minor is older than twelve, but younger than fifteen, at the time of an offence, and he is either incapable of appreciating the legal meaning and consequences of his act or his capability to control his behavior is underdeveloped then he is shall be exempt from criminal liability. However, such minors may be subject to security measures specific to children. Where the minor has the capability to comprehend the legal meaning and result of the act and to control his behaviors in respective of his act, for offences requiring a penalty of aggravated life imprisonment, a term of twelve to fifteen years of imprisonment shall be imposed and for offences that require a penalty of life imprisonment, a term of nine to eleven years imprisonment shall be imposed.*

[19] AKBULUT, 702; ARTUK, GÖKCEN, ALŞAHİN & ÇAKIR, 620; IŞIKA S. (2020) "Uzlaştırma Sürecinde Suça Sürüklenen Çocuklara İlişkin Bazı Sorun ve Değerlendirmeler" Türkiye Barolar Birliği Dergisi (151), 61-84, 66.

Otherwise the penalty to be imposed shall be reduced by half, save for the fact that for each act such penalty shall not exceed seven years".

Criminal responsibility is accepted for children in the 12-15 age group who are capable of culpability and a reduction in their penalties is envisaged.

In practice, the child's ability to perceive and direct his/her behavior is determined by experts. The child's ability to perceive and direct his/her behavior will be determined in terms of the crime committed, not in general[20].

In cases where it is accepted that children in the 12-15 age group do not have criminal responsibility, it is obligatory to apply security measures to these children. Prosecution is possible for these children. However, in the event that he/she is unable to perceive the meaning and consequences of the act he/she committed or is incapable of directing his/her behavior, it will be decided not to impose a sentence in accordance with Article 223 of the Code of Criminal Procedure. For all these reasons, a hearing will also be held for children in this age group[21].

In the calculation of the period of conditional release, one day spent by the convict in the execution institution until he/she turns fifteen years old is taken into account as two days (The Code of the Execution of Penalties and Security Measures 107/5)

Children under the age of fifteen cannot be sentenced to arrest for acts punishable by imprisonment with an upper limit of imprisonment not exceeding five years (JPC Juvenile Protection Code 21)

Periods of detention are applied at half the rate for children who have not completed the age of fifteen at the time of committing the act (Criminal Procedure Code102/5).

An administrative fine cannot be imposed on a child who has not reached the age of fifteen at the time of committing the act (The Law of Misdemeanors 11/1).

D-15-18 AGE GROUP

According to TPC 31/3: "*Where a minor is older than fifteen but younger than eighteen years at the time of the offence then for crimes that require a penalty of aggravated life imprisonment a term of eighteen to twenty four years of imprisonment shall be imposed and for offences that require a penalty of life imprisonment twelve to fifteen years of imprisonment shall be imposed. Otherwise the penalty to be imposed shall be reduced by one-third, save for the fact that the penalty for each act shall not exceed twelve years*".

The Turkish Criminal Code recognizes that children in this age group have culpability. Accordingly, they are also criminally liable. However, a reduction in the penalty is mandatory for these children[22].

The determination of children aged 15-18 differently from adults is based on the justification of penal policy and the aim of reintegrating children back into society and preventing them from committing crimes[23].

The detention periods are applied at a rate of three-quarters for children who have not yet reached the age of eighteen at the time of the act (Criminal Procedure Code 102/5).

Minors under 18 can be arrested for a criminal offense. However, they are immediately referred to the prosecutor's office by informing their relatives and the defense counsel. Law enforcement cannot investigate these minors. The investigation must be conducted by the prosecutor himself. (The Regulation on Arrest, Detention and Statement 19/b)

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[20] HAKERİ, 364; ARTUK, GÖKCEN, ALŞAHİN & ÇAKIR, 623.
[21] HAKERİ, 365; ÖZAR, 118.
[22] ARTUK, GÖKCEN, ALŞAHİN & ÇAKIR, 624; ZAFER, H. Ceza Hukuku Genel Hükümler (2010), 264.
[23] AKBULUT, 716.

The presence of a defense counsel is mandatory for children during the investigation and prosecution phase (Article 150/2 of the Criminal Procedure Code)
Children's sentences are executed in juvenile education houses (The Code of the Execution of Penalties and Security Measures 15) and juvenile closed penal execution institutions (The Code of the Execution of Penalties and Security Measures 11).
For those who are under eighteen years of age at the time of the act, the sentence of one year or less to which they are sentenced must be converted to one of the alternative sanctions by the judge (TPC 50/3).
The imprisonment sentence of minors who have not completed the age of 18 when they committed the act can be postponed if it is not more than three years (TPC 51/1).
The measure of deprivation of the exercise of certain rights is not applied to those who have not attained the age of eighteen at the time of committing the act (TPC 53/4).
The statute of limitations is shorter than for adults. The public prosecution shall be dismissed for those who have completed the age of twelve but have not completed the age of fifteen at the time of committing the act, upon the expiration of half of the periods stipulated in Article 66/1 of the TPC; and for those who have completed the age of fifteen but have not completed the age of eighteen, upon the expiration of two-thirds of the periods stipulated in Article 66/2 of the TPC.
The statute of limitations for punishment is also shorter than for adults. The penalty is not executed after half of the periods stipulated in TPC 68/1 have elapsed for those who have reached the age of twelve at the time of the act; and after two-thirds of the periods stipulated in TPC 68/1 have elapsed for those who have reached the age of fifteen but not eighteen (TPC 68/2).
In case of non-payment of judicial fines imposed on children and judicial fines converted from short-term imprisonment, these sentences cannot be converted into imprisonment (The Code of the Execution of Penalties and Security Measures 106/4**)**
Children's hearings are held in private and the verdict is announced in the closed hearing (CPC 185).
The content of the closed hearing cannot be broadcast by any means of communication (CPC 187/2).
Repetition provisions are not applicable for offenses committed by persons who were under the age of eighteen at the time of the offense (TPC 58/5).
While the period of postponement of the initiation of a public case for adults is 5 years (Article 171/2 of the Criminal Procedure Code), the period of postponement of the initiation of a public case for children is three years (JPC 19).
While the period of supervision in case of deferment of the announcement of the verdict is five years for adults (CPC 231/8), the period of supervision for children is three years (JPC 23).
It may be decided to place under supervision a child for whom a protective and supportive measure has been decided, a decision to postpone the opening of a public case has been approved, or a decision to defer the announcement of the verdict has been made (JPC 26).
Increased penalties pursuant to Article 5 of the Anti-Terror Law shall not be applied to children.
The provision aggravating the conditions of conditional release in organized crimes is not applied to children (The Code of the Execution of Penalties and Security Measures 107/4).
In the event that the child dragged into crime is also mentally ill, security measures specific to children are applied (JPC 12).

It is possible to apply judicial control measures against children[24]. According to Juvenile Protection Code article 20:

(1) At the investigation or prosecution stages related to juveniles pushed to crime, the court may, as judicial control measures, decide for the one or several of the measures listed below, or for the measures specified under Article 109 of the Criminal Procedures Law:

a) No moving outside specified peripheral boundaries.

b) No access to certain places or access to certain places only.

c) No contact with specified persons and organizations.

(2) However, in case these measures do not bring favourable outcomes, or in case it is understood that these measures will not bring favourable outcomes or in case of violation of these measures, the court may decide for an arrest.

(3)An expert is assigned to guide the child who is followed by the probation directorate during the judicial control period and improvement activities are carried out according to the needs assessment to be made about the child".

The judicial control periods to be applied to children will be applied at half the rate under Article 110/A of the Code of Criminal Procedure.

Detained children are kept in the juvenile unit of the police. In places where the police do not have a juvenile unit, children are kept in a separate place from detained adults (JPC 16).

According to Juvenile Protection Code Article 17:

"(1) In case of juveniles who have committed crime together with adults, the investigation and prosecution shall be carried out separately.

(2) In such a case, the necessary measures shall also be applied with regard to juveniles; nevertheless, if considered necessary, the court may delay the trial related to the juvenile until the finalization of the case continuing in the general court.

(3) In case it is considered necessary that the trials be carried out together, general courts may decide, during any stage of the trial, for consolidation of trials, on the condition that such consolidation is found appropriate by the courts. In such an event, the joint cases shall be administered at general courts".

Chains, handcuffs and similar tools cannot be put on juveniles. However, when necessary, the law enforcement may take necessary measures to prevent the juvenile from escaping, or to prevent dangers that may arise with regard to the life and physical integrity of the juvenile or others(JPC 18).

In the presence of the conditions in the Code of Criminal Procedure for the offense charged to the child, a decision may be made to postpone the opening of the public case. However, the postponement period for these persons is three years. The upper limit of imprisonment specified in the second paragraph of Article 171 of the Code of Criminal Procedure is applied as five years for children under the age of fifteen (JPC 19).

II- CRIMINAL PROCEEDINGS FOR JUVENILES

"*The juvenile, his/her parent, guardian, court-assigned social worker, the family that has assumed the care of the juvenile, or if the juvenile is cared for by the Agency, the representative of the Agency may be present at the hearing. The court or the judge may allow a social worker to accompany the juvenile during the juvenile's interrogation or during other procedures regarding the juvenile. The juvenile present at the hearing may be taken outside the courtroom if his/her interests require so; additionally, a juvenile whose interrogation procedures have been completed may not be required to be present at the hearing*" (JPC 22).

[24] AKBULUT, 712.

At the end of the trial for the offense charged to the child, the court may decide to defer the announcement of the verdict if the conditions in the Code of Criminal Procedure exist. However, the period of supervision for these persons is three years(JPC 23).
The provisions of the Code of Criminal Procedure on reconciliation shall also apply to children dragged into crime(JPC 24).
"Juvenile courts shall administer the actions filed with regard to juveniles pushed to delinquency, for crimes falling under the jurisdiction of basic penal courts and penal courts of peace. Juvenile heavy penal courts shall administer suits related to crimes committed by juveniles and falling under the jurisdiction of the heavy penal court. Courts and juvenile judges shall have the duty to take the necessary measures specified in this law and in other laws. Public prosecution suits filed with regard to juveniles shall be administered at the courts established via this Law, provided that the provisions of Article 17 herein shall be reserved" (JPC 26).
A juvenile bureau shall be established at the Chief Public Prosecutor's Offices.
The duties of the juvenile bureau shall be as follows:
a) to carry out the investigation procedures related to juveniles pushed to crime,
b) to ensure that necessary measures are taken without any delay, in cases which require measures to be taken with regard to juveniles,
c) to work in cooperation with the relevant public institutions and organizations and non-governmental organizations for the purpose of providing the necessary support services to juveniles who need help, education, employment or shelter, from among juveniles who need protection, who are victims of a crime or who are pushed to delinquency; and to notify such and similar cases to the authorized institutions and organizations, and
d) to carry out the duties specified in this Law and in other laws.
Law enforcement duties related to juveniles shall be carried out first of all by the juvenile units of the law enforcement[25]. (JPC 29,30,31)
In the event that children who are incapable of fault are used as a tool in the commission of the crime, the penalty of the indirect perpetrators will be increased (TPC 37/2)
The conviction of children for the acts committed by them shall be recorded in the judicial registry. However, judicial registry and archive records related to minors under the age of eighteen can only be requested by public prosecutors' offices, judges or courts to be evaluated within the scope of investigation and prosecution (The Law on Judicial Registry 10/3) [26].

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WEB: www.iksadkongre.com/law
E-MAIL: hukukkongresi@gmail.com

TÜRKİYE'S HARMONY WITH THE INTERNATIONAL CRIMINAL COURT FROM THE PROBLEM OF CRIMES AGAINST HUMANITY

Research Assistant Ekrem Kavak
Selçuk University, Faculty of Law
ORCID: 0009-0005-2415-8528

Abstract
Crimes against humanity represent some of the most severe violations of fundamental human rights. Given their seriousness, international law mandates legal frameworks to ensure accountability. However, the application and enforcement of these crimes vary across legal systems. While Türkiye recognizes crimes against humanity in its domestic law, its regulations differ significantly from the standards recorded in the Rome Statute. This paper analyzes the codification of crimes against humanity in both the Turkish Penal Code (TPC) and the Statute. With this information it will be possible to understand and address Türkiye's regulation of crimes against humanity in ways that differ from the Statute which may result in inconsistencies in scope, liability and application. This raises concerns about Türkiye's ability to exercise jurisdiction over international law norms and cooperate with institutions such as the International Criminal Court (ICC). Since Türkiye's legal frameworks are not fully compatible with the Rome Statute, it may face difficulties in asserting jurisdiction over such crimes and ensuring accountability while maintaining its dignity in international area. By investigating the consequences of Türkiye's legal situation for crimes against humanity, especially its non-compliance with the Statute this paper tries to clarify the possible problematic outcomes for Türkiye in order. Finally by identifying the problems this paper provides simple solutions which are reachable with logical reasoning.
Keywords: International Criminal Court, Rome Statute, Crimes Against Humanity, Turkish Penal Code

Introduction

Human history is covered with remarkable pain and suffering. The human tragedies that have occurred in the last century have led to the emergence of initiatives that will provide an environment of peace and security. There is no doubt that these developments have contributed to the progress of humanity itself and the development of human rights. Arguably the most important one is the International Criminal Court (ICC) (Aslan, 2007: 57).

ICC was established by the Rome Statute. Since its importance cannot be underestimated, why Türkiye is still not part of the Statute can be questioned. To understand that we must look into its historical course. A quick look at the historical events about Türkiye and the Statute shows us that Türkiye was willing to join the Statute and carried out actions for this particular reason. Türkiye even made regulations in its constitution and included the crime of genocide and crimes against humanity into its domestic law (Erhan, 2018: 111). But Türkiye was unwilling to continue and didn't add the war crimes and crime of aggression. Although these actions can be justified by the concerns of Türkiye at that time (and some reasons are still valid in their own reason), it was incomprehensible why Türkiye decided to change the crime of genocide and crimes against humanity from the Statute.

As mentioned above Türkiye did take solid actions to adapt the crimes in the Statute into its domestic law. Its effects are still visible till this day. Türkiye's aim was to fulfill the requirements to enter European Union. But for today it is possible to say that Türkiye's request to join the Union pushed to the second plan. It is also argued that for joining the Union it is not mandatory to join the Statute (Akın, 2020: 73-74).

Whereas one thing in particular creates some problem. Even though it can be said that joining the Statute is not mandatory, it is logical to regulate domestic law accordingly with the Statute (Yoka & Kurtbağ, 2022: 123). Some authors agree with the idea that it does not constitute any obligation and only exists in practice because states do not want to share their judicial powers (Tunçer, 2024: 98). However, it is also argued by some others that it is necessary to first become a party to the Statute and then harmonize domestic law (Bayıllıoğlu, 2007: 70). Nonetheless if not regulated accordingly, the possible outcomes are concerning. To explain this we will have to clarify the possible outcomes and with that indicate the problems and finally give a solution. But first we will look at the crimes against humanity and their codifications in both Turkish Penal Code (TPC) and the Statute.

Regulations of Crimes Against Humanity

Crimes against humanity and genocide is regulated in articles 76-77 of TPC and 5-6 in Rome Statute. In doctrine it is said that crimes against humanity are unique and exclusive but easy to confuse with similar crimes such as genocide (Önok, 2019: 663). Crimes against humanity and genocide can be distinguished from the crime of aggression and war crimes in that they fundamentally target all of humanity (İnan, 2023: 68). Accordingly there are also some main differences to distinguish genocide from crimes against humanity. From an historical point of view the crime of genocide was perceived as a sub-classification of crimes against humanity rather than an independent crime in the early 20th century. The Nuremberg Charter and the trials at the Nuremberg Court have addressed crimes against humanity as a fundamental concept within the framework of international law and with that the Court Charter is the first international law document to define crimes against humanity (Nişancı, 2021: 229). In the Statute genocide requires a specific intent which distinguishes it from crimes against humanity. Genocide requires an intent to destroy, in whole or in part, a national, ethnical, racial or religious group (Statute, article 6). In cases where specific intent is lacking, prosecution may be for crimes against humanity or war crimes (Nişancı, 2021: 239). Although there are some similarities, we can say that crimes against humanity are broader than genocide (İnce Tuncer, 2024: 105-106). But again, it must be mentioned that they can also overlap. Also, it can be said that genocide is a special case of crimes against humanity (İnan, 2023: 84). If we go back to the historical point, we see that crimes against humanity could only be committed against persons not actively participating in hostilities; acts committed by warring parties against each other were considered war crimes. But the accepted definition of crimes against humanity has evolved and now refers unequivocally to violations committed in both peacetime and wartime (Nişancı, 2021: 239).

Now to distinguish them, we must look at the regulations concerning crimes against humanity in both TPC and the Statute. A quick scan can make us clearly see the significant differences. Statute regulate crimes against humanity as counted acts that has the purpose of “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (Statute, Article 7). The Statute uses "or” between widespread and systematic with the purpose of separating them. But these terms are not defined in the Statute. The task of defining was left to case-law/jurisprudence (Erhan, 2018: 119). On the other hand TPC regulation arranges crimes against humanity as “acts that are systematically committed in against a segment/part of society in accordance with a plan with political, philosophical, racial or religious motives” (TPC, article 77). Regulation of TPC has been inspired from Article 6/c of the Nuremberg Statute, and Article 212-1 of the French Penal Code. Academic writings have criticized this approach in that framing the definition in the Statute would have been a much better choice (Önok, 2019: 664). What we can see is that TPC narrows the concept (İnan, 2023: 73). Does it make a difference is the question.

We can see that the Statute requires widespread or systematic attack while TPC mentions systematically committed attack. The attack being widespread or systematic is considered a contextual element (Önok, 2019: 671) and they are alternative conditions (İnan, 2023: 73). In one particular case ICC determined that an attack must be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims" (Erhan, 2018: 119-120). While this is the logical definition it is also mentioned that systematic does not require it being large-scale and actually relates to "the organised nature of acts of violence and to the improbability of their random occurrence" (Erhan, 2018: 120). There is also another inference that states widespread is related to the number of victims while systematic means as a result of the existence of a specific policy or plan (İnan, 2023: 74).

For the regulation in TPC we can say that prevalence is not an element of crimes against humanity (İnce Tuncer, 2024: 106). Because regulation is preventing the evaluation of prevalence rule (Yoka, 2022: 124). Still the act alone is not sufficient for the crime to occur. It must be committed systematically with a plan. It is argued that the concept of "being systematic" is not included to ensure harmony in the articles of the law, but to protect the unique essence of the crime in terms of content and to draw its own boundaries (Sabah, 2019: 28). These conditions are said to distinguish crimes against humanity from individual and random acts (İnan, 2023: 75). With the knowledge of these differences, we can go back and approve the argument that TPC narrowed the scope (Erhan, 2018: 123) For ICC it can be applied just by being simply systematic or widespread with the basic knowledge of it being an actual attack while Türkiye can apply it within an execution of a plan which must be a systematic attack.

The Statute requires acts committed accordingly "with knowledge of the attack" while TPC requires "in accordance with a plan". The Statute requires only that the attack has to be made in the knowledge of the act. It is not mandatory to know the underlying cause and it is enough knowing that the crime is done with just basic knowledge of making an attack (Durmuş et al., 2017: 512-513). So it is not mandatory to know the details and characteristics and even the plan. Perpetrator only need to know its general existence (Önok, 2019: 685). But TPC also requires a plan. Perpetrator need to know the existence of a plan which is executed systematically (Erhan, 2018: 118). But also in the Article 7/2 of the Statute it is regulated that attack directed against any civilian population means a course of conduct involving the multiple commission of acts that are referred to in paragraph 1 as "against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack". So it is said that in order for the attack in question to be committed, there must be an attack that is constituted by crimes committed against any civilian population with the assistance of a state policy or a political organization. TPC also requires "with political, philosophical, racial or religious motives" which has to complete a systematic plan. It can be argued that both of the regulations are narrowing down the concept (Erhan, 2018: 121).

The Statute requires that the acts must be committed in accordance with "the policy of a State or organization". Crimes may therefore be committed through acts instigated by, or with the connivance or acquiescence of, state officials or persons under their control (Sarıgüzel, 2013: 258). Although these explanations does not put forth if there is a difference we can try to make a comparison between "a plan" and "state or organisational policy". By literal interpratation we can come to a conclusion that plan is more concrete than the notion of policy (Erhan, 2018: 123). Although it is mentioned that domestic court may consider "plan" in accordance with the the Statute, the term "plan" cannot replace all the needs of policy as examined in ICC.

The Statute requires attack to be “directed against any civilian population” meanwhile TPC requires “against a segment/part of society” and the aim of attacking with “political, philosophical, racial or religious reasons”. In situations of international armed conflict, civilians are defined in the 1949 Geneva Conventions and Additional Protocol I as “persons who are not members of the armed forces of a party to the conflict”. In Additional Protocol II, civilians are defined in non-international armed conflict situations. Accordingly, in non-international armed conflict situations, civilians are “persons who are not affiliated with and not participating in hostile forces” (İnan, 2023: 74). It has to be mentioned that this use of a concept can be discussed. It is said that with this use it is ensured that it cannot be processed for a single person. However, it also gives the impression that the act must be committed against a specific group in particular (Çakar, 2012: 192). It is argued that the purpose here is to explain that a broad range of victims should be targeted and that isolated attacks against individuals do not constitute this crime (Önok, 2010: 31). So this definition of crime narrows the scope by not including any specific population, but only applying when it is against some part of a society.

Another main problem is that TPC requires a moral element. The Statute only requires two main (mental) elements. They are the mens rea proper to the underlying offence and the awareness of the existence of a widespread or systematic attack (Önok, 2019: 684). On the other hand TPC requires acts to be committed “with political, philosophical, racial or religious motives”. Although general intent is sufficient in terms of the the Statute, TPC requires a more specific intent (Tuncer, 2024: 106). Listed limited and requires extra evidence according to the limited area, it is distinct from the Statute. In the Statute it is not needed to prove perpetrators motive. It is sufficient that the perpetrator was or could be aware of a widespread or systematic attack against civilians (İnan, 2023: 75). But in TPC it has been determined that general intent will not suffice. Accordingly, the fact that it was committed with "political, philosophical, racial or religious motives" is a special intent (Sabah, 2019: 28). So, for TPC, if perpetrator is acted personally without the specific moral intent, it can only be punished by ordinary crimes (Önok, 2019: 688).

Aside from this criteria TPC did not listed crimes such as the Statute. What will happen to the crimes that are not listed? For matters such as war crimes, even though it is still problematic, Military Penal Code (MPC) has citations to TPC. So if a war crime is not listed in MPC it is only possible to punish the act with an ordinary crime. But in case of acts that are listed in the Statute but not included in the crimes against humanity in TPC it is problematic. Deportation or forcible transfer of population, enforced disappearence of persons, persecution, apartheid, sexual slavery are not listed in the TPC as acts which may constitute crimes against humanity (Önok, 2019: 664). According to one view in the doctrine, it is possible to judge the acts included in the Statute in accordance with other provisions of the TPC (İnce Tuncer, 2024: 107). But this approach which is argued and to be used for before mentioned specific intent needs and war crimes situations is not a good solution (neither for these situations nor for crimes against humanity) .It is argued that ordinary crimes can never act as a deterrent (Erhan, 2018: 124). So it is not suitable for the judicial system. To judge an international crime as an ordinary crime would not be a satisfactory solution considering the purpose of criminal law, the unfairness of the act and the legal interest protected by the crime (İnce Tuncer, 2024: 107). So it can be said that TPC is not regulated according to the Statute (at least we can say that for crimes against humanity) (Erhan, 2018: 130). The definition of crime against humanity made in Article 77 of the TPC is different from the Statute and is much narrower in terms of the material element of the crime (İnce Tuncer, 2024: 105). So it is recommended to revise crimes against humanity accordingly with the Statute. But one must ask why. What are the consequences of not revising and reforming crimes against humanity?

Problems of Not Complying with the Statute

Türkiye's general attitude towards legal regulations, as we mentioned above, is to be party to some of the International Regulations (Bayıllıoğlu, 2007: 60). What is understood from the attitudes displayed by Türkiye after the Rome Conference is that Türkiye had the desire and will to be a party to the Statute (Bayıllıoğlu, 2007: 66).

But Türkiye had some requests and problems in the meantime. There was more than one reason for non-participation. For instance the definition and scope of the crime of aggression and crimes against humanity were not sufficiently clear in the Statute. Another reason was that terrorism and drug crimes were not included in the statute (Çetin, 2010: 356). For example if acts such as forced transfer of population or exile, torture and enforced disappearance of individuals, which constitute the material elements of crimes against humanity, are associated with the events that took place in the Southeast during the fight against terrorism, a dangerous situation may arise for Türkiye (Yoka & Kurtbağ, 2022: 125). But Türkiye's problems does not end there. There is also the Cyprus problem. Taking the acts that is taken by Türkiye for Cyprus as a continuous crime is possible for the ICC and would be a problem that could come forth even though it is mentioned in the Statute article 11 that the ICC has jurisdiction only with respect to crimes committed after the entry into force of this Statute. So it has the possibility of becoming a problem especially with the settlement activity problems (Sarıgüzel, 2013: 266). Also the sui generis existence of the TRNC makes it difficult to obtain a logical and legal decision that is beyond dispute (Erhan Bulut, 2021: 84-85). Acts occurring in northern Iraq, Syria and other Eastern countries or on the border of Türkiye are also other problems that require solution before partying with the Statute (Yoka & Kurtbağ, 2022: 125-126). It is also said that uncertainty in the definition of the crime against humanity and genocide is also a reason (Yoka & Kurtbağ, 2022: 123). Some writers argue that there is no obstacle for Türkiye to become a party to the Statute (Çetin, 2010: 359). But with the current and ongoing problems it is possible to say that not joining to the Statute may be the right call.

However, there is an ongoing risk that Türkiye's citizens may be prosecuted even if they are not party to the Statute (Bayıllıoğlu, 2007: 99). According to the Statute there are three ways to accept the jurisdiction of the Court. States that are party to the Statute have already accepted the compulsory jurisdiction of the ICC. Secondly if a non-party state may notify the Registry of the ICC and if it recognizes the jurisdiction of the Court for the acts that fall within the jurisdiction of the Court. Thirdly if the act was committed in the territory of a State Party or by a national of a State Party, the ICC shall have jurisdiction (Çetin, 2010: 346-347).

In the article 13 of the Statute the conditions for opening an investigation are listed. Accordingly the Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15 (Rome Statute, Article 13).

So in order for a crime included in the Statute to be tried before the ICC, the perpetrator does not need to be a citizen of a State Party to the Statute (İnce Tuncer; 2024: 97). In case of a situation where Türkiye decides to take party to the Statute, even in a request of a state that is not affected by the crime, that state may request the Prosecutor's Office to conduct an investigation ex officio. Again a country that is not a party to the Statute and with which we are in conflict may denounce us (Sarıgüzel, 2013: 261).

Thus, a state that is not a party to the Statute may have to undertake certain obligations regarding ICC proceedings (Ince Tuncer, 2024: 100).

The only way for a state to eliminate the jurisdiction of the ICC (for example prosecutor may launch an investigation into these matters) is that the citizen has to be tried in its own national courts (Yoka & Kurtbağ, 2022: 125) which is very rare, exceptional and mostly known as sham trials in history (Bayıllıoğlu, 2007: 104-105). Parties who want to prevent the ICC from carrying out trials choose to regulate the crimes that fall within the Court's jurisdiction in their domestic law and with that they bring their criminal legislation into line with the Statute (İnce Tuncer, 2024: 99). So the problems mentioned above concern Türkiye. They exist without the question of if Türkiye will join party to the Statute or not (Bayıllıoğlu, 2007: 105).

The adoption of the principle of complementarity with the Status is described as the biggest concession given to the states as a result of their pressure during the negotiations (Kılıç, 2009: 643). Since the ICC has the principle of complementarity, it is subsidiary (Önok, 2010: 9). The ICC is not a first judicial authority and it is secondary to the states (Karadaş, 2009: 42-43). States have primary jurisdiction, and if they wish to exercise their jurisdiction over a dispute that falls within the jurisdiction of the Court, they will be able to do so freely. In such a case, the jurisdiction of the ICC will cease. Only when the national courts are unwilling or unable to prosecute, can the ICC step in and take over the task of prosecuting instead of the national courts (Önok, 2010: 9). The vagueness of the language used is criticized here (İnce Tuncer, 2024: 99).

In this case it is argued that since Türkiye is not a party to the Statute, it will not be able to rely on the principle of complementarity, but the decision to be given as a result of the trial may prevent the citizen from being tried again by the ICC, in accordance with the Statute's ne bis in idem principle (Bayıllıoğlu, 2007: 81-82). So it is possible to use Ne bis in idem principle and with these principles activation Türkiye prevent a retrial in the ICC (Önok, 2010: 10). But some scholars argue that since the principle of complementarity is a general principle, it can be used even if one is not a party to it and that there is no need for such a distinction (for example İnce Tuncer uses complementarity rule). Basically complementarity rule and ne bis in idem is complementary to each other and it can be said that complementarity which is mentioned both in preamble and article 1 of the Statute and ne bis in idem principle in article 20 of the Statute is in use to avoid ICC trial. Accordingly the ICC cannot try an accused when the accused has already been tried, whether convicted or acquitted, for the same conduct, whatever the legal characterization is of the crime. The only exceptions would be if there is a sham trial (Carter, 2010: 196)

Before the text of the agreement was finalized, many states expressed their doubts about this principle. It is stated that the court should have a wide area of freedom while exercising its authority. Türkiye was one of them (Karadaş, 2009: 42-43). However, this may pose a problem for us. Indeed, the court should have the power to act freely as it has a very important role. But if their authority were broader, Türkiye would be more open to prosecution for the issues we mentioned above.

At first glance it seems that there is no problem for such situations. But it should not be forgotten that no country would want to trial their own citizens, let alone their executives. In most cases it will be senior officials/executives who will be tried (İnce Tuncer, 2024: 99). Also making a trial just because of a threat is a problematic action. Türkiye’s history contains constant conflicts unlike most of the countries. Türkiye is unique in the world in many ways (Bayıllıoğlu, 2007: 112). The possibility of being prosecuted for its military actions could restrict Türkiye and harm its freedom of movement even damaging its national security (Bayıllıoğlu, 2007: 109). That being the case Türkiye has to be ready for such trials so that the ICC doesn’t judge Türkiye.

So in reality problem still continues. In case of two situations that mentioned in the Statute there can be retrials. If domestic courts trial "were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court or otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice" (Rome Statute, article 20). Only when a bona fide and effective trial is conducted by national authorities in accordance with the right to a fair trial and international standards of justice ICC's it will not be possible for ICC to exercise its jurisdiction. It must be adequate and appropriate with regard to the gravity of the crime (Önok, 2010: 10).

But as we mentioned before, our regulation is not in accordance with the Statute. In this situation even an effective trial may not be enough, for trial may need to cover the areas that the TPC left outside. For these situations giving a punishment for ordinary crimes because it was not regulated in International Crimes Division of TPC may not be suitable for ICC and lead to a retrial. It is argued that the only way out seems to be to regulate all types of crimes included in the Statute in Turkish law and, when necessary, to prosecute them (Bayıllıoğlu, 2007: 83).

For these reasons it is argued that it would be appropriate to establish a broad-authority International Criminal Court in Türkiye with a structure and procedure parallel to the ICC and to address international crimes in a separate text outside the Turkish and Military Criminal Codes (Domaç; 2009: 190). Germany has made the relevant regulations with the International Criminal Code (İnce Tuncer, 2024: 96). It is even said that International Criminal Code of Germany has passed ahead of the Statute (İnce Tuncer, 2024: 123) and can be a guide for Türkiye.

It can be said that it is not of great importance for Türkiye to be party to the Statute, despite the concrete regulations process proves that it has lost its urgency, it may be possible to first become a party to the Statute and then regulate domestic law. Nonetheless problem requires urgent changes in domestic law. In order to prevent the Court from having direct jurisdiction over the crimes alleged to have been committed, it is essential for Türkiye to have an effective domestic legal mechanism within the framework of the principle of complementarity (Aslan, 2007: 77). It should be noted that, no matter what, Türkiye must bring its domestic law into compliance and cooperate with the court even if it is not a party to the Statute (Domaç, 2009: 192). If ICC cannot accomplish its duty and if the non-party states do not comply with the Statute and stay unwilling or obstructive in their cooperation, the ICC will remain a "Utopian court in the clouds" (Köprülü, 2005: 56).

Conclusion

Inconsistencies between Türkiye's legal provisions on crimes against humanity and the Rome Statute present significant challenges for both legal implementation and international cooperation. While Türkiye has included crimes against humanity in its domestic law, the current framework narrows the scope of these crimes in ways that could hinder effective prosecution and international cooperation. Legal gaps, misinterpretations, and the potential risk of ICC jurisdiction over Turkish citizens remain urgent concerns.

To mitigate these risks, Türkiye should consider revising its legal framework to align more closely with the Rome Statute. This could include adopting a broader definition of crimes against humanity, removing unnecessary restrictive elements, and ensuring that its legal system effectively prosecutes such crimes and prevents external judicial intervention.

Strengthening domestic legal structures in line with international law would not only increase Türkiye's credibility in the global legal community, but would also contribute to the broader goal of ensuring accountability for crimes against humanity worldwide.

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WEB: www.iksadkongre.com/law
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VICTIMHOOD IN MIGRANT SMUGGLING: CONCEPTUAL AMBIGUITIES AND A CRIMINAL LAW PERSPECTIVE

Research Assistant Elif ŞAHİN
Selçuk University, Faculty of Law
ORCID:0000-0001-7478-0271

Abstract
Migrant smuggling, a crime committed for profit, disregards human life and dignity and has serious consequences on an international scale. During the smuggling process, many migrants are compelled to travel under poor conditions that endanger their lives. Paradoxically, strict border measures implemented to prevent irregular migration have paved the way for its proliferation. Since access to safe and legal pathways is often restricted, many migrants are left with no choice but to resort to smuggling operations run by criminal organizations. This approach drives migrants toward dangerous routes, making smuggling a lucrative business due to the low risk of being caught and punished. To successfully combat criminal organizations, states must engage in thorough, coordinated, and determined international cooperation. The Palermo Convention and its protocols serve as essential instruments enabling states to act jointly.
This paper outlines the fundamental differences between smuggling and trafficking before the legal analysis of migrant smuggling, in order to avoid conceptual misunderstandings. Generally, smuggling involves migrants voluntarily participating in illegally crossing borders based on an agreement with the smuggler, whereas trafficking is characterized by coercion, threat, deceit, and exploitation. The primary focus of this study is the position of the migrant in the context of criminal law and whether the migrant can be regarded as a "victim." The Protocol's deliberate avoidance of the term "victim," along with the migrant's vulnerability, and the circumstances under which smuggling occurs, reveal a tension between the legal construction of victimhood and the realities of irregular migration.
By comparing state- and migrant-centred approaches to smuggling, this study questions which value takes precedence—the state's territorial sovereignty or the fundamental rights of migrants—and examines whether the migrant can be regarded as a victim, with particular attention to how this issue is regulated under Turkish criminal law.
Keywords: Migrant smuggling, Victim, Consent, International Criminal Law, Transnational Crimes.

1. In General: Migrant Smuggling

Migrant smuggling is a transnational criminal activity that endangers the lives of migrants and disregards human life and dignity for profit (European Commission, 2021: 1). In an effort to maximize their earnings, smugglers often cram hundreds of migrants into airless storage spaces or overcrowded boats. Due to the harsh conditions of transportation, many migrants experience extreme exhaustion, dehydration, malnutrition, or lose their lives (Obokata, 2005: 400). According to the Missing Migrants Project of the International Organization for Migration, it is known that 201 migrants lost their lives in the Mediterranean alone between January and April of 2025.
Irregular migrants seek to reach countries where they believe they will have better employment or subsistence opportunities, often because they have friends, family members, or diaspora communities living there (EC, 2021: 5). Poverty, discrimination based on race or gender, and humanitarian crises are cited among the most common causes of smuggling (EC, 2021: 1).

The 2015 Refugee Crisis, which followed the onset of the economic crisis in 2008 and the uprisings referred to as the Arab Spring, led to an increase in irregular migration and, consequently, migrant smuggling (Aljehani, 2015: 136). It is estimated that in 2016, at least 2.5 million migrants were smuggled and that the profits generated from smuggling activities ranged between 5.5 and 7 billion US dollars (United Nations Office on Drugs and Crime, 2018: 5). The European Agenda on Migration, adopted by the European Commission on 13 May 2015, identified the fight against migrant smuggling as a priority. Likewise, the European Agenda on Security, adopted on 28 April 2015, also defined cooperation against migrant smuggling within the EU and with third countries as a priority in combating organized criminal networks.

In an effort to prevent irregular migration, the European Union has increasingly tightened its border controls. However, this approach has inadvertently created a market for migrant smuggling (Goodey, 2003: 417). For migrants who wish to enter Europe but are unable to do so through legal channels, resorting to smuggling operations carried out by criminal networks often remains the only alternative. Individuals in need of international protection—refugees and migrants—are frequently forced to resort to illegal means, as they are unable to leave their country of residence and enter a safe one through lawful routes (Guild, 2006: 4). In 2023, more than 280,000 irregular border crossings into the EU were recorded, and it was reported that over 90% of these were facilitated by smugglers (EC, 2023: 1). Moreover, considering the assumption that "one is caught, two pass" the actual number may be closer to one million (Heckmann et al., 2000: 171).

This reality has made smuggling an extremely profitable business for criminal networks. The number of such groups exploiting the vulnerability of migrants has increased, largely due to the low risk of apprehension and punishment (Europol, 2022: 9–10; EC, 2015: 1). In order to transform migrant smuggling into a high-risk, low-profit activity, the fight against it must be conducted at the international level and supported by effective sanctions (EC, 2015: 2).

Reflecting the growing international interest in human trafficking and smuggling—particularly in Europe since the early 2000s—the United Nations adopted the Convention against Transnational Organized Crime (Palermo Convention) on 15 November 2000 (Guild, 2006: 1). As the first international instrument aimed at combating organized crime, the Convention was complemented by three additional protocols: "the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children"; "the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition"; and "the Protocol against the Smuggling of Migrants by Land, Sea and Air". These protocols promote cooperation among State Parties in the fight against human trafficking and migrant smuggling, and in the protection of victims (Kiss & Windt, 2024: 61). However, it must be noted that these protocols are applicable only to activities that are transnational in nature and carried out by organized criminal groups.

2. The Difference Between the Crime of Migrant Smuggling and the Crime of Human Trafficking

Although the terms *migrant smuggling* and *human trafficking* are frequently mistakenly used interchangeably, they in fact refer to two distinct unlawful practices. While both involve the transportation of particularly vulnerable groups (such as migrants, women, and children) for the purpose of financial gain, there are several fundamental differences between them.

In cases of migrant smuggling, the illegal entry of the migrant into a country is the shared objective of both the smuggler and the migrant, and the migrant knowingly and willingly violates immigration laws. As both parties are typically cooperating, the smuggling operation is mutually beneficial (Jones, 2012: 493).

In contrast, human trafficking involves transportation by means of coercion, threat, or deception (Obokata, 2005: 396). Whereas trafficking can occur both across borders and within a single country, smuggling necessarily involves the crossing of international borders (Obokata, 2005: 397). In migrant smuggling, individuals voluntarily participate in the process of irregular migration and pay the smuggler to facilitate their border crossing. In human trafficking, by contrast, individuals are subjected to exploitation regardless of whether a border is crossed (UNODC, 2018: 19; EC, 2015: 2). In this regard, the fundamental distinction lies in whether or not the person transported by illegal means is released at the end of the process (Goodey, 2003: 419). In migrant smuggling, the relationship between the migrant and the smuggler typically ends once payment has been made or the border has been crossed. In human trafficking, however, the exploitation continues beyond the point of transportation (Jones, 2012: 493; Hsu, 2007: 507). Nonetheless, it must be acknowledged that the line separating trafficking from smuggling is not always as clear-cut as the definitions suggest (Obokata, 2005: 398).

3. Conceptual Ambiguities

According to Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, migrant smuggling is defined as "*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident*". Article 6 of the Protocol obliges State Parties not only to criminalize acts that facilitate illegal border crossing, but also those that enable a person to remain in the country unlawfully, even if entry was achieved through legal means.

Although the Protocol against the Smuggling of Migrants does not explicitly refer to the consent of the migrant as an element of the offence, in practice, the migrant agrees to relocate and consents to travel to another country (Aljehani, 2015: 131). When consent is viewed as a element of the crime, it is generally accepted that migrants voluntarily participate in the act of smuggling (Aljehani, 2015: 131; Obokata, 2005: 396). Accordingly, it is often said that "it is not the smuggler who finds the migrant, but the migrant who finds the smuggler; and they make a voluntary agreement based on mutual trust" (Heckmann et al., 2000: 170; Jones, 2012: 493).

Article 5 of the Protocol explicitly states that migrants shall not be held criminally liable for having been the "object" of smuggling. However, this provision should not be interpreted as granting migrants the status of victims per se, nor should it be construed as denying them all claims to victimhood (Spena, 2021: 49). After all, the Protocol repeatedly emphasizes the need to protect the rights of smuggled migrants.

In this context, the legal status of the migrant in relation to the act of smuggling becomes a complex issue. Unlike the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which systematically refers to trafficked individuals as "victims", the Protocol against the Smuggling of Migrants deliberately avoids the use of this term. A review of the travaux préparatoires of the Convention and its Protocols reveals that this was a conscious decision. Indeed, it is stated that: "*At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 3, as amended after extensive discussion. The protection of the rights of migrants was again in the forefront of the debate, while it was agreed that the notion of 'victims', as incorporated in the corresponding article of the trafficking in persons protocol, was not appropriate in the context of the present article.*" (UNODC, 2006: 461).

Furthermore, while individuals affected by trafficking are perceived as victims, it has been argued that migrants are not viewed as such by the public because they knowingly and willingly engage in the smuggling process (Jones, 2012: 497; Hsu, 2007: 507). Conversely, some perspectives portray smugglers as "greedy criminal organizations" exploiting the vulnerabilities of migrants, who are seen as completely defenseless victims. However, in certain cases, it has been reported that migrants did not feel victimized by smugglers. For instance, some migrants stated that the smuggler treated them kindly or even considered the smuggler a friend (Aziani, 2023: 81, 91; Sanchez, 2018: 35; Maher, 2018: 39). Given these circumstances, while there appears to be no ambiguity in defining the smuggler as the perpetrator of the offence, the position of the migrant under criminal law remains considerably unclear (Rebetz & Ölçer, 2023: 2).

4. The Victim in the Crime of Migrant Smuggling

In criminal law, the identification of the victim requires an assessment of the natural person who owns the object of the crime, who has suffered a wrong, and harmed as a result of the criminal act (Özgenç, 2024: 226; Koca & Üzülmez, 2024: 114; Akbulut, 2024: 486; Artuk et al., 2024: 351). In order to determine who qualifies as the victim in the crime of migrant smuggling, it is first necessary to clarify the object of the crime. The object of a crime is the person or thing upon which the criminal act is directed (Koca & Üzülmez, 2024: 116; Akbulut, 2024: 489; Artuk et al., 2024: 353). In this regard, two main approaches can be identified in the literature: the state-centred and the migrant-centred approach.

According to the first approach, if the object of the offence is considered to be the territorial integrity of the state, then the victim of the smuggling offence is the state itself, as it is the entity whose borders have been violated and whose sovereignty has been undermined (Musacchio, 2004: 1018; Campana & Varese, 2016: 93). From the perspective of this state-centric view, the criminalisation of migrant smuggling primarily seeks to prevent irregular migration. In other words, the core concern is not the relationship between the smuggler and the migrant, but rather the relationship between the migrant and the state whose territorial sovereignty is infringed (Spena, 2021: 44–45). According to this line of reasoning, criminal law should prioritise the protection of state sovereignty and public order, rather than that of the migrant (Rebetz & Ölçer, 2023: 40). However, it should be noted that only natural persons can qualify as victims in criminal law; thus, in our view, under this approach, the actual victim cannot be the state itself, but rather the population constituting the state whose borders are being violated, or even the international community.

In contrast, the migrant-centred approach holds that the object of the crime is the migrant, and that the key issue lies not in irregular migration per se, but in the migrant's vulnerable and exploitable condition in relation to the smuggler. Under this approach, the criminalisation of migrant smuggling is not based on the migrant's breach of border regulations, but rather on the violation—or at least the endangerment—of the migrant's rights, resulting from the exploitation of their desperation and lack of alternatives (Spena, 2021: 44–45). The migrant's apparent consent is often a product of coercive socioeconomic conditions, and it is well-documented that migrants frequently suffer harm and/or abuse during the smuggling process. For this reason, persons who are financially exploited due to their vulnerability must be regarded as victims of the offence (Tezcan, Erdem & Önok, 2024: 49). Otherwise, the refusal to recognise migrants as victims in this context would contradict international norms aimed at prohibiting modern slavery (Jones, 2012: 499).

The legal position of irregular migrants is more "invisible" compared to that of victims of human trafficking, which often leads to the human rights violations and victimisation caused by smuggling being overlooked (Rebetz & Ölçer, 2023: 5).

During the smuggling process, migrants may experience indirect forms of victimisation due to their irregular status (Campana & Varese, 2016: 97; Jones, 2012: 497–498). One example of this is the disproportionately high prices migrants are charged. For instance, Syrian nationals are reported to pay higher fees than many other migrants for smuggling services along the Mediterranean route—fees that do not necessarily guarantee a safer journey (UNODC, 2018: 5). Moreover, individuals who agree to engage in prostitution or offer their labour in exchange for crossing a border may also be considered within this scope. These migrants can, in fact, be regarded as "slaves," as they lack the financial means to pay upfront and must work off their debt to the smuggler after arrival. In some cases, migrants are so desperate to meet their basic needs that they are compelled to accept exploitative and inhumane working conditions. When a migrant has "no realistic or acceptable alternative" the smuggler's exploitation of that vulnerability for financial gain may constitute a serious injustice—even in cases that do not involve physical violence or threats to life or bodily integrity (Spena, 2021: 53).

As previously noted, the Protocol deliberately avoids the use of the term victim, it does not deprive migrants of all claims to victimhood. Notably, Article 2 of the Protocol states a dual purpose: to protect the rights of smuggled migrants and to combat smuggling activities carried out by transnational criminal organisations. This dual objective reflects both state-centred and migrant-centred perspectives and adopts a hybrid approach (Staiano, 2022: 18). Accordingly, the aim of criminalising migrant smuggling is not limited to the protection of public order and state sovereignty; it also encompasses the protection of the fundamental rights and freedoms of migrants (Rebetz & Ölçer, 2023: 40). Therefore, it must be acknowledged that, in addition to the general public of the state whose sovereignty has been violated, the migrant—who is directly affected by the act—must also be recognised as a victim of the offence. In our view, the victim, broadly speaking, encompasses all members of the affected society, while in a narrower sense, it is the migrant *themselves* who has been brought into or enabled to remain in the country through unlawful means (Şen & Malbeleği, 2011: 99; Kangal, 2019: 235).

Furthermore, it should not be overlooked that other offences may be committed against the migrant during the smuggling process (UNODC, 2010: 9), and if the smuggler fails to comply with the terms of the agreement, the migrant may suffer direct harm or exploitation (Campana & Varese, 2016: 98; Jones, 2012: 493–494; Goodey, 2003: 419). Examples include being coerced into prostitution or forced labour, or being deprived of liberty. In such cases, when migrants are stripped of their right to self-determination after crossing the border, the crime of migrant smuggling may evolve into human trafficking (Campana & Varese, 2016: 93, 98; Jones, 2012: 494).

Therefore, two main views may be put forward regarding whether migrants qualify as victims in the context of migrant smuggling. According to the first view, migrants are not the victims of the crime of smuggling, but rather its object, and they may only be considered victims if the injustices they suffer during the smuggling process constitute separate offences (UNODC, Model Law, 2010: 20; UNODC, 2018: 19). According to the second view, smuggling is a method of profiting from the migrant's vulnerability, desperation, and exposure to exploitation, and since it often occurs under degrading and inhumane conditions, migrants should be regarded as victims of the offence of migrant smuggling, as well as of any related crimes (Jones, 2012: 498; Musacchio, 2004: 1018).

5. The Legal Framework in Turkish Criminal Law

The crime of migrant smuggling is regulated under Article 79 of the Turkish Penal Code No. 5237. The relevant provision reads as follows:

Article 79 - Migrant Smuggling

(1) Any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain:

a) enables a non citizen to enter, or remain in, the country, or

b) enables a Turkish citizen or a non citizen to go abroad, shall be sentenced to a penalty of imprisonment for a term of three to eight years and a judicial fine of up to ten thousand days. (Sentence Added on 22 July 2010 – By Article 6 of the Law no. 6008) where the offence remains as an incomplete attempt, the penalty shall be imposed as if completed.

(2) (Paragraph Added on 22 July 2010 – By Article 6 of the Law no. 6008) The penalty to be imposed shall be increased by a half to two-third where it:

a) constitutes a danger to the lives of the victims,

b) subjects the victims to degrading treatment.

(3) Where the offence is committed in the course of the activities of a criminal organization, the penalty to be imposed shall be increased by one half.

(4) Where the offence is committed by a legal entity, the relevant security measures shall be imposed upon that legal entity.

In the second paragraph—added in 2010 through Law No. 6008, which introduced an aggravated form of the offence due to its consequence—the term *"victim"* is explicitly used, thereby acknowledging that migrants are the victims of this offence. Moreover, the legislative rationale of the article further supports this interpretation, stating that "*the real victims of this offence are people who, due to their desperation and poverty, struggle to find a means of livelihood*" Thus, it must be accepted that the object of the smuggling act is the migrant themselves, and accordingly, the object of the offence and the victim are aligned (Kangal, 2019: 238). However, despite the clarity of the legislative text, the Turkish Court of Cassation has in several decisions stated that migrants are not the victims but rather the object of the offence, thereby holding that the sole victim is the international community (4th Criminal Chamber, 2023/13995 E., 2023/26327 K., 26.12.2023; 2023/1041 E., 2023/17489 K., 26.4.2023; 2022/15185 E., 2023/850 K., 7.2.2023).

6. Conclusion

Migrant smuggling is a legally and morally complex phenomenon that challenges the balance between state sovereignty and human rights. While international instruments like the Palermo Protocol criminalise smuggling and emphasise state protection, they remain ambiguous about the legal status of migrants involved. This ambiguity is reflected in Turkish law, where Article 79 refers to migrants as *victims*, yet judicial decisions tend to treat them merely as the *object* of the offence.

However, as shown, smuggling often involves conditions of exploitation and vulnerability that can give rise to victimhood, even when consent is present. Recognising migrants as potential victims is essential—not only for legal coherence but also for aligning criminal law with fundamental human rights. A more protective and balanced legal approach is needed to ensure justice for all parties involved.

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APPLICATION IN TERMS OF TIME IN CRIMINAL PROCEEDINGS

Prof. Dr. Berrin AKBULUT
Selçuk University, Faculty of Law
ORCID: 0000-0001-8045-2784

Abstract
Due to the temporal changes in the rules governing criminal procedure, issues concerning the applicability of legal norms in terms of time also arise within the scope of criminal procedure law. In criminal procedure law the principle of immediate application prevails. Once a legal provision enters into force, it applies to ongoing and future procedural acts whether in favor of or against the accused. Although this is the general rule, the controversial legal classification of certain legal institutions gives rise to disputes regarding their temporal applicability. Another issue arises from amendments related to durations. The immediate application of such amendments upon their entry into force may result in the loss of legally protected rights.
Even though the general rule is the principle of immediate application, certain legislative regulations introduced within the scope of criminal procedure deviate from this principle. Particularly in regulations concerning personal liberty, the legislature tends to base its approach not on the time the procedural act is carried out, but rather on the time the underlying act was committed. However, the lack of consistency among the provisions while drafting the regulation and the overlooking of certain aspects, results in contradictions and creates problems.
This study, while aiming to address all of these issues and other matters deemed significant, will seek to propose potential solutions.
Keywords: criminal procedure, immediate application, time of the procedural act, time of the commission of the act, mixed legal institutions

I. General Overview

In criminal procedure, the temporal application of legal rules refers to the application of those rules to acts and proceedings conducted during the period in which they are in force. Conversely, it implies that such rules shall not apply to actions that were completed before their enactment, nor shall they continue to apply after being repealed.
The principles typically discussed in relation to temporal application include immediate application, retroactive application, and forward application. Immediate application means that the law currently in force applies to acts and proceedings carried out while it is valid. Retroactive application refers to the application of newly enacted provisions to events and actions that took place prior to their coming into effect. Forward application, on the other hand, implies the application of a provision to acts and proceedings occurring after its repeal (Gökcen et al., 2024: 69).
The issue of temporal application concerns every field of law and holds particular significance in the context of criminal procedural law. Since legal rules may change over time; new rules may come into force, existing laws may be repealed and replaced, or they may be repealed without substitution, these transitions give rise to issues concerning the temporal scope of legal norms. Since criminal procedure is a legal process conducted in relation to acts deemed criminal and unfolds over a certain period, changes of procedural rules are likely to occur during this timeframe, thereby leading to questions and disputes surrounding their temporal applicability.

II. The Principle of Immediate Application

The Criminal Procedure Code (CPC) does not contain a direct provision regarding the temporal application of its rules. However, Article 4 of the Law on the Enforcement and Application of the Code of Criminal Procedure includes a regulation under the title of the jurisdiction of courts. According to Article 4, "(1) The Code of Criminal Procedure shall be applied to all ongoing investigations and prosecutions, as of the date it enters into force, with the exception of those that have been concluded by a final judgment, without prejudice to the provision set out in the following articles.

(2) However, procedural acts and decisions carried out during the investigation and prosecution phases prior to the entry into force of the Code of Criminal Procedure shall retain their legal validity". As it is evident from this provision, the fundamental rule regarding temporal application in criminal procedure law is the principle of immediate application. As a result of this principle, the determining factor in the temporal application of procedural rules is the time at which the procedural act is performed. Accordingly, the procedural act will be carried out in accordance with the regulation in force at the time it is carried out.

Due to the immediate application principle, procedural rules that enter into force shall apply from the moment of their enactment. For instance, if there is an amendment to the law concerning appeal or cassation procedures, such changes shall be applied immediately as of their effective date. The newly enacted provision shall apply to all future, ongoing, and incomplete acts, regardless of whether it is favorable or unfavorable to the individual concerned. Therefore, in criminal procedure law, there is neither a prohibition against retroactive application nor a principle mandating the retroactive effect of the more favorable rule. For example, the Code No. 5271 does not include provisions for private prosecutions and instead recognizes only public prosecutions. When this Code entered into force, proceedings that had been conducted under the private prosecution model were still ongoing. In accordance with the principle of immediate application, these cases were transformed into public prosecutions, and private complainants were granted the status of intervenors (Law on the Enforcement and Application of the Code of Criminal Procedure, Art. 9/2–3). Procedural acts that have already been completed in accordance with the law in force at the time shall remain valid and do not need to be repeated under the new regulation. Because the act was made in accordance with the law in force on the date of the act, it will remain valid. For example, if a person was interrogated by a criminal judge of the peace under the conditions prescribed by the law in force, this interrogation remains valid even if those conditions change later. Likewise, if an interrogation was conducted without the presence of a defense counsel at a time when legal counsel was not mandatory, the subsequent introduction of such a requirement does not invalidate the original act or necessitate its repetition. However, if the act must be repeated, for instance, if the suspect must be interrogated again, the new procedure shall be conducted in accordance with the provisions in force at that time. Similarly, if an individual who had been arrested under the former legal framework is later released and needs to be re-arrested, any new arrest must comply with the legal provisions governing detention as amended in the meantime.

Since the principle of immediate application is a recognized principle in criminal procedural law, it is irrelevant under which statute a procedural institution is regulated. What matters is whether the rule in question pertains to criminal procedure. For example, Article 16, paragraphs 1 and 2, of the Child Protection Law (CPL) stipulates: "Children taken into custody shall be held in the child unit of the law enforcement; in locations where such units do not exist, children shall be held separately from adults in custody". As this provision pertains to criminal procedure, any subsequent amendment to this rule, regardless of whether it is to the benefit or detriment of the individual, shall be applied immediately.

III. Temporal Application in Hybrid Legal Institutions

There are some controversies as to whether certain legal institutions fall within the scope of criminal procedure or substantive criminal law. According to Court of Cassation "It is not sufficient to merely consider the statute in which a rule is codified to determine whether it belongs to the field of criminal procedure or substantive criminal law. As a general rule, norms that define crimes and prescribe penalties pertain to substantive criminal law, while rules that govern the procedures for investigating crime allegations and imposing penalties fall within criminal procedural law. Most procedural provisions regulate only the procedural relationship but some regulate both the procedural and substantive criminal relationship, thus forming hybrid provisions" (YCGK, 14.02.2024, E. 2023/589, K. 2024/58). Examples of such hybrid institutions include the postponement of the filing of a public case which was recognized as hybrid by 8th Criminal Chamber (16.09.2024, E. 2024/14313, K. 2024/6640), the postponement of the announcement of the verdict which was defined as hybrid by Öztürk et al (2024: 649) and also accepted as such by the Court of Cassation (YCGK, 11.10.2023, E. 2022/528, K. 2023/520), prepayment defined as hybrid institution by Dönmezer and Erman (2020: 319, 320, 322) and reconciliation. İpek and Parlak (2011: 51) argue reconciliation has predominantly substantive aspects while Centel and Zafer (2024: 596) emphasize its procedural nature. Likewise, simplified trial and expedited procedure are also considered hybrid institutions. Although simplified trial is a procedural institution, since it also enables a 1/4 reduction in the final sentence in the event of a conviction, it includes rules related to substantive criminal law as well. Thus, it can be considered a hybrid institution containing both procedural and substantive criminal law rules (YCGK, 14.02.2024, E. 2023/589, K. 2024/58). As a result, whether these institutions fall under substantive or procedural law leads to different consequences in terms of their temporal application. For instance, when the Child Protection Law (CPL) entered into force, provisions regarding the deferral of the public case, the postponement of the announcement of the verdict, and reconciliation were set out in Articles 19, 23, and 24 of the CPL. Later, with the enactment of Law No. 5560 dated 06.12.2012, amendments were made, and corresponding provisions in the CPC (Articles 171/2 et seq., 231/5 et seq., and 253) were also deemed applicable to children, except for some differences in the deferral and probation periods. For instance, the deferral period for public cases is 5 years for adults (CPC Article 171/2), while it is 3 years for children (CPL Article 19). Similarly, in the case of the postponement of the announcement of the verdict, the probation period is 5 years for adults (CPC Article 231/8) but only 3 years for children (CPL Article 23). Therefore, the provisions included in the CPC differ from those previously set out in the CPL, which has led to temporal application issues concerning children in practice.

If an institution we mentioned above, which are postponement of the filing of a public lawsuit, postponement of the announcement of the verdict, prepayment, reconciliation, simplified procedure and accelerated procedure of trial, is accepted as part of substantive criminal law, and the newly enacted provisions introduce more burdensome rules, then they will not apply to acts committed in the past. On the other hand, if the institution is considered part of procedural law, the principle of immediate application will apply, meaning the law in force at the time of the procedural act will be implemented regardless of whether it is more or less favorable. If these institutions regarded as hybrid, we apply the temporal rules of substantive criminal law regarding their conditions and consequences, whereas procedural aspects are governed by the temporal rules of criminal procedure. For example, changes concerning who is authorized to conduct reconciliation will be subject to the principle of immediate application under criminal procedure law. Therefore, a procedurally valid act conducted under the law in force at the time will remain valid, and new provisions will only apply to acts not yet performed or those that need to be repeated.

However, if there are changes to the conditions or consequences of such institutions, these will be considered substantive in nature and fall under the principles regarding the application in terms of time of Article 7 of the Turkish Penal Code (TPC). Accordingly, as a rule, the law in force at the time of the offense applies. Yet, if a subsequent amendment introduces a more lenient provision, it must be applied at any stage of the process, whether it is during investigation, prosecution, or execution.

If the subsequent legislation introduces more burdensome provisions, it shall not be applied to acts committed in the past. However, the Constitutional Court, in its ruling regarding the restriction on the application of expedited and simplified trials in CPC's Provisional Article 5 paragraph (d), "as of 1/1/2020, the rapid trial procedure and simple trial procedure will not be applied to the files that have entered the prosecution phase, have been ruled on or have been finalized." thus incorrectly failing to ensure the application of lenient provisions to finalized cases. The provision in Article 250(4) of CPC, which allows the prosecutor to reduce the sentence by half after determining the base sentence and considering potential aggravations such as repetition or chain offenses, is clearly a substantive criminal law rule. Therefore, the Constitutional Court's ruling is flawed. In its judgment dated 25/06/2020 (E. 2020/16, K. 2020/33), the Court annulled the phrase "...prosecution phase has begun..." with regard to simplified trials. Later, it also annulled the phrase "verdict has been issued," but unfortunately upheld the validity of "finalized files" (Constitutional Court, E. 2020/81, K. 2021/4, 14/01/2021). Although the relevant procedural provisions are codified within the Criminal Procedure Code, they directly affect the punishment and are therefore substantive in nature. As such, these lenient provisions must be retroactively applied under Article 7 TPC. For example, the provision in CPC Article 250(4) that allows for a 50% reduction in sentence under expedited procedure, and the provision in Article 251(3) allowing for a one-fourth reduction under simplified procedure, are both rules of substantive criminal law. Hence, even after the verdict becomes final, these procedures should have been applied retroactively in accordance with Article 7 TCK (Akbulut, 2024: 143).

IV. Temporal Application of Amendments Related to Court Jurisdiction

Amendments related to court jurisdiction also fall within the scope of criminal procedural law and are thus subject to the principle of immediate application. The Court of Jurisdictional Disputes considers the rules of jurisdiction to pertain to public order, asserts that no vested rights arise in this context, and holds that newly enacted jurisdictional rules shall apply retroactively. According to the Court, if the court that was competent at the time the case was filed becomes incompetent due to a new law, the (previously competent but now incompetent) court must issue a decision of lack of jurisdiction. However, if there are transitional provisions in the new law stipulating that the new jurisdictional rule shall apply only to cases filed after the amendment comes into force, then the court may not issue a ruling of lack of jurisdiction (Court of Jurisdictional Disputes, 03.05.2021, E. 2021/216, K. 2021/250).

Although in the concrete case the Court of Jurisdictional Disputes stated that jurisdictional rules apply retroactively, the issue in question here relates to criminal procedure and is governed by the principle of immediate application rather than retroactive effect. Since the process is ongoing, the newly enacted amendment must be applied. Therefore, the file should be transferred to the competent court. However, objections to territorial jurisdiction can only be raised up to a certain stage in the proceedings,(before the interrogation in the first instance courts, before the beginning of the review in regional appellate courts, and before the reading of the examination report in cases requiring a hearing). If these procedural stages have been passed, then even if there is a subsequent change in the rules governing territorial jurisdiction, such changes will not be applied.

V. The Principle of Immediate Application Regarding Procedural Requirements in Criminal Proceedings

Procedural requirements in criminal proceedings are also subject to the principle of immediate application. The amendment being favorable or unfavorable to the defendant is not taken into account. For instance, if an offense that was previously prosecutable only upon complaint is, during the investigation phase, reclassified as one prosecutable ex officio (and the complaint period has not yet expired), the requirement of a complaint will no longer apply, and the offense will be prosecuted ex officio (However, the legal nature of the complaint mechanism and of the withdrawal of a complaint is discussed in the literature. Some classifications made regarding their scope by deciding whether these are of criminal procedure, criminal law, or hybrid nature. At this point, there are authors who characterize the complaint (criminal procedure) and the withdrawal of the complaint (substantive criminal law) differently (see Toroslu and Toroslu, 2021: 451, 471)). Conversely, if an offense previously prosecutable ex officio becomes subject to a complaint requirement during the investigation phase, then the person entitled to file a complaint must do so within the prescribed period. In the literature, it is stated that in such cases, the injured party must be informed of the change, and the complaint period must be allowed to begin accordingly (Centel and Zafer, 2024: 65). Otherwise, since the procedural requirement for prosecution is not fulfilled, an indictment cannot be issued. If the procedural requirement changes after the public case has been filed, the prior investigation and prosecution remain valid and there is no need to conduct a new investigation. However, if the procedural requirement constitutes a condition for both the investigation and prosecution, or only for the prosecution, and if that requirement changes during the investigation and prosecution phase, or in the prosecution phase, then since the process is not yet completed, the amended requirement shall be applied immediately, regardless of whether it is to the advantage or disadvantage of the accused. For example, since a complaint is a requirement for both investigation and prosecution, if, during the prosecution phase, an offense formerly prosecuted ex officio becomes one that is dependent on a complaint and the continuation of the case will require the existence of a valid complaint. With Article 14 of Law No. 7531 dated 7 November 2024, Article 73 of the Turkish Penal Code was amended to include a provision stating: “In the offence of insult, the investigation and prosecution of which depend on a complaint, the period for filing a complaint, regardless of the circumstances, cannot exceed two years from the date of the act was committed”. Furthermore, with Article 18 of the same Law, a provisional Article 7 was added to the Code of Criminal Procedure, stipulating: “The amendment introduced to the second paragraph of Article 73 of Law No. 5237 by this Law shall not apply to files that, as of the effective date of this article, are already in the investigation or prosecution phase”. The reason for drafting the provision in this manner is to prevent practical issues from arising. In such cases, since the complaint requirement has already been fulfilled the process is considered complete and the two-year limitation period will not be applied. Thus, it is aimed to prevent problems that may arise regarding whether the complaint will be accepted as a mixed institution and whether the amendment will be applied retroactively by discussing its pros and cons.

VI. Annulment Decisions of the Constitutional Court

Annulment decisions issued by the Constitutional Court regarding rules of criminal procedure are also subject to the principle of immediate application. The procedural actions to be taken after the annulment decision comes into force will be carried out in accordance with the procedure set forth in the annulment decision. Whether the change is favorable or unfavorable to the defendant is irrelevant (CGK, 25.10.2023, E. 2023/120, K. 2023/554).

Until the annulment decision enters into force, the annulled procedural rules remain applicable. Similarly, changes resulting from the Court of Cassation's decisions to unify jurisprudence on procedural matters are also subject to the principle of immediate application. Such changes will not apply to completed procedures but will be applied to procedures yet to be carried out regardless of whether they are favorable or unfavorable (YİBK, 15.06.1949-4/11).

VII. Temporal Application of Amendments Concerning Durations

The principle of immediate application may lead to complications, especially when amendments concern durations. For example, if a law reducing the appeal period from 15 to 7 days comes into force on the 8th day of the existing 15-day period, a person who relied on the 15-day period and did not file an appeal might find their right to appeal invalidated under the new rule. In such situations, the strict application of the immediate effect principle may lead to injustices in terms of vested rights, fairness, and equality. These exceptions to the principle of immediate application can be made by law and a duration can be applied to people in situations such as the one in the example. For instance, under the former Criminal Procedure Code (FCPC) No. 1412, a distinction was made between urgent and ordinary objections, with no time limit for the latter. The CPC No. 5271; which entered into force on June 1, 2005, unified these objections under a single procedure and introduced a duration. To protect individuals who had not yet lodged an objection due to the absence of a time limit under FCPC, the Law on Enforcement of CPC included a transitional provision. It stated that objections against decisions subject to ordinary objection under FCPC could still be made within seven days from the effective date of the new CPC (Law on Enforcement, Art. 7/1) (Şahin and Göktürk, 2024: 46). Conversely, if an appeal period is extended for example from 7 to 15 days, on the 6th day, and the procedure is not yet complete, the new 15 day period will apply. However, if the amendment enters into force after the original 7 day period has already expired (e.g. on the 9th day), the new rule will not apply because the previous procedure has been completed. In such cases, the new law does not apply retroactively to completed actions (Akbulut, 2023: 53).

As a general rule in criminal procedure, repealed laws are not applied. However, in certain circumstances, transitional provisions allow continued application of repealed rules. For example, for first-instance court decisions issued before July 20, 2016, the appeal provisions of Articles 305–326 of the FCPC (excluding paragraphs 4, 5, and 6 of Article 322) remain applicable until the decision becomes final. Since FCPC is applied until the finalization of the decision, any amendments made in the CPC concerning appeals do not affect these provisions. For example, the appeal period in Article 291 of CPC was amended to 15 days by Law No. 7035 on August 5, 2017. Nevertheless, for decisions rendered before July 20, 2016, the appeal period continued to be 7 days until finalization, as governed by FCPC Articles 305–326. Similarly, if the Court of Cassation issued a reversal decision concerning a pre July 20, 2016 verdict, even if the reversal occurred after that date, the FCPC provisions will apply until the decision becomes final. However, if a decision is made later regarding a decision that became final without going through a cassation review, it will now be subject to appeal (appeal of Regional Courts of Appeal).

In criminal procedure law, the general rule is the principle of immediate application. But, retroactive application is not typically prohibited. Amendments will apply to acts and procedural steps that occurred before the law's entry into force, provided those steps are not yet completed. They will also apply to acts and procedures that occur after the law has entered into force, so long as the law remains in effect.

That said, some scholars make a determination about the distinction to be made in terms of procedural requirements (e.g., complaint, authorization) when applying the principle of immediate effect (see Önder, 1992: 81-83).

VIII. The Rule of Time of The Procedure as a Consequence of the Principle of Immediate Application

In criminal procedure, due to the principle of immediate application, the timing of the procedural act becomes significant. The law in effect at the time the act is performed will be applicable. In some provisions, the legislator explicitly states that the timing of the procedural act is determinative. For example, Article 50 of the CPC refers to individuals who have not yet completed the age of fifteen at the time of being heard as witnesses, indicating that this age threshold is assessed at the time of testimony. Similarly, Article 15(2) of the CPL stipulates that "a social worker may be present during the interrogation of the child or other procedures involving the child," again emphasizing the time of the procedural act. Even when such explicit wording is absent, the time at which the procedure is conducted will generally determine the applicable legal provision. If the CPC contains age-related or condition-specific criteria, these must be evaluated according to the circumstances at the time of the act. For instance, Article 150(2) of the CPC mentions a "suspect or accused child without a defense counsel," which should be interpreted to refer a suspect or accused who has not yet reached the age of 18 and does not have legal representation at the time of the procedural act.

However, in certain legal provisions, the legislator may instead refer to the time the offense was committed. One such example is Article 19 of the Regulation on Apprehension, Detention, and Statement Taking. According to this provision, for protective measures involving deprivation of liberty (e.g., apprehension, detention, arrest), the age of the individual is assessed based on their age at the time the offense was committed and not at the time of the procedural act. Under this regulation individuals who had not completed the age of twelve at the time of the offense, and individuals who were deaf and mute and had not completed the age of fifteen, cannot be apprehended or used in any way for the purpose of establishing criminal liability. These individuals may only be subject to apprehension for purposes of identification (paragraph a). Individuals who had completed the age of twelve but not yet eighteen at the time of the offense may be apprehended, detained, and arrested (paragraph b). While paragraph b does not explicitly mention deaf and mute individuals, it is understood that if a person was deaf and mute and under the age of fifteen at the time of the offense, they cannot be detained or arrested. Conversely, those who were over twelve (or deaf and mute over fifteen) but under eighteen at the time of the offense may be apprehended and detained. Arrest decisions, in this context, are based on the age at the time of the offense, not the age at the time of the procedure.

Article 21 of the CPL introduces a prohibition on arrest for certain age groups, referring only to "children who have not completed the age of fifteen" without specifying if it is "at the time of the offense". According to this provision "children under the age of fifteen cannot be arrested for offenses punishable by imprisonment of no more than five years". Therefore, the arrest prohibition will be applied to children between the ages of 12 and 15 for crimes that require a prison sentence of no more than five years, and the arrest prohibition will not be valid for children between the ages of 15 and 18 at the time of the act (including the deaf and mute). It should be noted that arrest is prohibited for deaf and mute individuals under the age of 15, in accordance with Article 19 of the Regulation on Apprehension, Detention, and Statement Taking, and the fact that deaf and muteness is not taken into account for those over the age of 15 results in contradictions.

Nevertheless, Article 4 of the CPL emphasizes that deprivation of liberty must be used only as a last resort in proceedings involving children (Akbulut, 2013: 559 et seq.).

Another regulation where the time of the act, rather than the time of the procedure, is determinative can be found in CPC Article 102(5), which regulates pretrial detention periods. According to this provision, for individuals who had not completed the age of fifteen at the time of the offense, detention periods are applied at half the regular duration and for individuals who had not completed the age of eighteen at the time of the offense, the periods are applied at three-quarters of the regular duration.

As for judicial control measures, there is no specific indication of the relevant time frame. The law merely refers to "children" and states that judicial control periods are applied at half the regular duration for children (i.e., those under eighteen) (CPC Article 110/A). Considering these regulations, it is inferred that the age at the time of the offense is also determinative for judicial control. When examining the regulations concerning detention and judicial control, it is notable that no specific mention is made of deaf and mute individuals. However, Article 19 of the Regulation on Apprehension, Detention, and Statement Taking explicitly includes references to deaf and mute persons. In our opinion, if deafness and muteness are to be considered as forming a distinct legal category, this should be applied consistently across all relevant provisions. If not, references to such individuals should be removed for consistency. Accordingly protective measures are part of criminal procedural law and age assessments should generally follow the principles of criminal procedure. Still, the legislative framework suggests an intention to protect individuals who were children at the time of the offense. Another instance where the timing of the act, rather than the procedure, is determinative relates to juvenile courts. Juvenile courts are competent to adjudicate offenses committed by individuals who were minors at the time of the offense. Even if such individuals later reach the age of eighteen, their trials will continue in juvenile courts and will not be transferred to general criminal courts.(CPL article 26).

Conclusion

In criminal procedure law, the temporal applicability rule is the principle of immediate application and there is no controversy regarding this principle. However, this study reveals that certain issues remain contentious. These controversies stem from the method chosen by the legislator in drafting the provisions, from debates surrounding the legal nature of certain institutions and from the fact that some institutions contentious to different legal disciplines (i.e., substantive criminal law and criminal procedure law). Therefore, when drafting legal provisions, the legislator must exercise greater caution in making such choices, and the legal nature of the relevant institutions must be accurately identified in doctrinal analyses. The legislator does not establish a general rule concerning the temporal application of laws. The evaluations above suggest that this preference is appropriate. Otherwise, the legislator would also need to include exceptions to the rule. Furthermore, since it is not possible to foresee new legal institutions before they enter into force, each new provision would require the inclusion of a rule regarding its temporal applicability.

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THE SUSPECT AND THE ACCUSED IN CRIMINAL PROCEDURE LAW

Prof. Dr. Berrin AKBULUT
Selçuk University, Faculty of Law
ORCID: 0000-0001-8045-2784

Abstract
The concepts of the suspect and the accused are defined in Article 2 of the Turkish Criminal Procedure Code. Under criminal procedural law, a person under suspicion of having committed an offense during the investigation phase is referred to as a “suspect”, and from the initiation of prosecution until the judgment becomes final, that person is referred to as the “accused”. The classification is based on the stages of the criminal procedure, and no distinction has been made according to the degree or intensity of suspicion. However, since the degree of suspicion is crucial for the initiation of both investigation and prosecution, the existence of suspicion is also a prerequisite for a person to be considered a suspect or an accused.
Although being under suspicion of an offense during the stages of the criminal procedure is important in determining whether a person is a suspect or an accused, there are also other factors that play a significant role in this determination. For instance, the minor status of a person is a significant factor in terms of being a suspect or an accused. Likewise, whether the person is a natural or legal person is also significant in terms of being considered a suspect or an accused.
In this study, all the above-mentioned issues will be elaborated upon and the doctrinal debates will be addressed.
Keywords: Suspect, accused, investigation, prosecution, natural person.

Introduction
Criminal procedure constitutes an integrated process comprising accusation, defense, and trial. Within this framework, the suspect and the accused are primarily involved in the defense phase. The existence of a suspect or an accused is a prerequisite for the initiation and continuation of criminal proceedings; in their absence, such proceedings cannot proceed. Upon the conclusion of the investigation and prosecution phases, if it is established beyond any reasonable doubt that the accused has committed the offense, and this determination becomes final, the criminal procedure concludes. Therefore, criminal procedure is inherently connected to the act committed and the individual suspected of perpetrating that act.
Although the concepts of suspect and accused, which are central to criminal procedure, may appear unambiguous, they encompass certain ambiguities that necessitate clarification.

1. Suspect
According to Article 2 of the Turkish Criminal Procedure Code (CPC), a "suspect" refers to an individual who is under suspicion of having committed an offense during the investigation phase. As indicated by this provision, the term "suspect" is applicable exclusively to an individual suspected of committing a crime during the investigation stage. The term is derived from the concept of "suspicion". In accordance with Article 2 of the CPC, in the absence of an initiated investigation, the designation of "suspect" is not applicable. Furthermore, pursuant to Article 158(6) of the CPC, if it is evident, without necessitating any inquiry, that the act reported or complained about does not constitute a crime, or if the report or complaint is abstract and general in nature, the initiation of an investigation is not accepted.

In such instances, the individual in question cannot be assigned the status of "suspect." Therefore, the existence of an initiated investigation is a prerequisite for an individual to acquire the status of "suspect." The mere existence of an investigation suffices; whether the individual is actually guilty or whether the investigation was erroneously initiated is inconsequential (Şahin & Göktürk, 2024: 30).

Although the Turkish Criminal Procedure Code distinguishes between the suspect and the accused based on procedural stages, the European Court of Human Rights (ECtHR) does not recognize such a distinction. According to the ECtHR, any person under suspicion of committing an offense is considered an "accused," regardless of whether they are in the investigation or prosecution phase. As per ECtHR jurisprudence, once judicial proceedings are initiated against an individual, that person is deemed to be an accused, irrespective of whether a formal charge has been made, and may benefit from the rights afforded to the accused under the European Convention on Human Rights (ECHR). The Court holds that if investigative authorities commence inquiries against an individual based on specific, concrete reasons, the notion of being an accused, in a broad sense, comes into effect (Centel & Zafer, 2024: 176). However, some scholars argue that recognizing a person as an accused from the very outset and granting access to all procedural rights may lead to adverse consequences. It is contended that notifying the individual of the accusation at the earliest stage of the investigation may hinder the collection of crucial evidence, pose a heightened risk of flight or tampering with evidence, ultimately necessitate pre-trial detention and thereby resulting in outcomes detrimental to the accused (Schroeder, 1996: 275).

The suspect is one of the subjects of criminal procedure and possesses both rights and obligations. The suspect is situated within the defense side of the process. The defense side is divided into two categories: individual and public defense. The suspect constitutes the individual defense authority.

Criminal procedure is initiated upon the acquisition of knowledge regarding the suspicion that an offense has been committed (or a situation that creates the impression of a crime) (CPC Article 160). The commencement of an investigation does not necessarily require the immediate identification of a suspect. A suspect may become known at the outset of the investigation or may emerge at a later stage. Moreover, it is possible for the identity of the suspect to change during the investigation phase. There may be one or multiple suspects during this phase.

To be considered a suspect, one must be a natural person. Since criminal law only recognizes natural persons as capable of committing crimes, and given that criminal procedure is conducted in relation to the crime and the determination of criminal responsibility of the offender, the existence of a natural person is a prerequisite for the status of suspect. Consequently, legal entities cannot be designated as suspects (CPC Articles 170 and 249). Only individuals who form the organs of a legal entity or its legal representatives may fall under the suspicion of having committed a crime.

As understood by the term itself, the existence of suspicion is a prerequisite for someone to be considered a suspect. The threshold of “simple suspicion” (or initial suspicion), which is required for initiating an investigation, is also sufficient for suspect status. Simple suspicion represents the weakest level of suspicion (Kindhäuser & Schumann 2023: 44). It refers to a suspicion based on concrete facts that, according to criminal experience or expertise, indicate (or make it appear possible) that a prosecutable offense has been committed (Meyer-Goßner & Schmitt, 2017: § 152 kn. 4). In this context, even a rumor that is not entirely unfounded (Allgayer, 2017: § 152 kn. 40), an indication (as it is stated that the evidence must at least have the character of an indication for initial suspicion: Centel & Zafer, 2024: 99; Öztürk et al., 2024: 437), or unilateral allegations may be deemed sufficient.

A low probability that the individual committed the crime is also considered adequate (Meyer-Goßner & Schmitt 2017: § 152 kn. 4; Löwe-Rosenberg/Beulke, § 152 kn. 26). However, in the literature, it is noted that in cases of particularly weak initial suspicion, a form of preliminary investigation has been developed in practice, which differs from the official preliminary inquiry (Roxin & Schünemann, 2012: § 39 kn. 17, 18). Another view holds that mere probabilities and assumptions are insufficient (Löwe & Rosenberg, 2008: § 152 kn. 22). For simple suspicion to be considered present, the suspicion must exceed the level of mere conjecture, rise above uncertainty, and reach a certain degree of intensity (Şahin/Göktürk, s. 29). Assumptions and vague clues are not regarded as sufficient for initial suspicion (BVerfG 2 BvR). A suspicion not grounded in facts and merely conjectural in nature is not considered sufficient to constitute simple suspicion (Özbek, 2002: 60; Meyer-Goßner & Schmitt 2017: § 152 kn. 4, 5).

In order for an individual to be designated as a suspect, the suspicion must be directed toward a specific person or persons. If there is no individual identified as the focus of suspicion, then the status of suspect does not arise. Furthermore, for someone to be considered a suspect, the investigative authorities must possess the intent to initiate an investigation (Ünver & Hakeri, 2024: 232).

In criminal procedural law, there is no requirement for a suspect to meet a specific age threshold or possess perceptional and volitional capacity. However, some scholars argue that the individual should have the criminal capacity (Öztürk et al., 2024: 242). Since individuals lacking perceptional or volitional capacity, as well as those who are mentally ill or minors, can commit offenses under criminal law, investigations can be conducted against them, and they can be designated as suspects. Given that criminal procedure does not impose limitations on who may be considered a suspect, any individual can acquire this status. It is not necessary for the person to be subject to a potential criminal penalty; the possibility of applying security measures suffices. Consequently, children under the age of 12 at the time of the offense (Turkish Penal Code Article 31/1) can also be considered suspects, even though they cannot be prosecuted or sentenced. Since security measures may be applied to them, they may attain suspect status.

To be considered a suspect, the individual must be alive. As criminal liability is personal, it is not possible to conduct an investigation concerning deceased individuals. If the suspect dies during the investigation phase, the proceedings must be terminated.

To be considered a suspect, an individual must be identifiable; anonymous persons cannot be designated as suspects. However, an investigation can be conducted against a known individual whose identity has not yet been ascertained, and such a person may be regarded as a suspect. Therefore, identification is not a prerequisite for suspect status. Nonetheless, during the investigation phase, certain procedural actions necessitate knowledge of the individual's identity, while in other instances, merely being known as an individual suffices. For example, during the processes of taking a statement or conducting an interrogation, the suspect's identity must be established (Article 147/1-a of the CPC) . Conversely, when issuing an arrest warrant, it is sufficient to know the person's general description; there is no absolute requirement to know their identity (Article 98/4 of the CPC) . Similarly, in a search warrant, the person to be searched must be explicitly specified (Article 119/2-b of the CPC). Additionally, records of procedures conducted during the investigation phase must include the names of individuals involved or concerned (Article 169/4 of the CPC) .

In criminal law, while distinctions are made between principal perpetrators and accomplices, criminal procedural law refers to all individuals involved in the commission of a crime, regardless of their specific role, as suspects. In terms of minors, they are referred to as "children drawn to crime" (Article 3 of the Child Protection Code).

2. Accused

According to Article 2 of the CPC, the term "accused" refers to a person suspected of committing a crime from the commencement of the prosecution until the finalization of the judgment. Since the prosecution begins with the acceptance of the indictment, the person for whom the indictment is accepted assumes the status of the accused. As indicated in the regulation, the legislator defines the accused within the prosecution phase, and since this status continues until the judgment becomes final, the person subject to appeal in both the appellate and cassation stages is also considered the accused.

The term "accused" derives from the verb "to assume" in Turkish, indicating a person who is believed to have committed the crime. Therefore, the intensity of suspicion is higher compared to that of a suspect. Since the initiation of prosecution requires sufficient suspicion, the existence of at least sufficient suspicion is also necessary for the status of the accused (CPC Article 170; Article 172). Sufficient suspicion exists when the likelihood of the person's conviction outweighs that of acquittal. For sufficient suspicion to exist, the suspicion must be based on concrete evidence (CPC Article 170; Article 172). In doctrine, it is noted that determining the distinction between suspect and accused based solely on procedural stages, without considering the intensity of suspicion, is scientifically inaccurate. This is because a person detained due to strong suspicion during the investigation phase is a suspect, whereas a person against whom public prosecution is initiated due to sufficient suspicion is an accused (Şahin & Göktürk, 2024: 31).

An accused, like a suspect, is a subject of criminal procedure law and possesses rights and obligations. They are in the individual defense position, while their defense attorney is in the social defense position.

In criminal procedure, while everyone can be a suspect, not everyone can be an accused. According to the Turkish Penal Code (TPC), prosecution cannot be conducted against children under the age of 12 (TPC Article 31/1), so these individuals cannot be accused. The age determination here refers to the age at the time the act was committed, as per Article 31 of the TPC. Additionally, to be an accused, a person does not need to have the ability to perceive and willfully act. However, in the doctrine, it is stated that merely being a natural person is not sufficient to be a suspect or accused; the person must also possess criminal capacity. According to this view, individuals who lack criminal capacity are not considered to have committed a crime, and thus criminal procedure cannot be applied to them (Öztürk et al., 2024: 242). Mentally ill individuals and those aged 12-15 without fault capacity can be accused. Whether the mental illness existed at the time of the act or developed later, these individuals can be accused. However, if the mental illness at the time of the act falls under Article 32/1 of the TPC, a trial is conducted, and security measures are applied. If it falls under Article 32/2, a trial is conducted, and a penalty reduction is applied. If the mental illness occurs after the act and prevents the individual from making a defense, a trial cannot be conducted. Depending on the likelihood of this condition, a decision to suspend or dismiss the case may be made. However, according to some authors in the doctrine, prosecution cannot be conducted against these individuals. According to this view, if the mental illness at the time of the act continues during the trial, there is an obstacle to prosecution, and these individuals should be awaited to recover (Dülger & Taşkın, 2024: 214, 215). In the investigation or prosecution phase, for determining the status of a suspect or accused (whether under or over the age of 12), the age at the time the act was committed is taken into account, as per Article 31 of the TPC. In criminal procedure law, prosecution is generally conducted against individuals other than those under the age of 12 who committed the act, provided that the conditions for prosecution are met.

These individuals will have the status of an accused. Whether a decision of no grounds for prosecution, no penalty, or acquittal is made does not affect their status as an accused.
The accused must also be a living natural person. Legal entities, like suspects, cannot be accused. However, although legal entities cannot be defendants, security measures can be applied to them (TPC, Article 60). In prosecutions related to crimes committed within the scope of a legal entity's activities, the organ or representative of the legal entity is accepted to attend the hearing as part of the defense. In this case, the organ or representative of the legal entity enjoys the rights granted to the accused by the CPC, However, if the defendant simultaneously holds the title of organ or representative of the legal entity, the organ or representative becomes the defendant and constitutes the defense (CPC, Article 249). Therefore, it is not possible to apply a status such as being part of the defense in this case.
In criminal procedure law, the accused is the person named in the indictment. Unlike in the case of the suspect, it is not possible for the accused to change during the prosecution phase. This is because the judgment is only given regarding the act and the perpetrator of the crime as indicated by the elements in the indictment (CPC, Article 225/1), so changing the accused during the prosecution phase is not possible. If it is revealed during the prosecution that another person committed the crime, a new indictment must be prepared, and a public case must be opened against that person. In cases where the crime is committed in collaboration, all participants in the crime, whether they are the perpetrator or accomplice, will hold the status of the accused. Children under suspicion of committing a crime during the prosecution phase will be referred to as "children drawn to crime" in accordance with the Child Protection Code (Article 3).
The identity of the accused must be known. According to Article 170 of the CPC, the defendant's identity must be stated in the indictment. However, in cases where the defendant’s identity cannot be determined during the investigation phase, the question of whether the prosecution should begin is controversial. Some scholars argue that in cases where the individual is known but their identity cannot be determined, a temporary identity should be issued, and the indictment should be prepared, allowing for the initiation of a public case. This view suggests that the indictment should not be rejected for this reason. Furthermore, this view posits that in the event the identity cannot be determined, as long as the individual is recognized as a person, a temporary identity can be issued, and a conviction can be rendered. If there is no doubt regarding the individual’s recognition as a person, discovering that the identity is incorrect will not invalidate the conviction (Centel & Zafer, 2024: 179). Some authors in the doctrine, whose views we share, accepts that being identified as an individual is sufficient. They state that the condition of recognition must be fully met for a conviction to occur (Yenisey & Nuhoğlu, 2024: 201). Another view in the doctrine argues that when the identity of the suspect is explicitly stated in the indictment, an indictment that does not include the identity of the suspect should be returned. Thus, they assert that prosecution cannot take place in the case of an unidentified individual (Ünver & Hakeri, 2024: 234).

Conclusion

In Article 2 of the CPC, the terms "suspect" and "accused" are defined, and further clarifications regarding suspect and accused are left to doctrine and practice. There is no limitation for being a suspect. However, to be an accused, the individual must be over 12 years old at the time the act is committed. The concepts of suspect and accused are related to criminal procedure, and the time the crime is committed is considered in relation to the individual's age. It is sufficient to have simple suspicion to be a suspect, while at least sufficient suspicion is required for one to be an accused. While it is possible for the suspect to change, the accused cannot change.

It is sufficient for the person to be identified to be a suspect. However, whether it is necessary for the identity to be known or simply for the person to be identified as the accused remains a topic of debate.

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DIGITAL ASSET SEIZURE IN ENFORCEMENT PROCEEDINGS: LEGAL CHALLENGES AND REFORM PROPOSALS

Assist. Prof. Dr. Ticen Azize ÖZRAŞİT
Cyprus International University, Faculty of Law, Department of Law North Cyprus
ORCID: 0000-0001-8843-4847

Abstract
The increasing use of digital assets such as cryptocurrencies and NFTs in modern economic transactions has posed significant challenges for enforcement authorities. Traditional enforcement mechanisms were not designed to detect, seize, or liquidate digital assets, which often lack a fixed jurisdiction or tangible form. This paper explores the legal and practical barriers encountered during enforcement proceedings involving digital assets, including issues related to identification, valuation, transfer, and protection of third-party rights. The paper further assesses how select jurisdictions have responded to these challenges, particularly through legislative reforms and case law developments. In this context, the potential of incorporating blockchain tracking tools, court-authorized digital asset wallets, and international cooperation mechanisms is analysed. Recommendations are made for a harmonized legal framework that ensures enforceability without undermining due process and debtor rights. This study aims to contribute to the evolving field of enforcement law by proposing realistic, forward-looking reforms that reflect the digital transformation of assets and economic behaviour.
Keywords: Enforcement law, Digital assets, Cryptocurrency, Legal reform, Seizure procedure

Introduction

In recent years, the widespread adoption of digital assets—particularly cryptocurrencies and non-fungible tokens (NFTs)—has reshaped the global financial and technological landscape. These assets are decentralized, intangible, and often pseudonymous, posing significant challenges for legal systems that were developed around physical and jurisdiction-bound property. Enforcement authorities, courts, and lawmakers around the world are now confronted with the task of adapting traditional asset seizure frameworks to a new class of assets that exist entirely on digital ledgers distributed across global networks (Thielen, 2023, p. 116).

The emergence of blockchain technology has enabled individuals and entities to hold, transfer, and conceal significant wealth without relying on conventional financial intermediaries. While this innovation has led to increased efficiency, privacy, and global accessibility, it has simultaneously undermined many of the foundational mechanisms that courts use to enforce judgments—particularly those requiring the seizure or freezing of assets. Enforcement mechanisms such as garnishment orders, writs of seizure, or asset freezes were not designed to address assets that are accessible only through cryptographic keys or that can be instantly transferred across borders with a few clicks. This has resulted in a significant enforcement gap, whereby individuals may possess valuable digital assets yet remain effectively judgment-proof due to technological and legal obstacles.

Moreover, digital assets frequently do not reside within a clear jurisdiction, and they may be held by or on behalf of decentralized autonomous organizations (DAOs) or stored on exchanges located in non-cooperative jurisdictions. These characteristics complicate efforts to locate, value, and secure the assets in question (Girasa, 2018).

In this article, we explore the legal and practical challenges surrounding the seizure of digital assets in enforcement proceedings. We analyze the approaches taken by various jurisdictions, including the United Kingdom, the United States, and the European Union, to adapt to this rapidly evolving space. Particular attention is given to technological innovations such as blockchain analytics and court-managed crypto wallets, as well as due process concerns and the protection of third-party rights. Ultimately, this study aims to propose realistic, forward-looking reforms that address the unique nature of digital assets while maintaining procedural fairness and legal certainty.

Materials and Methods

This study adopts a doctrinal legal research methodology, supported by comparative legal analysis and targeted use of case-based examination. Primary legal materials—such as statutes, regulatory frameworks, and court judgments—were analysed to understand how digital asset enforcement is treated in different jurisdictions, particularly in the United Kingdom, the United States, and the European Union. These jurisdictions were selected based on their legal developments and influence in the field of financial regulation and digital innovation.

Key case law, such as the UK High Court's decision in D'Aloia v. Binance Holdings Ltd., was examined to illustrate how legal procedures are evolving in response to the challenges posed by blockchain technology. In parallel, regulatory guidance from agencies such as the IRS, SEC, and the European Commission—including the MiCA proposal—was reviewed to identify trends and tensions in digital asset classification, treatment, and enforcement.

The study also includes a functional assessment of technological tools used in enforcement, such as blockchain forensic platforms (e.g., Chainalysis), court-authorized digital wallets, and smart contracts. These were considered through available case reports, academic literature, and industry white papers to evaluate their potential utility and legal integration in enforcement scenarios.

Finally, international cooperation mechanisms and procedural safeguards were explored using secondary sources including academic commentary, law reform proposals, and practical guidelines from financial crime enforcement agencies. The combined approach allows the study to synthesize legal theory, technological capacity, and real-world practice, with the aim of offering informed and applicable reform recommendations.

Findings and Discussion

The enforcement of digital assets presents multifaceted challenges that cut across legal, technical, and procedural domains. Traditional enforcement mechanisms—reliant on the identification, valuation, and physical control of property—are rendered largely ineffective when applied to assets that exist solely on decentralized digital platforms. The findings of this study reveal four interrelated areas where enforcement law struggles to accommodate the realities of digital assets: identification, valuation, accessibility, and third-party rights (Montanaro & Sarti, 2021).

1. Identification and Anonymity

A key issue is the pseudonymous nature of most digital assets. On public blockchains such as Bitcoin or Ethereum, while every transaction is transparent and permanently recorded, wallet addresses do not inherently reveal the identity of the user. This makes it difficult for enforcement authorities to link a digital wallet to a known individual or legal entity without external evidence or cooperation from exchanges.

While centralized platforms like Binance or Coinbase may hold identifying data through know-your-customer (KYC) processes, cooperation is not guaranteed, especially if the platform is based in a non-cooperative jurisdiction. This lack of transparency creates a substantial barrier to initiating enforcement, as asset holders can easily move or disguise their digital wealth (Foster, 2021).

2. Valuation and Volatility

Digital assets are also subject to extreme price volatility. For instance, Bitcoin has seen daily price swings of more than 10% on numerous occasions. This unpredictability complicates efforts to assign a reliable value for purposes of debt satisfaction, especially where enforcement takes place over days or weeks.

Valuation discrepancies between the time of seizure and liquidation can lead to over- or under-enforcement, potentially violating the principles of fairness and proportionality. Additionally, many digital assets are illiquid or only tradeable on niche platforms, raising further concerns about how to calculate enforceable value.

3. Accessibility and Transfer Risks

Access to digital assets is governed by private cryptographic keys. If a debtor refuses to disclose their private key, the asset becomes functionally inaccessible, even to law enforcement. This is unlike traditional assets where third-party custodians—such as banks—can be compelled to freeze or surrender property.

Furthermore, the instantaneous and borderless transfer of crypto assets significantly increases the risk of asset dissipation before an enforcement order can be executed. This has led courts in some jurisdictions, such as the UK, to grant Mareva injunctions even against unknown persons to preemptively freeze wallets based on transaction tracking and IP address data.

4. Rights of Third Parties and Legal Ambiguity

Digital assets are often held jointly or on behalf of Decentralized Autonomous Organizations (DAOs), where control and ownership are not always clearly defined under traditional legal principles. Enforcement actions that do not take into account these complexities risk infringing upon the property rights of third parties, thereby exposing enforcement agents and courts to liability for unlawful seizure.

Furthermore, the technology underpinning digital assets can obscure ownership trails—such as when assets are passed through mixers or held in smart contracts. Without established legal presumptions or procedural rules, such as the burden of proof in contested claims, courts may struggle to resolve disputes fairly and efficiently.

5. Case-Based and Comparative Insights

In D'Aloia v. Binance Holdings Ltd., the UK High Court allowed service of legal documents via NFT airdrop into a wallet controlled by anonymous fraudsters. This illustrates a judicial willingness to modernize procedural rules in response to enforcement challenges posed by digital assets.

In the United Kingdom, the civil enforcement of digital assets has significantly evolved following the recognition of cryptocurrencies as property under English law, particularly after the influential Legal Statement by the UK Jurisdiction Taskforce in 2019. This classification has enabled claimants in civil proceedings to seek traditional equitable remedies against digital assets, most notably proprietary and freezing injunctions. Proprietary injunctions are used to preserve assets over which the claimant asserts a proprietary interest—particularly useful in crypto-related fraud or misappropriation cases—while Mareva (freezing) injunctions prevent the dissipation of crypto holdings before or during litigation. The courts have demonstrated procedural flexibility in granting such orders even against "Persons Unknown," reflecting the anonymous or pseudonymous nature of blockchain-based assets.

Noteworthy decisions such as *AA v. Persons Unknown* and *Ion Science v. Persons Unknown* have allowed crypto-specific asset freezing through wallet tracking and IP geolocation evidence.

The UK civil courts have also issued disclosure orders—such as Norwich Pharmacal and Bankers Trust orders—against crypto exchanges, compelling them to release identifying information about wallet holders and transactions. These orders are essential tools in circumventing the veil of anonymity that blockchain technology often affords. Another remarkable procedural adaptation in the UK has been the allowance of service via alternative means, including NFTs and email, as endorsed in *D'Aloia v. Binance Holdings Ltd.* This represents a landmark moment in civil procedure, where courts have responded to technological limitations in serving defendants whose identities and locations are unknown. Once judgment is obtained, enforcement tools such as charging orders and receivership appointments may be used to compel control and liquidation of the assets in question. This demonstrates the UK judiciary's increasing responsiveness to the realities of digital asset enforcement in civil matters, blending classical equitable remedies with technologically adaptive approaches (Held, MacPherson, & Yüksel Ripley, 2022).

In contrast, enforcement practices in the United States remain fragmented due to competing regulatory definitions and inconsistent cooperation between federal and state agencies. While civil forfeiture laws have been applied in cases of digital fraud, their use in purely civil debt enforcement remains rare. The United States has taken a uniquely robust approach to the enforcement of digital asset-related crimes by leveraging both regulatory reach and public-private partnerships. While the legal framework remains somewhat fragmented due to differing interpretations by agencies such as the SEC, IRS, and CFTC, the country has nonetheless become a global leader in cryptocurrency seizure and forfeiture operations (Sarra & Gullifer, 2019).

A cornerstone of the U.S. enforcement strategy is its integration of blockchain analytics tools, most notably through partnerships with firms such as Chainalysis. These tools have enabled law enforcement to track, freeze, and recover vast sums of illicit cryptocurrency. As of 2024, it is estimated that U.S. agencies have seized over $12.6 billion worth of cryptocurrency, with cases spanning cybercrime, darknet activity, terrorism financing, and large-scale fraud.

Major operations highlight the effectiveness of this approach. In the Silk Road hacker case, IRS-CI and DOJ successfully recovered 50,676 Bitcoin—worth over $3.3 billion—from a fraudster who had exploited vulnerabilities in the early darknet market platform. In another significant case, following the Colonial Pipeline ransomware attack, the FBI traced ransom payments made in Bitcoin and recovered $2.3 million, demonstrating the traceability and recoverability of digital assets even when used by advanced criminal networks.

The U.S. has also embraced the use of forfeiture funds — such as the Asset Forfeiture Fund and Treasury Forfeiture Fund — to repurpose recovered assets into future enforcement efforts. Unlike traditional forfeiture where assets are liquidated immediately, there is now a growing movement toward retaining seized crypto assets, such as in the Strategic Bitcoin Reserve proposal, where Bitcoin is treated as a long-term financial asset rather than a liability to be disposed of.

Importantly, the U.S. also benefits from cooperation with stablecoin issuers like Tether (USDT) and Circle (USDC). These companies have the capacity to freeze wallets linked to illicit activity. In one of the largest cases to date, Tether froze $225 million of USDT in connection with a romance scam uncovered through cooperation between Chainalysis, U.S. Secret Service, and crypto exchange OKX. This capability aligns stablecoins more closely with traditional financial institutions, offering centralized intervention in an otherwise decentralized financial ecosystem (Rhodes & Maguire, 2020).

Finally, targeted training programs and tools such as Chainalysis Reactor and Wallet Scan have equipped U.S. law enforcement with the capability to act swiftly and confidently. As evidenced by coordinated operations like Operation Spincaster and Operation Endgame, the U.S. is building a long-term enforcement model that views cryptocurrency seizures not only as reactive measures but as strategic tools in the broader fight against financial crime.

In the United States, civil enforcement mechanisms for digital assets have developed more incrementally, influenced by the decentralized structure of the U.S. legal system and the patchwork of state and federal jurisdictions. Nevertheless, U.S. courts have begun applying traditional civil remedies—such as temporary restraining orders (TROs), preliminary injunctions, and turnover orders—to cryptocurrency holdings, treating them as property under IRS guidance and multiple federal court rulings. Under Federal Rule of Civil Procedure 65, civil litigants may apply for injunctions or ex parte restraining orders to prevent the dissipation of crypto assets in anticipation of trial. This is commonly used in civil fraud and breach of fiduciary duty cases involving blockchain transactions. Additionally, prejudgment remedies such as writs of attachment or replevin may be sought in states that allow early seizure of disputed property. Discovery mechanisms also play a vital role: subpoenas issued to crypto exchanges and custodians can compel the production of wallet information, transaction histories, and account holder identities, particularly where KYC (Know Your Customer) compliance applies. Post-judgment, U.S. courts can issue turnover orders requiring defendants to relinquish control over specific wallets or crypto holdings, enforceable under civil contempt powers for noncompliance (Rhodes & Maguire, 2020). Receivership may also be ordered in complex cases, empowering a third party to manage or liquidate assets under judicial supervision. However, successful civil enforcement in the U.S. often hinges on whether the assets are held on centralized platforms—which are more amenable to legal orders—or in self-custodied wallets, which pose greater practical and jurisdictional challenges. While U.S. civil procedures remain less harmonized than in the UK, ongoing cases and increasing cooperation between courts and blockchain analytics firms suggest a growing willingness to assert equitable control over digital assets in civil litigation contexts.

The European Union's MiCA proposal is promising in terms of regulatory harmonization, but enforcement actions—including asset freezing and transfer—remain governed by national procedures, leaving considerable disparity across member states.

Conclusion and Recommendations

The global proliferation of digital assets, particularly cryptocurrencies and non-fungible tokens (NFTs), has introduced profound complexities into the realm of enforcement law. Legal frameworks that have traditionally been anchored in physical, jurisdiction-specific property are struggling to address the intangible, borderless, and pseudonymous nature of these new asset classes. As digital assets increasingly become part of mainstream financial activity, legal systems face an urgent imperative to adapt existing enforcement mechanisms. This study has explored the critical difficulties surrounding the identification, valuation, and seizure of digital assets, alongside the risks of third-party rights violations and procedural deficiencies.

One of the principal findings of this research is that the enforcement of digital assets remains largely ineffective under conventional legal tools. Jurisdictions such as the United Kingdom have begun to lay the groundwork for digital asset recognition, treating them as property and enabling injunctions and service via blockchain technology. However, even in these relatively progressive jurisdictions, enforcement is far from standardized, and procedural gaps persist.

In contrast, the United States faces fragmentation due to overlapping regulatory definitions and federal-state inconsistencies, while the European Union has taken significant steps toward regulatory harmonization with MiCA, though enforcement continues to operate under divergent national laws. These discrepancies underscore the pressing need for legal systems to not only recognize digital assets within property law but also to develop enforcement-specific procedures that address the unique technical realities of such assets.

In response to these challenges, legal systems must pursue a multipronged strategy. First, legislative recognition of digital assets as enforceable forms of property is foundational. This recognition provides the legal basis for courts and enforcement authorities to act with confidence and clarity. Beyond this, legal institutions must design enforcement mechanisms tailored to digital environments. This includes the judicial approval of digital asset wallets managed by third parties, the use of blockchain tracking technologies, and expedited injunctions to prevent the dissipation of assets that can be transferred instantly across global networks. These tools are already being tested in a small number of jurisdictions, but broader implementation is needed to ensure consistent and effective enforcement outcomes.

Equally important is the need to protect the rights of third parties in enforcement actions involving digital assets. Many wallets are jointly owned, or subject to decentralized governance structures like DAOs, making it imperative for courts to approach enforcement with procedural safeguards that ensure fairness and prevent unlawful seizure. Transparency, proper notice, evidentiary standards for ownership, and mechanisms for appeal or objection must be revisited and modernized for the digital context. This ensures that the pursuit of enforceability does not come at the expense of fundamental rights or due process.

Furthermore, enforcement cannot be effective in isolation. Because digital assets transcend national borders, enforcement systems must be supported by international cooperation and harmonized standards. Treaties, mutual assistance agreements, and intergovernmental networks should be updated to include provisions on digital asset tracing and seizure. In this global context, fragmented approaches only encourage regulatory arbitrage and create loopholes for evasion.

Finally, the transformation of enforcement law requires investment in institutional capacity and legal education. Judges, enforcement officers, and legal professionals must be trained in the technological dimensions of digital assets, from cryptographic wallets to smart contracts and forensic blockchain analysis. Without such training, even the most progressive legal reforms will fail to translate into meaningful enforcement outcomes. The modernization of enforcement law, therefore, must go hand in hand with capacity-building and interdisciplinary collaboration.

In conclusion, the enforcement of digital assets represents one of the most complex challenges in contemporary legal practice. It demands not only doctrinal and procedural innovation but also a reimagining of how law interacts with technology in a rapidly evolving global economy. Failure to address these challenges may render significant portions of digital wealth effectively immune from the reach of the law, undermining both the authority of courts and the principle of legal accountability. Therefore, a harmonized, forward-looking approach is essential to uphold the rule of law in the age of digital finance.

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EVALUATING THE EFFICIENCY OF CASE MANAGEMENT REFORMS IN CIVIL PROCEEDINGS: A COMPARATIVE ANALYSIS OF ENGLISH AND TURKISH JURISDICTIONS

Assist. Prof. Dr. Ticen Azize ÖZRAŞİT
Cyprus International University, Faculty of Law, Department of Law North Cyprus
ORCID: 0000-0001-8843-4847

Abstract
The efficiency of civil justice is a cornerstone of democratic legal systems. In both England and Türkiye, increasing pressures of caseloads, procedural delays, and high litigation costs have spurred comprehensive reform efforts aimed at improving judicial case management. This paper undertakes a comparative analysis of these reforms, examining their legal foundations, implementation strategies, and real-world impact. Drawing from statutory texts, case law, and practitioner insights, the study focuses on key procedural instruments including pre-trial protocols, active judicial control, early case assessment, and digital case management tools. The research reveals that while England's Civil Procedure Rules have evolved through a common law tradition with strong emphasis on judicial discretion, Türkiye's post-2011 procedural reforms align more closely with civil law principles and international harmonization efforts. The analysis identifies areas of convergence and divergence between the two jurisdictions, offering reform-oriented recommendations to enhance judicial efficiency and procedural fairness.
Keywords: Civil procedure, Case management, Legal reform, Comparative law, Judicial efficiency

Introduction

Efficient case management is indeed a cornerstone of an effective judicial system, ensuring both timely access to justice and the maintenance of public trust. As you highlighted, England and Türkiye have faced similar challenges but have approached the issue with unique reforms shaped by their respective legal traditions (Zuckerman 2003).

In England, the introduction of the Civil Procedure Rules (CPR) in 1999 represented a significant shift in the approach to litigation, moving away from the traditional adversarial model towards a more judge-led system. Lord Woolf's reforms focused on reducing delays and costs while ensuring that disputes were resolved in a manner that was just and proportionate. The overriding objective of the CPR was to make sure that cases were managed efficiently, with a focus on proportionality, judicial oversight, and early settlement. One of the notable aspects of the CPR is the emphasis on active judicial case management, where judges take a hands-on approach in controlling the progress of cases, setting timetables, and encouraging the use of alternative dispute resolution methods. This system has contributed to reducing backlog and fostering a more accessible and efficient court system (Woolf, 1996).

Similarly, in Türkiye, the reform of the Code of Civil Procedure (CCP) in 2011 sought to address many of the same issues. While the Turkish legal system is rooted in civil law traditions, the reforms aimed at bringing greater efficiency and alignment with international norms. The CCP introduced measures to streamline the case management process, such as tighter control over procedural timelines and greater emphasis on the use of preliminary hearings to facilitate early resolution of disputes. The procedural changes, inspired by both European Union standards and the European Convention on Human Rights, emphasize the importance of efficiency, transparency, and access to justice.

By adopting these reforms, Türkiye sought to make its legal system more predictable and user-friendly while ensuring compliance with international human rights standards (Atamer, 2012).

Both jurisdictions have placed a premium on case management reforms, recognizing that delays and procedural inefficiencies can undermine public confidence in the judicial system. By focusing on timely resolution, minimizing costs, and ensuring proportionality, these legal systems aim to create a balance between the pursuit of justice and the practicality of managing an overloaded court system. While the methods may differ due to their unique legal traditions, the core objective remains the same: to ensure that justice is not only done but is seen to be done in a timely and cost-effective manner.

Materials and Methods

This research applies a doctrinal methodology combined with comparative legal analysis. It evaluates primary legal materials including statutory instruments, court rules, and case law from England and Türkiye. In addition, secondary sources such as academic commentary, law reform reports, and empirical studies have been examined. The study employs functional comparison to assess the goals, structures, and practical outcomes of case management reforms in both systems.

The research also integrates insights from practitioner surveys and academic workshops to evaluate how reforms have been received by legal professionals. Digitalization and COVID-19-related innovations, such as remote hearings and online filing systems, are assessed to determine their long-term potential for increasing access to justice and reducing systemic backlog.

A case study approach is also incorporated to explore specific instances where reforms have directly impacted judicial efficiency. This includes a close review of pilot courts in both jurisdictions where procedural reforms have been implemented at an accelerated pace and monitored for effectiveness.

Findings and Discussion

1. Legal Frameworks and Origins of Reform

In England, the CPR introduced a coherent framework for case management, placing judges at the center of procedural control. Pre-action protocols, case allocation tracks, cost budgeting, and early neutral evaluation were all designed to promote settlement and reduce unnecessary litigation. The emphasis on proportionality has led to more efficient handling of cases, especially in fast-track and small claims proceedings. These reforms were driven by Lord Woolf’s two reports: the Interim Report of 1995 and the Final Report of 1996, which underscored the need for a new civil justice system that was just, accessible, and cost-effective.

Türkiye's 2011 Code of Civil Procedure introduced reforms such as mandatory preliminary examination hearings, judicial obligation to clarify disputed issues early, and a broader use of procedural sanctions for delay. It also introduced mandatory mediation for specific case types, significantly reducing the number of contested proceedings. These reforms represent a marked departure from previous passive judicial models, though their practical implementation has faced inconsistencies due to entrenched legal culture and uneven resource allocation.

2. Judicial Role and Procedural Tools

A key divergence between the two jurisdictions lies in the role and discretion of the judge. English judges have considerable flexibility in managing proceedings under the CPR, with tools such as case management conferences and cost sanctions at their disposal. In Türkiye, although judges are encouraged to manage cases actively, statutory limits on judicial discretion and bureaucratic constraints often restrict full application of the reforms.

Digital case management has advanced in both countries. England's CE-File system allows online filing and case tracking in higher courts, while Türkiye's UYAP (National Judiciary Informatics System) offers an integrated digital environment for courts, lawyers, and enforcement offices. However, digital literacy and access disparities can still hinder optimal use of these tools.

One notable example is the impact of UYAP on enforcement proceedings in Türkiye, which has enabled faster communication between enforcement offices and courts, although the actual enforcement of decisions remains burdened by institutional inertia and lack of effective follow-up mechanisms.

3. Practical Impact and Challenges

Empirical studies suggest that while England's reforms have contributed to quicker case resolution and reduced litigation costs in many areas, they have also led to unintended consequences such as the rise of litigants-in-person, which can paradoxically slow proceedings. The simplification of procedure has also led to concerns about the erosion of substantive legal protections in certain types of cases.

In Türkiye, the reforms have improved procedural discipline but are undermined by high caseloads, variable judicial engagement, and lack of ongoing training. Preliminary findings from bar association reports suggest that while mediation has diverted many disputes away from litigation, it has not always resulted in equitable outcomes, particularly when power imbalances exist between parties.

Both jurisdictions continue to grapple with balancing procedural efficiency and fairness. The COVID-19 pandemic accelerated digital justice innovations in both systems, but also highlighted inequalities in access to legal services and technology. There remains a need for ongoing evaluation and adaptation of procedural rules to reflect changing legal and technological contexts.

4. International Influence and Comparative Perspectives

The reforms in both jurisdictions reflect broader international trends. England’s procedural philosophy has influenced other common law jurisdictions, while Türkiye’s reforms have been shaped by its candidacy for EU membership and its commitment to harmonize with the European acquis.

The European Court of Human Rights has played a significant role in shaping procedural expectations in Türkiye, particularly in regard to the right to a fair trial within a reasonable time. Comparative lessons can also be drawn from jurisdictions such as Germany and France, where case management is embedded in judicial training and court structure. The study emphasizes the importance of context-sensitive transplantation of reform elements, warning against wholesale borrowing without institutional adaptation.

Conclusion and Recommendations

This comparative analysis highlights the significant strides made in both England and Türkiye in reforming case management within their respective civil justice systems. While both jurisdictions have implemented important changes to enhance the efficiency and accessibility of justice, the full potential of these reforms requires ongoing efforts in key areas such as judicial training, digital infrastructure, and procedural clarity.

Recommendations:

1. Enhancing Judicial Discretion: Both England and Türkiye have embraced judicial oversight in case management, but further enhancements could be made by expanding the scope of judicial discretion in handling complex cases. Judges should be provided with additional tools and resources to make more informed decisions, allowing them to tailor case management strategies to the specific needs of individual cases.

2. Improving Access to Legal Aid and Technology: Both systems could improve support for litigants by enhancing access to legal aid and introducing more user-friendly technological tools. In Türkiye, the development of online platforms for case filing, status tracking, and document management could help reduce procedural delays and increase transparency. Similarly, in England, expanding the use of technology for remote hearings and case tracking could further streamline processes and reduce barriers for litigants.

3. Promoting Early Dispute Resolution: Encouraging the use of alternative dispute resolution (ADR) methods, such as mediation and arbitration, should remain a priority. Both England and Türkiye have recognized the value of early resolution, but further emphasis on pre-litigation mediation and compulsory early case management conferences could reduce court congestion. Expanding the role of courts in promoting ADR could further help litigants avoid lengthy and costly trials.

4. Judicial Case Management Training: While both jurisdictions have introduced reforms in judicial case management, Türkiye could benefit from more extensive judicial training programs focused specifically on case management techniques. Providing judges with specialized training in time management, mediation techniques, and technology-based solutions would improve their ability to manage cases efficiently while ensuring fairness. In England, further integration of case management best practices across lower courts may enhance consistency and predictability.

5. Centralized Case Tracking and Court-Led Mediation: England could explore the development of a centralized case tracking system to monitor case progress across all levels of the judiciary, enhancing efficiency and allowing for better resource allocation. Additionally, expanding court-led mediation programs could encourage more early-stage settlements and reduce the burden on the courts.

6. Investment in Digital Infrastructure: Both countries should continue to invest in their digital infrastructures. Türkiye should focus on expanding the scope of digital tools for litigants and judges, ensuring that the court system becomes more accessible and user-friendly. In England, while digital systems have already been introduced, enhancing their integration into the broader legal framework and ensuring full accessibility for all participants would ensure that technology plays a larger role in facilitating case management.

In conclusion, case management reforms in both England and Türkiye have significantly improved the efficiency of civil justice systems, yet continuous adaptation is crucial. Reform strategies should focus on balancing the need for efficiency with fairness. By enhancing judicial discretion, supporting litigants with better access to technology and legal aid, and promoting a culture of early dispute resolution, both jurisdictions can further refine their case management systems.

Learning from each other's experiences and adapting to societal and technological changes will be essential for both England and Türkiye in creating more accessible, fair, and effective civil justice systems.

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REGULATING CRYPTO-ASSETS DURING THE WEB 3.0: A CRITICAL EXAMINATION OF THE MICA FRAMEWORK AND ITS IMPACT ON TÜRKİYE

Assistant Professor Samet TATAR
Ankara Yıldırım Beyazıt University, Faculty of Law, Department of Cyber Law
ORCID: 0000-0002-3553-1683

Başak Ezgi DEVECİOĞLU ARAS
Ankara Yıldırım Beyazıt University, Faculty of Law, Department of Private Law
ORCID: 0009-0000-0644-5594, +905384000981

Abstract
With the dawn of the age of the internet, the internet evolved from fixed information-sharing frameworks (Web 1.0) to interactive user-generated realms (Web 2.0) and even to decentralized user-held systems christened Web 3.0 in recent years. This emerging phase—characterized by blockchains, smart contracts, cryptography, artificial intelligence, and machine learning—is producing fresh legal and regulatory challenges centered around crypto-assets.
Blockchain technology has frequently been celebrated for its transparency, immutability, and efficiency. However, its decentralized and pseudonymous nature coupled with the absence of stringent regulatory powers raises genuine concern regarding illicit use, volatility, and consumer protection. Therefore, the need for harmonized and extensive regulatory regimes has increased on the international platform.
States have responded with diverse approaches: some have an attitude of "wait-and-see" delaying legislative action, while others have adopted pro-active and substantial legal regimes to regulate crypto-asset markets. Of those, the European Union's Markets in Crypto-Assets Regulation ("**MiCA**") is a comprehensive and proactive supranational package.
The aim of this research is to critically examine the MiCA framework's normative foundations and critical legal provisions. The paper also considers potential implications of the MiCA for Türkiye, a growing digital economy. In its identification of normative deficits and locally specific challenges, the paper addresses how Türkiye can build a robust MiCA-founded regulatory framework for crypto-assets aligned to international best practice yet also responsive to domestic needs.
Keywords: Crypto-Assets Regulation, Blockchain Law, MiCA, Financial Technology Law, Decentralized Finance.

Introduction
In the contemporary era, the internet constitutes an indispensable facet of daily life, having undergone substantial transformation since its inception. Following the static Web 1.0 and the participatory Web 2.0, the emergence of Web 3.0 around 2014 has marked a pivotal transition toward a decentralized, user-driven digital ecosystem. Characterized by distributed ledger technologies, artificial intelligence, and machine learning, Web 3.0 represents not only a technological shift but also a legal frontier—raising new questions surrounding digital assets and governance (Wan, Lin, Gan, Chen, & Yu, 2024).
Blockchain technology is a rapidly evolving innovation that offers transparency, accuracy, and operational efficiency to its users. Given its accelerated pace of development, blockchain has emerged as a transformative tool within the digital economy.

When considering the crypto-assets transacted through blockchain-based systems, it is an undeniable reality that crypto-asset markets are expanding at an increasingly rapid rate (Joo, Nishikawa, & Dandapani, 2019).

While key features of blockchain—such as its decentralized architecture and enhanced security—make it an attractive option for users engaging with crypto-assets, these same characteristics, when coupled with the current lack of comprehensive regulatory oversight, also contribute to a range of challenges. These include associations with illicit activity, heightened market volatility, and a broader sense of legal and economic uncertainty (Joo, Nishikawa, & Dandapani, 2019).

Globally, national approaches to the regulation of crypto-assets vary significantly depending on differing regulatory philosophies. Some countries have adopted a "wait-and-see" approach, opting not to implement specific regulatory frameworks for crypto-assets in the short term. Instead, these jurisdictions monitor developments in other countries and adjust their positions gradually over time. In contrast, countries adopting a "regulatory approach" have chosen to establish explicit legal frameworks governing crypto-assets from the outset. (Dünyada Blokzinciri Regülasyonları ve Uygulama Örnekleri, 2019).

As outlined above, crypto-assets and their associated markets continue to evolve rapidly and are becoming increasingly prominent in daily life. In this context, negative experiences associated with crypto-assets—particularly those that have received widespread media attention—have underscored the urgent need to regulate emerging technologies, primarily to ensure the protection of investors. Indeed, as the crypto-asset market continues to expand both in Türkiye and globally, persistent legal and regulatory uncertainties pose significant risks not only to investors but also to market participants more broadly. Addressing these risks through clear, robust regulation is thus essential for the long-term stability and integrity of the digital financial ecosystem.

Despite various national and international regulatory efforts, the most comprehensive framework to date that directly addresses the regulatory needs of the crypto-asset sector is the European Union's Markets in Crypto-Assets Regulation, in short the MiCA.

In order to fully comprehend the nature and functioning of crypto-assets, it is first necessary to examine the foundational technology upon which they operate—blockchain. Following a detailed analysis of blockchain technology, this paper explores the evolution of crypto-assets, along with a comprehensive examination of their definitions and classifications. The discussion continues to significant scandals in the crypto sector, highlighting the regulatory motivations that have emerged in response. Subsequently, the study provides an overview of the MiCA, its implications for the European Union ("**EU**"), and its key regulatory provisions. Finally, the paper analyses Türkiye's current regulatory stance on crypto-assets and conclude with recommendations concerning the potential influence and alignment of the MiCA with the Turkish legal framework.

Blockchain Technology and Evolution of Crypto Assets

Crypto assets utilize their own specific databases, which are blockchains. A blockchain can be described as a digital ledger where crypto assets are created and transferred (Çetin, 2022). Specifically, blockchain groups and permanently record transactions within a given period into blocks, which are time-to-timestamped to ensure data integrity. Generally, blockchain can be defined as a decentralized, peer-to-peer, distributed database created using cryptographic techniques (Çetin, 2022; Şenkardeş, 2022; Sarıçiçek, 2024).

In simplified terms, blockchain technology can be likened to a trust machine. Each transaction block contains cryptographic verification methods that link to the previous block, creating a secure chain.

Essentially, blockchain is a distributed ledger where transactions are grouped into cryptographically linked blocks. Each block confirms recent transactions and references the previous block, thus forming the "chain", from which the term "blockchain" originates. This structure ensures a complete and chronological record of all transactions accessible publicly by any participant in the network. The existence of this verification method makes retroactive alteration impossible, thereby ensuring blockchain's security and transparency (Foley, Karlsen, & Putniņš, 2018; Yıldırım, 2019).

Crypto assets were introduced in 2008 with the publication of the article titled "Bitcoin: A Peer-to-Peer Electronic Cash System" authored by an individual or individuals still unidentified, using the pseudonym Satoshi Nakamoto. The first crypto asset introduced by this paper was Bitcoin, which also gave its name to the proposed alternative electronic payment system (Nakamoto, 2008).

Nakamoto highlighted the necessity of a new system due to issues inherent in existing electronic payment systems, including reliance on trusted intermediaries, associated costs, and privacy concerns over sharing personal data. Nakamoto proposed an alternative peer-to-peer electronic payment system using cryptographic encryption techniques, allowing parties to transact directly without traditional intermediaries (Nakamoto, 2008).

Following Bitcoin's growing popularity and success, numerous alternative cryptocurrencies emerged, collectively termed "altcoins" (Ay & Adıyaman, 2022).

In contrast, altcoins—referring to all cryptocurrencies other than Bitcoin—have generally been developed either to address certain limitations or shortcomings associated with Bitcoin or to serve alternative purposes, such as enabling the execution of smart contracts and supporting diverse use cases within decentralized digital ecosystems.

In recent years, the concept of smart contracts has gained substantial prominence, particularly due to the capabilities offered by blockchain technology. Following the development of the Bitcoin blockchain, Ethereum emerged with the innovative ability to alter the certification structure within the blockchain, thereby allowing for the creation and execution of self-executing documents composed entirely of code—referred to as smart contracts. This advancement has significantly expanded the functional scope of blockchain technology beyond simple digital transactions, enabling decentralized applications and automated legal and financial processes (Tevetoğlu, 2021).

Crypto Assets in General

Although there is no universally accepted definition of "crypto asset", in general terms, crypto assets can be defined as digital representations of value or contractual rights, protected through cryptographic techniques, stored and transferred via distributed ledger systems. (Güçlütürk, 2019; Özgün, 2024).

Crypto assets can be broadly categorized into five types: (i) cryptocurrencies, (ii) utility tokens, (iii) security tokens, (iv) stablecoins, and (v) non-fungible tokens (NFTs). Below are general descriptions and examples of each category.

Cryptocurrencies are digital currencies primarily used as a medium of exchange or a store of value. They are digital exchange instruments secured by decentralized consensus mechanisms. As such, cryptocurrencies are crypto assets not issued by any central authority and designed as alternatives to traditional electronic payment systems, enabling peer-to-peer transactions without intermediaries. Bitcoin is one of the widely used cryptocurrency (Baur, Hong, & Lee , 2018).

Utility tokens provide access to specific products, services, or platforms. These tokens are designed not as investments but rather to facilitate the use of a particular network or application. Typically, these tokens are created by platforms on existing blockchains.

For example, Mun token, developed on the Ethereum blockchain, allows users to make in-app purchases within an online application used for rating restaurants.

Security tokens confer rights analogous to equity or creditor rights in the issuing enterprise, including profit-sharing or dividends. Economically, these tokens resemble traditional financial instruments like shares, bonds, or derivatives, setting them apart from other types of crypto assets. For example, tokens issued by Polybius, a virtual bank aiming to provide peer-to-peer lending without physical branches, grant holders a share of the distributable profits.

Stablecoins maintain their value by pegging themselves to an external reference such as fiat currency or asset baskets (President's Working Group on Financial Markets, 2021; Kiff, et al., 2020).

Examples include Tether (USDT) and USD Coin (USDC), both pegged to the US Dollar.

Non-fungible tokens (NFTs) are crypto-assets representing ownership of unique items, typically digital artworks or collectibles. NFTs fulfill this function through a unique identifier that cannot be altered or substituted. More broadly, an NFT provides indisputable answers to questions about the provenance of a digital asset, such as who currently owns the NFT, its previous ownership history, the creator's identity, and identification of the original among numerous copies (Nadini, et al., 2021).

Major Scandals and Their Impact on Regulating Crypto Assets

Several significant scandals have had a profound impact on crypto markets and have directly influenced the development of the MiCA regulation. In order to fully grasp the regulatory necessity surrounding crypto-assets, it is instructive to examine a number of these high-profile incidents.

We begin by examining the Mt. Gox scandal of 2014—an event widely regarded as one of the earliest and most consequential crises in the history of cryptocurrency. Mt. Gox, based in Japan, was the world's largest Bitcoin exchange in the early 2010s, reportedly handling over 70% of global Bitcoin transactions at its peak. In 2014, the exchange abruptly suspended withdrawals and filed for bankruptcy after revealing that approximately 850,000 Bitcoins—then valued at around USD 450 million—had been lost to a massive hacking incident. The collapse of Mt. Gox sent shockwaves throughout the global crypto ecosystem, resulting in substantial financial losses for thousands of users and triggering widespread concerns over the security and governance of crypto exchanges. The incident served as a critical turning point for regulators, particularly in Japan. In response, the Japanese government amended its Payment Services Act in 2016 to impose mandatory registration requirements on cryptocurrency exchanges, along with obligations to implement cybersecurity measures and comply with anti-money laundering ("**AML**") standards. With these reforms, Japan became one of the first jurisdictions in the world to introduce a licensing regime for crypto-asset service providers (Umeda, 2018).

Following the Mt. Gox scandal in 2014, further incidents continued to shake confidence in the crypto-asset markets. Among them, the OneCoin scandal, which unfolded between 2016 and 2017, stands as a prominent example. Originating in Bulgaria, OneCoin was not a genuine cryptocurrency but rather a fraudulent scheme marketed as a revolutionary crypto project. Established in 2014 by Ruja Ignatova—self-styled as the "Crypto Queen"—OneCoin attracted billions of dollars in global investment despite lacking a functioning blockchain infrastructure. In reality, OneCoin operated as a Ponzi scheme, structured through a multi-level marketing system that used funds from new investors to pay earlier participants. By 2017, under increasing regulatory scrutiny, Ignatova disappeared, prompting an international search. She and other key executives were subsequently charged by U.S. federal prosecutors with fraud and money laundering.

The collapse of triggered regulatory warnings across multiple jurisdictions regarding high-risk investment projects in the crypto realm. Furthermore, the case reinforced the urgent need for stricter oversight of crypto-related advertising and the proliferation of pyramid-like schemes (Lexology , 2024).

Significant crypto-related scandals have also occurred in Türkiye, the Thodex incident stands out as one of the most prominent. The Thodex scandal represents the largest cryptocurrency fraud case in Turkish crypto history and has brought to light critical regulatory deficiencies in the oversight of crypto-asset exchanges. Founded in 2017 by Faruk Fatih Özer, Thodex rapidly grew to become one of Türkiye's leading cryptocurrency trading platforms. At its peak, the platform reportedly had a user base of approximately 400,000 individuals and facilitated a daily trading volume of around USD 585 million. Thodex attracted substantial user interest through aggressive promotional campaigns, including the promise of a secure trading environment and low transaction fees. (Singh, 2023; Balasa, 2024).

By April 2021, Thodex abruptly halted all trading and withdrawal operations without prior notice. Initially, the platform claimed that the suspension was due to the evaluation of a prospective partnership offer. However, it soon became apparent that Faruk Fatih Özer, the company's founder, had deactivated his social media accounts and fled Türkiye, allegedly absconding with approximately 2 billion USD in investor assets. This unexpected suspension of services triggered widespread panic among users and rendered hundreds of thousands of investors unable to access their funds. The incident gave rise to a wave of legal actions and complaints, exposing the vulnerability of investors in the absence of adequate regulatory supervision and consumer protection mechanisms within the crypto-asset market in Türkiye (Oladipupo, 2023).

These scandals exposed numerous issues, including insufficient internal controls, crypto-related fraud, and technological vulnerabilities. Many jurisdictions have subsequently adopted stringent measures, including exchange licensing requirements, capital adequacy rules, audits, asset segregation, and risk disclosures. Ultimately, these lessons have increasingly translated into formal legislation. The MiCA regulation represents the most comprehensive regulatory framework to date, specifically designed to prevent similar scandals and establish detailed crypto asset regulations.

The MiCA in General

The MiCA, formally adopted as Regulation (EU) 2023/1114, marks the EU's most comprehensive legislative initiative to date in the field of crypto-asset regulation. The MiCA seeks to establish a harmonized regulatory framework across all 27 EU member states, addressing a longstanding regulatory fragmentation that previously required crypto-asset service providers to comply with divergent national laws and obtain multiple licenses to operate (European Securities and Markets Authority, 2024).

To fully underscore the significance of the MiCA, it is essential to examine its legally binding nature within the EU framework.

The Treaty on the Functioning of the European Union (TFEU), specifically Article 288, clearly defines a regulation as follows: *"A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."*

The legal form of the MiCA eliminates the need for national implementing legislation and ensures uniform application across the EU. In contrast to directives, which allow member states discretion in terms of transposition, regulations provide legal certainty and consistency from the moment of entry into force.

The MiCA was deliberately structured as a regulation rather than a directive to eliminate inconsistent national interpretations and promote legal clarity, resulting in compliance by all EU member state (Legal Nodes, 2024).

Scope and Objectives of the MiCA

The MiCA applies to issuers, offerors, crypto-asset service providers ("**CASPs**"), and other stakeholders engaging in the issuance, public offering, trading, or custody of crypto-assets within the EU. It provides uniform requirements concerning the authorization, conduct, supervision, and operational obligations of these actors.

The core objectives of the MiCA include:

(i) Enhancing transparency through mandatory disclosures, such as standardized white papers and public filings.

(ii) Ensuring consumer and investor protection by setting operational standards and liability rules for CASPs.

(iii) Promoting financial stability, particularly in relation to stablecoins, by imposing reserve and redemption obligations.

(iv) Preventing market abuse, including insider trading and market manipulation, through enforceable compliance mechanisms.

(v) Achieving regulatory harmonization across EU member states, thereby facilitating cross-border operations and reducing compliance burdens (InnReg, 2025) (Solidus Labs, 2024)

The MiCA places strong emphasis on consumer protection. To mitigate fraud and operational risks, CASPs must comply with stringent accountability and operational standards, including systems for complaint resolution, capital adequacy, and internal controls.

In the area of market abuse, the MiCA introduces legally binding provisions against insider trading, unlawful disclosure of inside information, and manipulative practices. These provisions apply to any party professionally involved in arranging or executing crypto transactions and are designed to preserve market fairness and investor confidence (Solidus Labs, 2024).

The MiCA also prohibits misleading marketing by requiring all promotional content to align with the information disclosed in the approved white paper. This prevents discrepancies between investor-facing materials and formal disclosures, enhancing transparency and investor trust (InnReg, 2025).

Taken together, the MiCA offers a pioneering example of supranational crypto-asset legislation. It provides legal clarity, fosters responsible innovation, and sets a global benchmark for how decentralized finance and emerging digital assets may be regulated in a secure and scalable manner.

Key Provisions of the MiCA

The MiCA introduces a comprehensive set of legal obligations designed to enhance transparency, protect consumers, and promote the integrity and stability of the European crypto-asset market. These provisions apply to both issuers of crypto-assets and CASPs, establishing clear and enforceable standards for disclosure, conduct, supervision, and risk management.

White Paper Requirement

One of the foundational requirements of the MiCA is the obligation for crypto-asset issuers to publish a white paper before offering a crypto-asset to the public or admitting it to trading on a trading platform.

The white paper serves as a standardized disclosure document, akin to a financial prospectus, and must include detailed information on the issuer or offeror, the project's purpose, the rights and obligations associated with the crypto-asset, the underlying technology, and the related risks (InnReg, 2025).
To ensure accessibility and clarity, the white paper must be fair, clear, and not misleading, and written in a language customary in international finance, such as English, or in a language accepted by the relevant competent authority (InnReg, 2025).

Advertising and Marketing Compliance
The MiCA mandates that all promotional and advertising materials be fully aligned with the contents of the approved white paper. This requirement applies to all forms of investor-facing communication, including websites, newsletters, and social media platforms. The regulation strictly prohibits exaggeration of potential benefits, omission of material risks, or inconsistencies between promotional content and disclosed information (InnReg, 2025). This framework is intended to mitigate misleading marketing practices and strengthen investor protection through greater transparency.

Authorization and Ongoing Compliance for CASPs
The MiCA introduces a harmonized licensing regime for CASPs, including exchanges, custodians, brokers, and portfolio managers. Firms must apply for authorization from the competent authority in their home member state. Once authorized, they benefit from a passporting mechanism, which enables them to operate across the entire EU without needing separate licenses in each country (Legal Nodes, 2024).
Licensed CASPs are required to meet ongoing compliance obligations, including minimum capital and prudential requirements, internal control and governance structures, robust cybersecurity protocols, asset segregation and safeguarding procedures, transparent conflict-of-interest policies.

Registration and Supervisory Oversight
In addition to authorization, the MiCA imposes a registration requirement for issuers of ARTs and EMTs. Issuers must register with the competent authority of their home member state and receive prior approval before launching public offerings or admitting tokens to trading (European Securities and Markets Authority, 2024).

Türkiye's Standing on Crypto Assets
Türkiye has emerged as one of the leading jurisdictions in terms of crypto-asset adoption, with digital assets becoming an increasingly popular investment class among its population. Survey data suggests that public awareness and engagement with cryptocurrencies in Türkiye have grown significantly, rising from 16% in 2020 to over 70% in 2021, with continued increases in 2023 and 2024 (Balasa, 2024).
The Turkish regulatory approach has evolved from a fragmented and reactive stance to a more structured legal framework following a series of high-profile crypto-related events, including the Thodex scandal. Several key institutions now play a role in the regulation and oversight of the crypto-asset ecosystem. Here, we would like to take a brief look at the authorities and general regulations in Türkiye regarding crypto assets and the general obligations of the parties involved in the crypto asset process.

The Capital Markets Board ("**CMB**") is the principal regulatory authority responsible for overseeing capital markets in Türkiye. As of July 2024, Türkiye enacted its first comprehensive crypto-asset legislation through amendments to the Capital Markets Law No. 6362 ("**Amended Law**"), granting the CMB the authority to supervise crypto-assets that possess the characteristics of capital markets instruments (SRP Legal, 2024).

Under the Amended Law, CASPs—including trading platforms, custodians, and brokers—must obtain licenses from the CMB. Licensed entities are subject to detailed regulatory oversight concerning shareholding and management structures, capital adequacy and risk management, technological infrastructure and cybersecurity, governance and internal control systems.

The Amended Law also grants the CMB powers to approve white papers, supervise token listings, regulate marketing practices, and impose administrative sanctions for non-compliance.

The Financial Crimes Investigation Board ("**MASAK**") has also have a key role in Türkiye's crypto asset regulation and responsible for enforcing Türkiye's AML and Counter-Terrorism Financing ("**CTF**") obligations. In May 2021, MASAK designated CASPs as obligated institutions under the AML Law. This requires them to implement KYC verification procedures, monitor transactions for suspicious activity, report large or high-risk transactions (over 15,000 Turkish Liras) to MASAK (Rebeka, 2025).

Conclusion and Recommendations

The expansion of crypto-asset markets has prompted jurisdictions around the world to reconsider the adequacy of their financial regulatory architectures. In this evolving context, the MiCA offers the most comprehensive and harmonized framework yet established, setting a new benchmark in supranational crypto regulation. MiCA is designed to ensure transparency, consumer protection, market integrity, and financial stability, while also preserving space for technological innovation within the EU (European Securities and Markets Authority, 2024; European Parliament and Council, 2023).

A comparative assessment reveals that Türkiye's evolving regulatory regime shares many structural similarities with MiCA, particularly following the July 2024 legislative reforms. Türkiye has now established a licensing system for CASPs, empowered the CMB to supervise offerings and trading activities, and imposed obligations related to governance, AML compliance, and technological standards (SRP Legal, 2024; Rebeka, 2025). These measures mark significant progress toward a more transparent and accountable crypto ecosystem. However, the MiCA goes further in several key respects. In light of the MiCA, it is recommended that Türkiye's policymakers should consider further alignment with the MiCA.

In conclusion, the MiCA presents not only a regulatory model but also a strategic opportunity. For Türkiye, adapting to this framework could elevate its credibility in global financial markets, improve domestic investor protection, and stimulate the development of a compliant, innovative, and sustainable crypto ecosystem.

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THE IMPACT OF ARTIFICIAL INTELLIGENCE (AI) ON VIETNAM'S COMPETITION LAW

LLM. Nguyen Du Yen
Thu Dau Mot University, Faculty of Law
ORCID: 0000-0002-8704-6890

Abstract
Artificial Intelligence (AI) is revolutionizing various industries globally, and its rapid development has profound implications for competition law. In Vietnam, a nation striving to integrate into the global economy, the rise of AI poses both opportunities and challenges for its competition law framework. As AI technologies become more pervasive in e-commerce, manufacturing, and finance sectors, they can reshape market dynamics, influence consumer behavior, and alter traditional competitive structures.
This paper examines the effects of AI on Vietnam's competition law, exploring the key challenges it presents to regulators and businesses. One major concern is how AI-driven algorithms can lead to anti-competitive practices, such as price-fixing, market collusion, or monopolistic behaviors, even without direct human coordination. Additionally, the use of AI in data analytics and consumer targeting may result in discriminatory practices or the abuse of market dominance.
The paper also discusses the Vietnamese legal framework, which has made strides in competition regulation but faces difficulties in addressing AI-induced complexities. While Vietnam's competition law includes provisions against anti-competitive agreements and abuse of market power, the application of these provisions to AI-driven actions remains unclear. The paper suggests the need for a more nuanced and adaptive approach to competition law that incorporates the unique characteristics of AI technologies, ensuring that the law evolves to keep pace with technological advancements.
Ultimately, the paper concludes that Vietnam's competition law must adapt to the new reality shaped by AI, balancing innovation with fair competition to foster a healthy digital economy. This requires regulatory authorities to enhance their understanding of AI's potential impact and to introduce updated legal frameworks that address both the opportunities and risks associated with these technologies.
Keywords: Artificial Intelligence, Competition Law, Anti-competitive Practices, Digital Economy, Vietnam

Introduction

Artificial Intelligence (AI) is fundamentally transforming how businesses operate, particularly in production, sales, marketing, distribution, pricing, and consumer interaction. These changes, when reaching a certain threshold, can alter the competitive structure of the market, increase barriers to entry for new businesses, or enable large corporations to exploit dominant positions in more sophisticated and harder-to-control ways.
Globally, many countries have begun to adjust their competition laws to address issues posed by AI. For instance, the EU has enacted legislation such as the Digital Markets Act (DMA) and the Digital Services Act (DSA) to control abusive market power in the digital environment. In the US, competition authorities have also launched a series of investigations into "tech giants" for suspected market manipulation through algorithms.
In Vietnam, the Competition Law 2018 is considered a significant step forward in modernizing competition legislation and establishing a fair and equitable competitive environment.

However, faced with the rapid and complex development of AI, many experts argue that the current law still has numerous gaps that have not been timely addressed. Several critical issues, such as algorithmic pricing, exclusive digital ecosystems, and the handling of legal liability when AI autonomously commits legal violations, etc., have not been clarified and lack specific guidance within the current legal framework. AI has a significant impact on so many fields that many people have not yet focused on its effects on competition law.
Building a theoretical and practical basis regarding the influence of AI on competition law is a prerequisite for creating a solid legal corridor that ensures the principles of freedom, honesty, fairness, and healthy competition. Therefore, a comprehensive and systematic study is needed to analyze the impacts of AI on the regulations and enforcement practices of Competition Law in Vietnam, thereby refining current competition law provisions.

Materials and Methods

To conduct a comprehensive and in-depth study on the impact of artificial intelligence (AI) on Vietnam's competition law, the author employed a combination of legal analysis, comparative law, and case study methodologies. Specifically:

i) Legal document analysis

This constitutes the primary research method, focusing on the analysis of current legal documents governing the competition sector in Vietnam, including: the Competition Law 2018 and Decree No. 35/2020/ND-CP guiding the implementation of certain articles of the Competition Law 2018. Through the analysis of the aforementioned documents, the research aims to determine: the extent of recognition and control of AI technology usage in anti-competitive practices, thereby identifying legal gaps when confronted with the "non-human," automated, and complex interconnected nature of AI.

ii) Comparative legal study

This method is employed to reference the modern approaches of leading countries or organizations in regulating AI within the realm of competition, such as the EU, the United States, the UK, the OECD, etc. The legal documents utilized include: the Digital Markets Act (DMA) and the Digital Services Act (DSA) of the EU; the Federal Trade Commission (FTC) Guidelines on AI and Algorithms; certain guidelines and recommendations from the OECD on competition in the digital economy; documents from UNCTAD related to competition and consumer policies in the digital age; and so forth.

iii) Case studies

Given that Vietnam has not yet recorded many official cases involving AI and anti-competitive behavior, the research employs two parallel approaches: analyzing international cases such as Eturas, RealPage, Topkins, Amazon, Google, Uber, etc., and constructing hypothetical scenarios.

Findings and Discussion

1. AI and Its Legal Relevance to Competition Law

1.1. Overview of Artificial Intelligence (AI)

***AI and Related Concepts*:**

- Artificial intelligence (AI) is defined as the capability of a machine system to perform tasks that typically require human intelligence, including learning, reasoning, and self-correction (Russell & Norvig, 2021). AI is not merely a set of fixed programming algorithms but also possesses the ability to learn from data and make autonomous decisions based on the information gathered.

- Algorithm: This is a set of rules or step-by-step instructions for a computer to execute a specific task. Algorithms are the “brain” of AI, determining how AI processes information and generates results.
- Machine learning (ML): Machine learning (ML) is a subfield of AI which designs intelligent machines through the use of algorithms that iteratively learn from data and experience. According to Samuel (1959), machine learning gives “computers the ability to learn without being explicitly programmed” (OECD, 2017). For example, a machine learning system can be “trained” with thousands of images of cats and dogs. After learning, it can accurately identify which images are cats and which are dogs, even with images it has never seen before.
- Deep learning: This is an advanced machine learning technique that utilizes artificial neural networks with multiple layers to process complex data. Deep learning is particularly effective in tasks such as image recognition, natural language processing, and speech recognition. For example, facial recognition systems on smartphones use deep learning to analyze facial features and identify the user's identity.

Levels of AI:

According to the European Commission (2021), AI is categorized into three main levels:
- Narrow AI: This type of AI is designed to perform a single, specific task. Common examples include:

- Chatbots: Computer programs that can converse with humans, answer questions, and provide information. For example, customer support chatbots on e-commerce websites.
- Image recognition systems: Systems that can identify and classify objects in images or videos. For example, license plate recognition systems, fraud detection systems in online transactions.
- Spam filters: Programs that automatically filter out junk emails and protect users' inboxes.

- General AI: This type of AI has the ability to perform any intellectual task that a human being can. Currently, General AI is still in the development phase and has not yet reached human-level proficiency. Example (in the future): An AI system that can simultaneously write news articles, play chess, and provide financial advice, much like a true polymath.
- Superintelligent AI: This is a hypothetical level of AI that surpasses human intellectual capabilities in all domains. Superintelligent AI remains a theoretical concept and is the subject of much scientific and philosophical debate. Example (in science fiction): Films like “The Terminator” or “The Matrix” often depict superintelligent AI systems capable of controlling the world.

Although the majority of current AI applications fall under Narrow AI, their impact on economic activities and markets is highly significant.

1.2. The relationship between AI and Competition law

Competition law ensures fair market operation, protects consumers, and promotes innovation. As AI becomes a prevalent tool in business operations, it has profoundly altered how companies compete. Some specific manifestations clearly illustrate the role of AI:
- AI processes large amounts of data: AI algorithms can collect, analyze, and predict market behavior with superior speed and accuracy. This allows businesses to make operational decisions (such as pricing, product promotion, distribution) more quickly and efficiently. For example, e-commerce platforms like Shopee and Lazada use AI to analyze the shopping data of millions of customers, thereby providing personalized product recommendations, optimizing promotional campaigns, and predicting market demand.

- AI automates competitive strategies: AI systems can automatically identify and implement optimal competitive strategies, such as adjusting sales prices, offering promotions, or optimizing distribution channels. However, this also increases the risk of violating competition law, even if the business has no subjective intent. For example, online retailers can use AI to automatically adjust product prices in real-time based on competitor prices, customer demand, and other market factors. If these algorithms are not carefully designed, they can inadvertently lead to companies colluding to maintain high prices, harming consumers.
- Potential for implicit coordination through algorithms: Businesses using similar AI algorithms can generate coordinated behavior, leading to a "cartel effect" without any direct agreement. For example, gasoline companies might use AI systems to automatically adjust sales prices based on competitors' prices. If these algorithms are intentionally designed to learn from competitors' behavior, they could lead to companies maintaining high prices, even without any secret meetings or written agreements.

In summary, AI can blur the lines between legal and illegal competitive behavior, infringing upon the provisions of competition law. Self-regulating AI algorithms can lead to anti-competitive outcomes, even without subjective intent from the business. This poses new challenges for competition authorities in protecting the market from violations.

2. Negative impacts of AI (Challenges) on Vietnam's Competition Law

2.1. AI creates significant legal loopholes

2.1.1. AI and prohibited unfair competition practices

Unfair competition is defined in Clause 6, Article 3 of the Competition Law 2018 as "an act of a business contrary to the principles of goodwill, honesty, commercial practice, and other standards in business, causing or potentially causing damage to the legitimate rights and interests of other businesses."

Article 45 of the Competition Law 2018 currently prohibits the following unfair competition practices:

- Infringing upon confidential business information;
- Coercing partners or customers of other businesses to not transact or cease transacting with those businesses;
- Providing untruthful information about other businesses, causing adverse effects on their reputation, financial status, or business operations;
- Disrupting the business operations of other businesses;
- Illegitimately enticing customers;
- Selling goods or providing services below total cost, leading to or potentially leading to the elimination of other businesses operating in the same line of goods or services;
- Other unfair competition practices prohibited by other laws.

Currently, all these unfair competition practices are carried out by humans, either directly or by hiring others. However, in the context of digital transformation, businesses can fully exploit AI to do so more sophisticatedly and undetectably. Some examples of using AI for unfair competition include:

- Using deepfake technology: Through this technology, businesses can create fabricated videos of competitors' spokespersons or disseminate false information about their products or business operations, misleading consumers and damaging the reputation of competitors. This is a manifestation of providing untruthful information about another business. However, tracing the origin and proving the violation becomes extremely difficult because deepfake materials are often created anonymously and can spread rapidly within hours.

- Using algorithms for dynamic pricing: AI can collect and analyze vast amounts of data (about competitors, customers, inventory, etc.) to adjust sales prices in real-time. This can lead to very low prices (even below total cost) at certain times for a short period, while the average price may still be above cost. This can drive competitors out of the market but leaves no clear evidence, making it difficult for investigation agencies to prove this is an act of selling goods below total cost with the potential to eliminate competitors.
- Using price discrimination algorithms: AI can analyze the personal data of each customer to determine the price they are willing to pay. This can lead to some customers paying significantly higher prices than others. In some cases, AI may sell to some customers at low prices (possibly below total cost) to attract them, while compensating by selling to other customers at higher prices. This is also a case of selling goods below total cost with the full potential to eliminate other businesses, especially small businesses that do not have the resources to use AI. Authorities also find it very difficult to prove violations in this case, as businesses can argue that they are simply optimizing profits by offering different prices to different customer segments.

Overall, the current legal framework of Vietnam's competition law can still regulate acts of exploiting AI for unfair competition. However, some regulations need clearer guidance, such as what constitutes "selling goods below total cost with the potential to eliminate competitors." The current Competition Law and its guiding decree (Decree 35/2020/ND-CP) do not explain this at all. In practice, authorities still have to rely on the provisions regarding cases not considered selling goods below total cost to eliminate competitors from the expired guiding decree of the 2004 Competition Law, but this provision only explains the case of "elimination" and not the case of "potential elimination". This is a way of regulation that can be used to handle violations related to AI, but due to the lack of clear guidance, it is very difficult to apply in practice. Besides, AI also has the ability to self-learn to a certain extent, so determining the level of responsibility of the user of AI is also a thorny issue, which is a major legal loophole when resolving competition violations involving the impact of AI.

2.1.2. AI and prohibited Anti-competitive agreements

"Anti-competitive agreement is an agreement between parties in any form that has the effect or potential effect of restricting competition." (Clause 3, Article 3 of the Competition Law 2018). These agreements are specifically listed by Vietnamese lawmakers in Article 11 of the Competition Law 2018 with 10 cases from Clause 1 to Clause 10, such as: price-fixing agreements, customer allocation agreements, market sharing agreements, etc., and a contingency case in Clause 11 for other agreements not listed by law but having the effect or potential effect of restricting competition.

Although no cases of anti-competitive agreements using AI have been detected and handled in Vietnam so far, such agreements are no longer uncommon worldwide. A 2018 survey by the European Commission showed that two-thirds of online retailers in the EU used AI algorithmic software to automatically adjust prices based on competitors (Ngô, 2025). Pricing algorithms can run continuously, updating sales prices based on real-time market and competitor data. As a result, the speed and frequency of price changes are much faster than humans, helping businesses optimize revenue. However, this widespread automatic price adjustment leads to price coordination between competitors, undermining competition. In other words, AI can become a tool for implicit collusion: companies still "compete" in appearance, but all price movements seem pre-arranged.

According to author Ngô Nguyễn Thảo Vy (2025), there are two main forms of competitive collusion that AI can facilitate:

- Explicit collusion: Competitors explicitly agree (form a cartel) and use AI as a tool to enforce the agreement. Algorithms can automatically monitor prices and market share, ensuring all cartel members comply with the agreed price or market share. AI helps the cartel adjust quickly if anyone breaks the agreement and even automatically punishes (e.g., retaliatory price reductions against the violating competitor).
- Tacit collusion: More dangerous, AI can create tacit agreements without direct communication. Independent companies using similar algorithms (or algorithms that "learn" from each other) inadvertently reach unified behavior for mutual benefit. For example, if Company A's algorithm is programmed to "always copy the price of the nearest competitor" and competitor B uses similar logic, both will list identical prices. This case is very difficult to conclude as "collusion" or not, as they can argue that they coincidentally have the same strategy and did not "collude." This is a very difficult legal gray area to handle.

Some typical cases of collusion and reduced competition thanks to AI:

- Eturas case (EU, 2016): Online travel platform Eturas sent a notice imposing a 3% promotion cap on all travel agents using the system. Many agents implicitly complied with this common discount level. The EU Court concluded this was tacit collusion through algorithms, fining agents who did not object to the common policy (Ngô, 2025). This case set a precedent that not reacting to automated coordinated behavior is also considered participation in a cartel.
- Trod/GB Eye (UK) & Topkins (US, 2015): Poster sellers on Amazon (Trod Ltd. in the UK and its US partner) were found to be using automated algorithms to coordinate prices to keep poster prices high. The UK's CMA and the US DOJ coordinated investigations; the American director (David Topkins) pleaded guilty and was fined (Ginsburg & Wright, 2023). This was the first online price-fixing case to be criminally prosecuted, sending the message that "whether using AI or humans, price-fixing is illegal."
- Asus case (EU, 2018): Electronics manufacturer Asus established an automated retail price adjustment program on online channels: the algorithm tracked retailers' prices, and if anyone reduced prices below Asus's "floor price," the company would contact them to request a price increase; conversely, those who complied would be rewarded. This behavior was essentially widespread resale price maintenance using robots/algorithms. The EU fined Asus 63 million Euros for violating competition law (Ngô, 2025). The case shows that algorithms can help large businesses synchronize prices across distribution channels, distorting competition in the electronics retail market.
- Uber/Ola drivers case (India, 2018): A lawsuit accused Uber/Ola drivers of "colluding" to keep fares high by jointly accepting the app's dynamic pricing algorithm. However, the Competition Commission of India (CCI) argued that the drivers were not truly independent competitors (as the price was set by the company) and their joint acceptance of prices through the app did not constitute illegal collusion (Chandola, 2019). This case illustrates the blurry line between lawful coordination algorithms (within a platform) and collusive behavior.
- RealPage case (US, 2022-2023): RealPage provides AI management software for tens of thousands of apartment owners, collecting their rental price data and advising on "optimal" prices based on overall market data. As a result, landlords, who should have been competing by lowering prices to attract tenants, all simultaneously increased prices according to RealPage's algorithm's suggestions, causing unusually high rent increases across a wide area. The US Department of Justice in 2024 filed a lawsuit against RealPage and participating major landlords, alleging that RealPage's algorithm helped share sensitive information between competitors and coordinate rental prices (a form of "third-party collusion"), violating antitrust laws (U.S. Department of Justice, 2024). This case shows that simply using the same algorithm is no different from sitting down together to agree on prices (Dentons, 2025).

Legal challenges for Vietnam in handling collusion through AI:

Similar to handling unfair competition practices involving AI, dealing with anti-competitive agreements through AI under Vietnam's current legal framework will also pose many difficulties for authorities for the following main reasons:

- Firstly, difficulty in determining "agreement": By nature, the element of "agreement" is often associated with intentional, deliberate human behavior. In Vietnam's legal tradition, this element requires evidence of a will to coordinate, exchange information, or at least signs of tacit consent between the parties. When AI coordinates automatically, without any meetings or exchanges between businesses, it may not meet the criteria for an "agreement."
- Secondly, unclear legal responsibility: AI operates according to algorithms designed by humans, but with self-adjusting machine learning systems, the specific results are sometimes beyond the programmers' expectations. If one day the AI of two competitors "secretly colludes" to raise prices, the company can deny responsibility, claiming it was "done by machine learning." Attributing fault to programmers, managers, or the business becomes complex. Current law mainly assigns responsibility for human actions, so spontaneous AI behavior has no clear precedent for handling.
- Thirdly, lack of updated legal terminology, such as "autonomous algorithmic collusion," "hub-and-spoke collusion via AI." This can confuse competent authorities when applying current competition law (written for human behavior) to actions decided by machines. For example, in the Eturas case, the court had to infer the concept of "tacit agreement" when agents did not object to the common algorithm. Or the difference in views between countries: India (Ola/Uber case) considered that users sharing a price algorithm did not constitute collusion, while the US, on the contrary, if it can be proven that the parties intentionally relied on the same algorithm to coordinate, it is still a violation of the law. This inconsistency also confuses multinational businesses.

2.1.3. AI and abuse of dominant market position, abuse of monopoly position

With the support of AI, dominant businesses, especially digital platforms, can design algorithms that increase their market control while hindering or eliminating smaller competitors through:

- Predatory pricing algorithms: Dominant businesses can use flexible pricing algorithms to automatically lower sales prices to very low levels to eliminate new competitors. AI will monitor market fluctuations and react instantly; if it detects a competitor lowering prices, it will immediately lower prices further to eliminate them. The goal is to incur short-term losses to gain market share, then raise prices to compensate once market dominance is achieved. For instance, in the US, Uber was accused of using large amounts of capital to subsidize rides, pricing below total cost, and paying drivers high bonuses to eliminate a competitor (Sidecar), and then increasing prices through "surge pricing" mechanisms after eliminating the competitor, violating antitrust laws (Stempel, 2020). AI algorithms make this predatory behavior more effective by automatically maintaining loss-making prices until the competitor withdraws.
- Self-preferencing: Dominant digital platforms can adjust display or search algorithms to prioritize their own products/services while reducing the visibility of competitors. Google Shopping is a prime example. According to Stempel (2020), the European Commission concluded that Google abused its dominant position in the search market by prominently displaying its own shopping service, pushing rival price comparison services down. The EU Court also confirmed: "Google's practice of favoring its own shopping search results over rival services was discriminatory" (Hancock, 2024). Similarly, on e-commerce marketplaces like Amazon, if the search ranking algorithm prioritizes goods produced or distributed by Amazon, competitors will find it difficult to reach buyers.

This behavior distorts the market because users only see the prioritized ecosystem of the dominant business, while competitors, even with good products, lose the opportunity to reach customers.

- Exploiting user data and price discrimination: AI allows for deep collection and analysis of user data, thereby applying personalized pricing to each customer. Businesses with exclusive data can use algorithms to predict each customer's willingness to pay and then customize prices for maximum profit (Li, Philipsen, & Cauffman, 2023, p. 52). For example, online e-commerce or airline ticketing companies may display different prices based on user profiles, search history, or access devices. AI helps approach first-degree price discrimination, with each customer paying a price close to their maximum willingness to pay. From a competition perspective, price discrimination using AI has two sides: on one hand, it optimizes sales efficiency and can lower prices for price-sensitive groups; on the other hand, it can harm loyal customers (who have to pay higher prices) and hinder price competition for certain customer groups.
- Market manipulation through AI: Powerful AI algorithms can be exploited to cause fluctuations or manipulate the market for private gain. Algorithms can automatically create fake demand signals, for example, bots placing fake orders and then canceling them, to mislead competitors about market trends or cause them losses. In reality, Uber was once accused of deploying secret programs (like “Project Hell/SLOG”) with fake ride-hailing bots on competitor apps and then mass-canceling rides, aiming to discourage drivers and customers from switching to Uber (Stempel, 2020). This is an example of a tactic to create artificial demand to sabotage competitors, using technology to prevent competitors from accessing customers. Additionally, high-frequency trading algorithms can cause significant price volatility in just seconds. For example, the “Flash Crash” of 2010 in the US stock market, which caused the Dow Jones index to plummet 1,000 points in minutes, was linked to automated trading (CFTC & SEC, 2010).
- Data monopoly and new power structures: Leading technology companies can collect vast amounts of user data, using AI to analyze user behavior to retain customers within their ecosystem (lock-in effect). For example, a dominant social network or mobile operating system can lock in users by preventing data transfer to competitors or integrating services that make users increasingly dependent. AI operates more effectively with more data, so big data holders will become increasingly powerful, creating a reinforcing loop of data monopoly. This lock-in effect and exclusive data prevent new competitors from entering (very high barriers to entry) and gradually eliminate smaller competitors lacking data. This is also a form of indirect abuse of dominance, not through pricing behavior, but through controlling data and user resources to eliminate competition. In the digital economy, data is likened to “the oil of the 21st century.” AI cannot operate without input data. Therefore, companies that own large amounts of data (big data holders) like Google, Meta, Amazon, Alibaba... hold a monopoly advantage not only in terms of technology but also in market position. Although there may be many players in the market, if they all depend on a central data hub, genuine competition does not exist. This is the phenomenon of “pseudo-competition,” very difficult to detect using traditional investigation methods.

Legal challenges for Vietnam in handling abuse of dominant market position, abuse of monopoly position through AI:

Essentially, Vietnam's Competition Law 2018 can be applied to address the aforementioned behaviors, as this law also strictly prohibits acts of abusing a dominant market position and abusing a monopoly position. These prohibited acts are specifically listed in Articles 27 and 28, including some behaviors such as: selling goods or providing services below total cost, leading to or potentially leading to the elimination of competitors; imposing unreasonable

purchase or sale prices for goods or services, causing damage to customers (related to excessively high or low pricing); applying different commercial conditions in similar transactions, hindering other businesses from entering or expanding the market (prohibiting discrimination to eliminate competitors); imposing irrelevant conditions in contracts or preventing other businesses from entering the market; etc. Thus, acts of price customization that are disadvantageous to a group of customers can entirely be considered "imposing unreasonable prices" under current law. Behaviors that prioritize one's own services and restrict the market of competitors clearly fall into the category of preventing other businesses from entering the market or discriminating in transactions - prohibited acts for dominant businesses. Similarly, forcing customers or partners to only choose one's own services (e.g., lock-in effects due to binding conditions) can be considered imposing unfavorable transaction conditions.

However, the Competition Law 2018 and relevant guiding documents do not yet have criteria for evaluating abusive behavior through algorithms or anonymous AI strategies. Determining the cause-and-effect relationship between algorithms and market harm is a difficult issue in investigation and adjudication practice, requiring high technical capacity and a modern legal framework. Additionally, Vietnam's Competition Law currently lacks clear regulations on the limits of dynamic pricing, while international recommendations from the OECD, UNCTAD, and the EU are considering the possibility of setting limits on the permissible level of price discrimination based on personal data profiles.

2.1.4. AI and violations of economic concentration

AI can be used to conceal economic concentration transactions or create monopolistic market structures such as:

- "Quasi-merger": This is a form where a large company takes over the core personnel and technology of a startup but does not directly acquire a controlling stake. The startup still exists as a legally independent entity but has been "hollowed out" in terms of assets and human resources. Kazimirov (2025) points out that quasi-mergers are designed to "shield" large businesses from authorities, as they do not create a lasting change in legal control. AI can assist in breaking down a transaction into multiple parts, choosing roundabout investment methods through multiple intermediary companies, or using smart contracts to hide actual control. As a result, the economic concentration transaction occurs in reality but is not detected or does not fall under the notification requirement according to current law.
- "Killer acquisitions": AI can analyze market data, user trends, and emerging technologies to identify early-stage startups with the potential to threaten the position of large businesses. Based on AI recommendations, the dominant company can quickly acquire these startups before they become significant competitors. Typically, Meta (Facebook) acquired Instagram (2012) and WhatsApp (2014) – young but rapidly growing social networks. US regulators accused these transactions of being "killer acquisitions" aimed at eliminating future threats to Facebook's monopoly. In fact, a decade later, the Federal Trade Commission (FTC) is suing to unwind these acquisitions, arguing that Meta bought Instagram and WhatsApp to stifle competition early on (Bhuiyan, 2025).

Vietnam's current Competition Law has relatively comprehensively updated regulations on economic concentration compared to the old law. According to Article 29 of this law, economic concentration can exist in the forms of: merger, consolidation, acquisition, joint venture, and other forms of economic concentration as prescribed by law. Thus, the law expands the scope of application to non-traditional forms of concentration (provided that there are later regulations guiding their identification). The Competition Law 2018 also prohibits economic concentrations that cause a significant restriction on competition or have the potential to do so in the Vietnamese market (Article 30).

For control purposes, the law requires prior notification of economic concentration if it exceeds one of the thresholds specified in Article 13 of Decree 35/2020/ND-CP, including: total assets in the Vietnamese market of VND 3,000 billion or more; or total revenue from sales or total purchase value in the Vietnamese market of VND 3,000 billion or more; or transaction value of VND 1,000 billion or more, or combined market share of 20% or more (these values do not apply to credit institutions, insurance businesses, and securities companies). These regulations are basically in line with international practices, allowing for the handling of clear economic concentration cases (e.g., acquisition of controlling shares) and sanctioning acts of evading notification obligations.

However, the effectiveness of current law against sophisticated acts supported by AI remains a major question mark. Controlling new behaviors has many limitations:

- Firstly, current law lacks a clear mechanism to identify and handle “hidden” transactions that do not fall under traditional forms of economic concentration. If a large company does not directly hold shares or assets of a startup but only signs exclusive contracts for data, personnel, or technology, the transaction may not be considered an economic concentration under the definition of Article 30 of the Competition Law. The case of Microsoft's partnership with OpenAI is an example: the EU considered it from the perspective of economic concentration control but concluded that there was no lasting change in control, so it was not considered a notifiable economic concentration (Braeken & Elzas, 2024). Similarly, if this situation occurs in Vietnam, the transaction may slip through legal loopholes because AI helps disguise the acquisition relationship as strategic cooperation or the sale of intangible assets.
- Secondly, the current economic concentration notification thresholds may not be comprehensive enough to cover all cases. Although Vietnamese law stipulates relatively low thresholds, businesses can still circumvent the law by breaking down transactions below the threshold or focusing on acquiring competitive assets (such as patents, algorithms) without buying the company. AI can suggest strategies for buying multiple small startups below the threshold instead of buying one large company, or suggest indirect investment through multiple layers of intermediaries so that no single party reaches the notification threshold. If the separate parts of the transaction are not detected as related, competition authorities will find it difficult to intervene.
- Thirdly, the concept of “control” in the law does not yet account for new forms of control through algorithms. Current law focuses on voting rights, share ownership, or tangible assets. In the AI era, a business can gain control over the operations of another business through access to core data, joint decision-making algorithms, or binding customer contracts. These forms of “soft” influence are not fully defined by the law, leading to a lack of legal basis for handling them.

2.2. AI makes it difficult to handle violations

Competition violations related to AI often have the following characteristics:

- No clear traces: No emails, meeting minutes, or written agreements.
- Continuous and dispersed occurrence: In cyberspace, violations can occur millions of times a day, across many different platforms.
- Difficulty in distinguishing between legal and illegal behavior: For example, using AI to optimize prices can be legal, but if it exceeds the limit and is implicitly coordinated, it becomes a violation.
- Detecting violations in this environment requires:
- Ability to analyze big data.
- Knowledge of machine learning and reinforcement learning algorithms.
- IT systems capable of automatic monitoring.

However, current monitoring still relies heavily on denunciations and traditional investigation methods, making it difficult to handle non-traditional behaviors. In addition, Vietnam currently lacks a dedicated team to handle competition law violations related to AI. In Vietnam, the National Competition Commission (VCC), established under the Competition Law 2018, is the specialized agency responsible for monitoring and handling competition violations, including those of large businesses, digital platforms, and multinational corporations. The National Competition Commission and relevant agencies currently lack: highly specialized personnel in technology, AI, and big data; tools to monitor algorithms or trace "hidden" behaviors; and interdisciplinary cooperation mechanisms between legal experts and technology experts.

Another weakness contributing to this difficulty is the limited international cooperation, especially in cases involving cross-border technology platforms such as Google, Meta, and Amazon. Meanwhile, EU and US competition authorities have close information-sharing mechanisms, centralized databases, and teams of high-tech investigators.

3. Positive Impacts of AI on Vietnam's Competition Law

AI not only presents challenges but also creates significant opportunities to enhance the effectiveness of competition law in Vietnam. Here are some important positive impacts:

3.1. Promoting Legal Updates and Innovation

The rise of AI creates a massive wave of change in the economy, profoundly impacting how businesses operate and compete. For competition law to continue to play the role of fair market rules, innovation and updating are prerequisites, specifically:

- Innovating to address new challenges: AI creates new anti-competitive behaviors such as algorithmic collusion, self-preferencing, data abuse, etc., or distorts traditional behaviors, making current regulations outdated or insufficiently deterrent. Competition law needs to change to have clearer, more easily applicable regulations when such competition cases occur.
- Innovating to keep pace with technological development: AI is developing at a rapid pace, constantly creating new applications and business models. If competition law does not quickly update to adapt, it risks becoming obsolete and losing its ability to regulate the market.
- Innovating to integrate with international trends: Many countries and legal jurisdictions worldwide (EU, USA, etc.) have been and are reforming competition law to respond to the impact of AI. Vietnam's innovation of competition law is not only a domestic need but also a requirement for integration with international trends and to facilitate trade and investment.
- Innovating to protect consumers: AI brings many benefits to consumers but also poses potential risks. AI algorithms can be used to manipulate consumer behavior, violate privacy, or discriminate against consumers. Competition law needs to be innovated to protect consumers from these sophisticated anti-competitive behaviors while ensuring that consumers benefit from the innovation brought about by AI.
- Innovating to promote innovation: AI is a powerful driver of innovation. However, anti-competitive behaviors can stifle innovation and hinder the development of new technologies. Competition law needs to be innovated to create a healthy competitive environment where businesses are motivated to invest in AI research and development while preventing behaviors that hinder innovation.

The innovation of competition law is not only an inevitable response but also an opportunity for Vietnam to build a dynamic, innovative, and fair digital economy.

3.2. Contributing to enhancing law enforcement efficiency

Although the emergence of AI causes many difficulties in handling violations of competition law, it does not mean that AI has no contribution to law enforcement. On the contrary, AI can also be a sharp and powerful tool to help competition authorities detect and handle violations. For example, AI can help authorities automatically monitor the market and analyze big data. AI can be used to monitor the market continuously and automatically, detecting violations in real-time. AI can also analyze large amounts of market data to detect suspicious behavior patterns, such as unusual price fluctuations or signs of collusion. Competition authorities can use AI to collect price data from various sources (e.g., online sales websites, transaction data); analyze price data to detect unusual patterns, such as prices of businesses moving suspiciously parallel to each other; and use machine learning algorithms to predict prices and detect cases of price manipulation. This helps competition authorities save time and resources while increasing the ability to detect sophisticated violations. It can be said that whether AI causes harm or brings more benefits depends on the user's ability to exploit it.

4. Lessons for Vietnam from the regulatory experiences of other jurisdictions

4.1. Lessons from European Countries

Referencing regulations on “gatekeepers” under the Digital Markets Act (DMA) and the Digital Services Act (DSA):

- The Digital Markets Act (DMA) of 2022 applies to large technology companies such as Google, Amazon, Meta, etc., imposing a series of “must-do” and “must-not-do” obligations regarding how they operate core digital services. Many of these obligations are directly related to the use of algorithms and AI, aiming to prevent unfair competition practices arising from the technological power of gatekeepers. For example, Article 6(5) of the DMA prohibits the practice of self-preferencing, where the gatekeeper favors its own services on its platform. The DMA consolidates this ban on self-preferencing and adds a requirement for transparency in ranking algorithms (Hacker, Cordes, & Rochon, 2023). Accordingly, gatekeepers must ensure fairness in their algorithmic ranking of results, adhering to the principle of non-discrimination towards similar third-party products/services. This requires platforms to apply fair, reasonable, and non-discriminatory (FRAND) criteria in their algorithmic mechanisms, a groundbreaking aspect of the DMA.

Furthermore, the DMA places restrictions on the collection and use of data to train AI, aiming to prevent gatekeepers from leveraging exclusive data to consolidate their dominant position. Specifically, Article 5(2) of the DMA limits the ability of gatekeepers to combine users' personal data from different services unless GDPR-compliant consent is obtained. Notably, Article 6(2) of the DMA prohibits gatekeepers from using non-public data of business users (e.g., data of sellers on a marketplace) to infer or make AI decisions to compete against those very businesses. This regulation prevents situations where a company like Amazon uses internal sales data of third-party stores to develop algorithms that optimize Amazon's products, creating an unfair advantage (Hacker, Cordes, & Rochon, 2023). Simultaneously, the DMA requires gatekeepers to conduct independent audits of their customer profiling algorithmic methods. According to Article 15 of the DMA, gatekeepers must hire independent third parties to assess how their algorithms collect and analyze user data (e.g., personalized advertising algorithms) and report the results to the European Commission (Kachra & Hilliard, 2023). This audit mechanism aims to enhance transparency and ensure gatekeepers comply with data and AI rules.

- Parallel to the DMA, the EU's Digital Services Act (DSA) of 2022 imposes strict obligations on algorithmic transparency and risk management for very large online platforms (VLOPs), which often overlap with gatekeepers.

The DSA emphasizes the pillar of algorithmic transparency to minimize harm from content recommendation systems and online advertising. Specifically, platforms must disclose in their terms of service the main parameters of their AI-powered content recommendation systems (Cole, Etteldorf, Schmitz, & Ukrow, 2024). For instance, a large social network must disclose the algorithmic criteria determining the display of posts (based on interactions, preferences, etc.) so that users and regulatory authorities can understand the operating mechanism.

Lessons for Vietnam:

Drawing from the EU experience, Vietnam can consider developing regulations for businesses holding "bottleneck" positions in the digital economy. In particular, competition law or digital platform management rules could: prohibit anti-competitive algorithmic behaviors (such as prioritizing own services, exploiting exclusive data to compete against customers); require algorithmic transparency for large platforms (disclosing ranking criteria, content recommendations); establish monitoring and auditing mechanisms for AI systems with broad impact (e.g., requiring periodic reports on how algorithms operate and affect the market). The EU also demonstrates the necessity of coordinating competition law with other laws (such as Data Law) to comprehensively manage the behavior of gatekeepers.

4.2. Lessons from the United States

In 2021, the Federal Trade Commission (FTC) issued guidance and warnings to businesses that irresponsible use of AI could violate current law. In this guidance, the FTC emphasized four main principles: data transparency, avoiding discrimination, not manipulating consumers (especially in pricing), and accountability.

In 2024, the "Preventing Algorithmic Collusion Act" was proposed. This bill prohibits companies from using algorithms trained on non-public data of competitors (i.e., prohibiting the sharing of confidential data through third parties like RealPage). It also requires businesses to disclose and audit significant pricing algorithms and establishes a presumption that certain situations of shared algorithm use will be considered price-fixing collusion unless proven otherwise. This is a step to close the legal loophole regarding evidence, not requiring agreement emails; simply proving that competitors share a sensitive pricing algorithm is sufficient to infer a violation.

Lessons for Vietnam:

Vietnam can refer to the FTC's "soft" but effective approach by issuing guidance to businesses on responsible AI use in business. For example, Vietnamese competition or consumer protection agencies could develop a code of algorithmic ethics, emphasizing the principles of fairness, transparency, periodic auditing, and accountability. In particular, it is necessary to warn businesses against behaviors such as discriminatory algorithms (e.g., price discrimination based on region or gender) or collusive algorithms (e.g., tacit price agreements with competitors through the joint use of an AI tool). The general spirit is to promote business self-regulation under state supervision, as the FTC is doing to balance innovation and competition protection.

4.3. Lessons from the UK and Singapore

- The United Kingdom has adopted a "pro-innovation" strategy in AI governance. Instead of immediately enacting rigid new laws, the UK published a White Paper on AI in 2023, outlining five core principles (safety, transparency, fairness, accountability, and competition) and tasking sectoral regulators, such as the Competition and Markets Authority (CMA), with flexibly applying these principles within their jurisdiction. The UK is focused on enhancing the digital investigation capabilities of the CMA.

Simultaneously, the UK established the Digital Markets Unit (DMU) within the CMA to oversee major technology companies (similar to the EU's gatekeeper concept), and new legislation is expected to grant the DMU restrictive powers over these companies to prevent anti-competitive behavior (Competition and Markets Authority, 2021). The UK's approach is flexible: initially using existing laws and the capabilities of the competition authority to address AI issues on a case-by-case basis; concurrently, developing guidance frameworks and standards to encourage business compliance (e.g., the CMA urging platforms to voluntarily adhere to principles of responsible algorithmic design). The UK is also open to experimenting with new approaches, such as considering the use of regulatory sandboxes in the digital competition sector. Regulatory sandboxes have been successfully implemented in fintech in the UK, allowing businesses to test new products under special supervision from regulators.

- Similar to the UK, in response to algorithmic collusion, Singapore has not rushed to enact new laws but has focused on enhancing the digital capabilities of its competition authority. It established the Data & Digital Capability Division within the Competition and Consumer Commission of Singapore (CCCS) and developed machine learning tools to analyze bidding data and detect cartels (Seah & Kao, 2024). The CCCS also collaborates closely with other AI-related agencies such as the Infocomm Media Development Authority (IMDA), integrating the AI Verify toolkit (a framework for testing AI systems) to help businesses self-assess compliance with trustworthy AI principles. This shows Singapore's priority on guidance and encouraging voluntary compliance: they issued a “Model AI Governance Framework” providing detailed guidance on how to design transparent and unbiased AI. Singapore's legal environment is also open to AI sandbox experiments (e.g., sandboxes for AI in finance and healthcare), and lessons learned from these can be used to shape competition policy. For example, if a sandbox reveals that a new AI model poses a risk of market distortion, regulators can promptly issue guidance or make necessary adjustments before the model is widely deployed.

Lessons for Vietnam:

From the UK and Singapore, the importance of flexibility and innovation in policy is evident. Vietnam should consider:

- Adopting an interdisciplinary approach to AI governance, coordinating competition, information technology, and data protection authorities to develop joint guidelines on responsible AI development and use.
- Experimenting with policies based on the sandbox model. For example, allowing some businesses to test new AI solutions in a limited environment and monitoring the impact, thereby gaining experience to adjust regulations before widespread application.
- Strengthening the capacity of the competition authority in big data and algorithm analysis: potentially establishing a specialized digital economy unit within the Vietnam Competition Authority, investing in online market monitoring technology to detect early signs of anomalies (similar to what CCCS and CMA have done). Simultaneously, Vietnam should closely follow international standards (such as the ASEAN Guide on AI Governance and Ethics, which Singapore helped develop) to promptly adjust the domestic legal framework and avoid falling behind.

Flexibility does not mean laxity; on the contrary, it allows for rapid adjustments to new technologies. Vietnam can apply a risk management principle based on the level of impact: AI with a high risk to competition should be strictly managed (requiring pre-approval, regular reporting), while low-risk AI should be facilitated for development.

4.4. Lessons from other organizations

- The OECD (2017) report on "Algorithms and Collusion: Competition Policy in the Digital Age" clearly states that increasingly sophisticated pricing algorithms can help businesses achieve a cooperative equilibrium (high prices) automatically, without explicit human agreement. For example, in highly transparent and rapidly changing markets, self-learning algorithms (machine learning) can continuously experiment and adjust prices to avoid confrontation and implicitly understand that maintaining high prices benefits everyone – a phenomenon the OECD calls "virtual collusion" (Modrall, 2017). The problem is that this type of collusion leaves no evidence of communication or agreement between companies, making traditional competition law (which requires evidence of "agreement" or "contact" between parties) difficult to apply. The OECD raises the question of whether it is necessary to expand the concept of "agreement" in competition law to include "meetings of minds" formed through algorithms. For example, if two companies use a specific pricing algorithm and their prices quickly rise to a stable high level, could this be considered a "tacit agreement"? Although the proposal to expand this concept has not received widespread consensus, the OECD emphasizes that competition authorities need to develop new tools to detect and handle algorithmic collusion. Some suggestions include: enhancing market monitoring with big data to detect suspicious pricing patterns; using technical experts to audit algorithms during investigations; and coordinating with other agencies (technology and data regulators) to understand how algorithms operate in each industry.
- Similarly, UNCTAD - in its role of supporting developing countries - has also researched competition in the digital age, recommending the development of global cooperation mechanisms to address competition challenges posed by AI. UNCTAD emphasizes that AI has cross-border impacts, so competition policy cannot be separated from the international context. At the World Consumer Rights Day 2024 event, UNCTAD Secretary-General Rebeca Grynspan called for a global AI governance framework focusing on transparency, accountability, and inclusiveness (UNCTAD, 2024). This implies that countries need to share information and AI standards to ensure that AI systems serve consumer interests and do not create a "race to the bottom" in competition standards. Regarding algorithmic collusion, UNCTAD encourages countries to: update competition laws to include flexible provisions for handling indirect collusion; participate in international forums to learn from experience (e.g., OECD, ICN - International Competition Network); and build capacity for competition authorities (through training and technical assistance between countries) to keep up with AI advancements.

These recommendations are particularly useful for Vietnam - a deeply integrating economy - to adjust domestic regulations in line with global best practices and participate in the international cooperation flow on AI governance.

Conclusion and Recommendations

Conclusion

AI presents both tremendous opportunities and challenges for ensuring fair competition. Its impact on Vietnamese law is both positive and negative. Vietnam should not fear or reject the existence of AI but rather leverage it to create a new step forward in the competition law system. To do this, the first necessary step is to readjust legal regulations to promptly handle violations with traces of AI. However, competition law in the digital market should not only restrain the anti-competitive behavior of large platforms but also be carefully designed to support and promote the development of small businesses.

In addition, the addition of personnel and the improvement of qualifications for authorities in identifying, collecting evidence, and handling competition violations related to AI are also extremely important issues that need to be carefully considered.

Recommendations

i) Improving the legal framework

Recommend considering the addition and adjustment of regulations governing new violations arising from the involvement of AI, including:

- Expanding the concept of "agreement" to include "tacit coordination between AI systems" if it has the same impact as traditional collusion to address indirect collusion through algorithms.
- Adding regulations to control dynamic pricing mechanisms based on personal data, similar to the EU's DMA regulations, to address the abuse of personal data for price discrimination.
- Establishing the principle of extended legal responsibility, whereby entities that own, use, or benefit from AI should be objectively responsible for the consequences caused by AI. The law needs to clearly stipulate the responsibility of businesses when algorithms they develop or hire third parties to use engage in anti-competitive behavior, even if that behavior is not directly directed by humans, or add specific legal regulations on behavior performed by AI, including the concept of "indirect responsibility" of businesses in the case of using automated algorithms.
- Legalizing concepts of the digital economy, such as digital platforms, multi-sided markets, network effects, and especially clarifying the concept of "control" to include de facto control through data, algorithms, or strategic veto rights. It is necessary to develop a set of criteria for identifying "hidden" economic concentration behaviors: for example, the percentage of transferred personnel, the level of exclusive data sharing, or non-compete commitments. If a transaction meets these criteria, the competition authority can consider it an economic concentration even if the legal form is not a merger or acquisition of shares. This requires detailed sub-law guidance, possibly in the form of specific decrees or circulars for the digital economy sector, creating a flexible legal framework ("sandbox") for testing and timely adjustments (Nguyễn, 2023).
- Expanding the scope of transaction control: Learning from international experience, Vietnam can consider additional notification thresholds based on global transaction value or the acquirer's position. For example, the UK has proposed a merger threshold based on the size of the acquiring company ("acquirer-focused threshold") to target large companies acquiring small startups (de Moncuit et al., 2024). Vietnam can stipulate that if a participating party is a dominant enterprise or in the top market share, all their acquisitions must be notified regardless of size. This measure prevents large companies from circumventing the law by buying multiple small targets. In addition, a mechanism for "calling back" transactions below the threshold is needed, allowing the VCC to investigate transactions below the threshold if there are suspicious signs of restricting competition. Currently, the law does not have this right, but adding it will help promptly handle silent killer acquisitions.

ii) Enhancing the capacity of competition authorities and perfecting techniques

- Developing AI investigation toolkits: Apply simulation techniques, reverse algorithm testing, big data monitoring, etc., to detect price manipulation and tacit collusion.
- Training technology experts in competition law: Investigators and members of the VCC need to be trained in AI, machine learning, and big data analysis so that they can identify abnormal behavior through data and monitor price fluctuations or market structures.

- Applying digital analysis tools in competition investigations: Instead of relying solely on written evidence or traditional behavior, the VCC needs to invest in real-time market data analysis software, similar to the models of the UK's CMA or the European Commission. According to a UNCTAD report (2021), many countries are investing in Digital Forensic Tools to support the analysis of collusive or market-dominating behavior through algorithms.
- Increasing investigative powers and coordination with data and telecommunications authorities: To handle complex competition behaviors in the digital environment, the VCC needs a coordination mechanism with the Ministry of Information and Communications, the Ministry of Public Security, and platform providers.

iii) Strengthening international cooperation

In July 2024, the EU, the US, and the UK signed a joint statement on competition in AI. Accordingly, the European Commission, CMA (UK), DOJ, and FTC (US) will share information and jointly develop principles to prevent business practices in the AI sector that undermine competition. These common principles are expected to include: fair dealing, preventing exclusionary conduct, and closely monitoring investment and M&A in the AI sector to avoid "big fish eat small fish" (TTXVN, 2024). This is an important step towards a unified legal framework for competition in the AI era. In the context of AI and competition being global issues, Vietnam also needs to strengthen international cooperation to shorten the institutional gap and avoid repeating the mistakes of other countries.

- Participate more deeply in technical cooperation programs with the OECD, UNCTAD, and the EU on competition law in the digital age.
- Learn from AI control models in the competition field from advanced countries, for example: The EU with the Digital Markets Act, regulating "gatekeepers" like Google and Meta and The US with new guidance from the FTC (2021) on legal liability related to AI in antitrust.

iv) Promoting transparency and AI ethics

Develop a Handbook guiding businesses on competitive conduct in the digital environment, especially using AI transparently, legally, and responsibly.

Encourage businesses to implement "internal control measures" such as algorithm audits and competition impact assessments before deploying AI systems.

In addition to state regulation, it is necessary to encourage businesses to self-develop a code of AI ethics, including the following principles:

Transparency in the logic of pricing algorithms.

Non-discrimination through user profiles.

Allowing consumers to refuse AI if they feel disadvantaged.

Ensuring data security and not abusing personal information to manipulate consumer behavior.

The European Commission's AI Ethics Guidelines are a good model to encourage Vietnamese businesses to adopt social responsibility standards when developing AI products.

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CORPORATE SOCIAL RESPONSIBILITY PROJECTS FROM THE PERSPECTIVE OF LABOUR LAW

Asst. Prof. Abdullah EROL
Istanbul University, Faculty of Economics, Department of Labour Economics and Industrial Relations, Department of Labour Law
ORCID: 0000-0003-1018-1602

Abstract
Corporate social responsibility (CSR) refers to activities undertaken by companies for the purpose of giving back to society. Even though corporations claim to generate social value, CSR is mostly a strategic endeavour intended to construct brand value, gain consumer confidence, and ultimately improve profitability. CSR thus becomes a competitive strategy mechanism and not a moral duty. However, there is a critical examination showing that CSR might also create new social and legal challenges. The main problem is the uncertain legal status of workers involved in CSR schemes. The doctrine does not adequately cater for their labour rights, terms of employment, or means of enforcing claims under labour law. Job security, remuneration, and occupational health and safety issues remain unsolved. Moreover, requiring current contract workers to 'volunteer' is contrary to underpinning labour law principles. Merging CSR with volunteering to create a new employment model requires close legal and ethical scrutiny. Employers do not carry out CSR for charitable reasons but receive indirect benefits. Likewise, it cannot be conceived of that employees give their labour entirely without charge. This redefinition of work as 'volunteering' disregards wages, employment security, and working conditions and separates labour from economic reality. CSR activities must be re-looked at within the paradigm of the law which follows the canons of labour law. Otherwise, they can become instruments of exploitation of labour in the guise of social good and not genuinely benefiting society.
Keywords: Corporate Social Responsibility (CSR), labour rights, volunteering and employment, legal uncertainty, worker exploitation, ethical and legal scrutiny.

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E-MAIL: hukukkongresi@gmail.com

THE MENTAL ELEMENT IN THE CRIME OF HUMAN TRAFFICKING

Research Assistant Rabia Gökçe KOYUNCU
Selçuk University, Faculty of Law, Department of Criminal Law and Criminal Procedure Law
ORCID: 0000-0001-8469-2638

Abstract
The crime of human trafficking is regulated under Article 80 of the Turkish Penal Code, and this regulation has been shaped in accordance with international conventions and protocols to which Turkey is a party. In particular, the "United Nations Convention against Transnational Organized Crime" and its supplementary protocol, the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" (Palermo Protocol), constitute the fundamental legal basis for the definition and criminal sanctions of this offense. In line with these international instruments, Turkish criminal law has explicitly adopted the principle that human trafficking constitutes a crime only when committed for specific purposes.
The purposes listed in the provision — such as "forced labor, services, slavery or practices similar to slavery, or the removal of organs" — are enumerated in a restrictive manner. Therefore, for the crime to be established, the perpetrator must act with at least one of these specified purposes. In this respect, human trafficking stands out as a type of offense that must be carefully examined in terms of its subjective (mental) elements. In this crime, intent alone does not suffice for the fulfillment of the mental element. Additionally, the existence of other subjective elements such as purpose or motive is required.
In this context, what is crucial is that the perpetrator directs their conduct in alignment with one of the legally defined aims. Otherwise, a similar act committed with a different purpose cannot be evaluated within the scope of human trafficking. Hence, when assessing whether the crime of human trafficking has occurred, both the intent and the purpose of the perpetrator must be taken into consideration.
With this framework, the crime of human trafficking, as defined in Article 80 of the Turkish Penal Code, presents distinctive features in terms of its mental element. This study will examine the mental element of the crime of human trafficking through the concepts of intent, purpose, and motive.
Keywords: human trafficking, intent, purpose, motive, mental element.

Introduction

In today's world, human trafficking has become an increasingly prevalent and significant crime due to a number of factors such as the intensification of wars, mass migrations, social and economic changes, income inequality, and gender disparity. This crime has earnt a transnational character along with globalizing effect and the rise of organized crime (Vural, 2018:1).
Although human trafficking initially emerged predominantly with the intent of "exploitation for prostitution," over time, it has evolved to include a broader range of exploitative purposes. What was first time referred to as the "white slave trade" has, through the expansion of underlying motivations, transformed into the modern-day crime of "human trafficking" (Vural, 2018: 4).
In its most explicit sense, the crime of human trafficking punishes the commodification of human beings — treating individuals as tradable objects in commercial transactions (Kurt Yücekul, 2011: 1).

Although there is no universally agreed-upon definition of human trafficking (Bayraktar and et al. 2016: 161), the most widely accepted definition is found in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

The definition provided in Article 3 of the Protocol describes human trafficking as: *"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose ofexploitation."*

Within the same article, it is stated that the term *"exploitation"* shall include, at a minimum, "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

This definition, as found in Article 3 of the Protocol, has been taken into account in the regulation of the crime of human trafficking under Article 80 of the Turkish Penal Code No. 5237. Indeed, the corresponding provision in the Turkish Penal Code is as follows:

Human Trafficking – Article 80

(1) *(Amended: 06/12/2006 – Law No. 5560, Article 3)*

Any person who recruits, transfers, harbors, shelters, brings into or removes from the country another person by means of threat, coercion, force or violence, abuse of power, deception, or by exploiting the individual's helplessness or control over them, for the purpose of forced labor, forced service, prostitution, subjection to slavery, or removal of organs, shall be sentenced to imprisonment for a term of ***eight to twelve years*** *and imposed a* ***judicial fine of up to ten thousand days.***

(2) *If the acts constituting the offense as defined in the first paragraph have occurred for the specified purposes, the* ***consent of the victim shall be deemed invalid.***

(3) *In cases where a person* ***under the age of eighteen*** *is recruited, abducted, transferred, transported, or sheltered for the purposes stated in the first paragraph, the perpetrator shall be punished with the penalties specified therein,* ***even if none of the coercive or deceptive means are employed.***

(4) *Legal entities may also be subject to* ***security measures*** *due to offenses committed under this article.*

The Mental Element in the Crime of Human Trafficking

The crime of human trafficking can only be committed intentionally. In other words, the perpetrator must knowingly and willingly engage in conduct that fulfills the legal definition of the offense. It is not possible for this crime to be committed through negligence (Arslan, 2004: 55; Değirmenci, 2006: 86; Kurt Yücekul, 2011: 441; Bayraktar and et al. 2016: 215). This can be justified on two grounds:

First, according to the provisions of the Turkish Penal Code, crimes are generally committed intentionally as a rule (TPC Art. 21). For an offender to be held liable for a crime committed by negligence, such liability must be explicitly stated in the legal definition of the offense (Akbulut, 2024: 524). When the legal definition of human trafficking is examined, it contains no reference to liability for negligent acts.

Second, the statutory definition of human trafficking indicates that the crime can only be committed for specific purposes. When a criminal norm incorporates purpose-related or motive-related elements into its definition, such offenses can only be committed intentionally, as a purposeful act cannot arise from negligence.

When elements other than intent are included in the statutory definition of a crime, these elements are regarded as additional subjective elements of offence. In cases where the term "for the purpose of" is used in the legal text, it indicates the aim of the perpetrator (Akbulut, 2024: 527–528). In the crime of human trafficking, it is not sufficient for the perpetrator to merely act intentionally; they must also act with a specific motive or purpose (Değirmenci, 2006: 87).

Indeed, when the legal definition of a crime includes elements such as purpose or motive, intent alone does not suffice as the mental element. In such cases, the perpetrator must also possess the motive or aim stipulated in the definition (Akbulut, 2024: 528).

Article 80 of the Turkish Penal Code states that the offense must be committed "for the purpose of forced labor, forced service, prostitution, subjection to slavery, or the removal of organs." In this context, the term purpose refers to nothing other than motive (Bayraktar and et al., 2016: 215). Motive is defined as the internal psychological impulse that drives the perpetrator to commit the offense (Akbulut, 2024: 529).

Since the motives for committing the crime are exhaustively specified in the law, the commission of the offense for any motive other than those listed does not constitute human trafficking. However, in terms of the establishment of the crime, it is irrelevant whether the perpetrator has achieved the specific aims stated in the legal definition (Yılmaz, 2017: 909). Nonetheless, if the perpetrator has also achieved the stated aims**,** and those aims constitute separate crimes, the perpetrator should be punished for both the crime of human trafficking and the other crimes committed in pursuit of those aims **(**Değirmenci, 2006: 90-91; Tezcan and et al., 2023: 78; Yılmaz, 2017: 909).

It is sufficient for the perpetrator to have aimed at achieving at least one of the stated objectives for the crime to be considered committed. The perpetrator may act with the intention of achieving only one of the listed aims, or they may seek to achieve multiple objectives simultaneously (Kurt Yücekul, 2011: 447).

Some scholars in the doctrine argue that, when the law requires the perpetrator to act with a specific motive, this indicates the presence of special intent (Kurt Yücekul, 2011: 442; Tezcan and et al. 2023: 78; Bayraktar and et al. 2016: 216). According to this view, in the case of the crime of human trafficking, the specified motives—*"forced labor, forced prostitution, subjection to slavery, or the removal of organs"*—are explicitly mentioned in the law, and therefore, the crime can only be committed with special intent (Arslan, 2004: 54; Yılmaz, 2017: 909; Bayraktar and et al. 2016: 216; Vural, 2018: 250).

Since the law specifies that the crime must be committed with specific motives, it is not possible for the crime to be committed with dolus eventualis (Tezcan and et al. 2023: 78; Vural, 2018: 253). However, there is also a doctrine that asserts the crime could be committed with dolus eventualis (Değirmenci, 2006: 86).

The regulation in Article 80 of the Turkish Penal Code (TPC)**,** in conjunction with the definition provided in the Palermo Protocol**,** establishes the purpose element of the crime of human trafficking and outlines specific actions that must be undertaken. According to the legal definition of the crime, the material elements include acts such as forced labor, forced service, prostitution, subjection to slavery, or the removal of organs**,** all of which must be performed with the purpose of achieving these goals.

Although not explicitly stated in Article 80, it is inconceivable for the perpetrator to commit the crime of human trafficking without the intention of obtaining a financial gain or benefit, either for themselves or for others, when engaging in acts such as forced labor or service, subjection to slavery, or the removal of organs**.** Therefore, the purpose outlined in the statute inherently involves exploitation or abuse (Arslan, 2004: 54; Değirmenci, 2006: 87; Bayraktar and et al. 2016: 218).

In fact, the Palermo Protocol's definition of human trafficking explicitly states the purpose of exploitation (Yılmaz, 2017: 909). However, it is irrelevant whether the perpetrator gains material profit from the crime for its completion. This is because achieving the intended purpose is not a prerequisite for the completion of the crime (Vural, 2018: 251). On the other hand, there is a view in the doctrine that argues that requiring an additional purpose not included in the legal definition would violate the principle of legality **(**Vural, 2018: 254).
The crime of human trafficking is basically committed with the motive of obtaining financial gain**,** and this motivation can manifest in different ways depending on the economic, sociological, and cultural characteristics of the circumstances. However, it can be said that certain forms of exploitation commonly constitute the mental element **of this crime.** Exploitation of labor, sexual exploitation, subjecting individuals to slavery or slavery-like practices, and the removal of organs emerge as fundamental purposes in the commission of this offense.
While earlier, the primary purposes for committing this crime were considered to be the exploitation of labor and sexual exploitation, with the adoption of the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, an **extensive definition** that includes the primary forms of exploitation mentioned above was accepted in international legal frameworks for the first time (Kurt Yücekul, 2011: 3–4).

a. Forced Labor and Servitude

Article 80 of the Turkish Penal Code (TPC) stipulates the purpose of "forced labor" or "servitude" in the context of the crime of human trafficking. This refers to forcing the victim to perform a specific task for a certain period without their consent, using either physical or psychological coercion, pressure, or force (Arslan, 2004: 54). According to one view, it is necessary to inform the victim that harm may be inflicted on them or their relatives if they fail to complete the requested task or service (Kurt Yücekul, 2011: 455–456).
Regarding this motive, different approaches are adopted in the context of human trafficking. Some countries, as in Article 80 of the TPC, interpret the element of "coercion" as a fundamental aspect of the crime of human trafficking, consistent with the definitions in the International Labour Organization (ILO) Conventions on Forced Labor. Some countries emphasize that the exploitation of labor can be established simply by the unacceptable living and working conditions, regardless of the explicit use of force (Kurt Yücekul, 2011: 456).

b. Forcing Prostitution

With the amendment made to Article 80 of the Turkish Penal Code (TPC) in 2006, forcing prostitution was included as one of the objectives of the crime of human trafficking. However, it should be noted that the Palermo Protocol's regulation also refers to the exploitation of prostitution and other forms of sexual exploitation. In this respect, the Turkish Penal Code's regulation, which does not include other types of sexual exploitation, can be seen as a shortcoming (Yılmaz, 2017: 911; Bayraktar and et al. 2016: 216-217).
Prostitution occupies a significant place among the exploitation forms targeted by human trafficking. In Article 80 of the TPC, the purpose of forcing prostitution must be interpreted in accordance with the definition in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, which includes exploitation of someone else’s prostitution. This involves ensuring the victim engages in prostitution in some form, and generating profit from this activity, which constitutes the motive behind the offense (Kurt Yücekul, 2011: 462).

In the legal frameworks of European countries and in judicial decisions interpreting these regulations, certain criteria have been mentioned regarding the concept of prostitution. Specifically, the element of sexual contact has been used in defining prostitution, leading to the interpretation that prostitution is not limited to sexual intercourse. This broadens the scope, resulting in other sexual bodily contacts being classified as prostitution (Kurt Yücekul, 2011: 459-460).
Due to the requirement for sexual contact, sexual performances are excluded from the concept of prostitution and the use of individuals in these performances is considered another form of sexual exploitation (Kurt Yücekul, 2011: 462).

c. Subjecting to Slavery or Similar Practices
Article 80 of the Turkish Penal Code (TPC) foresees one of the objectives of human trafficking as "subjecting to slavery". The primary concepts here are "slavery" and "similar practices to slavery" (Kurt Yücekul, 2011: 463). Victims subjected to slavery or similar practices are denied any freedom or the right to make choices, and their ability to make decisions is entirely removed. In such cases, the person acts entirely according to the commands and desires of the person who has captured them, being compelled to act in this manner (Arslan, 2004, p. 55).
The concept of "servitude", which is closely related to slavery or similar practices, is included as one of the forms of exploitation in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, but it has not been included in our Turkish Penal Code.

d. Ensuring the Provision of Body Organs
The commission of human trafficking for the purpose of obtaining body organs stems from the fact that the huge demand in this area cannot be met through legal means (Kurt Yücekul, 2011: 467). As a result, illegal methods are resorted to in order to fulfill the demand for organs, with traffickers committing this crime to gain profit (Kurt Yücekul, 2011: 467). The objective of the perpetrator here is to ensure that the victim's organs are provided without harm, thereby fulfilling another person’s need for organs. This situation does not constitute a moral or legal purpose; ultimately, the perpetrator commits the act with the aim of gaining a material or immaterial benefit (Arslan, 2004: 55).

Special Circumstances
In the second paragraph of Article 80 of the Turkish Penal Code, it is regulated that even if the victim consents, the crime of human trafficking will still be considered as committed when performed with the specified purposes. Therefore, it should be emphasized that the victim's consent is rendered invalid in the case of human trafficking (Tezcan and et al., 2023: 79).
According to Article 5 of the Anti-Terrorism Law, if the crime of human trafficking is committed with the aim of terrorism or within the scope of a terrorist organization’s activities, it will be considered a terrorist offense, and the punishment will be aggravated (Bayraktar and et al., 2016: 218).
If the crime is committed for a purpose not mentioned in the article, other types of crimes will be involved. For example, if the purpose is the abduction of a person, crimes related to deprivation of liberty, which protect personal freedom, will be relevant (Tezcan and et al., 2023: 79).
In doctrine, it is stated that if a person assists in this crime and is aware of the perpetrator's intent to make the victim the subject of human trafficking, and carries out the act to make it possible, this person also possesses the special intent.

According to this view, a person not acting with this special intent may be held responsible for a different crime based on the act they have committed (Tezcan and et al., 2023: 79).

Conclusion

In the context of combating human trafficking, when compared to the objectives outlined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the regulations in the legal systems of other countries, the purposes that the perpetrator must have in order to commit the crime of human trafficking, as regulated in the Turkish Penal Code, are insufficient. When making assessments regarding the crime of human trafficking, it should not be limited to the provisions of Article 80 of the Turkish Penal Code. Determinations regarding the formation of the crime should be made by considering all aspects of the issue, including international regulations, immigration and labor law provisions, and human rights regulations.

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A DOCTRINAL INSIGHT ON THE IMPACT OF USER DRIVEN HEALTH CARE AND PATIENT JOURNEY RECORD (PAJR) SYSTEM IN ENSURING SOCIO-ECONOMIC RIGHT TO HEALTH OF THE PEOPLE OF INDIA

Sagnika Das
Department of Law, University of North Bengal

Abstract
The Socio-economic Right to Health is a quintessential phenomenon, having huge impact on to the lives of the people enabling humans to live with dignity. In this modern globalized international legal framework, every innovation are a subject of public trust and the people, existing therein have the *Right* to enjoy the positive result of the same. In this context, the innovative medical ideas are essential for ensuring *Right to Health* of the people at large at the social, economic and legal spectrum and in this arena *PAJR* can be an effective tool. The present conventional health care system is increasingly expensive as it going beyond the catch of the general people and is largely based on insurance. In this technologically advanced era of *Artificial Intelligence and other innovative technologies,* it also becomes difficult for the educationally backward people to access the benefits of the technologies, insurance, developed banking system, internet so on and so forth. This present paper intends to look into the theoretical aspects and existing data relating to *PAJR* in India and how the international medico-legal regime is perceiving this concept in order to make it a mainstream health care giving tool. It further intends to look into the impact of *PAJR* in ensuring *Socio-economic Rights* of the people belonging to a comparatively inadequate economic structure.
Keywords: User-driven Health Care, PAJR, Medico-legal aspects, Socio-economic Right and Human Rights.

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THE IMPACT OF HUMAN RIGHTS ON DEMOCRATIZATION: CHALLENGES AND PATHWAYS TO DEMOCRATIC TRANSITION

Satish Kumar Singh
Research Scholar, Department of Law, Central University of Punjab

ABSTRACT

Human rights are essential to the democratisation process because they influence the course and viability of democratic transitions. The incorporation of human rights principles can have a substantial impact on the development of democratic norms, institutions, and practices as countries move from authoritarian to democratic government. Human rights and democratisation, however, have a complicated relationship that is frequently characterised by both opportunities and challenges. Human rights give democracy a moral and legal basis, but they can also reveal profound social divisions, making it difficult for transitional administrations to muster the political will and ability to carry out changes. The full realisation of human rights is frequently impeded by long-standing power structures, past injustices, and opposition from elite groups, which can postpone or undermine the democratisation process. A comprehensive strategy involving legal reforms, the advancement of civil liberties, and the empowerment of civil society is necessary for the successful incorporation of human rights into democratisation initiatives. Furthermore, in transitional circumstances, foreign players, like the UN and non-governmental organisations, frequently play a crucial role in promoting human rights and assisting democratic governance. However, there are still many obstacles to overcome, including managing post-conflict reconciliation, tackling economic inequality, and striking a balance between political stability and human rights protections. In the end, human rights can both promote and protect democratisation, but their effects depend on the political, social, and economic circumstances of each nation. Developing policies that support inclusive and sustained democratic transitions requires an understanding of the ways that human rights influence democratisation.

Keywords: Human rights, Democratization, Political transition, Civil liberties, Social divisions.

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THE IMPACT OF GLOBAL CRISES ON WOMEN'S FOOD SECURITY IN DEVELOPING COUNTRIES: CHALLENGES AND PATHWAYS TO SUSTAINABILITY

Satish Kumar Singh
Research Scholar, Department of Law, Central University of Punjab

ABSTRACT

Vulnerable groups, especially women in developing countries, are disproportionately affected by global crises such as economic downturns, climate change, and health pandemics. Maintaining food security during these crises presents special problems for women, who are frequently the major caretakers and providers in homes. Global disruptions worsen the relationship between gender inequality and food insecurity by compromising women's ability to access resources, participate in decision-making, and manage stress. Global crises have a variety of effects on women's food security. While climate change impairs agricultural productivity, which women significantly rely on for both food and income, economic shocks lower women's income and market access. In addition, women's time is overburdened during emergencies by taking on more caregiving duties, which restricts their capacity to work and earn money or buy wholesome food for their family. These issues add to a cycle of food insecurity and poverty that is especially hard for women to escape. Addressing these problems requires comprehensive approaches that support gender-inclusive policies, empower women economically, and ensure their involvement in food security decision-making processes. Pathways to sustainability include improving social protection programs, encouraging sustainable farming practices, and expanding women's access to land, capital, and education. Developing nations can create more sustainable and equitable food systems that can endure the strains of global crises and support long-term food security for all by emphasising women's resilience and empowerment.

Keywords: Vulnerable Groups, Gender Inequality, Food Security, Climate Change, Women's Empowerment.

TOWARD A COMPREHENSIVE ARAB CULTURAL & HERITAGE LAW (ACHL)

Prof. Dr. Mohammed Waheeb
Department of Sustainable Tourism, Queen Rania Faculty of Archaeology Heritage, & Tourism (QRFTH), The Hashemite University
ORCID: 00000-0001-0000-9795-5935

Abstract
There have been several Arab initiatives to unify heritage and antiquities some have been adopted to unify and strengthen the legal protection of Arab antiquities through regional organizations such as the Arab Parliament, the Arab Organization for Education, Culture, and Science (ALECSO), and the Arab Organization for Intangible Cultural Heritage, in addition to joint agreements between Arab countries. Some of the most notable efforts include:
In 1981, during the Third Conference of Arab Ministers of Culture held in Baghdad, the "Unified Arab Antiquities Law" was introduced. This law aims to unify legislation related to antiquities in Arab countries and coordinate efforts to protect Arab cultural heritage. It includes definitions of antiquities, regulations for excavation activities, the protection of archaeological sites, and penalties for violations related to antiquities.
On January 15, 2020, the Arab Parliament approved the "Guiding Law for the Preservation and Protection of Arab Antiquities" as a model for Arab countries to refer to when drafting or updating their national legislation related to antiquities protection. This law aims to ensure legal protection for antiquities at national, regional, and international levels, establish practical mechanisms for documenting antiquities and cultural properties, prevent their theft or smuggling, and facilitate the recovery of looted artifacts. Additionally, it seeks to enhance public awareness and community participation in heritage protection.
On the international and regional agreements efforts many Arab Countries have joined UNESCO conventions, such as the 1972 Convention on the Protection of the World Cultural and Natural Heritage and the 1970 Convention on the Illicit Trafficking of Cultural Property. Some Arab nations have signed bilateral agreements to recover looted artifacts, such as Egypt’s agreements with several European countries and the U.S. to repatriate smuggled antiquities.
The Arab Organization for Education, Culture, and Science (ALECSO) has supported projects aimed at unifying antiquities laws and regulations. Launched initiatives to protect and document intangible cultural heritage, focusing on listing Arab heritage in UNESCO’s cultural heritage lists.
Despite these efforts to Unifying Heritage and Antiquities Laws in Arab World many Challenges still existed and represented a real problem, among of these are: Differences in national legislations: Each Arab country has its own set of laws, which may not fully align with unified legal frameworks. Conflicts and political instability: Wars and unrest in some Arab countries have led to the destruction and smuggling of numerous antiquities. Weak law enforcement: Despite having strict regulations, some countries struggle with implementing antiquities protection laws effectively. This research seeks the Future Outlook and Recommendations, such as Updating national laws to align with regional and international initiatives. Enhancing Arab cooperation through the establishment of a joint Arab authority for heritage and antiquities protection. Digitization and documentation to prevent antiquities theft and smuggling using modern technologies like AI and block chain.

While efforts continue, achieving a unified legal framework for heritage and antiquities protection in the Arab world still requires greater coordination and political commitment.
These laws and initiatives seek to enhance cooperation among Arab countries and perhaps with Islamic Countries (Turkey-Pakistan-Malaysia-Indonesia …etc.) in protecting cultural heritage and unifying efforts to address the challenges that threaten antiquities and historical sites in the region.

Keywords: Law, Antiquities, Heritage, Arab World

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LEGAL IMPLEMENTATION FRAMEWORK OF CULTURAL HERITAGE IN ARAB COUNTRIES

Prof. Dr. Mohammed Waheeb
Department of Sustainable Tourism, Queen Rania Faculty of Archaeology Heritage, & Tourism (QRFTH), The Hashemite University
ORCID: 00000-0001-0000-9795-5935

Abstract
The need to preserve cultural resources is an area of concern that is receiving increasing attention around the world, but it. is particularly acutely felt in Arab World.
Despite this it is commonly accepted that the framework for the protection and management of these resources has been generally inadequate. Even with recent improvements the framework remains underdeveloped and is heavily dependent on international support While a few archaeological village sites or distinguished remains have received some attention, many archaeological and traditional remains suffer from neglect, decay, and destruction. The reasons for this are economic (there is no money for conservation) and cultural (there is low but growing awareness of the importance of laws & cultural heritage). Exposed archaeological remains and standing traditional buildings are in a process of decay that far outstrips current means and efforts of conservation.

-EXISTING FRAMEWORK :LEGAL.

The Antiquities Law provides the basic legal framework for Archaeological and Historical concerns in Arab World. It is an all-embracing law that regulates policies and imposes penalties. However, it is viewed as deficient in a number of key areas. The antiquities laws, the Heritage laws, and Tourism laws all are issued after independence of Arab Countries since 1950 onward.

It is an all-embracing law that regulates policies and imposes penalties. However, it is viewed as deficient in a few key areas .

- There is no legal requirement for an agency to carry out surveys to determine whether any cultural resource will be impacted by a project. Legal sanctions are only available when a site is found, and even then, some interpretation of requirements is possible .
- It is yet not necessary for all agencies that carry out works to notify the DAAW (Dept of Antiquities inArabCountries) even if the works may affect archaeological or historical sites
- There is yet no requirement for official agencies or private sector developers to make provisions for archaeological works in development contracts .

-LEGAL POLICY

There are few official policies in force that are sector specific and relatively few in the wider environmental perspective. There are four areas of particular concern :

- There are no written policies or guidelines for use in the preparation of Feasibility studies. As a result the scope and extent of works may be variable between studies. It is also probable that the absence of clear guidelines will lead to a tendency for non-archaeological sites to be under assessed.
- There are no guidelines for the evaluation of study findings and for their translation into a mitigation framework .
- Cultural property rescue is not integrated into the project design and development basis in a systematic basis .

- There are no policies for the treatment of specific sites that may be indirectly affected by a project .

The aim of this study is to unify antiquities and heritage laws in the Arab world through academic research conducted by specialists in this field, in collaboration with UNESCO and countries that have become prominent in this domain through smart applications in legislation, regulations, and laws, as well as continuous improvements to these laws to keep up with global developments. Holding an annual conference to unify antiquities and heritage laws in the Arab world will provide an opportunity to explore the best global practices in this field for implementation, ensuring a tangible impact on preserving the cultural heritage of the Arab world for future generations.

Keywords: Law, Antiquity, Cultural Heritage, Arab World, Unesco.

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THE LEGAL FRAMEWORK FOR CARBON CREDIT TRADING IN NIGERIA AND ITS IMPACT ON ENVIRONMENTAL SUSTAINABILITY

Obot, Afia-ama Udofia
Lecturer, Department of Crime Management, Akwa Ibom State Polytechnic
ORCID: 0000-0003-2441-2336

Obot, Iberedem Udofia
Consultant, AML / CFT Nigeria Limited

Abstract
Carbon credit trading has emerged as a significant market-based mechanism to mitigate climate change by encouraging greenhouse gas (GHG) reductions. Nigeria, as a developing economy with substantial carbon emissions from oil and gas activities, has begun to develop a legal framework to regulate carbon trading. This article examines the legal support for carbon credit trading in Nigeria, the regulatory agencies involved, and the effectiveness of existing policies in promoting environmental sustainability. It highlights challenges such as regulatory gaps, enforcement mechanisms, and market participation while proposing recommendations for improving the system.
Keywords: Carbon Credit Trading, Green House Gas Reduction, Sustainable Development.

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RESTORATION AND REMEDIATION LAWS: EVALUATING THE LEGAL MECHANISMS FOR REHABILITATING OIL-POLLUTED LANDS AND WATERS IN NIGERIA

Obot, Afia-ama Udofia
Lecturer, Department of Crime Management, Akwa Ibom State Polytechnic
ORCID: 0000-0003-2441-2336

Obot, Iberedem Udofia
Consultant, AML / CFT Nigeria Limited

Abstract
Oil pollution remains a significant environmental and socio-economic challenge in Nigeria, particularly in the Niger Delta region. The degradation of land and water resources due to oil spills and gas flaring has resulted in loss of livelihoods, biodiversity destruction, and long-term health impacts. Despite numerous regulatory frameworks, the effectiveness of legal mechanisms for environmental restoration and remediation remains a subject of debate. This article evaluates Nigeria's existing restoration and remediation laws, analyzing their effectiveness, challenges, and areas for improvement. Key legal instruments, including the Constitution, the Petroleum Industry Act (PIA) 2021, the Environmental Impact Assessment (EIA) Act, and the National Oil Spill Detection and Response Agency (NOSDRA) Act, are examined alongside international legal frameworks and judicial decisions. The paper highlights gaps in enforcement, regulatory weaknesses, and corporate accountability issues while advocating for stronger legal mechanisms, community participation, and international best practices in environmental rehabilitation. The study concludes that a holistic approach, incorporating legal reforms, institutional strengthening, and stakeholder collaboration, is necessary to achieve sustainable remediation of oil-polluted lands and waters in Nigeria.
Keywords: Restoration, Degradation, oil and gas, oil pollution

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HUMANITARIAN PRINCIPLE IN THE DECISION ON A SENTENCE BELOW LOWER LIMIT OF THE SENTENCE BRACKET ACCORDING TO VIETNAM'S CRIMINAL CODE

MA. KHÁNH LY, Nguyễn Thị
Thu Dau Mot University

Abstract
Humanitarianism is an important principle in a legal system in general and also in the decision on a sentence below lower limit of the sentence bracket in particular. Suppose a punishment decision from the court does not satisfy the humanitarian principle. In that case, that decision does not make the offender to be "convinced" and thus is only meant to punish the offender without educating them or helping them reform into a good person; simultaneously, if humanitarian principle is not guaranteed in a punishment decision, then other principles, such as legality, fairness, and individualization of punishment, etc., may also not be guaranteed. In Vietnamese criminal law, the decision on a sentence below lower limit of the sentence bracket portrays the spirit of the humanitarian principle the most thoroughly. However, this criminal law provision still has some inadequacies, or there are still some inconsistent views explaining this legal provision among researchers. Therefore, in the content of this article, the author will provide the theoretical basis of the decision on a sentence below lower limit of the sentence bracket, a few concepts on what humanitarian principle is in criminal law, and what the decision is on a sentence below lower limit of the sentence bracket. Additionally, the author will briefly state the current criminal provision of this policy in Vietnam. Finally, the author will propose several legal solutions to improve the legal efficiency in the decision on a sentence below lower limit of the sentence bracket.
Keywords: Decision on sentences, humane, humanitarian principles, mitigating factors, the sentence bracket, decision on a sentence below lower limit of the sentence bracket.

Research Methods: This article is based on analytical, synthesis, and statistical methods.

INTRODUCTION

Humanitarianism is an idea that not only affects all aspects of social life but also helps humans to love and aid each other in order to develop a sustainable, happy, and prosperous society. Humanitarianism is also a principle present in all of the Vietnamese legal system, especially criminal law. The reason being, the government policies for the offender have the purpose of educating and reforming the offender and rehabilitating them back into society. This purpose is above the punishment for what they have done. As C. Marx wrote, "Both history and reason confirm the truth that cruelty, disregarding any differences, renders punishment completely ineffective, for cruelty abolishes punishment as a result of the law." (C.Marx - F.Engels). In deciding the punishment for the offender, the principle of humanity requires the court to issue a lenient verdict. In addition to considering the committed crime, it also takes into account any mitigating or aggravating circumstances the offender may have to impose an appropriate penalty. In other words, the decision on punishment must ensure that the nature and degree of danger to society from the criminal act and the criminal's personal circumstances are proportionate to the punishment. The punishment in criminal law for each sin and situation is not a defined, specific level but a spectrum with the maximum and minimum limits. Therefore, the court's mission when deciding the punishment is to select a specific punishment level and the methods to execute said punishment.

In reality, there will be criminal acts whose level of danger to society corresponds to the lower end of the penalty framework, and combined with many mitigating circumstances, if the court still decides on a penalty within the binding minimum penalty framework, it will not ensure the humanity and leniency of that decision. Therefore, in Vietnamese criminal law (Article 54, The Criminal Code 2015, amended and supplemented in 2017, and previous Criminal Codes), the state always has the provision and legal system for "Decision on a sentence below lower limit of the sentence bracket." The punishing decision in this situation shows the flexibility that the state has given to the court. However, to limit abuse of power and arbitrariness, "The court may decide a sentence lighter than the lower limit of the current sentence bracket if it is in the next lighter bracket provided the offender has at least two mitigating factors" (Clause 1, Article 54, The Criminal Code 2015, amended in 2017). Starting from the immense significance of the aforementioned legal system, the author now presents their research perspective on this content, with the hope that the spirit of humanitarianism will be effectively applied in criminal law, encompassing the lives of the Vietnamese people as well as all people around the world, and making the world a better place.

RESEARCH AND FINDINGS

1. The theoretical basis of humanitarian principles and several basic concepts related to decisions on a sentence below the lower limit of the sentence bracket

The terminology of humanitarianism is often emphasized and referred to values such as promoting human rights, justice, and dignity for everyone. Humanitarian principles cover all aspects of life, in literature, art, and even in law. This can be seen clearly in the fact that there are many international organizations that are founded and operated on the spirit of humanitarianism, such as the International Committee of the Red Cross (ICRC), the World Health Organization (WHO), and the Food and Agriculture Organization of the United Nations (FAO). Moreover, a legal document of many nations has been created that has clearly shown the spirit of humanitarianism, that is, the Universal Declaration of Human Rights (1948) (the Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (ratified by the United Nations General Assembly)). Article 5 of this declaration has stated that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.” It can be seen that every individual, even the offender who must be pertinently punished for the crimes they have committed, will not be treated inhumanely or cruelly. Therefore, no one can be treated inhumanely; this is a natural and basic right of every human that will last from birth to death.

Another theoretical basis for the existence of humanitarian principles in criminal law in general and in the decision on a sentence below the lower limit of the sentence bracket is the fact that the Vietnamese government believes in the good nature of humanity. A human was kind since birth. It is through development and maturity that impacts from society, bad environments, and limited education create evilness and actions that are immoral, illegal, and cause harm to other people, society, and the government. Despite this fact, deep in these people’s minds still exist their good side, their love of humanity, and their will to fix their mistakes. Therefore, the government and society treat them in the spirit of humanitarianism, with the main purpose of educating and helping them reform into good and helpful people.

Specifically, Article 3 of The Criminal Code 2015, amended in 2017 contains principles regarding treating the offender humanely as follows:

“1. With regard to criminals:…

Leniency shall be showed towards criminals who turn themselves in; show cooperative attitudes; inform on accomplices; made reparation in an effort to atone for their crimes; express contrition; voluntarily compensate for damage they inflict;

dd) A person who commit a less serious crime for the first time may serve a community sentence (mandatory supervision by family or an organization);
e) People sentenced to imprisonment shall serve their sentences at prisons and must improve themselves to become effective and productive citizens; commutation or conditional parole shall be granted to people who satisfy conditions set out in this document;
g) People who have served their sentences are enabled to live and work honesty and fit into society; criminal records shall be expunged when all conditions are satisfied"
2. With regard to corporate legal entities that commit criminal offences:…
d) Leniency shall be showed towards corporate legal entities that are cooperative during the proceeding, voluntarily compensate for damage they inflict, proactively prevent or alleviate consequences."
In specific regulations of the Vietnamese Criminal Code over the ages (1958, 1999, 2015), the concept of "humanitarianism" or "humanitarian principles" is not mentioned, but according to the Criminal Code law Textbook, "Humanitarianism is treating humans with kindness, generosity, and tolerance, taking good care for humans, and treating them as the greatest assets of society" (Ho Chi Minh City University of Law, 2022). Therefore, humanitarian principles are shown throughout the specific regulations in the Criminal Code, such as retrospective effect; criminal liability differentiation on guilt factor, the age of the individual offender, and crime stage; death penalty negation for specific situations; a number of punishments in the punishment system that do not take away the offender's freedom, such as warning, fine, community service, etc.; conditional parole; criminal liability negation for situations such as unexpected events, self-defense, emergency situations, and lack of criminal ability; and a decision on a sentence below the lower limit of the sentence bracket, etc.
Moreover, the concept of punishment and also punishment decisions on a sentence below the lower limit of the sentence bracket have not been legalized. These concepts are only referred to in the view of legal science, textbooks, articles in legal magazines, legal seminars, theses, essays, etc. Specifically, the Criminal Codes textbook of Ho Chi Minh City University of Law defines the concept of punishment decision as "Punishment decision is the court act of selecting the type of punishment with a specific penalty value within the statutory scope to apply to the offender or a corporate legal entity that commits a crime." (Ho Chi Minh City University of Law, 2022). In addition, according to the author Le Dinh Nghia, "The decision on punishment is the Court's (Trial Council) decision on the basis of the Penal Code to select a specific punishment and determine the level of punishment within the scope of the law to apply to the offender." (Lê Đình Nghĩa, 2023)
From the aforementioned concepts of punishment decision, the author introduces the idea of a decision on a sentence below the lower limit of the sentence bracket based on personal opinion as "a decision on a sentence below the lower limit of the sentence bracket is the court act of selecting the punishment type with a specific penalty level in the next lighter sentence bracket of the applied law to the offender, and a corporate legal entity that commits a crime with at least 2 mitigating factors."

2. Vietnam's current legal reality on the decision on a sentence below the lower limit of the sentence bracket

The punishment decision is the second important step in the court's trial, after the first step of determining the crime. The execution of this step, the Criminal Code, provides a very specific basis for punishment determination that is:
"1. The Court shall issue the decision on sentences pursuant to this Code and in consideration of the nature and danger of the crime to society, record of the offender, mitigating factors, and aggravating factors.

2. When imposing a fine, apart from the basis specified in Clause 1 of this Article, the Court shall also consider the offender's property and ability to pay the fine." (National Assembly of the Socialist Republic of Vietnam, 2015)

From said policy, we can see that the Court's punishment decision must be based on mitigating factors and aggravating factors of the offender. Therefore, in the case that the offender has many mitigating factors, then the decision to determine the punishment in the sentence bracket will not be suitable for the level of danger of conduct for criminal liability. The transfer to the lower sentence bracket would be sufficient to ensure fairness and punishment individualization. As C. Marx said, "In essence, law can only be the application of an equal measure." (C.Marx - F.Engels)

Currently, The Criminal Code 2015, amended in 2017 specifically regulates this issue in Article 54 as: "Decision on a sentence below lower limit of the sentence bracket.

1. The Court may decide a sentence lighter than the lower limit of the current sentence bracket if it is in the next lighter bracket provided the offender has at least two mitigating factors specified in Clause 1 Article 51 hereof.

2. The Court may decide a sentence below the lower limit of the current sentence bracket and it is not required to belong to the next lighter bracket provided the offender is an abettor with a minor role in the offense and does not have prior criminal record.

3. If all of the conditions specified in Clause 1 or Clause 2 of this Article are satisfied but there is only one sentence bracket or the current sentence bracket is already most lenient, the Court may switch over to a lighter sentence. The reasons for imposition of a lighter sentence must be specified in the judgment."

In principle, the court can only apply punishments within the sentence bracket. However, the Court's application of Article 54 is an exception to punishment discretion. From the aforementioned policy, we can see that the condition for the Court to be able to determine a sentence below the sentence bracket is that the offender must have at least 2 mitigating factors mentioned in Clause 1, Article 51. The limit of decision on a sentence below the lower limit of the sentence bracket is divided into 3 cases. The first case is the typical case, then the Court would determine on a sentence below lower limit of the sentence bracket only in the next lighter sentence bracket. The second case is the exceptional case; that is, the court is allowed to decide on a sentence below the lower limit of the sentence bracket or even lower than the next lighter sentence bracket, provided the offender is an abettor with a minor role in the offense and does not have a prior criminal record. The third case is when the requirements of Clauses 1 and 2 are satisfied, but there is only one sentence bracket or the lightest sentence bracket; then the court is allowed to use another punishment that belongs to a lighter type.

Therefore, when the court applies the policy for a decision on a sentence below the lower limit of the sentence bracket, we can see a number of possible problems, such as.

First, the mitigating factors at Article 51 of the Criminal Code consist of 2 groups. The first group is specific factors listed by the law from Point A to Point X of Clause 1, Article 51. The second group are other factors that the Court is allowed to consider, listed in Clause 2, Article 51. Policies in the Criminal Code do not specify whether mitigating factors in clause 1 or 2 hold the higher value, but the court can only apply a decision on a sentence below the lower limit of the current sentence bracket if there are many mitigating factors in clause 1. Therefore, we can conclude that the factors that the Court is allowed to consider (at Clause 2, Article 51) are considered by the Criminal Code to hold less value than the mitigating factors in Clause 1, Article 51. However, the complete prohibition of these mitigating factors to be conditions on the decision on a sentence below the lower limit of the sentence bracket is illogical.

Second, about the limit of decision on a sentence below the lower limit of the current sentence bracket within the next lighter sentence bracket, this is the limit that the author mentioned as the typical case (Clause 1, Article 54, The Criminal Code 2015, amended in 2017). This provision, when applied to certain specific crimes, leads to cases where the lighter penalty bracket contains a different type of penalty than the adjacent heavier penalty bracket. For instance, the crime of usury in civil transactions (Article 201, The Criminal Code 2015, amended in 2017), specifically: "1. Any person who offers loans at an interest rate that is five times higher than the maximum interest rate specified in the Civil Code and earns an illegal profit of from VND 30,000,000 to under VND 100,000,000 or previously incurred a civil penalty or has a previous conviction for the same offence which has not been expunged shall be liable to a fine of from VND 50,000,000 to VND 200,000,000 or face a penalty of up to 03 years' community sentence.
2. If the illegal profit is VND 100,000,000 or over, the offender shall be liable to a fine of from VND 200,000,000 to VND 1,000,000,000 or face a penalty of 06 - 36 months' imprisonment.
3. The offender might also be liable to a fine of from VND 30,000,000 to VND 100,000,000, be prohibited from holding certain positions or doing certain works for 01 - 05 years." For this crime, we can see that the lighter sentence bracket of Clause 2 is Clause 1, and this lighter sentence bracket contains the punishment of "community sentence," which is not present in the next heavier sentence bracket which only has the punishment of "fixed-term imprisonment" (Clause 2). This leads to two different opinions on the implementation of the limit for a decision on a sentence below the lower limit of the sentence bracket but still remaining within the next sentence bracket. For the first viewpoint, author Hoang Quang Luc argues that it is not possible to apply non-custodial reform punishment in cases where the penalty is set below the minimum level of the statute (the statute here is Clause 2, Article 201) because Clause 2, Article 201 does not include this type of punishment. "The reason we are forced to understand it like that is because from the perspective of the Legislator, it is only possible to compare the high and low within the same type of punishment, it is impossible to compare the high and low between different types of punishment." (Hoàng Quảng Lực, 2020). The second viewpoint is the opposite, because the punishment of "community sentence" has been stipulated to be applied at a lower level; the lawmakers have made a comparison and concluded that this type of punishment is lighter than the punishment of "fixed-term imprisonment." Therefore, when applying a penalty below the minimum level of the sanction (Clause 2, Article 201), the court is allowed to switch to the penalty of "non-custodial reform." Those who follow the second viewpoint, represented by author Phung Hoang, argue that "Through research, the author finds that understanding and applying as the first viewpoint suggests shows a somewhat mechanical and arbitrary view of law enforcement. Applying as the second viewpoint suggests is consistent with the provisions of the law in both theoretical and practical aspects." (Phùng Hoàng, 2022).
Third, regarding the limits on determining penalties in special cases under Clause 2, Article 54 of The Criminal Code 2015, amended in 2017, the Court is allowed to determine a sentence below the lower limit of the current sentence bracket and is not restricted to the next lighter sentence bracket. In this case, the dangerousness of the offender's act is minimal because they are first-time offenders who assisted in the accomplice case but played a negligible role. Therefore, their punishment can be reduced to a particularly lenient level. The issue encountered with this regulation is the condition regarding the number of mitigating circumstances required for its application, and there are also two opposing viewpoints.

"The first opinion is that, to apply Clause 2, Article 54 of the 2015 Penal Code, the offender must satisfy the conditions of Clause 1, Article 54 of the Penal Code, that is, there must be at least 02 mitigating circumstances in Clause 1, Article 51 of the 2015 Penal Code and the crime is committed for the first time, assisting with an insignificant role. The second opinion is that the offender only needs to have 01 mitigating circumstance according to Clause 1, Article 51 of the 2015 Penal Code and commit the crime for the first time, assisting with an insignificant role, because Clause 1 and Clause 2, Article 54 of the 2015 Penal Code are two independent provisions, the defendant will be applied Clause 2 when satisfying the conditions prescribed by law. We agree with the second opinion, because this is a provision that demonstrates the humanity and leniency of the law, especially in cases where many defendants participate in secondary roles, demonstrating differentiation in determining roles and deciding on punishment for criminals. This issue currently has no guiding document for uniform application in resolving criminal cases, causing difficulties for the prosecution agency." (Bùi Thanh Hằng, 2022).

Fourth, in cases where the defendant has many mitigating circumstances under Clause 1, Article 51, but also has many aggravating circumstances (the circumstances in Clause 1, Article 52), whether it is possible to consider applying a penalty below the minimum level of the adjacent penalty frame (Article 54) or not. This is also an issue that Article 54 of The Criminal Code 2015, amended in 2017 has not addressed and for which there are no detailed guiding documents yet.

SUGGESTIONS AND CONCLUSION:

A decision on a sentence below the lower limit of the sentence bracket is a policy that shows great humanitarianism in Vietnamese criminal law. This principle fits with the world trend and shows the good side of humanity that is benevolence and love of humanity. However, currently this legal policy still persists with a number of points that are yet to be reasonable. In addition, there are no detailed instructional documents; thus, the way of comprehending the law still creates some arguments. This leads to difficulties when it comes to implementation from the court. To improve legal efficiency, the author would like to have the following suggestions:

- Add conditions to apply Article 54, The Criminal Code 2015, amended in 2017, that in addition to the mitigating circumstances in Clause 1, Article 51, other mitigating circumstances given by the Court (Clause 2, Article 51) will also be applied, with the value of every 2 mitigating circumstances given by the Court being equivalent to the value of 1 specific mitigating circumstance.
- There needs to be a specific guiding document for the limit of mitigating penalties in Clauses 1 and 2, Article 54, which must be the same type of penalty.
- The condition for the number of mitigating circumstances to apply Clause 2, Article 54 is that there must only be 1 or more mitigating circumstance in Clause 1, Article 51 (or equivalent to 2 circumstances in Clause 2, Article 51).
- In the case of the offender having many mitigating factors but also having aggravating factors, then the court must consider the overall danger level to make a decision. Specifically, one mitigating factor in Clause 1, Article 51 (or two mitigating factors in Clause 2, Article 51) equals the negation of the danger level of one aggravating factor. Therefore, if the offender has an aggravating factor, then 3 mitigating factors are required to be eligible for a decision on a sentence below the lower limit of the sentence bracket.

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CLIMATE REFUGEES: LEGAL RECOGNITION AND PROTECTION UNDER INTERNATIONAL LAW

Dr. Tahir Qureshi
Symbiosis Law School, Hyderabad Campus, Symbiosis International (Deemed University)
ORCID: 0000-0001-9269-991X

Dr. Sunil George
Symbiosis Law School, Hyderabad Campus, Symbiosis International (Deemed University)
ORCID: 0009-0003-5099-2968

Dr. Dhananjay Kumar Mishra
Symbiosis Law School, Hyderabad Campus, Symbiosis International (Deemed University)
ORCID: 0009-0003-0176-1629

Abstract
Climate change-induced displacement is an emerging global crisis, yet international law lacks a clear legal framework for recognizing and protecting climate refugees. Existing refugee laws, including the 1951 Refugee Convention, do not encompass individuals displaced by environmental factors, leaving millions in legal limbo. This paper explores the gaps in international law concerning climate-induced migration, examining the role of human rights law, soft law instruments, and regional frameworks in addressing the issue. It evaluates the potential for expanding the definition of refugees, the applicability of non-refoulement principles, and the responsibilities of states under international environmental and humanitarian law. Furthermore, it assesses proposed legal mechanisms, such as a specialized international treaty or the incorporation of climate displacement into existing frameworks. The study argues for an urgent need to establish a legally binding instrument or an international policy framework to provide climate refugees with legal status, relocation rights, and long-term protection. It concludes that a combination of state responsibility, international cooperation, and progressive legal interpretations is essential to address the growing challenges of climate-induced displacement effectively.
Keywords: Climate Change, Refugee, Human Rights, international law etc

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LEGAL PROVISIONS AND THE DEVELOPMENT OF THE CIRCULAR ECONOMY – CASE STUDY KOSOVO

Prof. Asoc. Dr. Ismail Mehmeti
University of Applied Sciences in Ferizaj, Faculty of Management
ORCID: 0000-0002-2744-0853

Prof. As. Dr. Gazmend Deda
University of Applied Sciences in Ferizaj, Faculty of Management
ORCID: 0009-0005-3366-3999

Fisnik Bislimi
University of Applied Sciences in Ferizaj, Faculty of Management
ORCID: 0000-0002-1578-6750

Prof. Asoc. Dr. Arben Tërstena
University of Applied Sciences in Ferizaj, Faculty of Management
ORCID: 0000-0001-9758-9904

Prof. Asoc. Dr. Sokol Krasniqi
University of Applied Sciences in Ferizaj, Faculty of Management
ORCID: 0000-0002-5960-7865

Abstract
The purpose of the scientific paper is to identify the importance of legal provisions for the development of the circular economy, with a special focus on the Republic of Kosovo. For the development of the circular economy, efficient normative acts are needed, which help and create a strong supervisory basis in function of the implementation of the circular economy which determines economic activities for recycling, reuse and waste reduction, enabling and contributing to sustainable economic growth, preserving the environment and natural resources, as well as enabling efficiency and effectiveness in business activity. The scientific paper analyzes the implementation of current normative acts related to the circular economy in Kosovo, and the opportunities for their advancement, such as the normative act on renewable energy, on waste management, the action plan for the circular economy, on environmental protection, etc.
In relation to the circular economy in Kosovo, for this scientific paper, have been reviewed legal provisions, reports of local and international institutions and within the period October - December '24, have been contacted (through a survey) 74 manufacturing companies from the wood and plastic industry in the country. From the analysis of normative acts, institutional reports and findings from business research, it is a general finding that the advancement of the legal framework is a necessity, and there must also be cooperation between institutions, businesses and civil society, in order to have the opportunity for all parties to enjoy the benefits of applying the circular economy in the country. The paper is based on real data, scientific analysis and credible institutional reports, which determine the reliability of the data, which are relevant for stakeholders in the country and beyond.
Keywords: Circular economy, Legal provisions, Recycling, Reuse, Management, Institutions, etc.

WITNESS PROTECTION LAW IN INDIA AND USA: A COMPARATIVE ANALYSIS

Abhishek Kumar Verma
Research Scholar, Department of Law, School of Legal Studies, Central University of Punjab

Kaushal Kumar
Research Scholar, Department of Law, University of Allahabad

Shivangi Pandey
Department of Law, School of Legal Studies, Central University of Punjab

Abstract
Witness protection is probably the most significant aspect of the criminal justice system. It protects individuals when they testify in court, especially in cases involving organised crime, terrorism, and high-profile criminal prosecutions. While there is a general awareness in both India and the United States regarding the importance of adequate legal provisions for witness protection, their approaches differ widely in terms of the framework and mechanisms for implementation. In the United States, there is already a well-developed and successful program called the Witness Security Program (WITSEC), under which relocated identity changes and financial assistance are given to protected witnesses. Its Indian counterpart, the Witness Protection Scheme, 2018, has been recognised by the Supreme Court. Still, it has graded protection in terms of threat perception while suffering from enforcement and resource issues. In this paper, we look into witness protection laws in India and the USA regarding their legal provisions and their challenges in and effectiveness. It judges the law against the fairness of trials through witness participation. Among the aspects examined are the legal safeguards on offer, procedures, availability and modes of funding, and the role of law enforcers in such cases for both jurisdictions. Further, landmark judgments by the apex courts and their interpretations that have had a lasting effect on witness protection policies will also be discussed. This study assesses the merits and demerits of each system and recommends the best practices India can borrow from the USA, including exhaustive protection programs, anonymity measures, and extensive legal backing. This paper also concerns itself with human rights issues such as state security interests versus individual rights and the possible legal reforms necessary for an effective and secure witness protection network in India. Ultimately, the research proposes a more substantial legislative backup and better enforcement mechanisms for witness safety measures, thereby improving access to justice without the intimidation of a witness.
Keywords: Witness Protection, Criminal Justice System, WITSEC (Witness Security Program - USA), Witness Protection Scheme, 2018 (India), Judicial Safeguards.

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E-MAIL: hukukkongresi@gmail.com

RETHINKING PATENT LAWS FOR AI-GENERATED INNOVATIONS IN FOOD SECURITY

Abhishek Kumar Verma
Department of Law, School of Legal Studies, Central University of Punjab

Shivangi Pandey
Department of Law, School of Legal Studies, Central University of Punjab

Abstract
AI has revolutionised many sectors, such as agriculture and food security. It has transformed farming methods, supply chain management, and sustainable food production. Some AI-driven technologies include predictive analytics, automatic crop monitoring, and precision agriculture. The world over, it has contributed to improving food security. However, as far as innovations are concerned, the emergence of AI technologies leaves us with some complex legal challenges, especially in patent laws. Intellectual property rights were framed to protect man-made inventions. This, therefore, poses critical questions on the patentability and ownership of food security solutions. This paper dwells on the legal uncertainties revolving around such AI-driven innovations with regard to food security. Its primary focus is whether AI-generated technologies can be patented under the extant intellectual property laws. As part of that entitlement, this scholarly article reviews national patent frameworks of comparison, for instance, the United States, the European Union, and India, to determine how diverse legal systems approach AI-generated inventions. The paper also considers ownership dilemmas-property regarding whether patents should be assigned to AI developers or users or reserved in the public domain for the more expansive reach of food security solutions. Through analysis of landmark cases, emerging legal precedents, and policy debates, this study identifies the loopholes in the current patent laws. It advances some possible reforms in this area of AI-related intellectual property implications. The analysis includes ethical issues, especially concerning the monopolisation of AI-generated agricultural solutions and their repercussion on global food security and access to critical technologies. The paper, therefore, argues for a balanced approach that would nurture AI-driven innovative development while ensuring equitable access to food security solutions for the public good.
Keywords: Artificial Intelligence (AI), Food Security, Patent Law, Intellectual Property Rights (IPR), AI-Generated Innovations.

A COMPARATIVE LEGAL ANALYSIS OF FOOD SECURITY POLICIES IN INDIA AND SRI LANKA: RIGHTS, REFORMS, AND CHALLENGES

Abhishek Kumar Verma
Research Scholar, Department of Law, School of Legal Studies, Central University of Punjab

Prof. (Dr.) Deepak Kumar Chauhan
Department of Law, School of Legal Studies, Central University of Punjab

Jaswant Singh Rajput
Department of South and Central Asian Studies, School of International Studies, Central University of Punjab

Abstract
Food security is a human right and an indispensable part of sustainable development. India and Sri Lanka have enacted legal frameworks and policy measures concerning food security for their citizens. However, their approach and effectiveness differ drastically. This paper analyses the comparative legal aspect of food security policy in India and Sri Lanka, including legislative frameworks, implementation of policy, and socio-economic impacts. Under India's National Food Security Act (NFSA), 2013, beneficiaries will have the right to access subsidised food grains and entitlements under the Public Distribution System (PDS), Integrated Child Development Services (ICDS), and the Mid-Day Meal Scheme (MDM). This right-to-food approach addresses hunger, malnutrition, and access to food by vulnerable sections of society. On the other hand, food security in Sri Lanka is primarily driven by policy instruments such as the National Nutrition Policy, 2010 and the Conceptual Policy Framework for Food Security, 2023 focused on nutritional improvement, agricultural sustainability, and economic resilience. Unlike India, Sri Lanka does not have a comprehensive legal statute on the right to food, which raises concerns regarding the effectiveness and accountability of the country's food security programs. This study discusses the merits and demerits of both countries, analysing how governance, economic policies, and legal structures affect food security. The research brings to light the requirement for Sri Lanka to use a legally binding food security law to make policies more effective; India can also improve upon its existing framework by addressing issues of PDS leakages and regional disparities in food distribution. The comparative study provides policy recommendations for both nations to steer improvement in food security mechanisms towards more access to adequate, affordable, and nutritious food.
Keywords: Food security, legal framework, National Food Security Act, Public Distribution System, nutrition policy, India, Sri Lanka, policy analysis.

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LEGAL PRACTICES IN CRIMINAL AND CRIMINAL PROCEDURE LAW

Saloni Sharma
Dept. of Nutrition and Dietetics, Manav Rachna International Institute of Research Studies, (Deemed to be University)

Suhani Sharma
Jamia Hamdard University (Deemed to be University)

Abstract
Criminal law and criminal procedure law serve as the cornerstone of justice systems worldwide, ensuring the fair adjudication of crimes and the protection of individual rights. Criminal law defines offenses, prescribes punishments, and establishes the legal framework for maintaining order, while criminal procedure law outlines the processes through which justice is administered, from investigation to trial and sentencing. Legal practices in these domains encompass various principles, including due process, presumption of innocence, and proportionality of punishment. Criminal law relies on substantive legal provisions to categorize crimes, such as felonies and misdemeanors, whereas criminal procedure law dictates the procedural safeguards, including arrest, bail, evidence collection, and trial protocols. The evolving nature of criminal jurisprudence, influenced by human rights considerations, technological advancements, and global legal trends, has led to significant reforms in procedural fairness and investigative methodologies. Moreover, legal practitioners, including defense attorneys, prosecutors, and judges, play a critical role in upholding justice through ethical advocacy and adherence to legal precedents. Contemporary challenges, such as cybercrime, terrorism, and organized crime, demand adaptive legal frameworks to balance public safety with individual freedoms. Understanding the interplay between substantive and procedural laws is crucial for legal professionals, policymakers, and scholars in refining justice delivery mechanisms.
This paper explores the fundamental legal practices in criminal and criminal procedure law, analyzing key principles, case laws, and emerging trends that shape modern judicial proceedings. Through comparative analysis of various jurisdictions, it seeks to highlight best practices and potential reforms necessary for ensuring an equitable and effective legal system.
Keywords: Criminal law, Criminal procedure law, Legal practices, Justice system, Due process, Presumption of innocence, Punishment and sentencing, Evidence collection, Trial procedures, Judicial fairness, Legal reforms, Human rights, Cybercrime, Terrorism laws, Organized crime, Legal advocacy, Ethical law practice, Comparative law, Case law analysis.

Introduction
Criminal law and criminal procedure law form the bedrock of any justice system, ensuring that justice is not only delivered but is delivered fairly. Criminal law sets out the substantive rules that define criminal behavior, including the penalties for such behavior. Criminal procedure law, on the other hand, sets out the procedures by which a criminal case is processed, from investigation to trial and final sentencing. Together, these areas of law ensure that justice is delivered in a way that is both systematic and equitable, safeguarding the rights of the accused while protecting the public from criminal harm.

Substantive vs. Procedural Law

Criminal Law – This branch of law focuses on defining what constitutes criminal activity and prescribing the punishment for such acts. Crimes are categorized into felonies, which are more serious offenses, and misdemeanors, which are less severe. Examples include theft, assault, and murder. The primary role of criminal law is to prevent harm to society by punishing those who break the law. Criminal law also plays a significant role in deterrence, rehabilitation, and the overall promotion of public safety.

Criminal Procedure Law – While criminal law defines the offenses and penalties, criminal procedure law dictates how the legal process unfolds. This includes the rights of individuals during police investigations, the process of arrest, bail conditions, the collection and presentation of evidence, and the conduct of the trial. Importantly, it ensures that the rights of the accused are upheld, emphasizing the due process of law, which means fair and impartial treatment of every individual in the legal system.

Key Principles in Criminal Law and Procedure

1. Due Process

The principle of due process is a fundamental safeguard in any legal system, ensuring that individuals are not subjected to arbitrary or unfair treatment by the state. It upholds the rule of law by requiring that all legal actions follow established procedures and that individuals are granted full opportunity to defend themselves. Due process encompasses both *procedural fairness* (like timely notice of charges, right to legal counsel, and a chance to be heard) and *substantive fairness* (ensuring laws themselves are just and not oppressive). This principle is vital to preventing the misuse of authority, protecting citizens from wrongful detention, coercive interrogations, or unfair trials. In democratic systems like India, it is deeply embedded in Article 21 of the Constitution, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.

2. Presumption of Innocence

The presumption of innocence is a cornerstone of criminal law and a key feature of fair trial standards worldwide. It places the burden of proof entirely on the prosecution, meaning the accused does not have to prove their innocence; rather, the state must prove guilt *beyond a reasonable doubt*. This principle protects individuals from wrongful convictions, especially in systems where investigative bias or public opinion may otherwise influence proceedings. It also affirms the dignity of the individual and ensures that no one is punished merely on suspicion or accusation. In Indian jurisprudence, this principle has been reaffirmed through numerous Supreme Court judgments, and while not explicitly stated in the Constitution, it is treated as part of the broader right to life and personal liberty under Article 21.

3. Proportionality of Punishment

This principle ensures that the punishment imposed on an offender corresponds appropriately with the severity and nature of the crime committed. It reflects the moral and legal philosophy that justice must be measured, not excessive or vindictive. A fair justice system recognizes distinctions between various levels of wrongdoing—such as between a first-time petty thief and a repeat violent offender—and adjusts punishments accordingly. Proportionality prevents both over-criminalization and undue leniency, thereby maintaining public trust in the legal system. In the Indian context, the principle is invoked through the doctrine of “rarest of rare” in capital punishment cases and is central to sentencing policy in both the IPC (Indian Penal Code) and judicial decisions.

4. Right to a Fair Trial

The right to a fair trial is the bedrock of criminal procedure and a non-negotiable human right. It ensures that every accused person is treated equally before the law, irrespective of their background, status, or alleged offense. This right includes several procedural protections: the right to be informed of charges, the right to legal representation, the right to cross-examine witnesses, the right to a public hearing, and the right to be judged by an impartial and independent tribunal. A fair trial also involves the right to appeal and protection against double jeopardy and self-incrimination. In India, this principle is protected under Articles 20 and 21 of the Constitution and further elaborated in the Criminal Procedure Code (CrPC). Upholding this right is essential not only for the protection of the accused but also for maintaining the integrity and credibility of the judicial system.

The Evolving Nature of Criminal Jurisprudence

The evolving nature of criminal jurisprudence reflects the need for legal systems to adapt to societal changes, emerging challenges, and technological advancements, while still preserving core legal principles. One of the most significant factors driving this evolution is the rise of new types of crimes that were previously unimaginable or less prevalent, such as cybercrime, terrorism, and organized crime. With the advent of the internet, technology, and globalization, traditional legal frameworks have been stretched to address crimes that transcend national borders, like cyberattacks, identity theft, and international terrorism. These complex threats require new laws, tools, and collaborative efforts among countries to effectively combat them. For example, cybercrime laws have evolved to incorporate data protection, hacking offenses, and online fraud, while specialized agencies and international cooperation networks (such as INTERPOL) work together to tackle cross-border crimes. However, even as new threats arise, the balance between efficient law enforcement and the protection of fundamental human rights remains a crucial consideration. Legal systems must be careful not to infringe upon basic principles like due process or privacy rights, despite the need for more extensive surveillance or security measures.

Another transformative influence on criminal law has been the growing emphasis on human rights, particularly in relation to the treatment of accused individuals. The development of international human rights law, notably through conventions such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), has prompted many countries to reform their criminal procedures to align with these global standards. These reforms include measures like banning torture, ensuring access to fair trials, and establishing standards for humane detention conditions. In jurisdictions such as India, the Supreme Court has been proactive in expanding the scope of individual rights in the criminal justice system, ensuring that protections against arbitrary detention, custodial violence, and unfair trials are legally enshrined. Additionally, human rights organizations like the Amnesty International and Human Rights Watch have played a pivotal role in advocating for reforms that protect accused individuals from being subjected to inhumane treatment, excessive punishment, or wrongful convictions. As a result, many legal systems worldwide have reexamined their practices to align with these humanitarian principles.

The integration of human rights into criminal jurisprudence reflects a broader recognition that the law must evolve to meet the needs of an increasingly interconnected and rights-conscious world. At the same time, this evolution requires careful balancing—ensuring that the justice system can effectively address new forms of crime without undermining the fundamental rights of the accused or eroding public trust in the fairness of the system.

The dynamic nature of criminal law and procedure highlights the ongoing challenge for legal systems to remain flexible, ethical, and responsive to emerging issues while adhering to core principles of justice.

The Role of Legal Practitioners

Legal practitioners—defense attorneys, prosecutors, and judges—serve as the pillars of the criminal justice system, each fulfilling distinct but interconnected roles that ensure the fairness, integrity, and effectiveness of the legal process. Their responsibilities extend beyond simply adhering to the law; they also ensure that the rights of individuals are protected and that justice is both served and perceived to be served.

Defense Attorneys hold a crucial responsibility in safeguarding the constitutional rights of the accused, ensuring that their clients receive a fair trial and due process under the law. The defense attorney's role goes beyond merely challenging the evidence presented by the prosecution; they are tasked with ensuring that the rights of the defendant are not infringed upon during the course of the investigation or trial. This includes ensuring that the accused is protected from coerced confessions, unlawful detention, or inhumane treatment. While the defense attorney advocates for their client, they must also adhere to ethical guidelines, ensuring that they do not intentionally facilitate or promote criminal behavior. For instance, they are prohibited from encouraging their client to perjure themselves or obstruct justice. Their ethical duty is not only to their client but to the administration of justice itself, making their role critical in ensuring that the legal system functions with integrity.

Prosecutors, on the other hand, represent the state and act as guardians of public justice. Their primary goal is not merely to secure convictions but to ensure that justice is fairly and impartially administered. Prosecutors have a duty to present all evidence relevant to the case, including evidence that may be favorable to the defense, and to avoid prosecuting individuals without sufficient evidence. They are entrusted with balancing the pursuit of justice and the responsibility to protect society from harm, while also safeguarding against the wrongful conviction of innocent individuals. This responsibility highlights the ethical considerations in their role: prosecutors must act in good faith, prioritizing fairness over winning a case. Ethical concerns also arise in cases involving plea bargaining, where prosecutors must ensure that such negotiations do not result in unjust outcomes or pressure the accused into pleading guilty to crimes they did not commit.

Judges serve as the impartial arbiters of justice, ensuring that legal proceedings are conducted fairly and in accordance with the law. Their role is to provide oversight during the trial, ensuring that all parties comply with legal procedures and that the rights of both the defense and prosecution are respected. Judges are tasked with evaluating evidence, interpreting the law, and making decisions regarding the admissibility of evidence. Their ultimate responsibility is to render a verdict based on the facts and the law, without bias or prejudice. In addition to their decision-making role, judges are also responsible for ensuring that sentences are appropriate to the crime committed. This includes taking into account factors such as the severity of the offense, the harm caused, the defendant's background, and the potential for rehabilitation. Judges, therefore, must balance the interests of justice, deterrence, rehabilitation, and the protection of society.

In modern times, the roles of legal practitioners have expanded significantly to encompass ethical considerations that guide their conduct. For example, defense attorneys must be mindful of their duty to advocate for their client while ensuring that their actions do not contribute to the perpetuation of criminal conduct or injustices. Similarly, prosecutors must be vigilant in their pursuit of justice, avoiding the temptation to focus solely on securing a conviction at all costs.

Both defense attorneys and prosecutors must be conscious of the public interest, maintaining the integrity of the criminal justice system and working to prevent wrongful convictions, which can have devastating consequences for innocent individuals. Judges, too, must act in a manner that promotes fairness, ensuring that their decisions are transparent, reasoned, and free from any undue external influence.

Legal practitioners in the criminal justice system are entrusted with ensuring that justice is not only done but seen to be done. Their roles are intertwined with ethical duties that emphasize fairness, impartiality, and the protection of individual rights. The growing complexity of modern legal challenges, including evolving crime patterns and ethical dilemmas, underscores the importance of these practitioners' commitment to justice in both the legal and moral sense.

Emerging Trends and Contemporary Challenges

Contemporary challenges in the criminal justice system are rapidly reshaping the landscape of criminal law and procedure. As society faces new threats and evolving technologies, the need for adaptive legal frameworks has become more critical than ever. The rise of cybercrime, terrorism, and organized crime has prompted lawmakers, law enforcement agencies, and judicial systems to innovate and develop specialized responses to address these modern-day challenges.

1. Cybercrime: The digital age has brought about unprecedented opportunities, but it has also created new avenues for criminal activity. Cybercrime encompasses a wide range of illegal activities carried out through the internet or digital systems. These crimes include identity theft, fraud, hacking, phishing, cyberstalking, and even cyberterrorism—attacks aimed at causing widespread harm to critical infrastructure or instilling fear in the public. In response to this growing threat, legal systems have been forced to adapt, creating cybersecurity laws, data protection regulations, and cybercrime investigation protocols. These laws seek to protect individuals, businesses, and governments from the financial and reputational damage caused by cybercriminals. Governments have also established cybercrime units within law enforcement agencies to investigate and prosecute online crimes. Furthermore, international cooperation has become essential, as cybercrimes often cross borders and require collaborative efforts between countries to track and apprehend offenders. However, as technology evolves, so too does the complexity of cybercrime, necessitating ongoing updates and improvements to these legal frameworks.

2. Terrorism: The rise of global terrorism has posed a significant challenge to the criminal justice system. Terrorism, defined as the use of violence or intimidation to achieve political, ideological, or religious objectives, has led to devastating attacks across the globe. In response to these threats, criminal law has had to evolve to not only punish acts of terrorism but also to prevent them. Anti-terrorism laws have been enacted, focusing on both the prevention of terrorism and the punishment of those involved in terrorist activities. These laws have expanded the scope of law enforcement’s powers, allowing for increased surveillance, intelligence sharing, and counter-terrorism operations. Legal provisions now also address terrorist financing, radicalization, and foreign fighters—individuals traveling abroad to join terrorist organizations. For example, measures such as the U.S. Patriot Act have granted authorities greater powers to monitor and track individuals suspected of terrorism-related activities, though these measures have also raised concerns about privacy rights and civil liberties. At the international level, efforts to combat terrorism have led to the creation of treaties and conventions focused on enhancing cooperation between states in fighting terrorism. Organizations like the United Nations and INTERPOLhave played key roles in promoting international collaboration, ensuring that terrorist acts do not go unpunished, regardless of where they occur.

Nevertheless, the challenge remains for legal systems to strike a balance between national security and individual freedoms, ensuring that anti-terrorism measures do not disproportionately infringe on human rights.

3. Organized Crime: Organized crime refers to criminal groups engaged in large-scale illegal activities, such as drug trafficking, human trafficking, money laundering, extortion, and arms smuggling. These groups often operate across borders and engage in highly sophisticated operations that can be difficult for national law enforcement agencies to combat. The nature of organized crime necessitates international cooperation and transnational legal frameworks that allow for coordinated responses. For example, international conventions like the United Nations Convention Against Transnational Organized Crime (UNTOC) have been established to promote global cooperation in addressing organized crime. These agreements provide mechanisms for extradition, mutual legal assistance, and shared intelligence to facilitate the prosecution of criminals across different jurisdictions. At the national level, specialized law enforcement agencies like the FBI, DEA, and Interpol work together to dismantle these criminal syndicates. Additionally, countries have enacted money laundering laws and asset forfeiture statutes to disrupt the financial operations of organized crime groups. However, organized crime is highly adaptable and continues to evolve in response to law enforcement efforts. Modern criminal syndicates have embraced cybercrime, leveraging technology to launder money, track victims, or expand their reach. The globalization of crime means that criminals can operate across multiple countries with relative ease, making it imperative for nations to strengthen cross-border legal mechanisms and work together to combat the growing threat.

As the nature of crime continues to evolve, legal frameworks must remain flexible and adaptive. Cybercrime, terrorism, and organized crime represent significant challenges that require innovative legal responses, international cooperation, and ongoing reform of criminal laws and procedures. While these threats present new hurdles, they also provide an opportunity for legal systems to modernize and enhance their ability to safeguard public safety and uphold justice. By addressing these contemporary challenges, societies can work to ensure that the legal system remains effective, fair, and capable of responding to the needs of an increasingly complex and interconnected world.

Comparative Analysis and Legal Reforms in Criminal Justice Systems

The criminal justice systems of different countries, while grounded in similar foundational principles of justice, often diverge in their approach to criminal law and criminal procedure. The core principles—such as due process, presumption of innocence, and proportionality of punishment—are universally accepted, yet their application can vary significantly depending on the legal traditions, cultural norms, and societal values of each jurisdiction. Through a comparative analysis of criminal justice systems, we can better understand these differences and the necessity for legal reforms that address contemporary challenges.

Punitive vs. Rehabilitation Approaches:

One of the most noticeable variations across criminal justice systems is the approach to punishment and rehabilitation. For instance, in countries like the United States, the criminal justice system is often considered punitive, with a heavy emphasis on incarceration, lengthy prison sentences, and harsh penalties, particularly for serious offenses such as drug-related crimes or violent acts. The “tough on crime” approach prioritizes deterrence and retribution, with policies focused on punishing offenders as a means of maintaining public order.

In contrast, countries like the Netherlands and Norway place a greater emphasis on rehabilitation rather than punishment. Their systems are designed to reintegrate offenders into society through education, vocational training, and psychological counseling while they serve their sentences. In Norway, for example, the prison system is centered around the idea of restorative justice, with an emphasis on rehabilitating prisoners to reduce recidivism rates. This approach has been shown to produce lower recidivism rates, suggesting that rehabilitation-oriented justice systems can be effective in reducing repeat offenses.

The difference in focus—punitive versus rehabilitative—often leads to contrasting outcomes in terms of recidivism rates, social reintegration, and overall effectiveness. While punitive systems may appear to maintain order, rehabilitative systems aim for long-term societal benefit by addressing the root causes of criminal behavior.

Rights Protection and Procedural Fairness:

Another critical difference lies in how criminal justice systems handle procedural fairness and rights protection. In countries like Germany and Canada, there is a strong emphasis on safeguarding the rights of the accused at all stages of criminal proceedings. Legal safeguards such as legal representation, the right to remain silent, and the right to a fair trial are enshrined in law and strictly adhered to during criminal investigations and trials. Transparency in judicial processes, as well as independent oversight, ensures that the legal system remains accountable and the rights of the accused are not unduly compromised.

However, in other countries, particularly those with authoritarian regimes or limited access to justice, the protection of human rights during criminal proceedings may be weaker. Arbitrary detention, torture during interrogations, lack of access to legal counsel, and unfair trials can undermine the integrity of the legal process, often leading to wrongful convictions and human rights abuses.

A key area for reform, particularly in developing or transitional democracies, is improving due process protections. This includes increasing access to legal representation, ensuring transparent trial processes, and ensuring that defendants' rights are not overridden by expediency or political pressures.

Legal Reforms to Address Modern Challenges:

Legal reforms are essential to ensure that criminal justice systems evolve in response to contemporary challenges. Modern-day criminal threats—such as cybercrime, terrorism, and organized crime—require innovative legal solutions and procedural adaptations. Below are several areas where legal reforms could have a significant impact:

1. **Access to Legal Representation:** Ensuring that individuals have access to competent legal representation is a fundamental principle of criminal justice. Reforms could involve expanding public defense services to ensure that individuals who cannot afford legal counsel still have their rights protected. In many jurisdictions, access to a fair trial is compromised due to the inability to afford adequate defense, leading to higher conviction rates for disadvantaged individuals. Public defenders should be better funded and trained to handle complex criminal cases, particularly in light of emerging forms of crime.
2. **Improved Evidence Handling and Forensic Technology:** With the rise of cybercrime and more sophisticated criminal activities, there is a pressing need to improve evidence handling and the use of forensic technologies. Legal reforms should focus on updating laws related to digital evidence and forensic procedures to ensure that they align with modern investigative techniques. This includes improving the admissibility of digital evidence in court, ensuring that chain of custody protocols are followed, and developing clear procedures for handling cyber-related offenses.

3. **Increasing Public Awareness of Legal Rights:** Many individuals are unaware of their legal rights, particularly in countries where access to justice is limited or where legal procedures are opaque. Legal reforms should focus on increasing public education about fundamental rights under criminal law, including the right to a fair trial, protection from self-incrimination, and the right to legal counsel. Awareness campaigns could help individuals navigate the justice system and ensure that they are not unfairly taken advantage of during investigations or trials.
4. **International Cooperation in Criminal Justice:** With the increasing globalization of crime, especially in the areas of terrorism, money laundering, and drug trafficking, international cooperation has become essential. Reforms at the international level—such as improved extradition agreements, mutual legal assistance treaties, and cross-border investigations—are necessary to address these crimes effectively. Countries need to work together to close legal loopholes and prevent criminals from evading justice by crossing borders

Conclusion

Legal practices in criminal law and criminal procedure law are the pillars of justice in any society. These practices play an essential role in ensuring that justice is not only achieved but achieved fairly and impartially. The evolving nature of crime, particularly in the digital age with the rise of cybercrime, terrorism, and organized crime, demands continuous adaptation in criminal laws and procedures. As these challenges become more complex, the legal system must be responsive, balancing the need to protect society with the imperative to uphold the fundamental rights of the accused.

Legal practitioners, including defense attorneys, prosecutors, and judges, hold the responsibility of ensuring that justice is served within the framework of established laws. Their actions directly impact the fairness and effectiveness of the criminal justice system. The role of these professionals must be viewed through the lens of ethical responsibility, where they not only protect the rights of the individual but also work to maintain the public trust in the system.

The principles of fairness, proportionality, and due process must remain at the forefront of criminal jurisprudence. These guiding tenets ensure that punishments align with the severity of crimes and that the legal process is transparent and just for all parties involved. As technology and society evolve, so too must the law, adapting to new types of criminal activities while safeguarding these core values.

The continued relevance of criminal law and criminal procedure law requires a commitment to legal reforms. These reforms must ensure that the justice system is equipped to deal with emerging threats and challenges while preserving the integrity of justice. Ongoing education, international cooperation, and legal innovations will ensure that justice remains accessible and equitable for all, now and in the future.

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BASIC THEORIES OF LEGAL AND FACTUAL INDIVIDUALIZATION OF A CLAIM

Associate Professor Dr. ARSENI Igor
Comrat State University, Republic of Moldova, Faculty of Law, Department of Private Law
ORCID: 0000-0002-9560-0011

Abstract
In studies specializing in the individualization of a claim, not enough attention has been paid to the need to formulate such rules for the individualization of claims that would ensure a balance of interests of the parties in the adversarial process. For the defendant, if the court does not know in advance the legal norms that, in its opinion, are applicable to the facts established in the adopted judicial act, then in the current circumstances it is very difficult to defend him from a claim against him. In particular, not knowing the legal qualification of the claim, the defendant was deprived of a real opportunity to make a timely statement about the plaintiff's failure to meet the limitation period, since substantive legislation and general and special limitation periods are provided for certain methods of protection. The position of the plaintiff in this regard is also uncertain. Neither the current legislation nor the law enforcement practice clearly prescribes a method of protection against the suspension of the limitation period when applying to the court.
Keywords: individualization of the request, subject of the request, cause of action, defendant, defendant, response

INTRODUCTION

The starting point for studying the importance of choosing the right way to protect a violated subjective material right is the use of the principles of adversarial proceedings and optionality, as well as the personalization of the claim. It is established from civil legislation that the protection of civil rights can only be carried out in the manner clearly provided for by law. Therefore, in order to choose a method for protecting violated rights, the plaintiff must know the relevant legal norms specified in the statement of claim. It should also be noted that the adversarial process is to some extent characterized by unpredictable results of judicial investigation and assessment of evidence. A number of factual circumstances finally established by the court, before the court makes a decision, the participants in the process cannot know with certainty. This can complicate the determination of the correct legal qualification at the stage of preparation for the trial in relation to the persons participating in the case and the court itself. If you do not know what facts will be confirmed by the results of the investigation and judicial assessment of evidence, the plaintiff may make mistakes. When applying the rules of substantive law to the facts determined by the results of the study and assessment of evidence, the choice of the method of protecting the violated rights of a person is ultimately made by the plaintiff or the court in the statement of claim? The answer to this question determines the importance of legal clauses in personalizing claims and thus determines the definition of the elements of the claim.

METHOD

The methodological basis of the study are general scientific methods (analysis, synthesis, generalization and analogy) and methods of particular - scientific knowledge (formal-logical, historical-legal, formal- legal, comparative legal, systemic and complex analysis, method legal modeling).

RESEARCH AND FINDINGS

The most important work devoted to the individualization of a claim is the work of V.M. Gordon "The Basis of a Claim as Part of the Change of a Claim" [4, p.37-41]. V.M. Gordon reduced the entire teaching on the concept and meaning of the basis of a claim to two directions. Based on the importance that these teachings attach to the legal and factual elements of a claim, he argues that the first is the theory of the legal individualization of a claim, and the other is practical.

According to the theory of legal individualization of a claim, a claim is personified by legal relations (legal relationship connections) arising in connection with a dispute. Facts alone are not enough to substantiate the plaintiff's claims. In the current legal system, there must be a norm confirming the validity of the plaintiff's claims. Taking this into account, the claim is based both on the facts cited by the plaintiff in the statement of claim and on the legal norms designated by him. Since the norms proposed by the plaintiff have a separate meaning, they are binding on the court. If the plaintiff makes a mistake in choosing a legal norm, he will lose the case, since the court does not have the right to apply other legal norms that differ from the legal norms proposed by the plaintiff. [13, p 183-189]

According to *the theory of factual individualization of a claim (the theory substantiation)* , the cause of action is ultimately individualized only by the facts stated by the plaintiff. The plaintiff's reference to the law is not binding on the court. "The position of the court requires that, whether the case is before the parties to the proceedings or before the law, the court in its own thinking may be guided only by the law appropriate to the given case: jura new curia ("The Court knows the law"). In the opinion of the Court, in this case it is obliged to be guided by the relevant legislation. Instructions of legal parties and draft interpretations thereof may not be binding on the court. Thus, the legal component is not important for the individualization of the claim. [9, p.90; 2, p.174; 11, p.172]

It has found its embodiment in the current procedural legislation theory of factual individualization of the claim. By virtue of Article 166 of the Civil Procedure Code of the Republic of Moldova, the plaintiff is not obliged to state the facts in the statement of claim. He only needs to explain what the plaintiff’s violation or threat is and what the rights, freedoms or legitimate interests arising from his claim are, as well as to substantiate the plaintiff’s claim with the circumstances and confirm these circumstances. According to Parts (5)-(6) of Article 240 of the Civil Procedure Code of the Republic of Moldova, when making a decision, the court determines which law should be applied to the case and is subject to whether the claim will be satisfied. [1]

Thus, the current Civil Procedure Code of the Republic of Moldova is based on the theory of factual individualization of claims. The legislator explains the commitment to this theory by the fact that traditionally in civil proceedings there is no duty on the parties to conduct the case in a professional manner. In non-professional proceedings, the burden of determining the correct legal classification of the established factual circumstances lies with the court, and the plaintiff cannot bear the risk of determining the negative consequences of an incorrect legal status. [10, p.137]

Also V.M. Gordon noted that "the law does not require anyone to be familiar with the case law in order to find out what laws apply to a particular set of facts, but to use that conclusion as a starting point. It is unfair to limit a trial defense to the plaintiff's legal training." [5, p.114-115]

Based on the principle of disposition in its classical sense, individualization of claims should ensure the court's compliance with the facts and motives set out in the claim filed by the plaintiff. The plaintiff has a certain subjective interest in determining the wording of the claim and its grounds.

The elements of the claim are considered as a form of the plaintiff's subjective interest in the court's consideration and satisfaction of a specific claim and the facts presented by the plaintiff. Consequently, in its decision the court must precisely protect the interests specified by the plaintiff in the statement of claim. When the court switches from one method to another, will the plaintiff's interests in protecting violated rights remain the same when the legal qualification changes? In procedural theory, the importance of the plaintiff's interests for individualization of the claim is traditionally considered only if the plaintiff amends the claim. As for the admissibility of the court changing the legal qualification of the stated claims, the application of the principle of disposition has not been fully explored. If the plaintiff is free to choose the method of protecting violated rights, he indicates this in the statement of claim and asks the court to apply this method. When the facts established by the court during the trial differ from the facts initially proposed by the plaintiff in the statement of claim, the court must use other means of defense based on the facts established by the court but not stated by the parties. If the plaintiff is entitled to satisfaction, can the description of the grounds of the plaintiff's claim in the statement of claim be considered to have individual significance?

Finally, under certain conditions, the method of protection chosen by the court is completely unexpected for the plaintiff. Based on the results of the assessment of evidence, is it always in the plaintiff's interests for the court to apply a different method of protecting violated rights?

In speaking of the adversarial principle of civil proceedings, let us look at the issues under study from the defendant's point of view. In the case where a contractual claim is replaced by a claim for compensation for unjust enrichment, it is obvious that there is no uniform case law regarding the importance of legal clauses for the individualization of claims. [6, p.104]

Unfortunately, when studying the individualization of a claim, scholars have rarely addressed the defendant's position in the process. However, for example, S.V. Byrdina noted that only one change in the basis of the claim is significant, since it can lead to corresponding changes in the means and methods of the defendant's defense. The defendant, taking into account the claim addressed to him, prepares a specific defense. Certain conditions must be created for him. He must be familiarized with the revised claim and given a period to prepare the appropriate defense. Otherwise, this violates the principle of equality of the parties. However, as a rule, in procedural literature the issue of the defendant's defense against changes to the claim is considered only if the plaintiff corrects the claim, and does not imply a reclassification of the claim by the court. [12, p.353-354]

When the defendant finds himself in a procedural situation where the protection of his rights is complicated by uncertainty as to what essential claims, he must defend himself against, such a situation does not meet the requirements of the adversarial principle. A.H. Golmsten also pointed out the inadmissibility of using the “surprise factor” in civil proceedings. “The plaintiff must accurately identify them, state his demands and, of course, provide the defendant with the opportunity to prepare objections, refute or weaken these demands. Of course, it is impossible to make the defendant’s rights dependent on the arbitrariness, that is, the whims of the plaintiff. First, he asked for one thing, then the defendant prepared for defense, and then he asked for something completely different. The defendant was unable to defend himself and lost the case.” [3, p.25-26]

This decision seems correct not only if the plaintiff changes his claim. The participants in the procedure must understand the nature of the claim and its possible reservations in order to be able to raise objections to them. The possibility of the court applying legal norms provides another way to protect violated rights, which may be a more unexpected factor for the defendant than the plaintiff's change in claims.

By determining the legal qualification and methods of protecting violated rights due to a number of established circumstances, the court risks acting as an unconscious assistant to the plaintiff. Whether in the statement of claim or during the consideration of the case, the court provides such an opportunity that is contrary to the interests of the defendant. In this case, during the trial, the defendant was forced to defend himself not only from the specific arguments put forward by the plaintiff in the statement of claim and during the consideration of the case, but also from the unlimited range of legal qualifications that the court can give to the established circumstances. In addition, in the process of factual individualization based on the claim, the assessment of the legal qualification of all evidence and facts established by the court is carried out in the court session so that the parties can directly address the judicial authorities after the final consideration of the case. In this way, it is possible to raise objections and ensure effective protection, although there are several possible legal reservations, so this is a way to protect the violated rights of the plaintiff, but not all possible options require legal qualification. Therefore, the defendant must be informed in advance of the facts stated by the plaintiff and the possible legal qualification of these circumstances, otherwise he will be deprived of the opportunity to raise objections in a timely manner and take other necessary procedural measures. In particular, in the context of the factual individualization of the claim, the defendant may use this remedy to bring a claim against him as a statement of the plaintiff's inaction after the expiration of the limitation period. [7, p.267-279]

In the process based on the theory of individualization of the claim, if the plaintiff chooses the wrong legal qualification, the court must dismiss the claim. There is no reason to consider the expiration of the limitation period for a remedy that the plaintiff did not seek in the original claim, since the court did not have the opportunity to use the appropriate remedies for the violated rights without the proper expression of the plaintiff's will. Therefore, in the case of legal individualization of the claim based on the first legal basis, it does not affect the observance of the limitation period for other possible reasons. The limitation period associated with other reasons continues to run, and the plaintiff may have missed the limitation period due to participation in the trial on the claim, distorting false legal rights in the claim. Such an approach is clearly contrary to the interests of the plaintiff, and the plaintiff is forced to bear the risk of negative consequences of the incorrect legal qualification of his claim. [8, p.156] Therefore, the problem of individualization of a claim should be considered first and foremost from the point of view of ensuring a balance of interests of all parties in the adversarial process. In addition, M.A. Gordon correctly pointed out the importance of continuing to study the legal qualification of a claim: "It is necessary to resolve the issue of what are the signs of individualization of a claim."

CONCLUSION

As a result of the research conducted in this article, the following conclusions were made:

- The analysis shows that the definition of elements of requirements is inevitably limited by the theory of individualization. The main drawback of approaches to defining elements of requirements in procedural literature is that most of them do not fit within the framework of the theory of factual individualization of a claim and the elements of these requirements are traditionally considered separately from the action of the adversarial principle. This statement and its individualized theory should be formed in the context of adversarial actions to initiate a civil claim.
- The definition of the content of the elements of the claim is of an adversarial nature, and ignoring this relationship means the cancellation of the individualization of the claim within the framework of the existing procedure itself.

Already in Soviet times, the criteria for the status of a claim were vague, and the restrictions established by legislators in the form of prohibitions on changing several elements of the claim no longer met the needs of practice.

- Elements of a claim determined without taking into account the operation of the principle of adversarial proceedings cannot fully perform the functions assigned to determining the identity of a claim during adversarial proceedings.
- If the court does not grant the plaintiff the right to choose an appropriate method of protecting the violated subjective material right, but exercises the authority to apply the norms of substantive law to the facts determined based on the results of the entire study and assessment of the evidence presented, the function of individualization of the claim cannot be performed and is implemented in accordance with the conditions.
- The conducted analysis allows us to conclude that the importance of the rules of individualization of a claim in a judicial process is not limited to the establishment of internal and external standards of claim identification - the limitation of the plaintiff on changing the requirements during the judicial process and the exclusive validity of judicial decisions. The rules of individualization of requirements directly affect other elements of the procedural form.

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TRANSPOSITION OF THE ECN+ DIRECTIVE IN THE CANDIDATE COUNTRY: THE CASE OF ALBANIA

Gentjan Skara
Department of Law, Epoka University
ORCID: 0000-0003-1113-6600

Abstract
Albania, as a candidate country has gradually harmonised its competition legislation in line with the EU competition acquis. The Albanian competition law, currently in force, is drafted with the assistance of *Deutsche Gesellschaft fur technische Zusammenarbeit* (GIZ) and modelled in line with Articles 101 and 102 TFEU, the main EU competition regulations and a number of Commission's notices and guidelines. On the other hand, as a responsible institution for the protection of competition, Albanian Competition Authority (ACA) has played an important role in furthering the harmonisation level by issuing directives or guidelines that transpose EU secondary competition acts or Commission soft. On June 30, 2020, the ACA adopted the Guideline on "empowering Albanian Competition law as amended for ensuring proper functioning of the internal market" which transposes the ECN + Directive into the domestic legal system.
As Albania is obliged to harmonise domestic legislation with the EU *acquis*, this article critically analyses the transposition of the ECN+ Directive in Albania. The authors: i) analyse the enforcement of EU competition rules briefly and provide the main novelties introduced by the ECN+ Directive; ii) compare how the EU Member States and Albanian Competition Authority transposed the ECN+ Directive and iii) discuss the role of Albanian Competition Authority in the digital market. The paper argues that harmonising public enforcement tools is far from being completed in Albania.
Keywords: EU competition law, public enforcement, ECN+ Directive, Albanian Competition Law

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THE COMPETENCE OF THE ARBITRATION BOARD IN THE RESOLUTION OF THE ENERGY INVESTMENT DISPUTES BY ARBITRATION

Assist. Prof. Dr. Aynaz UĞUR
Inonu University, Faculty of Law, Department of International Private Law
ORCID: 0000-0003-1934-1051

ABSTRACT
Energy investment disputes are disputes in which one side is a state and the other side is a foreign real or legal person investor. Regarding the resolution of these disputes, arbitration proceedings can first be mentioned within the scope of the "*Energy Charter Agreement (ECA)"*. However, the most recognized and preferred method for the resolution of investment disputes through arbitration is "*ICSID"* arbitration. Since the "*Washington Convention"*, where "*ICSID"* arbitration is regulated, contains specific regulations regarding the authority of the arbitration board, it has been examined in general under a separate heading in the relevant sections. In terms of jurisdiction in terms of person, it is accepted that only disputes between the host state that is entitled to apply for arbitration and the real or legal person foreign investor who invests in this state will be examined. In terms of jurisdiction in terms of subject, what is important is that the dispute arises from an economic activity that can be considered as an investment under the law of the host state. The third issue regarding jurisdiction is examined in detail under the heading of consent to arbitration. Consent to arbitration can be given in state investment laws, bilateral or multilateral investment agreements or international agreements. In our current study, firstly the basic concepts of energy investment law will be discussed, then the arbitration procedure and the jurisdictional problems encountered in this procedure specific to energy investment disputes will be discussed. Finally, an evaluation will be made in the context of "*ICSID"* and "*ECE"* comparison.
Keywords: investment, arbitration, energy, competence, consent…

INTRODUCTION
Energy investments can be defined as the first area in which international investment law began to manifest itself. Accordingly, concepts related to foreign direct investment law have been built upon those of energy investment law. The period when energy investments began to intensify first emerged after the Industrial Revolution as a capital flow from the West to the East due to the increasing demand for resources. In this process, foreign investors and their home states sought to establish conditions for the protection of investors in the host states where energy investments were made. Initially, this protection was provided through investment contracts; however, since the protective mechanisms of these contracts were limited to the domestic law of the host state, they eventually became insufficient for foreign investors. Consequently, investment treaties came into play. Through such treaties, foreign capital was shielded from the pressure and uncertainties of the host state's domestic law and judicial mechanisms.

The most important universal document in international investment law is arguably the "Washington Convention," which established the "International Centre for Settlement of Investment Disputes (ICSID)." ICSID has become the most frequently used institution for resolving international investment disputes through arbitration. Unlike international commercial arbitration, investment arbitration does not require a separate arbitration agreement; instead, the host state provides advance consent through relevant legislation, which is considered an offer.

The investor's application to the arbitration institution is deemed an acceptance of this offer. This procedure often brings the issue of the arbitral tribunal's jurisdiction to the forefront. For this reason, ICSID has introduced additional rules regarding the tribunal's jurisdiction that differ from other investment treaties, aiming to minimize jurisdictional objections and eliminate potential uncertainties.

MATERIALS AND METHODS

I. CONCEPTS RELATED TO ENERGY INVESTMENT DISPUTES

A. Energy Investment

1. General Overwiev

Disputes arising from energy investments represent the first type of dispute observed between states and investors and it is also accepted that the concept of foreign direct investment evolved from energy investments[1]. Over time, the desire of multinational corporations to operate in different countries, coupled with host states' recognition of foreign investment as a financing method, has made energy investments the most common type of foreign investment. As a rule under international law, it is accepted that energy resources are state-owned[2]. Thus, the extent and framework in which private entities may be allowed to operate over energy resources depend on the system determined by the host state. Even though the execution and financing of energy activities—considered public services in essence—can be delegated to private enterprises by the state, this does not change their public service nature[3]. Accordingly, the state's regulatory and supervisory power over these activities remains intact. States enter into public law–based state contracts with foreign investors regarding access to and operation within the energy market and retain certain superior powers in these contracts. For this reason, a significant portion of investment disputes arises from unilateral interventions by states into these contracts[4].

The international trade of energy resources began with the establishment of oil refineries in the late 19th century[5]. Investors from the United States and Europe, under the encouragement and protection of their home states, turned to resource-rich but economically underdeveloped countries and these countries, in turn, welcomed foreign investors to accelerate their economic development[6]. During this period, concession contracts were established to regulate the relationship between the foreign investor and the host state[7]. While permitting choice-of-law clauses was a step towards the internationalization of investment contracts, the key development was limiting judicial interference by the host states. National court oversight through annulment and enforcement proceedings remains the most concrete example of such interference. The "Washington Convention," signed with these concerns in mind, provides an arbitration system that ensures arbitral awards are independent of national legal systems[8].

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[1] TUNCER, B. (1968), *Türkiye'de Yabancı Sermaye Sorunu*, Ankara, s. 16; URAS, T. G. (1979), *Türkiye'de Yabancı Sermaye Yatırımları*, İstanbul, p. 20.

[2] CARDENAS, E. (1996), *"The Notion of Sovereignty Confronts a New Era"*, Economic Development, Foreign Investment and Law, Int. Bar Ass. Series, Kluwer Law International, p. 13.

[3] KARAHANOĞULLARI, O. (2020), *Kamu Hizmeti: Kavram ve Hukuksal Rejim*, Ankara, p. 5.

[4] ÜNSAL, H. (2023), *Enerji Yatırım Uyuşmazlıklarında Yetki Sorunu ve Esasa Uygulanacak Hukuk*, Ankara: Adalet Press, p. 49.

[5] ACUN, N. (1949), *Dünya Petrol Tarihi ve Türk Petrolü*, İstanbul, p. 22.

[6] TUNCER, p. 14.

[7] TİRYAKİOĞLU, B. (2003), *Doğrudan Yatırımların Uluslararası Hukukta Korunması*, Ankara, p. 67, (Yatırım).

[8] DUGAN, C. & WALLACE, D. & RUBİNS, N. & SABAHİ, B. (2000), *Investor-State Arbitration*, Oxford: Oxford University Press, p. 675-678; SORNARAJAH, M. (2000), *The Settlement of Foreign Investment Disputes*, Kluwer Law International, p. 287-289.

This service is provided by the ICSID, established under the Convention. ICSID arbitral awards may only be annulled for specific reasons stated in the Convention, and such requests are reviewed by a new tribunal to be constituted under ICSID. Moreover, ICSID awards involving monetary obligations must be enforced by the states party to the Convention as though they were final judgments of local courts. With its protection of arbitral awards from state interference, ICSID remains one of the most frequently used institutions for resolving energy investment disputes today.

2. Elements of Energy Investment

Energy investments are broad-based institutions encompassing various elements essential for their proper operation. The first of these elements includes investment laws, bilateral investment treaties, and contracts, through which the host state voluntarily limits its territorial jurisdiction to protect foreign investors[9]. The second element is the investment itself. For an economic activity to be legally recognized as an investment, it must meet the definition provided in the applicable investment law or treaty[10]. According to Article 1(6) of the Energy Charter Treaty (ECT), an investment refers to every kind of asset, owned or controlled directly or indirectly by an investor. The third element is the investor, which lacks a uniform definition under international law. Therefore, the definition of "investor" provided in the relevant investment laws and treaties is taken as the basis[11]. Although the definitions generally cover both natural and legal persons, most major investors are legal entities, making disputes more prevalent in this category[12]. As per Article 1(7)(a)(2) of the ECT, companies and other organizations qualify as legal entity investors, meaning that no limitation has been imposed in this regard.

Most investment laws and treaties require that the investor not possess the nationality or citizenship of the host state in order to benefit from the rights provided[13]. Therefore, determining nationality for individuals and the nationality (or "corporate nationality") for legal persons is crucial. For individuals, nationality is determined based on the laws of the state whose nationality is claimed. For legal entities, the place of incorporation and the location of the administrative center are the most frequently applied tests today. The fourth and final element of energy investments is the state. In this relationship, the capital-exporting state is referred to as the home state, and the capital-importing state is the host state. It is observed that states adopt broader investment conditions when exporting capital, and stricter ones when importing it.

B. Investment Dispute

Investment disputes should be analyzed by distinguishing between contract-based and treaty-based disputes. In the early stages of energy investments, investment contracts served as the primary protection mechanism for investors. However, since such contracts are governed by domestic law, the protection they offered became insufficient. This led to the adoption of investment treaties, which provided protection at the international level. Investment treaties impose obligations on states regarding the protection and treatment of investors, and in cases of violation, the dispute resolution methods outlined in the treaties can be invoked.

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[9] TİRYAKİOĞLU, Yatırım, p. 2.
[10] SALACUSE, J. (2021), *The Law of Investment Treaties*, Oxford, p. 20.
[11] PARRA, A. (1997), *"Provisions on the Settlement of Investment Disputes in Modern Investment Law, Bilateral Investment Treaties and Multilateral Instruments on Investment"*, ICSID Rewiev, V.12, N.2, p. 294; https://academic.oup.com/icsidreview/issue/12/2, 16.08. 2024; TİRYAKİOĞLU, Yatırım, p. 167.
[12] GÜNGÖR, G. (2023), *Tabiiyet Hukuku*, Ankara: Yetkin Press, p. 200.
[13] ÜNSAL, p. 180.

Investment disputes are classified into two categories: those arising from contract violations and those arising from treaty violations[14]. These can also be termed contract-based and treaty-based disputes, respectively. The differences between the two may be summarized in three points[15]:

1. Contract-based disputes are subject to domestic law, while treaty-based disputes are governed by international law.
2. Treaty-based disputes always involve a state and an investor, while the counterpart in contract-based disputes may be a municipal body, federal entity, or a state-owned company.
3. Treaties provide standardized protections, whereas the provisions of contracts vary based on their specific terms.

Making the correct distinction between the two categories is critical in determining the applicable law and the jurisdiction of the dispute resolution body. However, modern investment law has introduced what are known as "umbrella clauses," which allow for the elevation of contract obligations to treaty obligations[16]. In other words, by including a specific clause in the investment treaty, contract breaches may be treated as treaty violations, thereby enabling treaty-based protections and dispute resolution mechanisms to apply to contract breaches as well.

When examining the sources of investment disputes, the first to be mentioned is expropriation. The conditions for lawful expropriation include legality of the act, non-discrimination, public interest, and the payment of compensation[17]. Other common sources of dispute include restrictions on the transfer of payments, violations of treatment standards stipulated in investment treaties, and unilateral changes to contract terms[18]. The relevant standards of treatment include[19]:

- Full protection and security
- Fair and equitable treatment
- National treatment
- Most-favored-nation treatment

[14] ÜNSAL, p. 203.
[15] ÜNSAL, p. 204.
[16] FOOTER, M. (2017), *"Umbrella clauses and widely-formulated arbitration clauses: discerning the limits of ICSID jurisdiction"*, The Law and Practice of International Courts and Tribunals, Vol. 16, No. 1, p.87–107; GÜNARSLAN, B. F. (2024), *"Enforceability of Umbrella Clauses by Investment Arbitration Tribunals"*, Erciyes Üniversity Law Rewiev, No. 19/1, p. 85- 107.
[17] SORNARAJAH, p. 69 etc. ; VANDEWELDE, K. (2010), *Bilateral Investment Treaties*, Oxford: Oxford University Press, p. 270 etc.
[18] ÜNSAL, p. 223-243.
[19] ÇALIŞKAN, Y. (2012), *"İki Taraflı Yatırım Anlaşmalarında Yer Alan En Çok Gözetilen Ulus Kaydının Uyuşmazlıkların Çözümüne İlişkin Hükümlere Uygulanabilirliği Sorunu",* Prof. Dr. Tuğrul Arat Present, Ankara: Yetkin Press, p. 75; ŞİT KÖŞGEROĞLU, B. (2012), *Enerji Yatırım Sözleşmeleri ve Bunların Uluslararası Yatırım Anlaşmaları ile Korunması*, İstanbul, p. 273; SALACUSE, p. 205 etc. ; TİRYAKİOĞLU, Yatırım, p. 174; VANDEWALDE, p. 243 vd.

FINDINGS AND DISCUSSION

II. THE ARBITRATION METHOD IN THE RESOLUTION OF ENERGY INVESTMENT DISPUTES

A. Arbitration Procedure

Arbitration is an alternative dispute resolution method in which disputes relating to private law are resolved in a binding and enforceable manner by an arbitral tribunal formed by the parties to the dispute. As evident from this definition, arbitration differs from state court proceedings in many respects. However, the binding nature and enforceability of an arbitral award are the same as that of a court judgment.

In order for arbitration to be used as a method for resolving international disputes, there must be an arbitration agreement between the parties. As a general rule, the parties to arbitration are private law entities. However, states can also become parties to arbitration proceedings when they act as traders in commercial transactions[20]. Arbitration involving a state on one side and a foreign natural or legal person on the other is referred to as investment arbitration. Investment arbitration is used to resolve disputes arising from investments made by a foreign investor in the host state[21]. Typically, investment arbitration is initiated when the investor accepts the host state's general offer of consent to arbitration—either provided in investment laws or bilateral agreements—by directly commencing arbitration proceedings[22].

The law applicable to the arbitration procedure is distinct from the law applicable to the substance of the dispute. The procedural law governs the powers of the arbitral tribunal and all other procedural matters. The parties may agree on the procedural law to be applied. If no such agreement exists, the arbitral tribunal determines the applicable procedural law, which is usually the law of the seat of arbitration. Although some agreements include procedural rules within their own framework, most refer to the rules of arbitration institutions.

The most frequently preferred institution in investment arbitration is ICSID (International Centre for Settlement of Investment Disputes), established under the *Washington Convention*[23] and affiliated with the World Bank. ICSID serves as a center for the resolution of international investment disputes through arbitration and conciliation, functioning between states that are party to the Convention and foreign natural or legal persons investing in those states[24].

B. Jurisdiction of the Arbitral Tribunal

Unlike state courts, the arbitral tribunal derives its jurisdiction in arbitration proceedings from the arbitration agreement between the parties[25]. However, in investment arbitration, arbitral tribunals can derive their jurisdiction from arbitration clauses included in investment laws or treaties. In this regard, investment arbitration differs from other types of arbitration in that it can be initiated without a specific arbitration agreement. This characteristic often leads to jurisdictional objections in investment arbitration.

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[20] ATAMAN FİGANMEŞE, İ. (2011), *"Milletlerarası Ticari Tahkim ve Yatırım Tahkimi Arasındaki Farklar",* Public and Private Law Bulletin, Y. 31, N. 1, p. 91 vd; TİRYAKİOĞLU, B. (2007), *"Yatırımlar ve Uluslararası Tahkim Arasındaki İlişki: ICSID Tahkimi"*, International Economy and External Commerce Policy, No. ½, p. 171, (Tahkim).

[21] DUGAN & WALLACE & RUBİNS & SABAHİ, p. 17.

[22] STRONG, S. (2013), *"Discovery Under 28. U.S.C. Paragraph 1782: Distinguishing International Commercial Arbitration and International Investment Arbitration"*, 1 Stan. J. Complex Litig. 295, p. 7.

[23] https://icsid.worldbank.org/about/member-states/database-of-member-states, 1.09.2024.

[24] https://icsid.worldbank.org/sites/default/files/ICSID%203/ICSID-3--END.pdf, 1.09.2024.

[25] ERKAN, M. (2013), Milletlerarası Tahkimde Yetki Sorunları, Ankara: Yetkin Press, p. 110-115.

Under the *Kompetenz-Kompetenz*[26] principle, arbitral tribunals have the authority to rule on their own jurisdiction. This principle is expressly regulated in many investment arbitration rule frameworks[27]. Since ICSID arbitration rules impose additional conditions concerning jurisdiction, this issue will be addressed separately below.

1. Jurisdiction Ratione Personae (Personal Jurisdiction)

Although this issue is referred to as "jurisdiction," it essentially pertains to determining which entities are competent to be parties to arbitration proceedings. These entities are the host state and a foreign investor who is a national of another state investing in that country[28]. In ICSID arbitration, the first condition for personal jurisdiction is that both parties must be nationals of states that are parties to the Washington Convention. The second condition is that the dispute must have arisen directly between the host state and the investor. If the host state has designated and notified the ICSID Centre, its subdivisions or representatives may also be considered parties to arbitration[29].

Regarding the investor, they must not be a national of the host state, but a national of another state that is a party to the Convention. Multiple nationalities are generally not problematic unless one of them is that of the host state[30]. As for legal persons, the nationality criteria specified in investment laws or treaties apply. However, an exception is made for companies that, although incorporated in the host state, are controlled by foreign entities. If there is an agreement between the host state and the foreign-controlled company, the latter may be treated as a foreign investor[31]. For example, in *Holiday Inns v. Morocco*[32], the arbitral tribunal did not accept an implied agreement and required an explicit expression of intent.

Due to differences between the Energy Charter Treaty (ECT) and the Washington Convention in their definitions of natural and legal persons, divergent outcomes may arise in determining ICSID jurisdiction. First, the ECT does not require natural person investors to be nationals of a contracting state, deeming residence in one of the states sufficient[33]. Second, the ECT defines legal person investors as companies or entities established under the law of a contracting state[34]. Thus, a legal entity incorporated in the host state cannot initiate arbitration under the ECT. However, the Washington Convention allows a legal entity incorporated in the host state but controlled by foreign nationals to access ICSID arbitration, provided there is an agreement with the host state.

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[26] ERKAN, p. 110-115.

[27] UNCITRAL Arbitration Rules, art. 23/1, https://rm.coe.int/uncitral-ticari-tahkim-model-kanunu/1680a72db8, 15.09.2024; ICC Arbitration Rules, art. 6/5, https://icc.tobb.org.tr/icc-tahkimkullari.php, 15.09.2024.

[28] JACOB, M. (2010), *International Investment Agreements and Human Rights*, Duisburg, p. 36.

[29] EGEMEN DEMİR, I. (2013), *Uluslararası Yatırım Uyuşmazlıklarının Halli Merkezi (ICSID) Tahkiminde Kişi Bakımından Yetki-Jurisdictio Ratione Persona-* , PHD Thesis, Istanbul University Social Sciences Institute, İstanbul, p. 54; ERTEN, R. (2005), *Doğrudan Yabancı Yatırımlar Kanunu'nun Türk Yabancılar Hukuku Sistemi İçindeki Yeri ve Rolü*, Bank and Commerce Law Research Institute, Ankara, p. 216.

[30] YILMAZ, İ. (2004), *Uluslararası Yatırım Uyuşmazlıklarının Tahkim Yoluyla Çözümü ve ICSID*, İstanbul, p. 92.

[31] EGEMEN DEMİR, p. 114; ERTEN, p. 217; YEŞİLIRMAK, A. (1999), *"Yatırım Uyuşmazlıklarının Çözümüne İlişkin Uluslararası Merkezin Türk İmtiyaz Sözleşmeleri Üzerindeki Yargı Yetkisi"*, Bank and Commerce Law Rewiev, V. XX, N. 2, p. 171.

[32] Holiday Inns and others v. Morocco, Decision on Provisional Measures, 2 July 1972, 20.09.2024.

[33] ÜNSAL, p. 329.

[34] ÜNSAL, p. 329.

2. Jurisdiction Ratione Materiae (Subject-Matter Jurisdiction)

The arbitral tribunal's subject-matter jurisdiction is determined by the scope of the dispute resolution provisions in investment laws and treaties[35]. Two main questions are examined in this context:

First, whether the activity in dispute qualifies as an investment under the relevant law or treaty[36].

Second, whether the dispute between the investor and the host state constitutes an investment dispute[37].

Both investment laws and treaties vary widely in how they define the term "investment." In particular, treaties tend to include very broad definitions. For instance, there is debate over whether general phrases like "any dispute" or "all disputes relating to the investment" grant jurisdiction to the arbitral tribunal. Scholarly opinion generally favors an interpretation that such phrases do confer jurisdiction[38].

However, in *SGS v. Pakistan*[39], the tribunal concluded that the phrase "disputes relating to investments" in the BIT's dispute resolution clause was insufficient to establish jurisdiction over contract-based disputes.

Since the ECT is a treaty specifically focused on the energy sector, it is necessary and sufficient that the dispute to be submitted to arbitration involves an activity within that sector. Under the Washington Convention, ICSID's jurisdiction depends on whether the underlying economic activity can be defined as an investment within the relevant law or treaty[40]. The classification of an activity as an "investment" is based on the domestic law of the host state or the law of a treaty party. Thus, ICSID jurisdiction is established for any matter considered an investment by the relevant state[41]. Scholarly views suggest that ICSID lacks jurisdiction in cases where investment applications have been rejected[42]. In *Mihaly v. Sri Lanka*[43], for example, the tribunal declined jurisdiction on this basis.

According to widely accepted opinion, investment disputes submitted to ICSID must be legal in nature[44]. ICSID does not consider itself competent to adjudicate purely political or purely commercial disputes. However, if such disputes involve the creation or impact on legal rights and obligations, jurisdiction may be recognized. For example, in *CSOB v. Slovakia*[45], the tribunal accepted that while investment disputes involving states often have political elements, they may still be subject to arbitration if they involve legal rights and obligations.

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[35] SORNARAJAH, p. 208.
[36] SORNARAJAH, p. 307-310.
[37] SORNARAJAH, p. 307-310.
[38] DUGAN & WALLACE & RUBINS & SABAHI, p. 223.
[39] SGS v. Pakistan, Judgment by the Supreme Court of Pakistan, 3 July 2002, 1.10.2024; For Opposite: SGS v. Philippines, SGS v. Philippines, Decision of the Tribunal on Objections to Jurisdiction, 29 Jan 2004 (jusmundi.com), 10.10.2024.
[40] ERKAN, p. 178.
[41] DOST, S. (2006), *Yabancı Yatırım Uyuşmazlıkları ve ICSID Tahkimi*, p. 156; ERKAN, p. 193-194; YILMAZ, p. 155-156; VANDEWELDE, p. 131.
[42] YILMAZ, p. 156.
[43] Mihaly v. Sri Lanka, Award, 15 Mar 2002, 10.10.2024; For Opposite: PSEG v. Turkey, PSEG v. Turkey, Award, 19 Jan 2007, 10.10.2024.
[44] AKYÜZ, S. (2003), *"The Jurisdiction of ICSID: The Application of the Article 25 of Convention on the Settlement of Investment Disputes Between States and Nationals of Other States"*, Ankara University Law Faculty Rewiev, V. 52, N. 3, p. 349; ERTEN, p. 215; YILMAZ, p. 134-137.
[45] CSOB. v. Slovak Republic, Award, 29 Dec 2004, 10.10.2024.

3. Jurisdiction Based on Source

a.Establishment of Jurisdiction by Consent

aa. The Concept of Consent in Arbitration

In international commercial arbitration, consent may be based on a separate arbitration agreement between the parties or an arbitration clause inserted into the underlying substantive contract. However, in investment arbitration, arbitral tribunals may be vested with jurisdiction through arbitration clauses contained in investment laws and treaties. In this respect, investment arbitration differs from other types of arbitration in that it enables the initiation of arbitration proceedings without the necessity of a separate arbitration agreement. Therefore, unlike international commercial arbitration, the concept of consent rather than an arbitration agreement becomes prominent in investment arbitration. The advance consent given by states through arbitration clauses in investment laws and treaties is known as impersonal (or unilateral) consent, and is considered an open and continuing offer to arbitrate. When the investor initiates arbitration proceedings, this act is deemed an acceptance of the offer. Thus, arbitration can commence without any need for a specific arbitration agreement between the state and the foreign investor[46].

bb. Granting Jurisdiction Through Consent

aaa. Arbitration Clause in Contracts

The oldest method of conferring jurisdiction on arbitral tribunals in investment arbitration is the inclusion of an arbitration clause in concession contracts between the foreign investor and the host state. In such cases, the issue at stake is usually not jurisdiction per se, but rather the state's capacity and the validity of the arbitration clause[47].

bbb. Investment Treaties

####### aaaa. In General

In bilateral investment treaties (BITs), consent to arbitration is usually expressed by referencing specific arbitration rules—most commonly ICSID—and by naming one or more arbitral institutions. Listing multiple arbitral institutions in a single investment treaty is important in that it enables the parties to seek recourse before another tribunal if one declares itself without jurisdiction[48].

Even where arbitration is foreseen under investment treaties, jurisdictional disputes may arise. For instance, investment treaties and investment contracts may authorize different arbitral institutions or national courts. When a national court or a specific arbitral tribunal is granted exclusive jurisdiction, determining the jurisdiction of a tribunal may be particularly contentious. In the SGS v. Philippines[49] arbitration, the tribunal held itself competent with respect to treaty-based claims, while leaving contract-based claims to domestic courts. In our opinion, such a jurisdictional division undermines the logic of exclusivity, and the institution granted exclusive jurisdiction should be deemed competent in both cases.

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[46] For Opposite: "SPP v. Eygpt-1985", https://jusmundi.com/fr/document/decision/en-southern-pacific-properties-middle-east-limited-v-arab-republic-of-egypt-decision-on-jurisdiction-thursday-14th-april-1988, 15.09.2024.

[47] OLEGHE, F. O. & OLİYİDE, (2022), *"Olusesan, Contextualizing the Doctrine of Privity of Contract in Relation to International Investment Arbitration",* Journal of Law, Policy and Globalization, N. 127, p. 28.

[48] PARRA, p. 331.

[49] SGS v. Philippines, Decision of the Tribunal on Objections to Jurisdiction, 29 Jan 2004 (jusmundi.com), 16.09.2024; For Opposite: Belenergia v. Italy, Belenergia v. Italy, Award, 6 Aug 2019 (jusmundi.com), 16.09.2024.

This interpretation was affirmed in Belenergia v. Italy[50] under the ECT, where the Rome courts were accepted as the sole competent forum.

bbbb. The Energy Charter Treaty (ECT) as a Multilateral Investment Treaty

Article 26 of the Energy Charter Treaty (ECT) aims to eliminate uncertainties regarding the existence of consent to arbitration by explicitly providing a detailed dispute resolution clause, thereby enabling recourse to arbitration without a separate arbitration agreement[51]. As such, the clause is referred to as an unconditional consent to arbitration. This provision also allows the parties to choose between multiple arbitration forums[52].

Importantly, the ability to pursue ad hoc arbitration or arbitration under the SCC (Stockholm Chamber of Commerce) offers a viable path even where ICSID jurisdiction cannot be established—for example, when the investor is a national of the host state[53]. Furthermore, Article 17 of the ECT, which regulates the denial of benefits clause, has sparked debate over whether it can prevent investors that are owned or controlled by nationals of non-ECT member states and that do not conduct substantial business in their state of incorporation from initiating arbitration against the host state[54]. However, the prevailing view is that this clause should not be interpreted in a manner that blocks recourse to arbitration[55]. In Plama v. Bulgaria[56], the first case where this clause was raised, the tribunal rejected the host state's objection and held that Article 26 of the ECT constitutes an unconditional offer to arbitrate.

cccc. Most-Favored-Nation (MFN) Clause

The possibility of establishing jurisdiction based on MFN clauses in investment treaties remains controversial. However, since most investment treaties already contain provisions enabling arbitration, MFN clauses are usually invoked to bypass limitations on access to arbitration rather than to confer jurisdiction outright[57]. A further issue arises as to whether MFN clauses can be used to expand the investor's access to arbitral forums beyond those explicitly provided in the treaty. The dominant view is that the parties' genuine consent is reflected in the treaty, and thus the MFN clause cannot be interpreted as permitting the establishment of jurisdiction by reference to other treaties[58].

The first decision affirming jurisdiction based on an MFN clause was in Maffezini v. Spain[59], where the tribunal found itself competent notwithstanding the requirement in the Spain-Argentina BIT to first pursue remedies in domestic courts and wait 18 months. The tribunal based this conclusion on the MFN clause.

[50] Belenergia v. Italy, Belenergia v. Italy, Award, 6 Aug 2019 (jusmundi.com), 16.09.2024.
[51] PARRA, p. 347.
[52] PARRA, p. 346.
[53] PARRA, p. 345-346.
[54] ÜNSAL, p. 301.
[55] ROE, T. & HAPPOLD, M. & DİNGEMANS, J. (2011), *Settlement of Investment Disputes Under The Energy Charter Treaty*, Chambridge, p. 79 etc.
[56] Plama v. Bulgaria, Decision on Jurisdiction, 8 Feb 2005 (jusmundi.com), 10.09.2024.
[57] ÜNSAL, p. 292.
[58] CALIŞKAN, p. 306-308.
[59] Maffezini v. Spain, Award, 13 Nov 2000 (jusmundi.com), 10.09.2024; For Opposite: Salini v. Jordan, Salini v. Jordan, Decision on Jurisdiction, 29 Nov 2004 (jusmundi.com), 10.09.2024.

cc. Provisions in National Legislation

National investment laws also sometimes provide foreign investors with access to arbitration. However, these laws are far from uniform. Some require the existence of a contract between the investor and the state as a condition of valid consent to arbitration. For example, the Turkish Foreign Direct Investment Law follows this model. In such cases, parties may enter into an agreement even after a dispute arises. If the conditions stipulated in the legislation are met, parties may apply to any arbitral institution or proceed with ad hoc arbitration.

Through such provisions, states position themselves advantageously vis-à-vis investors in investment disputes[60]. These arrangements are considered to preclude unilateral consent to arbitration[61].

In contrast, most investment laws that adopt a more flexible approach recognize consent to arbitration if the applicable arbitral forum or the procedural rules governing ad hoc arbitration are determined in advance. Another method found in legislation is to reference treaties or agreements concluded between the host state and the investor's home state or between the host state and the investor.

b. Jurisdiction Based on Explicit Reference to ICSID Arbitration

To confer jurisdiction on an ICSID tribunal in an investment dispute, the consent clause in an investment contract, treaty, or national law must be supplemented by the requirements set out in Article 25 of the ICSID Convention[62].

The first condition is that both the host state and the investor's home state must be parties to the ICSID Convention. For example, in Fábrica de Vidrios v. Venezuela[63], the tribunal found itself without jurisdiction because Venezuela had withdrawn from the Convention. The second condition is that both the host state and the investor must express their consent to ICSID arbitration in writing[64]. This consent may be given through a clause in a treaty, a separate arbitration agreement, or unilaterally by the state in its investment law or treaty commitments. If the investor accepts this unilateral offer by initiating ICSID proceedings, the tribunal considers the consent to be valid[65]. In SPP v. Egypt[66], the tribunal rejected Egypt's argument that the relevant legislative provision did not constitute valid consent to arbitration.

III. AN EVALUATION IN THE CONTEXT OF A COMPARISON BETWEEN ICSID AND THE ECT

In the resolution of energy investment disputes, arbitration proceedings are first and foremost conducted under the Energy Charter Treaty (ECT). However, the most well-known and preferred method for resolving investment disputes through arbitration is the ICSID arbitration. Since the Washington Convention, which governs ICSID arbitration, contains specific provisions on the tribunal's jurisdiction, it is appropriate to compare the jurisdictional frameworks of these two regimes.

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[60] CLARK, H. & VELAZQUEZ, A. (2001), *"Foreign Direct Investment in Latin America: Nicaragua-A Case Study",* American University International Law Rewiev, V. 16, I.3, p. 761; https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1240&context=auilr, 1.08.2024.

[61] ÜNSAL, p. 282.

[62] YILMAZ, p. 156.

[63] Fabrica de Vidrios v. Venezuela (I), Decision on Annulment, 22 Nov 2019, 1.09.2024.

[64] AKYÜZ, p. 348.

[65] AKYÜZ, p. 348; YEŞİLIRMAK, p. 168.

[66] SPP v. Egypt, Decision on Preliminary Objections to Jurisdiction, 27 Nov 1985, 15.09.2024.

In terms of personal jurisdiction, it is accepted that only disputes between the host state and the foreign investor—whether a natural or legal person—who has made an investment in that state, may be subject to arbitration. Although this issue is discussed under the concept of jurisdiction, it essentially refers to the capacity to be a party to the arbitration process. These parties are the host state and the investor who is a national of another contracting state[67]. The first requirement for personal jurisdiction in ICSID arbitration is that both parties eligible to be part of the arbitration, the host state and the investor must be parties to the Washington Convention. The second condition is that the dispute must have arisen directly between the host state and the investor. If the host state consents to arbitration and notifies the ICSID Centre accordingly, its sub-state entities or representatives may also be considered parties to the arbitration[68].

Due to differences in the definitions of natural and legal persons under the ECT and the Washington Convention, the scope of personal jurisdiction in ICSID arbitration may vary. The ECT, unlike the Washington Convention, does not require natural person investors to be nationals of a contracting party; it suffices that they are habitually resident in one of the ECT parties[69]. Secondly, the ECT defines legal person investors as companies or entities incorporated under the laws of one of the contracting parties[70]. Thus, a legal entity incorporated under the laws of the host state cannot initiate arbitration under the ECT. In contrast, the Washington Convention allows such entities to access ICSID arbitration if they are controlled by foreign nationals and the host state consents in writing.

Subject-matter jurisdiction is determined by whether the dispute arises from an economic activity that qualifies as an "investment" under the host state's law. Arbitral tribunals derive subject-matter jurisdiction from the dispute resolution provisions contained in investment laws and treaties[71]. Two core elements are examined in this context. First, whether the activity that is the subject of the dispute qualifies as an investment under the applicable law or treaty[72]. Second, whether the dispute between the investor and the host state constitutes an "investment dispute[73]."

Since the ECT is a treaty specifically focused on the energy sector, it is both necessary and sufficient that the dispute submitted to arbitration relates to an energy-related activity. In contrast, for the ICSID tribunal's jurisdiction to be established, the economic activity that is the subject of the dispute must be capable of being defined as an "investment" under the applicable law or treaty[74]. The classification of the investment is assessed based on the law of the contracting state or the treaty itself. Thus, arbitral jurisdiction is established for all disputes considered to be investments under the respective state's or treaty's framework. It has been argued in scholarly writings that ICSID tribunals do not have jurisdiction when investment applications are rejected. Additionally, it is widely accepted in the doctrine that disputes submitted to ICSID arbitration must be legal in nature[75]. ICSID tribunals generally decline jurisdiction over disputes that are purely political or purely commercial[76].

[67] JACOB, p. 36.
[68] EGEMEN DEMİR, p. 54; ERTEN, p. 216.
[69] ÜNSAL, p. 329.
[70] ÜNSAL, p. 329.
[71] SORNARAJAH, p. 208.
[72] SORNARAJAH, p. 307-310.
[73] SORNARAJAH, p. 307-310.
[74] ERKAN, p. 178.
[75] AKYÜZ, p. 349; ERTEN, p. 215; YILMAZ, p. 134-137.
[76] DOST, p. 156; ERKAN, p. 193-194; YILMAZ, p. 155-156; VANDEWELDE, p. 131.

However, if such disputes give rise to or affect legal rights and obligations of the parties, jurisdiction may still be recognized[77].

The third issue of jurisdiction concerns consent to arbitration. Consent may be given through national investment laws, bilateral or multilateral investment treaties, or international agreements. Article 26 of the Energy Charter Treaty addresses potential uncertainty regarding the existence of consent to arbitration by providing a detailed dispute resolution clause[78]. This eliminates the need for a separate arbitration agreement and allows direct recourse to arbitration[79]. Accordingly, this clause is considered an unconditional consent to arbitration. The provision also allows the investor to choose among multiple arbitration rules and institutions[80]. Of particular note is the availability of ad hoc arbitration and arbitration under the SCC (Stockholm Chamber of Commerce), which ensures that arbitration proceedings can still be initiated even if ICSID jurisdiction cannot be established—for example, when the natural person investor is a national of the host state.

Additionally, Article 17 of the ECT, which includes the denial of benefits clause, has led to debate over whether it allows host states to block arbitration proceedings initiated by legal entities that are controlled by nationals of non-ECT countries and do not conduct substantial business in their state of incorporation[81]. However, the prevailing view holds that this provision should not be interpreted in a way that obstructs recourse to arbitration[82].

To vest jurisdiction in an ICSID tribunal in an investment dispute, in addition to the consent clause in the investment law, treaty, or contract, the requirements of Article 25 of the Washington Convention must also be fulfilled[83]. The first requirement is that both the host state and the investor's home state must be parties to the Washington Convention. The second requirement is that consent to ICSID arbitration must be expressed in writing by both the host state and the investor[84]. This consent may be included in a dispute resolution clause in a treaty, or it may be given through a separate arbitration agreement. Moreover, if the host state makes a unilateral offer of arbitration through its laws or treaties, and the investor initiates ICSID arbitration, this initiation is considered an acceptance of the offer. In such cases, the ICSID tribunal accepts jurisdiction[85].

CONCLUSION

Unlike state courts, an arbitral tribunal's jurisdiction in arbitration proceedings depends on the parties authorizing the tribunal through an arbitration agreement. However, in investment arbitration, tribunals may derive jurisdiction from arbitration clauses embedded in investment laws or treaties. This distinguishes investment arbitration from other types of arbitration in that proceedings can be initiated without the need for a separate arbitration agreement. Consequently, objections to jurisdiction are frequently encountered in investment arbitration. Under the principle of Kompetenz-Kompetenz, arbitral tribunals are authorized to rule on their own jurisdiction. This principle is expressly stipulated in many sets of investment arbitration rules.

[77] YILMAZ, p. 156.
[78] PARRA, p. 347.
[79] PARRA, p. 346.
[80] PARRA, p. 345-346.
[81] ÜNSAL, p. 301.
[82] THOMAS & MATTHEW & DİNGEMANS, p. 79 etc.
[83] YILMAZ, p. 156.
[84] AKYUZ, p. 348.
[85] AKYUZ, p. 348; YEŞILIRMAK, p. 168.

In ICSID arbitration, specific additional requirements are introduced regarding jurisdiction. As ICSID is the most commonly used forum for resolving investment disputes, the detailed regulation of jurisdiction enhances the integrity and legitimacy of proceedings. ICSID arbitration shields energy investment disputes from interference by domestic law and courts, placing them firmly within the realm of international law. As a result, foreign investors benefit from stronger protection. In serving the interests of international commerce, ICSID arbitration has become the most preferred dispute resolution mechanism among investors. Given the volume of ICSID cases, the institution's effort to introduce additional jurisdictional conditions to screen applications more thoroughly from the outset is a reasonable response to practical needs. Moreover, this approach contributes to clearer jurisdictional rules and is likely to reduce the number of jurisdictional objections.

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WEB: www.iksadkongre.com/law
E-MAIL: hukukkongresi@gmail.com

THE PROBLEM OF LEGAL BINDINGNESS OF BLOCKCHAIN-BASED SMART CONTRACTS IN INTERNATIONAL TRADE

Mehmet Yiğitalp KARGI
Bachelor Student. Selçuk University, Faculty of Law
ORCID: 0009-0007-9157-1106

Abstract
This study examines blockchain-based smart contracts, which are becoming increasingly common in international trade. While smart contracts offer significant advantages in speeding up international transactions and reducing costs, they also bring with them various legal uncertainties. In particular, the legally binding, enforceability and interpretation of these conventions have not yet been fully resolved.
The aim of this study is to reveal the application areas and potential of blockchain technology and especially smart contracts in international trade law, to evaluate the legal validity of smart contracts comparatively in terms of Turkish law, CISG and common law systems, to address the problem of determining the competent court and applicable law in disputes that may arise from smart contracts, and to develop concrete recommendations by examining the current approaches of international arbitration courts to recognize smart contracts together with the legal and technical problems encountered in the acceptance and interpretation of these contract types. To conclude, the aim of the paper is to analyze the legal uncertainties that prevent the adoption of blockchain technology in international trade, especially through smart contracts, and to provide a legal basis for the effective use of this new technology by offering solutions.
While this study highlights the advantages of blockchain technology and smart contracts in international trade, it reveals that there are significant uncertainties regarding the legal validity of the technology, the determination of competent courts and the recognition of these contracts by international arbitration institutions. In order to resolve these issues, it is recommended that international institutions such as the CISG and UNCITRAL establish common legal standards and arbitral institutions strengthen their technical infrastructure for these new technologies.
Keywords: Blockchain, Smart Contracts, International Trade Law, Arbitration, Legal Uncertainty, Lex Mercatoria

1. Introduction

a. The increasing role of blockchain technology in international trade.

Blockchain technology is a type of database technology. It has a decentralised database, the transactions are transparent and at the same time the transactions cannot be changed by other users. The concept of smart contract was first introduced to the literature by Nick Szabo. According to the definition made by Szabo, smart contracts are ‘a transaction protocol with a computer that fulfils the conditions of a contract.’ (Szabo,1994)
According to Szabo, the aim is to minimise both malicious and accidental exceptions and to minimise the need for trusted intermediaries. Related economic objectives include reducing fraud losses, brokerage and execution costs and other transaction costs. (Szabo,1994)
According to research by Deloitte, business-to-business (B2B) and person-to-person (P2P) payment transactions using blockchain technology save between 40% and 80% in transaction costs compared to traditional methods, and these transactions take an average of four to six seconds to complete (Khandaker, 2019). This shows that it is actually a payment instrument suitable for the structure of the world that has become a digitalised and global village.

Since international trade involves many different parties and complex procedures, it causes high expenses in terms of both time and cost. For this reason, important projects are being carried out for the use of blockchain technology in international trade. As an example, Maersk, the world's largest container ship operator, is investigating how blockchain technology can improve operations involving paper-based bills of lading. In 2018, Maersk announced a joint initiative with IBM to use blockchain technology to initiate more efficient and secure methods of conducting global trade. (Öz, 2019) Within the scope of this project, the parties can digitise the paper documents traditionally used in international trade and share them through the blockchain system and perform various procedures such as customs clearance in a secure and automated manner through smart contracts. (Kel, 2020).
In conclusion, blockchain technology has become widespread in the field of international trade especially since 2016 and has become a candidate technology to replace traditional methods.

b. The potential of smart contracts in international commercial transactions

The areas where blockchain technology can be used are basically divided into three areas, customs clearance and supply chain management, documentation and secure document sharing, and can be used in letter of credit transactions in finance. (Özyüksel & Ekinci, 2020)
Blockchain smart contracts are in the field of secure document sharing. Thanks to blockchain technology, transactions that take days as mentioned above can be carried out in seconds. Especially in terms of smart contracts, the Port of Rotterdam launched a new blockchain application called Quay Connect in 2021, the Naviporta platform provides a service that enables secure and direct data exchange with customs authorities in the UK.
With stakeholders on both sides of the North Sea connected to this platform, a recent pilot has resulted in cost savings of at least 30 per cent and a speed increase of at least 20 per cent in the processing of documents and goods. In addition, manual workload was reduced, the risk of errors was minimised and better insight into the status of the cargo was provided. These findings show that the Naviporta platform makes a significant contribution to improving the efficiency of international trade processes and reducing operational costs. (“Port of Rotterdam Introduces Quay Connect Blockchain Technology,” 2021)
To briefly summarise our introduction, blockchain is an emerging technology and is still in the development phase, but it should not be overlooked that it will have a huge potential in international trade in the future.

2- The Problem of Legal Bindingness

a. Legal Nature and Validity Conditions of Smart Contracts

Smart contracts are technically a computer protocol and there are different approaches in the doctrine regarding its legal nature. Firstly, it is necessary to examine the types of smart contracts. We can categorise smart contracts under three main headings; On-Chain Smart Contracts, Off-Chain Smart Contracts and Hybrid Smart Contracts. These have different advantages and disadvantages within themselves. According to the ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection, according to Principle 9, if there is a conflict between the traditional text of a smart contract established off-chain and the coded version on-chain, the off-chain text shall prevail, unless otherwise explicitly stated by the parties. This is because the code is usually only understandable by software experts and the traditional text is much clearer and more understandable. In addition, when there is a discrepancy between the source code and the bytecode, the source code will be given precedence. Due to the nature of blockchain (e.g. due to immutability), enforcement issues may arise and both legal and technical approaches are required to solve these problems.

The General Code on Digital Enforcement published by the International Association of Bailiffs contains principles for such enforcement issues. (European Law Institute [ELI], 2022)

b. Uncertainty of Will in Intelligent Contracts and Comparative Evaluation

So when does a smart contract become legally binding and become a legal smart contract? This situation should be evaluated on a case-by-case basis and should be examined according to the type of blockchain on which the smart contract is traded, the parties, the interests and the applicable legal rules.

Only after this evaluation, legal validity can be decided. What are the differences between a classical contract and a smart contract? According to the Turkish Code of Obligations No. 6098 (TCO), the parties must enter into a legally valid and binding contract consisting of an offer and an acceptance. In addition, the principle of freedom of contract is fundamental in Turkish Law, although there are different cases where a form requirement is imposed. There is no difference between the establishment of contracts that do not have a separate form requirement in the law, that are not contrary to morality, public order, personal rights or whose subject matter is not impossible, and the establishment of contracts as smart legal contracts on the blockchain. According to the TCO, in order for a contract to be legally binding and valid, the parties must have the capacity of right and action, and there must be no impairment of will such as mistake, fraud or intimidation. As a result, it is accepted that intelligent contracts that comply with the conditions specified under Turkish Law shall be legally valid and binding. (Turkish Code of Obligations [TCO], 2011).

Similarly, the applicability of smart contracts under the CISG (United Nations Convention on the International Sale of Goods), one of the fundamental texts of international trade law, has been intensively discussed in recent years. In the literature on the subject, it is argued that the offer and acceptance rules of the CISG can be interpreted flexibly in line with technological developments, and in this context, smart contracts can be considered within the contract formation mechanism envisaged by the CISG. In particular, taking into account the provisions that allow the parties to express their will explicitly or implicitly, it is stated that a contract may be deemed to have been concluded within the scope of the CISG in cases where the parties express this will through the code. In this context, smart contracts, which fulfil the basic functions of the contract and create binding force between the parties, may be considered valid under the CISG, supported by legal interpretation (Wall & Williams, 2019).

In the common law, the basic conditions for a contract to be legally binding - an agreement between the parties (offer and acceptance), consideration, intention to establish a legal bond, clarity and certainty - are still valid for smart contracts. However, it should be noted that there may be difficulties in determining the will of the parties and the intention to establish a legal bond in contracts formed only by code without the use of natural language. In addition, the interpretation method to be followed when there is a conflict between natural language and code in hybrid contracts and how the courts will evaluate such contracts have not yet been fully clarified. Therefore, the validity of smart contracts under common law will be assessed according to whether these basic elements are present in the particular case (Diaconeasa, 2021).

In short, in the Turkish legal system, which is a continental European legal system, as well as in the International Law and in the Common Law, smart contracts are examined on a case-by-case basis, and especially in the Common Law, it is not clear how these contracts will be processed. Since these systems are the basic systems of the countries, these systems are primarily examined in the paper and the legal bindingness of smart contracts in these systems is examined.

3- Choice of Law and Jurisdiction in Case of Dispute

a. Problem of Determining the Authorised Court

The rules for determining jurisdiction in traditional relationships do not apply as smart contracts need to be created cross-border. In particular, the parties are located in different countries and the anonymity nature of the blockchain makes the determination of the competent court complex.

According to an article published by the International Bar Association, as long as the parties have agreed on the legal system to be applied in the contract and the jurisdiction of the courts, the English courts will respect this arrangement (Diaconeasa, 2021). If such a term is not included in the contract, the jurisdiction of the court is determined on the basis of classical anchor points such as the place of performance and the residence of the parties.

Furthermore, according to the UK Jurisdictional Task Force's 2019 statement, the parties' intention on the enforceability of smart contracts should be expressed in code or natural language, and predetermination of issues such as governing law and jurisdiction is critical to dispute resolution (UK Jurisdiction Taskforce, 2019).

In this context, smart contracts do not differ from traditional contracts, and therefore, disputes regarding smart contracts are primarily evaluated by the jurisdiction rules of traditional contracts. In order to resolve disputes on jurisdictional rules, the practice states that in the event of an express jurisdictional agreement between the parties, the agreement of the parties is valid and the dispute should be handled by the competent court (CCP, 2011, Art. 17-18).

Subject matter jurisdiction in a contract may be exercised in natural language or by code as part of the contract. If there is no valid jurisdiction clause between the parties, the general rules of jurisdiction apply; accordingly, the court of the place of residence of the defendant or the court of the place of performance is competent (CCP, 2011, Art. 6). In contracts containing foreign elements, the parties have the right to choose the applicable law and the competent court; in the absence of such a choice, the place that is most closely connected to the contract shall be taken as the governing law (Civil Procedure Law, 2007, Art. 24-28).

However, even if there is a problem with jurisdiction due to the realisation of the smart contract on the blockchain and the potential anonymity of the parties in the transactions, identification on the basis of technical traces and transaction history is still possible. Accordingly, an explicit jurisdiction and choice of law clause would allow for dispute resolution in smart contracts relating to cross-border transactions.

On the other hand, arbitration institutions and third-party firms are drafting model rules on arbitration to formulate solutions for disputes on blockchain. For example, in September 2018, an arbitration institution called JAMS published model rules on blockchain arbitration.

In contrast, a 3rd party dispute resolution firm called Sagewise offers alternative resolution mechanisms through mechanisms other than smart contracts. (Özekin, 2020, s. 50.)

b. Lex mercatoria and smart contracts

Lex Mercatoria are independent and flexible commercial law rules applied by agreement of the parties in international trade law. Lex mercatoria is a concept that actually emerged in the Middle Ages and was used for international trade, but today, the modern or new lex mercatoria has come back to the agenda in the 1960s, preserving its medieval roots. (Güven, 2014)

There are some reasons why lex mercatoria is favoured especially in arbitration, such as speedy resolution of problems, flexibility, balanced solution between the parties, and especially its suitability for innovative contract types, which are the subject of this paper. In the interpretation of smart contracts, lex mercatoria can be more easily integrated with technological developments since it is based on functional evaluation instead of strict written rules.

For example, in 2017, the Kleros Arbitration Platform in France is a locchain-based, decentralised and crowdsourced dispute resolution platform. (Bergolla, Seif et Eken, 2021) examined the Kleros example in detail while evaluating the legal impact of decentralised justice platforms. Kleros is especially used for digital dispute resolution in international trade. The Kleros platform resolves disputes using the basic principles of lex mercatoria, without being bound by state law. The parties agree that in the event of a dispute, the dispute resolution will take place directly on the Kleros platform, in accordance with established and internationally recognised general commercial practices (such as INCOTERMS or UNIDROIT Principles).

Arbitrators (jurors) apply the general principles of lex mercatoria and internationally recognised standards, rather than national law, in the interpretation of contracts and dispute resolution.

As a result, the flexible and universal nature of the lex mercatoria has made it preferred by both traditional arbitral institutions and decentralised platforms, especially in the resolution of innovative contract types such as smart contracts, and has contributed significantly to the digital transformation of international commercial law.

c. The problem of international arbitration courts recognising or not recognising smart contracts

Smart contracts, which have started to replace traditional contracts in international trade, bring new dimensions to dispute resolution processes. Due to the complex technical structure of smart contracts and their execution in a digital environment, international arbitration courts have become of critical importance in the resolution of disputes arising from these contracts. However, the approach of arbitral tribunals towards this new type of contract has not yet been clarified, and the issue of whether smart contracts will be legally accepted and recognised is currently being debated by international jurists. (Kayalı, 2022, p. 274)

In order for smart contracts to be recognised by arbitral tribunals as a legally valid and binding contract, certain basic criteria must be met.

First of all, in order for a smart contract to be considered valid, the parties must expressly declare their will, and as mentioned above, this is regulated in this way in almost all legal systems.

Again, offer and acceptance are elements of this. Arbitration courts, when assessing the existence of a contract, look at the existence of the classical elements of offer and acceptance. Although this process is automatic in codified systems, these elements must be traceable in the code. Principle 8 of the ELI principles regulates this issue. (European Law Institute [ELI], 2022, p. 38)

As in all legal systems and international law, the subject matter of a smart contract should not be contrary to law, morality and public order. Arbitration courts also take into account whether the purpose of the contract is to facilitate illegal transactions. The contracting parties must have the capacity to enter into a contract. This includes age and capacity to distinguish for natural persons and authorised representative for legal entities. In smart contracts, authentication is important as the parties sometimes make anonymous transactions.

d. Legal and Practical Challenges in International Arbitration

In order for the arbitral tribunal to have jurisdiction, an arbitration clause must be included in the smart contract, either explicitly or implicitly. This clause may be in natural language or explicitly in the code.

In order for an arbitral court to have jurisdiction over a dispute, there must be an explicit or implicit arbitration agreement between the parties. In the context of smart contracts, this is possible through the parties' inclusion of an arbitration clause written in natural language in the contract, or by making provisions in the code that clearly reveal this intention. According to the principles published by the European Law Institute, it is possible to include mechanisms such as alternative dispute resolution mechanisms or arbitration in smart contracts, even in codified form, and the interpretation of these provisions should be based on the will of the parties. Therefore, in terms of the jurisdiction of arbitration courts, the relevant provisions in the code may be considered to have the same legal function as arbitration clauses in natural language (European Law Institute [ELI], 2022, s. 41).

What the codified contract means and how it will be enforced must be understandable to the arbitral tribunal. For this reason, the clarity of the source code and, if necessary, the opinion of a technical expert are of great importance.

In order for smart contracts to be accepted by arbitration courts, it must be demonstrated that the elements of the classical contract are also met in the technical environment, the will of the parties must be clear, and the arbitration agreement must be clearly stated. When these criteria are met, arbitration courts will be able to resolve disputes by evaluating smart contracts as classical contracts.

Of course, there are some difficulties encountered in this regard, the first problem is the difficulties encountered by the arbitral tribunal in understanding and evaluating the smart contract codes. Then, there is the problem of how to determine and interpret the true intentions of the parties through the codes. Since smart contracts often express the true intentions of the parties through software codes rather than natural language, serious legal uncertainties arise in the process of determining and interpreting the true intentions of the parties. Finally, there is the problem of the law under which the arbitral tribunal will interpret the contract. When international arbitral tribunals interpret smart contracts on the blockchain that touch different jurisdictions, there is often uncertainty as to which of the independent legal rules such as national laws, international trade principles or lex mercatoria should be applied. This situation makes it difficult for arbitral tribunals to make consistent decisions in dispute resolution processes and reduces legal predictability in international commercial transactions.

4. Conclusion and recommendations

The concept of smart contract, which was first introduced in 1994, has started to be used in many areas today. In particular, it has been used and adopted in documentation and secure document sharing in international trade and letter of credit transactions in financing. However, legal uncertainties in the adoption of this technology create significant difficulties, especially in the legal validity of contracts, determination of the competent court and acceptance of such contracts by arbitration courts.

In order to overcome these uncertainties, it is necessary to establish common legal standards that will be recognised at the international level. In this context, it is of great importance that international regulatory bodies such as CISG and UNCITRAL develop specific rules or interpretative principles for blockchain technology and smart contracts. In addition, it is important for legal systems to work on this issue.

Moreover, in order to overcome the technical difficulties encountered in the interpretation of smart contracts, it may be suggested that international arbitral courts should train their arbitrators on such new technologies or make technical expert witness practices more effective. In addition, the explicit inclusion of arbitration clauses and choice of law in the codes of smart contracts will significantly reduce legal uncertainty in disputes that may arise.
In conclusion, it is inevitable that clarifying steps should be taken in the international legal system and the relevant institutions should establish the necessary legal infrastructure in order to adopt and popularise smart contracts in international trade. In this way, the advantages offered by blockchain technology can be fully utilised and a more effective legal framework will be provided in international commercial relations.

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WEB: www.iksadkongre.com/law
E-MAIL: hukukkongresi@gmail.com

FROM SHIP TO SHORE: APPLYING DOMESTIC LEGAL PRINCIPLES IN MARITIME DISPUTES

Assist. Prof. Dr.Faysal GÜDEN
15 Kasım Kıbrıs University, Vocational School of Justice, Lefkoşa-Turkish Republic of Northern Cyprus
ORCID: 0000-0002-6478-1198

Abstract
This paper examines the intersection between maritime law and domestic legal principles, focusing on how national legal doctrines are used to resolve disputes that arise at sea. Although maritime law is traditionally viewed as a distinct set of international and transnational norms, modern maritime disputes often require the application of domestic laws, including contract law, tort law, and property rights. These legal frameworks are increasingly relevant in areas such as carriage of goods, salvage operations, collision liability, and marine insurance. The paper explores how domestic legal principles can both complement and conflict with international maritime conventions. Through selected case studies, it illustrates how national courts interpret and adapt internal legal doctrines to fit the unique circumstances of maritime incidents. This includes the incorporation of inland legal standards into judgments that affect seafaring activities, thereby shaping the broader practice of maritime law. By analyzing these hybrid legal approaches, the study highlights the dynamic interaction between international maritime norms and domestic legal systems. It reveals how courts in coastal states balance their own legal traditions with the demands of a global maritime regime. Ultimately, the findings offer insight into the evolving relationship between ship and shore—where differing legal systems converge to resolve complex maritime conflicts.
Keywords: Maritime Disputes, Domestic Legal Principles, International Maritime Law, Conflict Resolution, Legal Interpretation

Introduction
The complexities inherent in maritime disputes highlight the pressing need for a robust legal framework, particularly as advancements in offshore exploration increasingly blur the lines between maritime and domestic jurisdictions. These conflicts often arise from competing claims over valuable resources, leading to inefficient outcomes that hinder economic progress. As noted, disputes over maritime boundaries result in inefficient outcomes for all parties to the conflict, which demonstrates the necessity for a principled approach to resolve such matters effectively (Bjorndal, T., & Munro, G. R. (2003)). Furthermore, the rise in environmental incidents related to offshore operations emphasizes the urgent call for clarity in liability frameworks, given that significant pollution events can arise from these disputes. The lack of a unified international regime for civil liability claims pertaining to offshore oil spills exacerbates this issue, as underscored by the current gaps in addressing damage claims from operations on the high seas (Faure, M. G., & Hui, W. (2010)). Thus, this essay endeavors to explore the application of domestic legal principles to enhance the resolution of maritime disputes.

Materials and Methods
This paper utilises qualitative legal research based on doctrinal and comparative legal research. Because the relationship between internal legal systems and the international regime of the seas is complex, we chose a multi-tier approach so as to guarantee a courageous and context-sensitive reading of legal terms.

1. Study Design and Methodological Approach

Research design is rooted in traditional *'doctrinal legal research'*, defined as a systematic examination of legal rules and laws, and corresponding case law (Hutchinson & Duncan, 2012). This is supported by a *'comparative legal method'* that examines how various legal systems interpret and employ local rules in maritime matters (Zweigert & Kötz, 1998). This will make it possible to map convergence (and divergence) of domestic responses to maritime legal challenges and to stand back and identify patterns of judicial and legislative behaviour.

2. Data Sources and Collection

The research relied on primary and secondary legal sources:

Primary Sources:

International conventions, including the 'United Nations Convention on the Law of the Sea' (UNCLOS, 1982), the 'International Convention for the Prevention of Pollution from Ships' (MARPOL, 1973) and the 'International Convention for the Safety of Life at Sea' (SOLAS, 1974).

Relevant domestic legislation from specific maritime jurisdictions, such as:

- The Merchant Shipping Act (UK, 1995),
- The Carriage of Goods by Sea Act (U.S., 1936),
- The Merchant Shipping Act (India, 1958),
- Singapore's Maritime and Port Authority Act (1996).

Judgments of national courts (United States Supreme Court, UK House of Lords/Supreme Court, Indian High Courts, and Singapore Court of Appeal).

Decisions of arbitral and international tribunals such as the ITLOS and the PCA.

Secondary Sources:

Articles in scholarly journals, legal monographs, commentaries, law reports, and textbooks on maritime law.

IMO, ILO, and regional port authority reports and policy statements.

3. Doctrinal Legal Analysis

The doctrinal analysis consisted of interpreting statutory and case-law sources to derive and classify the doctrines implicated, such as contract (e.g., charter-parties, bills of lading), tort (e.g., negligence, environmental liability), property (e.g., salvage, wreck removal), and constitutional law principles (e.g., extraterritorial jurisdiction). Precedent analysis and statutory interpretative tools were used to map how domestic courts reason on maritime matters of local and international scope (Hutchinson & Duncan, 2012).

4. Comparative scope of Jurisdiction

A comparative study was undertaken involving four major admiralty jurisdictions—United States, United Kingdom, India, and Singapore. They were selected because of their:

- High intensity of marine navigation and port related activities,
- Influence to the development of maritime law (historical and contemporary),
- The presence of case law and legislative materials.

The comparative structure mainly involved:

- Territorial jurisdiction and restrictions on the application of national law to foreign ships or incidents at sea.
- The domestic response to maritime torts and environmental harm.
- National remedies for seafarers, insurers, cargo-owners and state interests.

This approach follows functional comparativism as it compares legal systems based on how they act towards like sets of facts and laws (Zweigert & Kötz, 1998).

5. Case Study Selection
The following three case studies were provided to illustrate the constellation of domestic and international maritime law:
1. The Prestige (Spain v. ABS)– jurisdiction over transnational tort claims relating to oil pollution.
2. The Arctic Sunrise Arbitration (Netherlands v. Russia) – teasing out the contours of the use of [state jurisdiction and enforcement].
3. The Hanjin Shipping Insolvency (various)– cross-border maritime insolvency; the role of the port states.
For each case, the legal analysis, implementation of domestic law and rule of law applications following international maritime norms were computed.
6. Interpretation and Synthesis
Co-receptor Use and Activation Interpretation of these integrated analyses and the identified clusters given the co-receptor use and their state of activation in the CD4 receptor, and the subsequent fusion process, resulted in the following.
Results of the doctrinal as well as comparative analyses were used to construct a conceptual framework that explains the gradual emergence of domestic legal orders as regulators of maritime governance. The focus was normative developments and legal tensions of sovereign authority and international cooperation in the maritime domain. Teleological and purposive interpretive methods were used to evaluate how courts weight national interests against treaty commitments (Slaughter, 1995).

Findings and Discussion
The study of the application of domestic legal principles in the context of the law of the sea uncovers a dynamic and ever-developing encounter between domestic and international legal orders. The discoveries illustrate that despite the growing impact of domestic legal principles in the resolution of maritime disputes, the absence of uniformity and the possibility of jurisdictional encroachment play a substantial part in the legal implications. This part covers the main doctrinal and comparative analyses.
1. Jurisdiction over Maritime Disputes: The Case of Regional Disagreements
Among the most remarkable trends is the growing readiness of the courts of a country to exercise jurisdiction with respect to shipping disputes outside its geographical boundaries. Domestic tort and environmental laws have been extended to international waters or areas bordering international waters by courts in countries including the United States and India, especially after transboundary pollution or human right rights abuses by foreign ships has taken place (Anderson, 2017; Bhattacharya, 2020).
The Indian Supreme Court, in Indian Council for Enviro-Legal Action v. Union of India (1996), underscored that domestic environmental principles like the "polluter pays" principle apply at least in situations that have traditionally been subject to international maritime norms. In the same vein, domestic laws such as the ‘Clean Water Act’ and the ‘Oil Pollution Act (OPA) of 1990’ have been used by U.S.courts to skirt flag state protections in relation to liability for offshore oil spills (Faure & Hui, 2010).
These cases exemplify a transformation to an “assertive sovereignty” model in which domestic norms do not merely supplement international law, sometimes they displace or reinterpret it, particularly in public health, labor, or safety litigation.

2. Entropy, and Legal Science

Notwithstanding the active application of domestic law, legal fragmentation results from the lack of a harmonized international liability regime, according to this analysis. Importantly, there is no single worldwide treaty, like that which applies to tanker spills under the International Oil Pollution Compensation (IOPC) Funds regime, which covers civil liability for damage resulting from offshore oil and gas operations.

This legal void produces uneven compensation results depending on where a case is litigated and what body of law applies. In this regard, Faure and Hui (2010) highlight that there are no binding rules on offshore installations and pollution liability and, therefore, a 'gap in the legal regime' exists especially where simultaneous marine spaces or overlaps of exclusive economic zones (EEZs) are at stake.

In addition, claimants are confronted with locating an appropriate forum and establishing the extraterritorial reach of domestic substantive law. This discourages prompt payment and introduces legal uncertainty for investors and insurers.

3. Judicial Innovation and Doctrinal Adaptation

A second insight is the functional adaptation of household canons by courts to the needs of maritime law. For example, doctrines of 'duty of care', 'negligence' and 'strict liability' have been developed and applied with creativity to claims arising out of maritime collisions and pollution. The example of 'Prestige Oil Spill Litigation' in Spanish and U.S. law showed how the tort principles consider maritime events with substantial economic and ecological effects (Bjorndal & Munro, 2003).

Further, it has been acknowledged by the courts in Singapore and the UK concerning the enforceability of charterparty and bill of lading contracts under local commercial rules while taking into account several international instruments like the Hague-Visby Rules. This reliance upon both national and international sources generates legal pluralism, but requires clear judicial direction to avoid conflicting judgments.

4. Implications for Legal Harmonization and Reform

These results indicate that an international response is essential, and that the response should harmonize globally. Although domestic legal systems have been instrumental in addressing immediate injuries and affirming state interests, ambiguity and uncertainty in the law can only be resolved by the pursuant to the uniformization of rules of liability, jurisdiction, and enforcement.

Academics and international institutions have suggested the creation of a comprehensive multilateral instrument applicable to offshore environmental damage and transboundary maritime torts (Treves, 2010). While then, bilateral and regional treaties like the European Union or ASEAN may provide the frameworks for a gradual convergence.

For their part, courts can also play a role by helping enhance the uniformity of interpretive standards and by linking domestic decisions with international obligations and thus enhancing the credibility and predictability of the law of the sea.

Discussion

The increasing influence of domestic legal principles in such maritime disputes is a healthy development in the evolution of global maritime governance. No longer, therefore, are national courts the passive recipients of the whole law made by the lawgivers of the sea. Rather, it is exercising jurisdiction, developing legal doctrines, and providing relief to deal with a whole host of complex issues in the maritime area. But this development also discloses structural lacunae in the system of international law, which will have to be remedied if fragmentation and legal uncertainty are to be averted. A wise combination of national considerations with international requirements is an absolute necessity for the consistent evolution of law of the sea in an ever more interrelated world.

Conclusion and Recommendations

Conclusion

The examination of how different domestic legal principles can be brought to bear to resolve maritime disputes, reveals a complex, developing legal framework in which national courts and legislation increasingly direct outcomes that were historically governed by the international law of the sea. As this article has demonstrated, the borrowing of domestic doctrines, whether on tort liability, contract enforcement, or environmental accountability, has become a hallmark of contemporary maritime adjudication.

This new situation is born out of a mixture of necessity and opportunity. On the one hand, states are driven to assert jurisdiction to safeguard their economies, environments, and citizens, particularly when pollution from ships occurs at sea, old ships are abandoned, or people are exploited for cheap labor. On the other hand, in domestic jurisdictions new legal responses to current maritime issues are emerging, where international treaties have been slow to respond.

But this development leads to fragmentation, since the absence of a uniform international framework for civil liability, offshore regulation, and maritime torts generates different results in different countries. In the absence of coherent standards, the players in maritime trade — shipowners, states, and insurers, as well as victims — suffer from indeterminacy and frequently have unequal access to justice. Accordingly, though application of the domestic ga joe eui has been able to fill legal normative or regulatory gaps, it needs to be augmented with greater international legal harmonization.

Recommendations

1. Establish a comprehensive International Liability framework for Offshore Operations

The lack of a global convention on civil liability for offshore oil and gas operations is a fundamental legal gap. International bodies such as the International Maritime Organization and United Nations should prioritize talks towards a binding multilateral pact, covering offshore pollution, damage across borders and the sharing of liability.

2. Boost Regional and Bilateral Accords

Without universal agreement, regional blocs like the EU, East African Community and ASEAN can act to set standards and agree on reciprocity liability laws. Similar definitive dispute resolution mechanisms can as well be arranged through bilateral treaties between both maritime neighbors with their respective shared zones of interest.

3. Promote Consistency in the Judiciary: The Role of Soft Law and Benchmarks

International courts, academics, and lawyers may publish interpretive standards, model laws, and best practices to guide national courts to perform and adhere to uniform legal analysis when coming up with decisions involving maritime matters. These “soft law” tools could help encourage convergence while at the same time respecting legal diversity.

4. Domestic Laws and Legislation need to be Firmed up with Maritime Specific Provisos

States should legislate to codify well-settled maritime torts in their own domestic law, along with jurisdiction tests that trigger extraterritorial claims and rules for enforcement. It will help ensure fair and predictable settlement of maritime disputes, including those relating to foreign-flagged ships and offshore installations.

5. Resources for Judicial Training and Legal Capacity Building

As our own courts take up more and more difficult maritime cases legal education and the ‘master-judges’\registry offer instruction in maritime law, international conventions and comparative law. This will also empower judges and practitioners to better understand and reconcile domestic and international norms.

6. Boost Cooperation Between National Courts and International Tribunals
Dialogue, both formal and informal, between domestic courts and international tribunals has the potential to harmonize jurisprudence. Judicial network, conference platform and shared legal database could contribute to well-coordinated development in legal field.
Through a combination of domestic innovation and international collaboration, the world is now on track to create a more just, efficient and predictable maritime legal order – one that benefits all of the parties involved in the business of navigating the challenging waters from ship to shore.

Thanks and Information Note
This paper is a contribution to discussion on the changing relationship between domestic legal orders and global marine governance.
From Ship to Shore: The Rise of Domestic Law in Adjudicating Disputes Between Mariners on the High Seas is a learned demonstration of the extent to which domestic law comes down onto the seas. It is based on doctrinal, comparative and case study legal research, and seeks to inform academic debate and policy-making on maritime law int'l dispute resolution and environmental governance. The opinions presented here are of the authors and do not necessarily represent those of any related institutions and funding bodies.

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E-MAIL: hukukkongresi@gmail.com

THE INTERSECTION OF MARITIME LAW WITH NATIONAL LEGAL FRAMEWORKS

Assist. Prof. Dr. Faysal GÜDEN
15 Kasım Kıbrıs University, Vocational School of Justice, Lefkoşa-Turkish Republic of Northern Cyprus
ORCID: 0000-0002-6478-1198

Abstract
This paper explores the intersection of maritime law and national legal frameworks, with a focus on how international maritime principles are interpreted, adapted, or supplemented by domestic legal systems. Although maritime law is largely shaped by international conventions and customary practices, its practical application often depends on national courts and domestic legislation. The study examines how jurisdictions rooted in common law, civil law, or hybrid systems address core maritime issues such as vessel registration, maritime liens, environmental protection, and dispute resolution. Through the analysis of legislative developments and case law, the paper identifies areas where maritime and national laws align, as well as where tensions arise. It highlights the influential role of domestic courts in shaping and enforcing maritime legal norms, often adapting international principles to reflect local legal traditions and policy priorities. By conducting a comparative review across different jurisdictions, the paper illustrates the dynamic relationship between international maritime law and national legal systems. This interplay not only impacts the consistency of maritime legal interpretations but also affects global efforts to regulate maritime activities fairly and efficiently. The study concludes that a nuanced understanding of this intersection is essential for promoting legal certainty, enhancing dispute resolution mechanisms, and fostering international cooperation in maritime governance.
Keywords: Maritime Law, National Legal Frameworks, International Conventions, Jurisdiction, Dispute Resolution

Introduction

The mosaic of legal regimes that intersect in the area of the sea is at the heart of the study of international relations and national sovereignty. In a context of ‘trade normalization’ in a world of globalisation, the point of contact between maritime law and national legal regimes was a crucial site of contestation of problems varying from those of environmental sustainability to matters of security. Maritime space is governed by a plethora of treaties and agreements and illuminates the dynamic tension between domestic law and international law (Tanaka, 2015). Such as exchanges on the inadequacy of the Trans-Pacific Partnership on environmental protection point to urgency of more integrated legal orders to align trade with climate policy (Falkner, 2016). The unique relationship between the United States and the Freely Associated States that comprise the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, moreover, serves to illustrate the significance of fostering extensive maritime legal regimes. Such frameworks also serve to strengthen maritime security, to increase institutional capacity and to contribute to the long-term regional stability (Barker 2021).

Materials and Methods

This research takes the 'qualitative legal research approach' and applies 'doctrinal analysis' and 'comparative legal methods'. "The idea is to see how state legal orders understand and integrate the maritime, and how these dynamics in turn frame the adjudication and regulation of maritime activities in domestic spaces".

1. Methods Design and Approach

The study is 'doctrinal studies' which is a systematic study of legal rules, statutory texts, judicial decision, and international agreement of maritime laws and the national application of maritime law concerning jurisdiction case. Dogmatic research permits systematic comprehension of normative content and of the hierarchy of the sources of law (Hutchinson & Duncan, 2012).

'Comparative Legal Analysis' An additional method of analysis was Comparative Legal Analysis, to compare differences and similarities in the way in which different jurisdictions implement and use principles of maritime law in the country's national legal system (Zweigert &Kötz, 1998). The study is analytical and interpretative, not empirical.

2. Data Sources

This study drew data from both 'primary' and 'secondary' sources.

Primary Sources:

'International accords and conventions!, including:

- United Nations Convention on the Law of the Sea (UNCLOS 1982)
- Conventions of the International Maritime Organization (IMO) - SOLAS (1974), MARPOL (1973/78) and the STCW Convention (1978)

'Country laws and regulations' including:

- U.S. - 'Carriage of Goods by Sea Act' (1936)
- UK Merchant Shipping Act (1995)
- India's Merchant Shipping Act (1958)
- Singapore's Maritime and Port Authority of Singapore Act (1996)

'Judicial decisions' from specific jurisdictions including:

- United States Supreme Court
- UK Supreme Court.
- Indian High Courts
- Singapore Court of Appeal

Secondary Sources:

Legal treatises, academic articles, commentaries and law periodicals on admiralty law such as:

- Journal of Maritime Law and Commerce
- Lloyd's Maritime and Commercial Law Quarterly

3. Jurisdictional Scope

Four important maritime jurisdictions were chosen for comparative study, being all relevant to world-wide shipping trade, having developed admiralty law regimes and a readily available case law:

- United States (focusing on federal admiralty jurisdiction and environmental liability).
- 'United Kingdom (common law maritime tradition for centuries)
- India (rising naval power and hybrid legal roots)
- Singapore (Internationalized legal framework with leading maritime hub)

4. Legal Analysis Method

Case law investigations, 'statute interpretation', and 'treaty inquiry' were used to:

- Track how national judiciary systems make use of international maritime law
- Consider apparent tensions or accommodations between domestic and international law commitments
- Understand the role of national public policy in the interpretation of maritime regulations

The 'functional approach of comparative law' was used to evaluate responses of different legal traditions on similar legal problems in ocean legal space (Zweigert & Kötz, 1998). All jurisdictions were examined with a view to their approach to the major bodies of maritime law including oil pollution liability, carriage of goods, salvors rights and crew well-being.

5. Limitations

This study is also confined to common law jurisdictions with legible sources in English and may fail to reflect changes in non-common law or maritime states that do not use English. Also, the analysis is not meant to be empirical, i.e. It does not seek to gather data (e.g. through interviews or surveys) but is limited to interpretative legal reasoning.

Findings and Discussion

The interface of the corpus of "nautical law" with national legal systems has given rise to a pattern of international judicial opinions and legislation that reflect a dynamic tension between international maritime norms and domestic legal norms. The findings reveal three main themes: the greater tendency of international maritime standards to be situated locally, jurisdictional disputes between national courts and international maritime systems, and the recasting of local legal doctrines in a maritime flavour.

1. The Nationalist Strategy and the Localisation of International Norms of the Sea

One of the key findings is that international maritime treaties agreed at a global level are the subject of a wide range of often-conflicting interpretations and implementations at the national level. For instance, the United Nations Convention on the Law of the Sea (UNCLOS) establishes common practices regarding jurisdiction, environment, and resources, but its implementation on a domestic level is diverse.

The UK has incorporated UNCLOS provisions into both domestic law (the Marine and Coastal Access Act 2009) and even the US, not a party to UNCLOS, recognizes many of their provisions as binding under customary law, and has additionally implemented relevant sections into its domestic law through the *Outer Continental Shelf Lands Act* and the *Clean Water Act*. These conflicting adoption practices show how states adapt international maritime norms to national interests and legal systems (Treves, 2010; Anderson, 2017).

2. Tensions and Fragmentation of the Jurisdiction

Domestic Courts are playing an ever greater role in the settlement of international maritime disputes concerning foreign ships and offshore installations and deficiencies and transboundary environmental damage. This has resulted in jurisdictional tensions, particularly in situations where domestic decisions seem to contradict international obligations or impact foreign parties.

For example, in Republic of the Philippines v. China (2016), the Permanent Court of Arbitration clarified that international law may constrain what claims a state may make to maritime spaces. But it has indeed happened that, as for example '*United States v. Royal Caribbean Cruises Ltd. (2018)'*, U.S. courts have examined the application of domestic environmental laws to foreign-flagged vessels thus posing the issue of extraterritorial application and conflict of laws (Faure & Hui, 2010).

These jurisdictional claims illustrate the necessity for an improved multilateral mechanism for resolving overlaps and harmonizing between internal decisions and international maritime regimes.

3. Domestic Doctrines as Applied to the Law of the Sea

Maritime incidents are increasingly subject to traditional legal theories - such as negligence, strict liability, and constitution al theories - within the national legal order. This is particularly so in environmental cases, seafarer rights, and on contract conflicts.

Even where incidents have occurred in international waters Indian courts have used domestic legal principles such as the 'polluter pays' principle in dealing with maritime pollution *(Indian Council for Enviro-Legal Action v. Union of India, 1996)*. As well, the Singaporean upper courts have found that general common law negligence liability for ship collisions and cargo damage are compatible with international carriage conventions, such that there is harmonisation of domestic tort law and the convention.

This transformation demonstrates a more general trend toward a willingness on the part of judges to view international maritime duties in light of the values of national law, particularly where treaty rules are not clear (Mukherjee, 2018).

4. Legal Coherence and Maritime Governance

If the use of a nation's laws enhances justice and regulation, it also adds division. Divergent national constructions can erode the uniformity so essential to international shipping. This tension highlights the central requirement for harmonization mechanisms – whether regional, international or in terms of model national legislation developed by organs such as the IMO.

Courts and lawmakers also must weigh national sovereignty against international cooperation. This calls for respecting treaty obligations while providing the necessary means for domestic laws to effectively face modern maritime challenges like exploitation of resources offshore, abandonment of vessels and threats to the marine biodiversity.

The conclusion reached is that national legal systems are not just interpreters but also makers of maritime law. As disputes at sea evolve in complexity, national courts will remain crucial in fleshing out the meaning of the maritime norms and standards. But some reasonable coordination should be required to promote convergence of domestic legal innovation and international maritime governance to minimize legal vagueness and conflict of jurisdiction.

Conclusion and Recommendations

This analysis illustrates the ever more complex relationship between international maritime law and domestic legal orders. With the development of more complex and burgeoning global maritime practices, domestic legal systems are more than passive receptacles but rather active spaces where international norms of conduct are read, enforced or even contested.

The results indicate that national courts and legislatures are increasingly adopting and modifying international maritime laws to accommodate regional policy goals, environmental interests, and economic needs. Whilst such harmonization enhances regulatory control and empowers victims with better access to legal recourse, it also creates jurisdictional incoherence, and threatens to dilute the uniformity so crucial to the international business of shipping.

The overlap of international and domestic legal orders in the maritime arena has increased the need for coherence. Legal fragmentation in fields such as offshore pollution liability, and jurisdiction over transboundary harms, and the application of customary maritime rules demonstrate the pressing need for harmonised legal regimes.

In the final analysis, a workable solution toward maritime governance in the 21st century will depend on the resolution between national sovereignty and legal unity at sea.

Recommendations

1. Draft Model Law of Maritime Legislation for a Nation

Institutions of international character such as the IMO and the UNCITRAL should cooperate, in that regard, in the elaboration of a 'model law' which would offer guidelines to the States with a view to harmonizing their national maritime laws with international ones. This would go a long way to eliminating legal disparities between jurisdictions.

2. Augment Judicial Training in Maritime Law

National courts should promote specialized analyses of maritime law, international treaty construction, and comparative jurisprudence within training programs for the judiciary and legal officers. This would enhance uniformity and excellence in domestic maritime adjudication.

3. Foster Regional Legal Integration

Regional organizations like ASEAN, the EU, and the African Union should promote *'regional treaties or frameworks'* that establish uniformity among instruments applicable to maritime law and rights, especially of regions that have to compete with common marine resources or transit corridors.

4.Creating International Maritime Dispute Panels or Hybrid Forums

With a view to bridging the existing lacuna between questions of international maritime law and domestic law enforcement, states would be well advised to consider the formation of 'Hybrid Maritime Dispute Settlement Panels'. The lack of a permanent international court which is with full-time basis to interpret the United Nations Convention on the Law of the Sea (UNCLOS), has resulted in fragmentation and divergent application amongst domestic legal systems (Tanaka, 2015). To offset this power imbalance, states may establish 'non-binding but authoritative bodies of national and international legal experts'.

These hybrid fora would not be imposing panels, but 'advisory and/or mediatory mechanisms' with the power of expert adjudication of UNCLOS provisions. Their roles could include:

- Issuing *non-binding advisory opinions* on legal questions around maritime jurisdiction, environmental obligations or boundary lines.
- *Facilitating settlement between states* in inter-state maritime disputes, particularly in cases where formal settlement proceedings are politically or diplomatically sensitive.

Supporting capacity by providing guidance to national courts or enforcing authorities grappling with complex international norms.

Such institutions would add legal certainty, lower the load on more-instrumental tribunals like the ITLOS, and promote confidence and cooperation among states with shared maritime interests.

5. Enforce Green and Human Rights Standards for Maritime Law

States must enshrine environmental safeguards and seafarers' rights in national maritime laws drawing inspiration from inter alia international conventions (such as MARPOL, MLC 2006) as well as constitutional values. In this way national-level legal systems can be made to respond to changing global commitments.

6. Promote Exchange on the Transparency of Recourse to Treaties

In order to prevent interpretative confusion, national legislatures should adopt statutes which formally *implement international maritime conventions*, explaining in which cases and how they should be applicable domestically. This has the effect of limiting judicial discretion and promoting legal certainty.

In doing so they will support the aims of international maritime law and local interests. This balance is not only necessary to maintain in order for the law to be sound at an international level but as well as to ensure that the world's oceans are governed prop erly, fairly, and in a sustainable manner.

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E-MAIL: hukukkongresi@gmail.com

COMPLEMENTARITY PRINCIPLE IN JURISDICTION OF INTERNATIONAL COURTS and TURKISH CONSTITUTIONAL COURT

Dr. Halit Serhan ERCİVELEK
Istanbul Sabahattin Zaim University, Faculty of Law, Department of Constitutional Law
ORCID: 0000-0002-6303-3008

Abstract
International courts and jurisdiction system mainly based up on international public law principles. Hence this international basement jurisdictional aouthority is still main authority of a sovereign and independent state due to statehood principles.
International courts - like all other international organizations- established by international agreements which are signed by independent states. Nevertheless sovereginty of state and authorithies of international courts still a conflict zone due to independency of a state as a common principle of international law which correspondences to sovereignty of a state.
In order to manage this zone of conflict jurisdiction authority of international courts are designed under the shadow of “complementarity principle”. Due to complementarity of an international court jurisdiction authority get charged after domestic jurisdiction process of state. As an effect of complementarity principle priority of domestic jurisdictions accepted as an admissibility criteria for application to an internaional court.
European Court of Human Rights and International Criminal Court are two ideal samples to examine the complementarity principle as an admissibility criteria for international courts. Neverthelles it is a part of domestic jurisdiction about protection of constitutional rights, individual application procedure of Turkish constitutional jurisdiction system designed similar admissibility criteria. Parallel to European Court of Human Rights and International Criminal Court, exhausting all ordinary domestic legal remedies is an admissibility condition for individual application for Turkish constitutional court.
Parallel issues of jurisdictional systems of three courts sourced from complementarity principle designs very interesting superposed jurisdiction system. Hence these courts are very different aim, perspection and law systems oriented courts it seems that they met under the point of complementarity of their jurisdiction authorities.
Keywords: International courts, complementarity principle, admissibility criteria, individual application.

TRUMP'S RIVIERA PLAN: NO LAWYERS IN THE WHITE HOUSE?

Assoc. Prof. Dr. Selcen ERDAL
Selçuk University, Faculty of Law, Department of International Law
ORCID: 0000-0002-1294-3247

Abstract
On February 4, 2025, US President Donald Trump announced his plan about the Gaza Strip. From Trump's statements, it is understood that the plan generally involves relocating the remaining Palestinians to other countries and rebuilding the Gaza Strip as the “Riviera of the Middle East”. Trump also stated that after all Palestinians are relocated to other countries, the region will be transferred to the US on a long-term basis and that the relocated population will not have the right to return. Trump's plan is contrary to the fundamental principles/rules of international law, the decisions of the United Nations General Assembly, Security Council and the International Court of Justice. Furthermore, the actions contained in the plan constitute a violation of the fundamental purposes and principles established in the United Nations Charter, the 1949 Geneva Conventions, and the provisions of the Rome Statute of the International Criminal Court.
Keywords: Donald Trump, Gaza Strip, Riviera of the Middle East, International Law.

Introduction

Following the actions carried out by Hamas on October 7, 2023, the international community has been confronted with a grave tragedy in the Gaza Strip. Indeed, Israel has continued to target the Palestinian people in the operations it launched in response to Hamas' aforementioned actions, and these operations have been marked by the commission of “crimes of genocide”, “crimes against humanity” and “war crimes”, which affect the entire international community.

According to current data, as a result of Israel's operations, more than 50,000 Palestinians, mostly women and children, have been killed, more than 90,000 Palestinians have been injured, and almost the entire population of Gaza has been displaced (United Nations Office for the Coordination of Humanitarian Affairs [UNOCHA], 2025). The surviving Palestinians, who have been left homeless, without schools, and without hospitals, are reported to be facing starvation, thirst, and unprecedented deprivation—all exacerbated by Israel's blocking of humanitarian aid (United Nations Economic and Social Commission for Western Asia (UNESCWA [UNESCWA], 2025).

With regard to the situation in the State of Palestine, solutions are being sought within the framework of the tools and methods provided by international law. Indeed, the International Court of Justice, the United Nations General Assembly, and the Security Council (some of its members) are continuing their activities aimed at halting the operations and ensuring the uninterrupted flow of humanitarian aid. Additionally, the ongoing proceedings at the International Criminal Court raise the possibility of holding accountable and punishing those responsible for these international crimes, which concern the entire international community(International Criminal Court [ICC], State of Palestine). Israel's stance regarding the requirements of these activities demonstrates its continued determination to violate international law.

This difficult process has taken on a new dimension with the statements made by US President Donald Trump. It appears that Trump has included Gaza in his dangerous and unlawful agenda.

An Overview of Trump's Statements

Since returning to office on January 20, 2025, US President Donald Trump has continued to attract attention with his statements that have shaken the entire world. Trump, who has threatened Greenland and Panama and claimed that Canada should become the 51st State of the US (Reuters, 2025), appears to have added Gaza to his agenda.

Indeed, on February 4, 2025, US President Donald Trump announced his plan for the Gaza Strip during a joint press conference with Israeli Prime Minister Benjamin Netanyahu (Middle East Monitor, 2025) and made further statements detailing the plan in the following days. From Trump's statements, it is understood that the plan generally involves relocating the remaining Palestinians to other countries and rebuilding the Gaza Strip as the "Riviera of the Middle East." Additionally, Trump stated that the entire population would be removed from Gaza and that Palestinians had no alternative but to leave the "large pile of rubble" in Gaza (Middle East Monitor, 2025).

Describing the Gaza Strip as a "symbol of death and destruction" (The Guardian, 2025), Trump also stated that after all Palestinians are relocated to other countries, the region will be transferred to the US on a long-term basis and that the relocated population will not have the right to return (The Guardian, 2025). Additionally, the President claimed that Egypt and Jordan would accept the displaced Palestinians, threatening to withhold US aid to pressure these countries into accepting more Palestinians (Euronews, 2025).

The "Riviera Plan" from an International Law Perspective

Trump's plan means the forced displacement of Palestinians; it also reveals that sovereign States such as Jordan and Egypt are being ordered to take in Palestinians who will be expelled from Gaza.

The likelihood of Trump's "Riviera Plan", which appears to have been ill-conceived and not analyzed in the context of international law, being implemented seems quite slim. In fact, Trump's project to expel more than two million Gazans from their lands and build a vacation resort there to sell to the world is nothing more than an legally ignorant statement. Nevertheless, it must be emphasized that Trump's plan is contrary to the fundamental principles/rules of international law, the resolutions of the UN General Assembly (General Assembly Resulution [A/RES] 78/78, 78/170, 78/192, 78/251) and Security Council(Security Council Resulution [S/RES] 2735), and the decisions of the International Court of Justice (International Court of Justice [ICJ], South Africa v. Israel, 2024); ICJ, South Africa v. Israel (2024). Furthermore, the actions contained in the plan constitute a violation of the fundamental purposes and principles established in the United Nations Charter, the 1949 Geneva Conventions, and the provisions of the Rome Statute of the International Criminal Court.

Firstly, it must be emphasized that there are no circumstances under international law that justify the forcible seizure of a territory. Indeed, according to Article 2/4 of the United Nations Charter (United Nations [UN], 1945), "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Therefore, Israel has no right to cede Palestinian territories to the United States or any other State. In addition, according to Article 1, the purpose of the United Nations is to "maintain international peace and security and to take collective measures to prevent and remove threats to peace". The Charter also supports "the principle of equal rights and self-determination of peoples." Thus the claim that this would be in the interest of the population there is also legally meaningless. Furthermore, forcing States to host Palestinians would also clearly violate the sovereign rights of those States.

In addition, a United Nations Commission of Experts mandated to look into violations of international humanitarian law committed in the territory of the former Yugoslavia defined ethnic cleansing in its interim report S/25274 as "… rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area." In its final report S/1994/674, the same Commission described ethnic cleansing as "… a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas." (UN Office on Genocide Prevention and the Responsibility to Protect)

It should be also noted that according to Article 49 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (UN, 1949), "forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

However, the text also states that "Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand." But with clear limits that "such evacuations may not involve the displacement of protected persons outside the borders of the occupied territory, except where it is impossible for material reasons to avoid such evacuation". It also adds that: "Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased." (ICJ, Advisory Opinion, 2024)

Thus, the plan to forcibly expel Palestinians from the occupied territories against their will is a war crime. This is also confirmed by Articles 8/2-a(vii) and 8/2-b(viii) of the Rome Statute of the International Criminal Court (ICC, 1998). Indeed, article 8/2-a(vii) of the Statute defines "unlawful deportation or transfer or unlawful confinement" and article 8/2-b(viii) defines "the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory" as war crimes. Moreover, these acts will constitute crimes against humanity when committed as part of a widespread or systematic attack against the civilian population. Article 7/1-d of the Rome Statute clearly regulates this determination. According to this "crime against humanity" means "deportation or forcible transfer of population" "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

From this point of view, in the event that the planned actions are carried out, both the international responsibility of the States concerned and the individual criminal responsibility of those responsible for the crimes will arise.

Conclusion

On February 4, 2025, US President Donald Trump announced his plan for the Gaza Strip. From Trump's statements, it is understood that the plan generally involves relocating the remaining Palestinians to other countries and rebuilding the Gaza Strip as the "Riviera of the Middle East". Additionally, Trump stated that the entire population would be removed from Gaza and that Palestinians had no alternative but to leave the "large pile of rubble" in Gaza.

The likelihood of Trump's "Riviera Plan," which appears to have been ill-conceived and not analyzed in the context of international law, being implemented seems quite slim. Nevertheless, it must be emphasized that Trump's plan is contrary to the fundamental principles/rules of international law, the decisions of the United Nations General Assembly and Security Council, and the International Court of Justice. Furthermore, the actions contained in the plan constitute a violation of the fundamental purposes and principles established in the United Nations Charter, the 1949 Geneva Conventions, and the provisions of the Rome Statute of the International Criminal Court.

In the event that the planned actions are carried out, both the international responsibility of the States concerned and the individual criminal responsibility of those responsible for the crimes will arise.

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E-MAIL: hukukkongresi@gmail.com

THE GEOPOLITICS OF SUSTAINABILITY IN SMART CITIES: ANALYSING THROUGH THE LENS OF INTERNATIONAL ENVIRO-LEGAL FRAMEWORK

Priya Chaudhuri
Amity University
ORCID: 0009-0008-7745-3282

Associate Professor Dr. Mainan Ray
Amity University

ABSTRACT
The intersection of geopolitics, smart city innovations and environmental justice has spring up as a pivotal focal point/sentiment in the context of contemporary environmental crisis. As cities rapidly embracing smart technologies to enhance urban efficiencies, sustainability and economic growth, the geopolitical dynamics surrounding these advancements became increasingly complex. The international vying/ competition for technological dominance, access to resources and influence over urban governance models are transforming the global power architecture/structure. Concurrently, environmental justice concerns are increasingly centre to the discourses on the urban planning and policy. The researcher attempts to explore the convergence to these three domains, delving into how global geopolitical tensions influence/persuade the development of smart cities with a special emphasis on how such technologies can either perpetuate or mitigate environmental inequalities. This research addresses the booming calls for the environmental justice, through the lens of international enviro-legal paradigm and the efficacy of the enforcement agencies. By examining case studies from various regions, the paper accentuates the exigency for integrated approaches that considers the geopolitical, technological and environmental dimensions of urban transformations to foster sustainable global cities.
Keywords: Environmental Justice, sustainability, Geopolitics, Smart Cities, International Enviro-Legal Paradigm

INTRODUCTION
The third millennium is considered as the third wave of urbanization because it is first time that the urban population of world has crossed 50%.[1] The United Nations Organization (2008) has projected that 70% of the global human footprint will be seen in the urban areas.[2] The 21st century is the century of cities and cities has pivotal role in expanding economy, global competition, technological advancement and innovations etc. Cities contribute 80% of Global GDP and it is anticipated by Mckinsey Global Institute (2011) that by 2050 only 600 cities from world's largest cities will generate 60% of Global GDP.[3]

[1] world urbanization to hit historic high by year's end, under-secretary-general says as commission on population and development opens forty-first session, United Nations, available at: https://press.un.org/en/2008/pop961.doc.htm
[2] *ibid*
[3] Richard Dobbs Sven Smit Jaana Remes James Manyika Charles Roxburgh Alejandra Restrepo, Urban world: Mapping the economic power of cities, 2011, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mckinsey.com/~/media/mckinsey/featured%20insights/urbanization/urban%20world/mgi_urban_world_mapping_economic_power_of_cities_full_report.pdf

Although despite the achievements contributed by the cities to mankind it comes with several adverse consequences also and one such consequence is degradation of environment. There are several instances wherein it has been witnessed that the development made in cities were not in consonance with the principles of sustainable development. Development at the cost of environment can be deciphered as the development of deceive as degradation of environment has the potential to extinct the whole homo sapiens. Cities gobble up 75% of global energy and generate huge amount of waste and produce 70% of green house gas, which is a major contributor of climate change.[4] Simultaneously the rapid growth of cities is not corresponding to the capacity to enlarge their infrastructure and obtrude the increasing pressure on urban infrastructure. Therefore, they always endure from detrimental repercussions leading to substandard quality of lives of citizens.

To cope up with the adverse impact of urbanization the global leaders has brought forth with the concept of Smart City. The main aim of smart city was to enhance the quality of life of people living in cities and promote and implement the principle of sustainable development.

SIGNIFICANCE OF GEOPOLITICAL FACTORS IN SHAPING SMART CITY SUSTAINABILITY STRATEGIES

The expression Geopolitics implies the exploration of the interaction between, firstly, geographical settings and perspectives and, secondly, political processes. Both the elements, i.e., geographical settings and political processes are dynamic in nature, and each influence and is influenced by the other. Geopolitics deals with the consequences of this interaction.[5]

By using advanced technology, the smart cities play a pivotal role in global urban development. From intelligent transport systems and energy grids to AI-powered governance and data-driven services, smart cities assure more optimized, viable, and habitable urban spaces. However, behind the vision of a technologically empowered city lies a complex web of political, economic, and strategic interests. In this context, geopolitics plays a climacteric role in shaping the direction, pace, and nature of smart city innovation worldwide.

1. Technology Sovereignty and National Security

One of the foremost geopolitical drivers of smart city innovation is the issue of technology sovereignty. As cities crescively confide on digital infrastructure—such as 5G networks, surveillance systems, and data platforms—governments are taking more precautions regarding who owns and controls these technologies. The agitation that foreign actors might compromise or embezzle crucial urban data has led to increasing restrictions on technology imports from geopolitical rivals.

For example, the United States and its numerous allies have proscribed or restricted the usage of Chinese companies like Huawei and ZTE in their 5G infrastructure, comprehending the national security risks. This kind of behaviour has a straight effect on smart city projects which depend on rapid, reliable communication networks.

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[4] The New Urban Agenda H III, United Nations Conference, available at:https://habitat3.org/the-new-urban-agenda/

[5] Semna Rana Gokman, "Geopolitics and the study of international relations", available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://etd.lib.metu.edu.tr/upload/12612289/index.pdf

Similarly, India has limited Chinese tech firms from engaging in public infrastructure projects, affecting the utilization of smart traffic systems and public surveillance.[6]
These gestures are the portrayal of data nationalism, where the nations administer and control the data which are generated within their territories. In the context of smart city, it implies that the cities must correspond to the policies of the nations concerning the storage, processing and accessing of data that can limit the international partnership and technologies which the smart cities could have adopt.

2. Global Tech Competition and Smart City Models

Geopolitical competition is not only constrained to technology bans and trade restrictions—it also encompasses the export of entire smart city models. Several global powers are providing not just smart city technologies, but also the governance frameworks and policy models that chaperone them.
For instance, China is vehemently promoting its vision of the smart city through initiatives like the Belt and Road Initiative (BRI). Chinese firms propose end-to-end solutions that includes surveillance systems, facial recognition technologies, and AI-generated governance tools. These are especially enchanting for the developing countries due to their affordability and speed of deployment. Although, critics argue that these models often accentuate state control and surveillance over privacy and democratic values.[7]
In contrasted with, the European Union (EU) cities are building smart city ecosystems which are based on protection of data, active participation of citizen and innovative technologies promoting sustainability. The EU is setting a global standard for sustainable smart city through efficient regulations like General Data Protection Regulation (GDPR).[8]
This divergence focuses on contrasting geopolitical ideologies—authoritarian techno-centrism on one side and democratic digital governance on the other which results in a fragmented and uneven global smart city landscape.

3. Infrastructure Investment and Strategic Alliances

Geopolitics also shapes where the funding flows and building up of infrastructure. The nations use smart city investments as a toll of foreign policy that offers loans, grants or technology conveyance to dominate through political influence.
For example, in several nations like Africa, Latin America and Southeast Asia, China has sponsored smart city infrastructure. Although these projects advancing development but it also enhancing the dependency on Chinese vendors. In reaction, G7 introduced Build Back Better World (B3W) initiative, which is a democratic alternative to the China's BRI, that aims at top grade infrastructure investment which promotes un-equivocality and accountability.[9]

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[6] Noah Berman, Lindsay Maizland, and Andrew Chatzky, Is China's Huawei a Threat to U.S. National Security?, available at: https://www.cfr.org/backgrounder/chinas-huawei-threat-us-national-security
[7] James McBride, Noah Berman, and Andrew Chatzky, China's Massive Belt and Road Initiative, available at: https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative
[8] General Data Protection Regulation, available at: https://gdpr-info.eu/
[9] Opportunities for Increased Multilateral Engagement with B3W, CSIS, available at: https://www.csis.org/analysis/opportunities-increased-multilateral-engagement-b3w

Domestically, to enhance the smart city development the governments are utilizing using sovereign wealth funds and national innovation programs. For example, Saudi Arabia's NEOM project and India's Smart Cities Mission has been tied to national ambitions to assert regional dominance and modernize the economy, showing how domestic geopolitics also fuels urban innovation.[10]

4. Regulatory Influence and Standardization Battles

The nations are vestibuling in the international forums like International Telecommunication Union so that their technical and governance structures are espoused globally. These structure and standards clouting the cities as to which technologies will be adopted. For instance, China is plunging for the standards which align with its controlled technologies, on the other hand the Western Countries prescribe for privacy centric, open-source solutions. These influences impact the global smart city interoperability and city-level autonomy.

5. Urban Diplomacy and City Networks

Although the nations have geopolitical influences, but the cities are emerging as an independent diplomatic player. Through several transnational networks like C40 cities, U20 and the Global Covenant of Mayors, the cities are associating themselves on climate action, conveying of technologies, data ethics, without giving any heed to geopolitical tensions. These networks concede the cities to share the best practices, resources and develop their own standard. This "urban diplomacy" can circumvent some national-level restrictions and foster cooperation in politically tense environments.

Geopolitics is enormously embedded in the smart city narrative. From which entity builds the infrastructure and how data is governed, to what values are implanted in urban technologies, global political dynamics are shaping the cities of the future. As geopolitical tensions rise and technological competition intensifies, smart city innovation will continue to reflect the ideological divides, strategic interests, and power struggles of the international order.

INTERNATIONAL ENVIRO-LEGAL PARADIGM WHICH EMBEDDED THE PRINCIPLES OF SMART CITY

The development of smart cities is not only a technological and urban planning endeavour—it is also deeply rooted in international environmental legal frameworks. These enviro-legal paradigm command how the nations make the blueprint cities which are sustainable, pilable, inclusive, and aligned with international commitments. Numerous international laws, protocols, agreements, and principles implant the core values of smart cities, particularly in the areas of sustainable development, environmental protection, and climate resilience.

1. The 2030 Agenda for Sustainable Development (UN Sustainable Development Goals - SDGs): The SDGs aims at balancing the three dimensions of sustainable development- economic, social and environmental. SDG 11 enumerates "Make cities and human settlements inclusive, safe, resilient, and sustainable". Key Targets of SDG 11 Include:

- Access to secure and accessible housing for all
- Affordable and sustainable public transport
- Reduce urban pollution and improve air quality

[10] Seven Years of Saudi Arabia's NEOM Project: Prospects and Challenges, Indian Council of World Affairs, available at: https://www.icwa.in/show_content.php?lang=1&level=1&ls_id=12311&lid=7505

- Build cities that are resilient to climate-related disasters
- Upgrade waste management and resource efficiency
- Magnify green public spaces
- Robust urban planning and participatory governance[11]

2. The Paris Agreement (2015): The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016. Its overarching goal is to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels." Carbon neutrality targets, Zero-carbon solutions, green Economy and Green Technologies are the key elements to combat climate change.[12]
Cities are regarded as the major contributors to greenhouse gas emissions. Smart cities use energy-efficient technologies, smart grids, and low-carbon transport to comply with the climate targets and national commitments. Urban areas are key actors in implementing climate adaptation and mitigation strategies, which are central to national climate commitments under the Paris Agreement.

3. The New Urban Agenda (Habitat III, Quito 2016): The Agenda aims at the New Urban Agenda represents a shared vision for a better and more sustainable future. If well-planned and well-managed, urbanization can be a powerful tool for sustainable development for both developing and developed countries. The New Urban Agenda provides a framework for building cities that are inclusive, resilient, safe, and sustainable. Encourages the use of ICTs, data, and innovation to enhance the delivery of public services, urban planning, and citizen engagement. It focuses on the significance of protecting ecological systems and reducing environmental degradation in urban development.[13]

4. United Nations Framework Convention on Climate Change (UNFCCC): The United Nations Framework Convention on Climate Change (UNFCCC) is a treaty adopted in 1992 to prevent hazardous anthropogenic interference with the climate system. Its primary goal is to stabilize greenhouse gas concentrations in the atmosphere at a level that prevents such interference, while allowing ecosystems to adapt naturally and enabling sustainable development. Provides the legal framework for climate-resilient development at national and sub-national levels. Encourages urban climate governance, environmental data monitoring, and sustainable infrastructure—all central to smart cities.[14]

[11] Transforming our world: the 2030 Agenda for Sustainable Development, United Nations, available at: https://sdgs.un.org/2030agenda
[12] The Paris Agreement, United Nations Climate Change, available at: https://unfccc.int/process-and-meetings/the-paris-agreement
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The international enviro-legal paradigm provides a normative and legal foundation for smart city development. From climate change and sustainable development to disaster risk and public participation, these global frameworks guide the principles, goals, and technologies used in smart urban environments. Smart cities, in turn, act as laboratories and implementation hubs for fulfilling international environmental commitments.
Therefore, smart city innovation is not just about deploying cutting-edge technologies; it is also about aligning urban development with international legal obligations, sustainability norms, and human rights principles.

COMPARATIVE ANALYSIS BETWEEN SINGAPORE AND INDIA

Singapore's law: The Singapore Green Plan, 2030 provides a comprehensive strategy to achieve net zero emissions by 2050. The master plan set for plantation of 1 million trees to expand green spaces, promote sustainable living by reducing waste sent to landfills by 30% by 2030, facilitate green economy and strengthen climate resilience infrastructure. Environmental Protection and Management Act (EPMA) aims at controlling pollution and protection of environment by imposing carbon tax, promoting zero waste by sustainable consumption. Clean Transportation Policies mandated clean energy transport, introduced EV buses etc. Green Building Regulations and Certifications is a green building master plan aiming at 80% of buildings to achieve the Green Mark certification by 2030.[15]
India's Law: In India there is no comprehensive legislation regarding the smart city governance and currently it is regulated through Smart City Mission Guideline and other Regulations, like Environmental Protection Act,1986, Air Act,1981, Water Act,1974 and several Waste Management Rules. India has made Environmental Impact Assessment mandatory for any kind of projects through Environmental Impact Assessment Notification, 2006[16]. But several byelaws have been made by the concerned State governments wherein Smart city Model has been initiated which embraces the sustainable practices and active participation of citizen of urban areas. For instance, Kolkata Municipal Corporation has enacted Solid Waste Management Byelaws, 2020[17], State of Karnataka has enacted Model Building Bye laws, 2016[18], etc.

GEOGRAPHICAL FORCES THAT SHAPE ENVIRONMENTAL LAWS AND COMPLY INTERNATIONAL COMMITMENTS WHICH AFFECTS SMART CITY'S ABILITY TO BE SUSTAINABLE

Geopolitics influences which environmental laws are made, how they're enforced, and how accessible green technologies and resources are to cities. Smart cities operate in a legal environment shaped not only by national interest but by global power dynamics, making geopolitics a hidden yet powerful force behind their sustainability laws.

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[15]Tian Kuay Lim, Abbas Rajabifard, Victor Khoo, Soheil Sabri, Yiqun Chen, "The smart city in Singapore: How environmental and geospatial innovation lead to urban livability and environmental sustainability", page-29-49, Smart Cities for Technological and Social Innovation, 2020, available at: https://www.sciencedirect.com/book/9780128188866/smart-cities-for-technological-and-social-innovation
[16] Ministry of Environment, Forest and Climate Change Government of India, EIA 2006 Notification, available at: https://environmentclearance.nic.in/report/EIA_Notifications.aspx
[17] Kolkata Municipal Corporation Solid Waste Management Bye-laws, 2020, available at: https://wbxpress.com/kolkata-municipal-corporation-solid-waste-management-bye-laws-2020/
[18] Model Building Bye laws, 2016, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://mohua.gov.in/upload/uploadfiles/files/MBBL.pdf

1. *International Environmental Agreements and their Implementation*

Smart cities often operate within the framework of national commitments to international environmental laws—like the Paris Agreement, COP decisions, or the Convention on Biological Diversity. Geopolitical relations influence how seriously countries commit to these laws, and whether they push cities to follow through on emission caps, biodiversity targets, or green infrastructure policies. Example: If a national government softens its position on climate agreements due to geopolitical alliances or conflicts, its cities may not receive the regulatory or financial support needed for sustainable action.

2. *Fragmentation of Environmental Standards*

Due to geopolitical rivalries (e.g., U.S. vs. China), global environmental laws and standards are diverging. Western countries may promote stricter environmental regulations and carbon taxes. Others may prioritize economic growth over strict environmental compliance. This creates legal uncertainty for smart cities relying on global suppliers or tech, making it harder to align with sustainability goals. Example: A smart city using EVs or smart grid tech from abroad may face compliance issues if the exporting country doesn't adhere to the same environmental standards.

3. *Transboundary Environmental Law & Resource Conflicts*

Many smart cities are affected by transboundary legal frameworks—for air pollution, river systems, or marine ecosystems. Geopolitical disputes (e.g., over rivers, shared forests, or regional air quality) make it harder to enforce environmental law across borders. Example: A smart city near a disputed border may suffer from pollution caused by industrial activities across the border but lack legal pathways to enforce cleaner practices.

4. *Sanctions and Green Technology Transfer Laws*

Countries under economic sanctions often face restrictions on importing green technologies, which delay or derails smart city sustainability initiatives. Intellectual property laws related to green innovations (like smart waste management or renewable energy systems) are influenced by geopolitics, making it harder for developing cities to gain legal access to crucial technologies. Example: Iran or Venezuela may struggle to implement sustainable smart infrastructure due to tech restrictions tied to sanctions.

5. Climate Finance & Legal Accountability

Climate financing for smart cities often depends on international funding bodies, which are influenced by geopolitical relationships. Disputes over who should pay for climate adaptation and green transitions (developed vs. developing countries) can delay or water down legal commitments that benefit cities. Example: African smart cities may have environmental plans ready but face delays in receiving climate finance due to stalled negotiations at the UN level.

6. *Environmental Justice & Legal Protections*

In geopolitically tense or authoritarian contexts, environmental laws may be selectively enforced. Smart cities may prioritize flashy green infrastructure while ignoring vulnerable communities. Legal protections for environmental defenders, public participation, and local governance are influenced by broader political dynamics. Geopolitical asymmetry influences how international environmental commitments are negotiated and implemented. The principle of Common but Differentiated Responsibilities (CBDR) reflects the demand from developing countries for equity in climate obligations and access to resources. Wealthier nations may place conditions on climate aid, while poorer nations push back against “green colonialism,” where environmental rules are perceived as barriers to development.

CONCLUSIONS AND SUGGESTIONS: The Smart City has wide spectrum which includes improving the quality of life of urban areas, promoting economic growth, sustainable development with the use of IoT. In the era of globalization cities plays a major role in development of any nations, so they are interconnected with each other for rapid development and the geopolitical landscape plays a pivotal role in shaping their evolution. On the one side geopolitical tensions can impede the technological flows and obstruct global co-operation, geopolitics also stimulate the activity of technological sovereignty and innovations. To enhance and promote the sustainability of smart city the geopolitical dynamics must aim for the following:

- Climate compliance should be made mandatory for advanced and developed nations. Integration of smart city action plans or strategy and climate action plans aligned with the international commitment will make better environmental preservation.
- The Environmental Impact Assessment must be made mandatory for all the nations aiming at structuring smart city project to anticipate any potential threat.
- Multilateral cooperation must be promoted in data governance of smart city.
- The laws relating to circular economy should be made mandatory.
- The supply chains must be diversified to abbreviate the geopolitical vulnerability.

FINDINGS

- There is lack of integrated strategies combining the geopolitical risk management and environmental law.
- The environmental elements of smart city, for example, renewables and EVs which rely upon geopolitically sensitive matters.
- The agitation regarding cyber threats shoving the smart cities to adopt closed or nationally controlled systems.
- The nations having geopolitical alliances advance rapidly on the other hand the marginalized nations face impediment due to lack of access and authority.

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WEB: www.iksadkongre.com/law
E-MAIL: hukukkongresi@gmail.com

RETHINKING SINGLE-USE PLASTICS IN INDIA: FROM ENVIRONMENTAL DESTRUCTION TO SUSTAINABLE SOLUTIONS

Pritheeraj Sen
Amity University Kolkata, Department of Law
ORCID:0000-0002-1499-1170

Associate Professor Dr. Mainan Ray
Amity University Kolkata, Department of Law

Abstract
India has emerged as a living witness to the significant adverse effects of pollution, species extinction, and environmental deterioration which have resulted from the extensive use of plastic products, especially in cities. Single-use plastic pollution in India is a serious environmental problem that exacerbates climate change, damages biodiversity, and degrades land and water. An estimated 3.5 million tonnes of plastic garbage are produced in India every year; inappropriate disposal causes marine pollution, congested drainage systems, and infertile soil. Additionally, microplastic contamination has been found in freshwater sources, which affects human health. The build-up of non-biodegradable plastic in ecosystems disturbs wildlife, and when animals accidentally consume plastic waste, it can have deadly repercussions. Air quality problems are further exacerbated by the emission of harmful pollutants into the atmosphere while burning plastic garbage.

However, these issues can be lessened by implementing sensible regulations and sustainable substitutes in the form of effective penal legislation which would not only address the main drivers of plastic pollution at various levels of the ecosystem but also mandate the drivers of single-use plastic pollution to restraint from carrying activities which are sources of such plastic pollution and impose rigorous punishment, sufficient enough to prohibit such acts of pollution, something which India lacks at present and on which necessary actions haven't been implemented much as necessitated.

Thus, this research study looks at how single-use plastics affect India and mainly addresses efficient remediation procedures by enforcing stronger laws on the production of plastic, mandating implementation of long-term fixes of single-use plastic pollution through innovative technology, encouraging biodegradable substitutes, modifying consumer behaviour through public awareness campaigns, and changes to governmental regulations.

Keywords: Single-use plastics, non-biodegradable, pollutants, microplastic, ecosystem, legislation.

EXTRAJUDICIAL KILLING WITH RESPECT TO MENTAL HEALTH: A CRITICAL ANALYSIS OF ITS AMBIT AND REQUIREMENTS IN TODAY'S SCENARIO IN NATIONAL AND INTERNATIONAL DISCIPLINE

Srija Mondal
Amity Law School, Amity University Kolkata

Dr. Mainan Ray
Amity University Kolkata

ABSTRACT
First time in Geneva convention in Sec 3(d) explicitly prohibit the term "Extra judicial killing", but in today's scenario its practice runs globally. Encounter killing is also form of extra judicial killing in South Asia, done by the police personnel, military and other security forces for some genuine reasons like self-defense, for doing some welfare, try to maintain law and order, or want to protect anybody's life. Due to lack of definition about extra judicial killing in our criminal law jurisprudence, our legislature facing various difficulties. Though our new criminal law BNS, 2023 defined the portion of private defense, BNSS, 2023 stated the role of police, procedure of inquiry or trial, Malimath committee report discussed about the power of police officer. The Supreme court and NHRC & UN report also defined the guidelines about the extra judicial killing. The alleged criminal shoots by the police personnel in any controversial circumstances and there may be some personal gain also. There arise various questions about the acceptability in society about extra judicial killing. The researcher aims to build a link between real necessity of extra judicial killing with the mental state of mind, the ambit of extra-judicial killing and its types, the historical perspective in national and international level, will gather all the challenges and lacuna about the legislature. The researcher also tries to shed light on the role of judiciary, controversies with the help of relevant case laws. This study will be limited to doctrinal method and aims to contribute some recommendation about the ongoing discourse of extra judicial killing.

1.1 INTRODUCTION
In a layman's point of view, we hardly seen that the death penalty pronounces by the Judge's in very rarest cases but in the case of extra- judicial killing the police officials end the alleged criminal's life without a proper trial. The concept Extra- judicial killing is not new to our third world countries like India and other developing countries, it has a long history. This concept getting popularity from 20th century and still it increases rapidly. Almost in every day's newspaper this topic getting highlighted and faces various controversies. Extra judicial killing is one kind of unlawful killing rather we say it is illegal by nature, the police personnel or any govt authorized person cannot take prior permission from the superior authority. This encounter killing concept has been spread all over the country and especially in the megacities like- Mumbai, Chennai, Kolkata, and Uttar Pradesh, Rajasthan, Chhattisgarh, J & K etc. There is not an available definition that what is meant by extra- judicial killing and the ambit of its justification. Police can easily take laws in their own hand and in the case of extra-judicial killing. The suspected criminal is died in the police custody due to physical, mental or sexual harassment done by any police officer or by some other stuffs of the police station. Sometimes the female accused are sexually abused by the police offers in the custody so they attempt to commit suicide.

Tukaram and Ors vs. State of Maharashtra, the alleged criminal (a female orphan) in the Mathura police station was raped by two police officers in the custody. So those officers were tried in the Supreme court.[1]

Encounter killing is also known as retaliatory killing or extra-judicial executions by the police, military, or other security force. This concept challenges the Rule of Law in a civilized society. According to the Oxford dictionary[2] that 'encounter' is an incident in where the police shoot dead the suspected criminal under controversial circumstances, in many times the police may have some personal gain also. The researcher tries to describe the extra- judicial killing as a 'endgame challenges. Because in every criminal trial, there may be three stages, those are primary stage, middle stage and lastly the end stage. In the primary stage the police officers arrest the suspected criminal and take him into the judicial custody. In the middle stage the court procedure shall be stated like trial, production of the alleged criminal, produce of witnesses etc. In the end stage after completion of investigation or inquiry the judge pronounce the judgement. In extra- judicial killing the police personal unauthorisedly killed that alleged criminal by way of shoot-out, or by physical or mental torture. In the case of custodial death there must be done post- mortem and polygraph test to identify the culprit.[3] This type of killing is very much controversial by nature legally as well as morally, society can accept those cases only when any terrorist or gangster is shoot out. According to Art 21 of our Indian Constitution every person has right to life and personal liberty. But sometime our government or Government authorized person failed to protect our life, liberty, not ensure our basic human rights. Right to die or commit suicide not consider as a fundamental right of an individual. The famous doctrine ***Audi alteram partam*** stated that the court's duty to hear both the parties in a proper trial. ***Ei incumbit probation qui dicit, non qui negat*** is one of the famous Latin maxims which tells us that a suspected criminal is also presumed to be innocent unless he is declared guilty by the eye of law. In extra- judicial killing lots of reasons are involved like- political pressure, interpretation by media, slow progress of the criminal justice system, monetary benefits, societal pressure, etc. The Supreme court of India, NHRC, ICCPR, UN Reporters, Malimath committee report prescribes various guidelines about this topic and their main concern to remove this kind of killing from the society.

1.2 **SCOPE AND OBJECTIVES**

This study aims to critical analysis of extra judicial killing with respect to mental health, its ambit & requirement in today's scenario in national and international perspective. It explores all the existing legal framework, the rules and guidelines prescribe by the Supreme court, NHRC, ICCPR etc, the role of judiciary system, the definition regarding this, the loopholes regarding legal frameworks and lastly the societal acceptance about the concept of extra judicial killing. This study mainly concerned with the detailed study on Indian laws but try to cover some other practices runs globally. There are various kinds of this honour killing like civil extra judicial killing or military extra judicial killing, but this researcher limited to focus on the portion of civil extra- judicial killing only. This study aims to provide some recommendations for decrease of this tremendous practice in the society.

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1.3 METHODOLOGY

This research study mainly based on analytical methods combining with qualitative and quantitative by nature. This researcher gather data from various articles, national survey, text books, newspapers, various guidelines given by the Supreme court and other legal authorities. This researcher also tries to shed lights on the portions of critical study on case history to understand the practical incitement and the societal acceptance & controversies.

1.4 HISTORICAL BACKGROUND

Extra judicial killing concept is not a new concept for our country, this concept comes into existence from the pre-independence period. On 15th August 1942, to suppress the Quit India Movement launched by Mahatma Gandhi when Lord Linlithgow was nominated as viceroy of India, against colonial British. It was ruled by the ordinance, who is nominated by Commissioned Officers shall be not below the rank of captain in the Army. Wherever necessary to use the force of causing the death of somebody who fails to halt when challenged by a sentry or who attempt to destroy the property.

On 15th August 1947 when our country got independence, the Governor-General of India issued four ordinances namely- in Bengal, Assam, East Punjab, and Delhi Disturbed Area . It was fixed in an ordinance that – any commissioned officer, non-commissioned officer, warrant officers, military or air forces member can use force, even can causing the death of a person who is contravening the law and order. But this rule not stayed too long, it was replaced by Armed Forces (special powers) Act, 1948, and was replaced only by Act 36, of 1957.

In the middle of 1950, when the Nagas resorted to armed force in Assam and Manipur demanding India, the Government of India quickly responded and gave the Armed Force a special power. The Armed Force can fire or use force, even causing death in summary executions.

In the late 1960s, the armed rebellion was the Indian witness they formed the Naxalbari o Krishak Sangram Sahayak Samiti has launched a policy. The policy was – in the symbolic killing of the police inspector in Naxalbari during a raid in April 1967. The Assam Rifles had killed 11 people. In West Bengal, more than a hundred fake encounters were held in the 1960 and 1970s.

By 2005, this Naxalites movement spread to Chhattisgarh and neighbouring states, and this encounter killing concept gaining regularly. According to the Ministry of Home Affairs report, there were more than 7755 persons were killed during 2004- 2017, most of the cases declared as fake encounters.

In the period of Insurgency, lots of people died in Fake Encounter. The National Human Rights Commission with the direction of the Supreme Court investigated and record all the cases.

In October 2018, the AFSPA remains in force in various areas of East-West Kamang, Namsai, Lower Dibang Vally of Arunachal Pradesh, Assam, Nagaland, etc. During 2004 – 2017 about more than 1325 security forces were killed in police encounters in Jammu and Kashmir.

Extra- judicial killings frequently happened only not in our country it spread in all over world especially in the under developed countries, where democratic system is loose like our India. Like in Pakistan, the Sindh police are famous for doing extra- judicial killing. In Bangladesh this kind of killings are known as Crossfire killing. Sri Lanka also famous for extra- judicial killings. In French in their law and regulations are stronger than us, there democratic system is known as Adversarial System and in England their excise Common law system. So, rate of extra- judicial killing is lesser than our country. Because in our country's democratic system not so rigid nor so flexible, so possibility to infringe law is higher than the developed country.

One Writ petition filed before Bombay High Court, the ***People's Union Civil Liberties (PUCL)*** questioned genuineness about the 99-encounter killing in Mumbai between 1995 and 1997. There were more than 135 persons were killed in that period. From 1st April 1998 to 31st March 2018, the NHRC registered about 2955 complaints of encounter killing cases all over India according to the NHRC report.

2. EXISTING LEGAL FRAMEWORKS ABOUT EXTRA- JUDICIAL KILLING:

There are no direct provisions about extra- judicial killing, but the police try to justify their work as self-defence. There are some provisions are mentioned to use in grave situations when no other way to overcome this situation. Though no provisions gave permission to a police personal also to kill someone without prior approval from any legal authority, but some sections give permission to a authorized person to use force against a criminal. Those provisions are such as follows-

2.1. NATIONAL LEGAL FRAMEWORKS ABOUT EXTRA- JUDICIAL KILLING:

❖ **Section 34 of Bharatiya Nyaya Sanhita (BNS), 2023:** Self Help is the basic primary rule in life under criminal law. It is the main section which talks about the definition of how a person takes self-defence by way of private defence[4]. It may be used when some wrongdoing happens against the aggrieved party hamper anybody's life and property, to prevent harm the police can use force against the suspected criminal to protect his own life or another's life or body or property. The police personnel are the servant of the State and their primary duty is to protect everybody's life if any mischievous act is done by the criminals.

❖ **Section 38 of BNS:** like section 96, this section also supports the extra- judicial killing process. It allows also to causing death[5]. But it is possible only when these stated conditions are fulfilled in the circumstances: -

- Death will be occurred to prevent anybody from doing assault.
- Assault may be resulting in grievous hurt.
- They've seen an assault with the motive to rape any person.
- Intention to fulfil his addiction to unnatural lust.
- Intention to committing kidnapping or abducting etc.

❖ **Section 35 of BNS:** police can use force for self-defence to protect their own body when it's urgent from actions which cause resulting in death or grievous hurt. On that ground, police may be protected by laws[6].

❖ **Section 43 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023[7]:** when police going to arrest someone, who is involved in any heinous crime, can't cooperate with the police. Then the police may use force that is necessary to make the arrest. Use of force that is available only that extends which apprehension of danger in the human body according to **Section 102 0f IPC.** But if death occurred by the police officer, then it may amount to murder or culpable homicide.

[4] Bharatiya Nyaya Sanhita 2023, Taxman's Bare Act, Act No. 45 of 2023 Dated 25th December 2023, Page no- 40.
[5] Id, Page- 41
[6] id
[7] Bharatiya Nagarik Suraksha Sanhita, 2023, Taxman's Bare Act, Act No. 46 of 2023, Dated 25th December 2023, page- 48

❖ **Section 196 of the BNSS:** deals with the Magistrate one the inquiry about the death of the deceased person. Death may occur for various reasons like- rape, murder, or police encounters[8].

❖ **Section 100 of BNS:** the police officer has the right to injure for the sole of self-defence or maintaining peace and order in the society. But intention must not be male fide or dishonest motive or to settle personal benefit cannot be justified and death caused than the police officer who involved in this may be punishable with culpable homicide.[9]

2.2. **LEGAL PROVISIONS UNDER INDIAN CONSTITUTIONAL LAW:**

some provisions are directly opposed the concept of extra- judicial killing; they are such as follows-

❖ **Article 14 of Constitution:** fair investigation and the fair trial of every case must be executed whether the suspected criminal is the degraded criminal. Right to equality and the right to protect everybody's constitutional right. Nobody has the right to infringe the Rule of Law. Everybody will be treated equally before the eye of law.[10]

❖ **Article 21 of Constitution[11]**: the right to life with liberty and dignity is the basic right of every human being. It is free from the unlawful fear and force which resulted in causing the death of human beings.

❖ **Art 22 of Constitution:** said that every accused has a fundamental right to choose his Advocate for defence. **Section 303** of the **CRPC** gave the protection of Article 22. It is also right of a accused to know the ground of arrest.

2.3. **SOME OTHER PROVISIONS RELATED WITH THIS TOPIC:**

❖ **Audi Alteram Partem:** this is one of the rules laid down in Administrative Law by Natural Justice. It means both should be heard before the court[12]. It is presumed that in the civilized society both parties shall have the right to present themselves. But in extra- judicial killing, the police end the suspected criminal's life without allowing him to present himself before the trial of the court. The police claim that there is no other option remains for taking self-defence for himself.

❖ **Ei incumbit probation qui dicit, non qui negat[13]**. It is one of the famous Latin maxims which tells us that a suspected criminal is also presumed to be innocent unless he is declared guilty by the eye of law.

❖ **Art 11(1) of the UDHR**, also said the same meaning as above. That any person is staying innocent until he or she is proven guilty by the public trial, he must be given opportunities for his/ her defence[14].

❖ **Section 6 of ICCPR[15]:** right to live is protected by law. No one has the authority to deprive human beings right to life. ICCPR doesn't support the extra-judicial process of custodial death.

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[8] Id, Page- 128
[9] Supra note 5, Page- 70
[10] Constitution law of India by Dr J N Pandey, published by- central law agency, Fifty second edition: 2015, page no- 250
[11] Id
[12] Supra, foot note- 16
[13] Times Journal on September 29, 2019, by Team@Law, https://lawtimesjournal.in
[14] How the Indian criminal law interprets encounter killing, published by dignath raj Sehgal in criminal law, https://blog.ipleders.in from
[15] Supra

2.4. SUPREME COURT'S GUIDELINE ABOUT EXTRA- JUDICIAL KILLING:

Our learned Supreme Court gives sixteen (16) guidelines about the encounter killing in India. Most notably In *People's Union for Civil Liberties*[16] *VS. Union of India* and *Prakash Kadam VS. Ram Prasad Vishwanath Gupta*[17], have viewed that encounter killings violate the Fundamental Rights which comes under Art 21, Right to life and liberty- which is against the deprivation without a procedure established by Law. That Apex Court stated that there had been 99 police encounters resulting in the death of 135 persons between the year 1995 to 1997.

3. LEGAL FRAMEWORKS ABOUT EXTRA- JUDICIAL KILLING IN INTERNATIONAL REGIME:

❖ REFLECTION ON NHRC JUDGEMENT AND UN REPORTER'S REPORT

The National Human Rights Commission (NHRC) of India is a statutory body, it comes into force on 12 October 1993. Its main object to come is to protect, promote Human Rights and is defined by the Act as 'Right relating to life, liberty, equity, peacekeeping body. This is guaranteed by the Constitution or embodied in the International Covenants and enforceable by the procedure established by the courts of India[18].

International covenant covers lots of conventions like- ***International covenant on civil and political rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR). The Convention on the Rights of Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),*** etc.

NHRC received several complaints from the general public and non-governmental organizations. The ratio of fake encounter killing increases rapidly by the police instead of subjecting them due process of law if offences are alleged against them. No investigation was done properly about this matter and unnatural death occurred. On 29th March 1997, the NHRC issued various guidelines in respect of the "encounter killing" procedure that will be followed by the State Government[19].

The following guidelines which are issued by the NHRC are:

1. When the officer in charge received any information about the extra- judicial killing related death happens between the police and others, he shall enter immediately that the information in an appropriate manner.
2. When the information is received and sufficient to suspect then that officer needs to start an immediate investigation about the facts and circumstances leading to the death.
3. In those cases where the police officers belonging to the same police station are the members of the encounter death, that case will be investigated by other independent authorities, such as State CID.
4. The inmates of the victims shall be compensated may be determined in cases ending in conviction, if the police officer is involved based on the investigation result.

- On 2nd December 2003, NHRC stated that in past six years record the matters of encounter death have not been encouraging. Most of the states are not truly following those guidelines. For getting transparency and clarity we have to modify those guidelines:

1. FIR should be registered under proper sections of the Indian Penal Code immediately.
2. The magisterial inquiry should be done.

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[16]People's Union for Civil Liberties VS. Union of India, (CDJ 2014 SC 831).
[17] Prakash Kadam VS. Ram Prasad Vishwanath Gupta, (2011) 6 SCC 189.
[18] National Human Rights Commission of India, https://en.m.wikipedia.org, (last visited 28th April, 2025)
[19] National Human Rights Commission of India, https://nhrc.nic.in, (last visited 28th April, 2025)

3. Proper prosecution and disciplinary action should be taken against the officer who is involved in the Fake Encounter killing.
4. No promotion shall be awarded soon after the occurrence of the case, proper investigation must be done.

- NHRC guidelines were revised again on 12th May 2010 and certain new points are added. The senior superintendent of police of each District should be noted down all the encounter death cases and make a report within 48 hours and submit it within three months with providing the following information[20]-

1. Disclose the name and designation of the police officer who is involved.
2. Explain the justification of using force that resulted in cause death.
3. Forensic examination result.
4. Post mortem report and Inquest report.
5. Report of deadly weapons which is used by the deceased and his companions.

The other's functions which are NHRC perform, give protection to the individual. They are-

1. They are doing inquiry about is in our country there is a violation of Human Rights held or not by a public servant.
2. Review the factors about the act of terrorism and also doing treaties about the Human Rights Convention.
3. Study and promote the research about Human Rights and its violation.
4. Human Rights Commission always staying in the touch with the jail authority and they visit there and study the condition of the jailor and how the jail authority behaves with the inmates.
5. They engage in human rights education and spread it in the various sections of society. They promote awareness and made safeguards about the violation of human rights and they organize various seminars and made social media awareness programs etc.
6. Keep in touch with the NGO and work with various Social Welfare related Institutions.

❖ **Article 11(1) of the UDHR** states that any person is presumed to be innocent until he or she is expressly proved as guilty or culprit by the eye of Law. He must be put on public trial and shall be allowing him to prove innocent.

❖ According to **Section 12(h) of the Protection of Human Rights Act, 1993**, NHRC spread Human Rights Education all over the nations and conducting lots of programs relating to police violations of human rights, right to women, children, minorities, Dalits, female foeticide, bonded labour, and other social, economic, civil and political rights.

4. <u>SOCIAL ACCEPTABILITY OF THE ENCOUNTER KILLING:</u> The concept of extra-judicial killing is vague. It seems like it gives proper justice to the victim but actually, it's not. It provides a false sense of security. It is only acceptable by society when the alleged terrorists are shooting death by police encounters. Across the entire world, there are various kinds of encounter happens, India also part of it. But in all cases, it is not required to kill that suspected criminal for self-defence or use the 'end game' policy. All over the world; the police who are doing this extrajudicial killing justify their work in this manner. They explain as to reduce the crime rate, controlling the crime, and try to give a lesson to society that if anybody to do some illegal act, he must think twice before committing any crime.

[20] id

Human beings are social animals and everyone's thinking is not the same. It varies with the different kinds of situation arises. Generally, in the death of terrorist's encounter killing, most of the citizens in the entire country appreciate that because people think they are harmful to our society. But in the death of the normal alleged criminals in an encounter, lots of questions arise in social beings' minds. So, most of the extra- judicial killing make controversy and facing lots of challenges by society[21].

5. SOME RELEVANT CASE LAWS REGARDING EXTRA- JUDICIAL KILLING:

Ishrat Jahan encounter case, on 15th June, 2004 the Gujrat Police has been gunned down by Ishrat and three others near Ahmedabad by the police team who are belonging to the Detection of Crime Branch of the Ahmedabad city police. According to the police, those four who were encountered were connected with the LET and make a conspiracy to killed Gujrat Chief Minister Narendra Modi.

Vikas Dubey vs. the State of U. P., the famous gangster Vikas Dubey was killed by the Uttar Pradesh police in a very controversial situation, and no evidence was found against that extra-judicial killing.[22]

Mamani vs Berzain, under Torture Victim Protection Act (TVPA) involving the responsibility of the former president and Defense Minister of Bolivia to protect the extra- judicial killing towards the civilians of this nation.[23]

Lasa and Zabala case, it was one of the famous Spanish cases. Here Antanio Lasa and Jose Ignacio Zabala were kidnapped, physically and mentally tortured, executed by the Spanish police force on 1983. The executors also covered the dead body to erase all the evidence against them.

5. CONCLUSION & SUGGESIONS

In extra- judicial killing, police end the alleged criminal's life by taking self-defence. But is it justified to end anybody's life for giving any other people justice? I think a proper trial must be required to seek justice. Our countries democratic system is too loose. A big role has Indian Judiciary and Police negligence towards the increasing rate of extra- judicial killings and fake encounter killing. Most of these cases held in odd time, there are a lack of eye witness and no proper evidence are available from the crime scene.

By the way of endgame, police try to finish the cases as early as possible, this is the outcome of police lethargy and negligence in doing duty.

Our Judiciary is also somehow liable for that. There are certain reasons involved like the judge's lethargy, the delay procedure in the trial process, delay in case filling and register FIR. For this delay, the general people, as well as the police, lose their faith in the Judiciary system. The Malimath committee report also not specify the ambit of execution of power of the police officer. The police are not cooperating properly with the National Commission of Human Rights and delay in sending the report and lauding FIR. Supreme Court directed the police to filed an FIR of each case within a reasonable time in the appropriate jurisdiction. But it is seen that in there lots of negligence seen in the part of the police.

Is it not necessary to take prior permission from the higher authority or from the magistrate to take action about the extra- judicial killing?

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[21] Id

[22] Vikas Dubey vs State of U. P. on 28 May, 2020, Criminal MISC Anticipatory Bail Application U/S 438 Cr. P.c No 2655 of 2020.

[23] See Mamani v. Berzain, 2009 WL 10664387 (S. D. Fla. Nov. 25, 2009)

In India, the justice delivery system is a never-ending process. At first, we have to improve the justice delivery system and have a look for a speedy trial process. Need to establish more Fast Track Court.

Need to replace the retributive theory with the reformative theory of punishment. To reform anyone from criminal to innocent people to mainstream society, it will be a better and more fair way to give anybody justice.

It is more necessary to insert a proper definition of encounters and application of extra-judicial killing. The Supreme court must entertain these matters more seriously and establish more strong authorities who are working freely and honestly. Establish a different bench for it.

It is most important to adopt a strong democratic rule like the U.S.A, UK, and France, it helps to decrease the number of cases of fake encounters.

It is necessary to amend Section 173 of BNSS that is FIR. Government should amend this Section in this way that delay in lodging FIR is a punishable offence.

Immediate enactment should be required in the case of police torture and the prevention of torture bill.

Need to amend the Armed force Special power Act.

- Need to amend Section 43 of BNSS where it stated that a police officer can use necessary force to make anybody arrest. But that force did not extend to anybody's death.

- Need to review Section 218 of BNSS. It is necessary to take prior permission from the higher authority before taking cognizance of taking any case.

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E-MAIL: hukukkongresi@gmail.com

AVOIDANCE TRANSACTIONS UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 : ITS IMPACT A CRITICAL ANALYTICAL STUDY

Assistant Professor, Sudipa Mazumder
Sister Nivedita University, Kolkata, School of Law, Research Scholar, Amity University Kolkata, Amity Law School
ORCID:0009-0005-2720-3232

Associate Professor Prof. Dr. Mainan Ray
Amity University Kolkata, School of Law

Abstract
The purpose of this paper is to study the importance and objective of provisions regarding avoidance transactions provided under the Insolvency and Bankruptcy Code, 2016 herein after referred to as IBC. IBC is a consolidating statute. Previously laws relating to insolvency and bankruptcy has been covered under different enactments. IBC has been enacted to make constant input in the economic growth of our country.At the same time, it is intent of the legislature to make a balance in protecting the interest of stakeholders or creditors by inserting various provisions. Bankruptcy confers the legal status to an insolvent who is not in a position to meet his financial liabilities i.e insolvent. It has the effect of imposing some legal disabilities on the insolvent which renders the property of such insolvent available for the purpose of protection of interests of creditors. Before proceeding further on the issue it would be very pertinent to explain avoidance of transaction, transactions which have been entered into by the corporate debtor(herein after referred to as CD) and that is in the opinion of the resolution professional(herein after referred to as RP) or liquidator may fall under any of the heads like either preferential, undervalued, extraneous and fraudulent (herein after referred to as PUEF) depending upon the characteristics of such transaction, are called avoidance transaction. In such cases RP or the liquidator may file an application before the Adjudicating Authority(herein after referred to as AA) for avoidance of such transaction if it has been considered that it should be avoided for the protection of interest of creditors. The very purpose of such provisions is to maximize the value of assets. This study will try to analysis the scheme behind the provisions regarding avoidance transaction under PUEF with the contention that these provisions are construed for the benefit of creditors. The object of the study is to get an understanding on the different types of avoidance transactions and criteria to classify them into different categories.This study will give a clear insight on the functioning of the avoidance provisions under Code. This study will analyse the benefits to be gained by the creditors and at the same time will focus on the disadvantages if any for which corporate debtor might be losing its business hope. This study will try to understand the impact and importance of such provision regarding avoidance transactions under Code. The doctrinal research study has been undertaken to conduct this research.
Keywords: Insolvency & Bankruptcy, avoidance transaction, creditor.

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THE FUTURE OF THE DUTCH SEX INDUSTRY: LEGAL REFORMS, TECHNOLOGICAL INNOVATIONS, AND GLOBAL IMPLICATIONS

Sneha Mahapatra
Amity Law School, Amity University Kolkata

Associate Professor Dr. Manian Ray
Amity Law School, Amity University Kolkata

Abstract
The Netherlands has long been recognized for its progressive approach to prostitution, with legal frameworks regulating the industry to ensure the safety and rights of sex workers. The lifting of the brothel ban in 2000 under the Dutch Penal Code (Article 250a) legalized and regulated sex work, allowing municipalities to implement licensing systems. However, recent debates have led to proposals such as the Sex Work Regulation Act (Wrs), which aims to introduce a national licensing system and stricter regulations on both sex workers and clients. Additionally, Article 273f of the Penal Code continues to prohibit human trafficking and forced prostitution. While these legal measures seek to protect workers, critics argue that increased restrictions may push parts of the industry underground. Simultaneously, advancements in artificial intelligence (AI), virtual reality (VR), and sex robots are redefining the sex industry. AI-powered chatbots, VR-enabled experiences, and robotic companions are emerging as alternatives to human sex work, potentially altering demand for traditional services. While these innovations promise a safer and more private experience for consumers, they also raise ethical and regulatory concerns. The Dutch model is often compared to policies in other nations, including India, where prostitution exists in a legal grey area. Unlike the Netherlands, India's Immoral Traffic (Prevention) Act, 1956 (ITPA) criminalizes activities such as brothel-keeping, pimping, and public solicitation, making regulation difficult and increasing risks of exploitation. As discussions on legalization and reform continue in India, lessons from Dutch legal frameworks and technological shifts could influence future policies. Looking ahead, the Dutch sex industry is poised for transformation, balancing legal reforms with technological disruptions. Policymakers, sex worker advocacy groups, and tech developers will play a crucial role in shaping its trajectory. Understanding these changes is vital for countries like India, where similar debates on legalization, worker safety, and digital innovations are gaining momentum.

Keywords: Dutch sex industry, prostitution laws Netherlands, AI in sex work, virtual reality brothels, sex robots, human trafficking, legalization of prostitution India, sex work regulations, future of prostitution, technological impact on sex industry.

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THE DILEMMA OF CROSSING BORDERS OR NOT: LEGAL COMPARATIVE ANALYSIS ON THE PROTECTION OF THE INTERNALLY DISPLACED PERSONS AND REFUGEES

Sudeshna Halder
Research Scholar of Amity Law School, Amity University Kolkata

Associate Professor Dr. Manian Ray
Amity Law School, Amity University Kolkata

ABSTRACT
An act of crossing a border of a sovereign country or not for better protection, reflects dilemma of person which establishes the status of Internally Displaced Person (IDP) or Refugee thereby address two different legal protection regimes. An internally displaced person is one who in order to escape the effects of armed conflict, violations of human rights, violence, natural or man-made disasters, is forced to flee their homes but displaced or ousted within the borders of their own country[1]. While, refugee is one, who due to well-founded fear of being accused for reasons of race, religion nationality, etc, and is forced to escape their own country and find safety in other country[2]. An attempt has been made by the researcher to do critical and comparative legal analysis on the lacunas present in international framework of "United Nations Guiding Principles on IDP, (UNGPID) 1998[3]" and "The 1951 Refugee Convention[4]", Indian legal efforts and Judicial attempts enlarging the scope of traditional definitions with recent driving factors of displacement like climate change[5], developmental projects[6] thereby, enhancing the protection of rights of the displaced persons.
Keywords: Displacement, displacement factors, IDP, refugee, legal protection.

1.1 INTRODUCTION
The basic needs that are required by an individual to live in a civil society is known as the human rights like right to live, food, shelter, healthy environment, education, work, security, etc. The right to shelter or a habitable place is basic need for every individual which is threatened by forceful displacement. Therefore, through ages, displacement poses a significant challenge to human kind. A citizen of a sovereign country should get protection from the government of the State. Every citizen of a nation should be protected by the domestic legal framework of the same country. Thereby, the absconding from homes due to violence and its impact on humans have resulted into the arise of the situation of displacement. The traditional definitions of IDP or refugee has factors like violations of human rights, violence, etc.

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But with the advancement of the society there are new factors added to the existing definitions of the "UN GPID, 1998"[7] as well as "the 1951 Refugee Convention"[8]. This chapter explores the critical legal analysis of existing frameworks of the persons who are displaced internally and refugees in realm of international law.

1.2. METHODOLOGY

The researcher has opted for the doctrinal method with the analysis of various legal perspectives. The doctrinal method involves both qualitative and analytical method. The researcher has highlighted emerging issues that are affecting the human rights of people whether cross border or with in the border of a nation and what are the existing legal protections available to them.

1.3. DILEMMA OF CROSSING BORDER OR NOT: UNDERSTANDING THE CONCEPT OF PERSONS DISPLACED INTERNALLY VS REFUGEES

The decision to cross an international border of a sovereign country reflects dilemma for a person fleeing from their habitual place of residence due to various natural or man-made factors. There is clear indication of compulsion that are causing these people to be ousted from their homes. Therefore, displacement of persons can be of two types – internally and cross border.

- **WHO ARE INTERNALLY DISPLACED PERSONS(IDPs)?**

The event of displacement of human beings occurring internally do not involve crossing the borders of a country. They are being forced to move from one place to another due to various factors. In international law, these persons are the internally displaced persons also called as IDPs as recognised under UNGPID, 1998[9]. The significant essentials of an persons internally displaced is involuntary movement and it is happening inside national borders of their country. They ran away from their homes and residential establishments to find shelter and basic amenities in other places.[10] As per the Internal Displacement monitoring centre (IDMC), out of 75.9 million people 68.3 million were displaced due to conflict and violence and 7.7 million were displaced due to disasters as recorded in 2023[11].

[7] Supra note 1 at 1.
[8] Supra note 2 at 1.
[9] Supra note1 at 1
[10] Noam Schimmel, et. all, Trapped by sovereignty: the fate of internally displaced persons and their lack of equal human rights protection under international law, Sage Journals, Vol 185, Issue 3, https://journals.sagepub.com/doi/full/10.1177/00438200221104498
[11] IDMC, Internal Displacement Monitoring Centre, https://www.internal-displacement.org/global-report/grid2024/#:~:text=IDPs%20by%20cause%20of%20displacement,and%207.7%20million%20by%20disasters.&text=A%20mother%20and%20her%20children,ab%20Camp%20in%20Aden%2C%20Yemen.

- **WHO ARE REFUGEES?**

The 1951 Convention[12] deals with the people who have flee from their homes and have crossed the international border of his own country. There were around 43.7 million forcibly displaced refugees worldwide due to conflict, violence, human rights violations in 2024[13]. Therefore, crossing the border of his own nation by a person is essential to constitute the status of refugee, along with, there is well-founded fear of persecution for the reasons of race, religion, nationality, membership of a particular social group, or political opinion and they are either unable to obtain protection from their own country.

1.2 COMPARATIVE LEGAL ANALYSIS OF THE UNGPID, 1998 AND 1951 CONVENTION:

The infringement of human rights of both the persons who are displaced internally and the refugees are responsible due to displacement. Though the frameworks like UNGPID, 1998 and the Refugee Convention attempts to address the infringed rights of these persons to provide them a holistic legal protection. The following comparative analysis between frameworks highlights various legal perspectives.

[12] Supra note 2 at 1
[13] UNHCR, The UN Refugee Agency, Data and Statistics, https://www.unhcr.org/global-trends

The definition provided by the UNGPID, 1998[14], for the IDPs have legal lacunas in addressing the new factors like developmental projects, climate change responsible for displacement should be included within the ambit of the definition. Therefore, the existing definition IDP is defined as a person or groups of persons:

- who are forced to run away or to leave their homes or residence,
- to avoid the effects of armed conflict,
- generalised violence circumstances,
- violations of human rights, or,
- natural or human-made disasters,
- have not crossed an internationally recognised border of his own country.[15]

- While defining the refugees, in the existing definition under convention of Refugee, it does not include any cause due to environment hazard, which makes the scope of including the rights for climate refugees very narrow. The refugees as defined in the refugee Convention as a "person,

- who owing to well-founded fear,
- of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and,
- unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or,
- who, not having a nationality and being outside the country of his former habitual residence,
- as a result of such events, is unable or, owing to such fear, is unwilling to return it."[16]

- The nature of former is non-binding guidelines which is a soft law, lack in enforcement mechanisms and no penalties for non-compliance, whereas, the latter, are binding treaty obligations for the signatory states in international arena. The former is applicable to those persons internally displaced due to conflict, disasters or human rights infringements. Whereas, the latter, is applicable in cases of those individual crossing borders of his own country, due to fear of persecution for race, religion, nationality, membership of a particular social group, or political opinion.

- Due to displacement various rights of the IDPs have been infringed. These rights are which are essential for them, have are discussed in UNGPID,1998 as 'principles.' The rights include the IDPs have right to enjoy full equity as well as other rights and freedoms in international and domestic law just as the other persons in their country do which is explained in Principle 1, right to protection from arbitrary displacement in Principle 6, right to life in Principle 10, right to dignity and physical, mental and moral integrity in Principle 11, right to adequate standard of living in Principle 18, right to education in Principle 23[17], etc.

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[14] Supra note 1 at 1

[15] Who are internally displaced persons? https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/about-internally-displaced-persons#:~:text=According%20to%20the%20Guiding%20Principles,avoid%20the%20effects%20of%20armed

[16] What is the difference between an internally displaced person and a refugee? https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/about-internally-displaced-persons#:~:text=According%20to%20the%20Guiding%20Principles,avoid%20the%20effects%20of%20armed

[17] Supra note 1 at 1, United Nations Guiding Principles on Internal Displacement, 1998.

- While, the rights of the refugees include principle of non-discrimination, freedom to practice their religion, movable and immovable property rights, right to work, right to education, right of freedom of movement, principle of non-refoulment in Articles 3, 4, 13, 17, 22, 26 and 33, respectively are discussed in the Convention[18]. Though right to adequate housing and basic necessitates, right to seek asylum are not explicitly mentioned in the article of the convention, but they need to be addressed.

- The former, promotes protection of human rights within the respective states while protecting these persons. The latter, have defined the status of the refugee including the non-discrimination principle, non-refoulment principle, etc. Therefore, the legal ambit of both the existing legal frameworks needs to enlarged to include the new types of displaced persons for enhanced protection.

1.3 INDIAN LEGAL EFFORTS AND JUDICIAL ATTEMPTS VIS-À-VIS CASE STUDIES

- India is not a party to UNGPID, 1998. India has no specific legal framework to protect the IDP. They are protected, rescued, and evacuated and through the Constitutional provisions and the DM Act, 2005[19]. The infringed rights of the persons displaced personally are protected through Articles 14[20] talks about right to equality, where the people who are displaced internally should get equal treatment just like other citizens of India, Articles 15[21] and 16[22] deals with that there should be any discrimination on grounds of caste, race, religion, sex or place of birth and equality of opportunity in matters of public health, Article 21[23] deals with right to life and personal liberty. Therefore, no comprehensive legal framework to address the IDPs.
- Judicial attempts have been made by India by expanding the scope of Article 21[24] of the Indian Constitution. In Narmada Bacho Andolan Case[25] highlighted the incident of internal displacement of persons due to the Sardar Sarovar Dam project. The Supreme Court emphasised the need for the adequate compensation and proper rehabilitation measures for the people who were affected, thereby ensuring decent standard of living. The Supreme Court of India in the case of displacement of the Kashmiri pandits were mass exodus, were threatened for their life and property, that highlighted the importance of the right to shelter[26].

[18] The 1951 Refugee convention, Convention and Protocol Relating To Status Of Refugees, https://www.unhcr.org/sites/default/files/2025-02/1951-refugee-convention-1967-protocol.pdf
[19] Disaster Management Act, 2005, Act No. 53 of 2005
[20] The Constitution of India, 1950, Article 14
[21] The Constitution of India, 1950, Article 15
[22] The Constitution of India, 1950, Article 16
[23] The Constitution of India, 1950, Article 21
[24] Ibid.
[25] Narmada Bacho Andolan vs. Union of Of India and Other, 2000, https://indiankanoon.org/doc/1938608/
[26] SC recalls exodus of Kashmiri Pandits, but justice seems to elude community, https://www.ap7am.com/en/71496/sc-recalls-exodus-of-kashmiri-pandits-but-justice-seems-to-elude-community#:~:text=Supreme%20Court%3A%20SC%20recalls%20exodus,Kashmiri%20Pandits%2C%20but%20justice.

- India is not a party the refugee Convention[27] or its protocol. India has no specific legal framework for refugees. But Article 21[28] (right to life and personal liberty) of the Indian Constitution, is applicable to citizens and also to non-citizens. Indian Judicial efforts played a critical role in interpreting for the interests of the refugees through its decisions in the following cases.
- In NHRC vs State of Arunachal Pradesh (1996)[29], the Supreme Court stopped the forced eviction of Chakma refugees highlighting the importance of right to life and personal liberty as contained in Article 21 clauses. In case of Mohammad Sali mullah vs Union of India (2021)[30], the Rohingya crisis, the refugees of Rohingya challenged their deportation highlighting the principle of non-refoulment. Here the Supreme Court of India permitted their deportation as it was connected with the clause of Article 19(1)(e)[31], i.e. freedom of movement which is available to citizens of India only.

1.4 CONCLUSION AND RECOMMENDATIONS

The comparative analysis between the concepts of IDPs and the refugees lies in, whether crossing or not of an internationally recognised country border. The dilemma reflected is not voluntary since they are forced to be displaced, either, within the country or cross border in search for better protection, shelter, amenities, etc. The legal framework of to UNGPID, and the refugee Convention, have lacunas with respect to the recognition of the emerging types of persons who are ousted or displaced due to the emerging causes of climate change or developmental projects.

The comparative also reveals that the principles for the IDP are non-binding in nature that exhibits weak guarantees to the infringed rights of the persons who are displaced internally. Whereas due to the binding nature of the latter convention, the refugees who are forced to leave their home, come under the purview of the internationally binding protection when the refugees cross the borders of own country. In both the scenarios, may it be, IDPs or the refugees, both the International legal framework, should enlarge the definitions so that better protection can be offered to these displaced persons. It should be reflected in practice while giving shelters, safeguards and amenities to them by the host countries or their own countries addressing the infringed rights.

In India, the Indian legal efforts and Judicial attempts, various Supreme Court and High Courts' decisions upheld various Constitutional provisions while providing safeguards to the infringed rights of the that person who has been displaced within the borders of his nation but forced to leave their houses. The dilemma is reflected in the movement of the refugees in search for better protection, shelter. Though India is not a party to UNGPID, 1998 or the refugee Convention, but through the judicial decisions, the Indian courts have addressed the issues and infringed rights of the displaced persons.

Here, in this research paper, the researcher recommends that:

- The new emerging factors like climate change and developmental projects, need to be explained and the traditional definitions of the UNGPID, 1998 and refugee Convention needs to be expanded.

[27] Supra note 2 at 1
[28] Supra note 23 at 5.
[29] NHRC vs State of Arunachal Pradesh (1996), https://indiankanoon.org/doc/767216/
[30] Mohammad Sali mullah vs Union of India (2021), https://indiankanoon.org/doc/10486034/
[31] The Constitution of India, 1950, Article 19(1)(e)

- The nations who are not a party to UNGPID, 1998, can take inspiration form this framework to implement it in their domestic frameworks to give enhanced safeguard to the IDPs.
- India should address the rights that are encroached of the people who are displaced with a cohesive legal framework to give inclusive protection to these displaced people.
- In the era of increase in huge developmental projects, climate change, international and Indian legal endeavours should be highlighted and implemented for cohesive safeguards to these affected people by addressing their issues.

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17. SC recalls exodus of Kashmiri Pandits, but justice seems to elude community, https://www.ap7am.com/en/71496/sc-recalls-exodus-of-kashmiri-pandits-but-justice-seems-to-elude-community#:~:text=Supreme%20Court%3A%20SC%20recalls%20exodus,Kashmiri%20Pandits%2C%20but%20justice.

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INTERNATIONAL LAW OF THE SEA

Sonila Guzina
Faculty of Political and Legal Sciences, Aleksander Moisiu University

Aleksander Moisiu of Durres
"Public International Law" Dr. Dorina Ndreka

ABSTRACT
The international law of the sea is a complex and comprehensive discipline that encompasses a wide range of legal norms, treaties and practices that regulate international relations in the maritime domain. It aims to protect national interests and promote international peace and stability, focusing on normative issues related to the economy, legislation and administration of the sea.
The maritime legal regime is important for the implementation of bilateral and regional agreements, as well as for the enforcement of international standards, thereby contributing to global security and stability. In a complex international system, the importance of the law of the sea is increasing, reflecting the diversity of treaties and the commitment of states to address maritime issues effectively.
In addition, a comprehensive study of international relations requires the inclusion of other disciplines such as history, foreign policy, global economics and human rights, emphasizing that international relations are interconnected and cannot be understood in isolation
This shows that the international law of the sea is an essential component within international relations and helps shape global policies and practices.
Keyword: International Law of the Sea; Treaties Agreements; International Relations.

Introduction
The law of the sea in public international law is regulated by the Montego Bay Convention. This Convention was adopted by the Third UN Conference on the Law of the Sea, which began its work in 1973 and concluded with the adoption of the 1982 Convention. This Convention is one of the most important and valuable documents drafted within the framework of the UN. It is considered the "constitution of the law of the sea", as the main point of reference for all issues related to international maritime law. Through it, a new and complete legal regime is created on the seas and oceans, which adapts and creates different interests of states. The Convention harmonizes quite well the existing norms of international maritime law (of treaties and of customary international law) with the new norms that change or affirm previously unknown and untreated concepts, by the traditional international maritime law, thus reflecting the needs, tendencies and interests of different groups of sovereign states. Through 320 articles and 9 annexes that, according to article 318 of the Convention, are considered an integral part of it, a wide range of diverse and delicate problems of international maritime law is regulated. Based on this, coastal states have the right and direct interest to take, as the case may be, the necessary steps that make possible the extension of sovereignty, sovereign rights or national jurisdiction in certain maritime areas.[1]
The issue of the delimitation of maritime borders between Albania and Greece, especially in the Strait of Corfu and the Ionian Sea, is a complex topic that includes historical, legal and political aspects.

[1]Lecture series, "Public International Law" Dr. Dorina Ndreka

The international law of the sea provides a framework for resolving maritime disputes. However, there are ambiguities and misinterpretations that help to maintain tensions between the two countries. Albanian and Greek maritime legislation play an important role in the implementation of the agreement. Legal gaps and gaps in the relevant provisions can contribute to ongoing tensions. The delimitation of the maritime boundaries between Albania and Greece is a complex issue that requires a careful and coordinated approach. The will to resolve disputes and to implement the international law of the sea is essential to ensure stability and peace in the region.

Methodology

The methodology followed in carrying out this paper is a qualitative research methodology, which is based on the analysis of data and information obtained in various literature that are primary for the realization of this paper. This approach allows for a deeper understanding of the issues discussed and helps in identifying challenges and opportunities in the context of international law of the sea and the delimitation of the Albania-Greece maritime boundaries.

The main points for study regarding the international law of the sea, especially in the context of the Albania-Greece maritime delimitation case, include:

- History of Albania-Greece Relations: Analysis of the historical and political relations between the two countries, including previous agreements and disputes that occurred;
- Principles of International Law of the Sea: Study of the United Nations Convention on the Law of the Sea (UNCLOS) and its principles for the delimitation of maritime boundaries;
- Delimitation Points: Identification of disputed points for the delimitation of maritime boundaries, such as islands and territorial waters;
- The Role of International Courts: The importance of decisions of the International Court of Justice and other international institutions in the resolution of maritime disputes;
- International Agreements: The importance of international and regional agreements that may affect the delimitation process;
- Participation of Other Parties: Analysis of the influence of other international and regional actors on the delimitation issue between Albania and Greece.

1. History of Albania-Greece Relations

Over the past decades, the law of the sea has become an essential discipline of the international legal system, in which recent developments of a legal nature have been numerous and of particular importance for the international system. These developments have resulted in fundamental changes regarding the jurisdiction and sovereignty of coastal states over the maritime spaces adjacent to their coasts, in particular over the regime of territorial waters and the exploitation of the natural resources of the seabed and subsoil. Albania possesses a national regime of territorial waters, which is generally based on the norms of international law and consists of a set of mandatory rules and norms that apply to this national maritime space.[2]

The history of Albanian-Greek relations in the context of the law of the sea, especially in relation to the Corfu Channel incident, is complex and includes several important aspects:

[2] Law No. 8771, dated 19.04.2001 “On the State Border of the Republic of Albania”. Law 60/2012 “On Amendment to Law No. 9861, dated 24.01.2008, On the Control and Surveillance of the State Border

During the Second World War, Greece declared a state of war against Albania, creating an atmosphere of tension that characterized the relations between the two countries. This situation led to continuous incidents on the maritime borders, where the Albanian authorities considered a military response to Greek provocations in the Corfu Channel justified.
The Albanian-Greek maritime border is a complex issue that has had a profound impact on relations between the two countries for many centuries. This situation has been shaped by a combination of historical, geographical and political factors.
The coastal region of the Balkan Peninsula has been inhabited by Illyrian populations and Greek colonies, with strong Roman and Byzantine influences. Over the centuries, this region has been at the center of clashes between Albanians, Greeks, and other ethnic groups for control of strategic sea routes.
During the Balkan Wars and after Greece declared independence in 1821, the Albanian-Greek border area became the subject of territorial claims, especially during the Congress of Berlin in 1878.
After World War I, the Albanian-Greek border was sanctioned by the Conference of Ambassadors in 1921, and later defined by an International Boundary Commission in 1925. These agreements established the maritime and land border, but tensions continued.
During the Cold War, Greece pursued an aggressive policy towards Albania, causing numerous incidents on the maritime and land border. These tensions intensified with the expulsion of the Cham Albanians from Greece and Greece's refusal to accept the current borders as final. After the incident, Albania was held responsible for the lack of control and jurisdiction over its territorial waters, where mines were laid by the Yugoslav navy. This situation highlighted the need for better management of maritime security and the improvement of Albanian maritime legislation.
The Corfu Channel incident negatively affected Albanian-British and Albanian-Greek relations, creating a climate of mistrust and tension that lasted for decades. This situation was reflected in subsequent political and diplomatic developments in the region. After the 1990s, Albanian-Greek relations began to improve, however, issues of the law of the sea and maritime borders continue to remain complex and controversial.
In 2009, Albania and Greece signed an agreement on the delimitation of maritime zones, which was criticized by some Albanian intellectuals as an action that favored Greece.
violated Albania's territorial integrity. This agreement was accompanied by claims for the exploitation of natural resources in the Ionian Sea, increasing tensions between the two countries.
Today, maritime and land border issues continue to be complex, with influences from the Greek minority in Albania and the Albanians in Greece. Meanwhile, the search for natural resources in the Ionian Sea remains a source of tension, highlighting the need for a sustainable and mutually acceptable solution.
These aspects show that Albanian-Greek relations are complex and continue to be influenced by the history and politics of the region.

2. Principles of the International Law of the Sea

The principles of the international law of the sea include several key aspects that govern international relations concerning the use of the seas and oceans. Some of these principles are:
Sovereignty over territorial waters: States have the right of sovereignty over their territorial waters, which extend up to 12 nautical miles from the coast. This includes the rights to control the passage of ships and to protect natural resources.

Exclusive Economic Zone (EEZ): States have the right to declare an exclusive economic zone up to 200 nautical miles from the coast, where they have exclusive rights to explore and exploit natural resources.
Freedom of navigation: All states have the right to freedom of navigation in international waters, including the free passage of merchant and military vessels.
Protection of the marine environment: States are obliged to protect the marine environment and prevent pollution of the seas, respecting international agreements for the protection of the environment.[3]
Dispute Resolution: States should resolve their disputes regarding rights and obligations at sea peacefully, using mechanisms such as negotiations, arbitration or international courts.
These principles are regulated in the United Nations Convention on the Law of the Sea (UNCLOS), which is a key document in regulating international relations in the field of the sea. After the entry into force of UNCLOS (1982), where the width of territorial waters of 12 nautical miles was accepted by almost all coastal states of the international system, Albania relied on the legal principles of international law of the sea, by means of a decree of the Presidium of the People's Assembly[4]. In this context, a special importance is reflected in the UN Convention on the Law of the Sea (UNCLOS 1982), which the Assembly of the Republic of Albania ratified in 2003 by adopting Law No. 9055, dated 02.04.2003 "On the accession of the Republic of Albania to the UN Convention on the Law of the Sea". Albania's accession to this Convention obliges it to formulate a new maritime legal regime, which has not been fully implemented due to the non-determination of the adjacent maritime zone, the EEZ and the continental shelf.
The determination of the Exclusive Economic Zone (EEZ) by Albania is a matter of vital importance for national interests, based on the principles of UNCLOS. [5]Albania enjoys sovereign rights over a maritime zone up to 200 miles from the coastline, where it has rights to explore and exploit natural resources, manage waters and protect the environment.
However, Albania currently does not possess a de facto defined EEZ, and negotiations with neighboring states on the division of the EEZ in the Adriatic and Ionian Seas have not started or have failed. This has led to illegal fishing activities and potential conflicts with neighboring countries, such as Greece, which has resulted in violent incidents.
To resolve these issues, it is essential that Albania begins talks with Italy, Greece and Montenegro on the declaration of their respective EEZs, respecting the principles of UNCLOS and the practices of other Mediterranean countries.

3. Delimitation points of the maritime zone Albania-Greece

The delimitation of the maritime spaces between Albania and Greece is an important and complex issue that has a direct impact on the relations between the two countries. This process aims to determine the border lines at sea, based on the principles of international law. The 2009 agreement between Albania and Greece on the delimitation of the maritime spaces was considered a strategic achievement for Greece. However, political changes in 2019, with the return of Democracy to government, brought a new approach to this agreement and unresolved issues between the two countries. Greece has insisted that the issue of maritime delimitation be addressed within the framework of the European agenda, making this issue more complicated for Albania, which is trying to advance in the process of integration into the European Union.

[3] Puto, Public International Law
[4] UN, United Nation Convention on the Law of the Sea
[5] Official Gazette No. 2 Decree of the Presidium of the People's Assembly No. 7366 dated 24.03.1990.

Albania and Greece have decided to turn to an international court to resolve the issue of delimitation. This process requires careful preparation and a joint document to be presented to the court, identifying the common points and differences between the parties. According to the International Court of Justice, the delimitation process includes several steps:
Analysis of the Legal Basis: Presentation of the international and domestic laws of the parties.
Geographical Analysis: Assessment of the terrain and determination of the base points for the construction of the delimitation line.
The delimitation of maritime spaces between Albania and Greece is a complex process that requires a careful and strategic approach. Both countries must work to reach an agreement that respects the rights of each and contributes to the stability of the region.

The Role of International Courts

The role of international courts is essential in resolving legal issues between states and in protecting human rights. They provide a platform for resolving disputes that arise at the international level, ensuring that parties respect international law and reach fair agreements.
International courts, such as the International Court of Justice,[6] provide a mechanism for resolving disputes between states, based on treaties and international law
:By providing a forum for resolving disputes, they help promote peace and stability in different regions, reducing the potential for armed conflict
The case that was considered by the International Court of Justice (ICJ) in the Corfu Channel case involved disputes between Albania and Greece over navigation rights in this strait. The ICJ emphasized that, despite the high tensions between the two countries, no state had the right to completely prohibit the navigation of ships through the strait.
The court noted that Albania had not established rules to restrict the passage of foreign ships, and that the navigation of foreign ships could not be subject to restrictive criteria, such as the requirement for special authorization from the coastal state.[7]
Thus, the role of international courts is important for maintaining global order and stability.
The interstate agreement between Albania and Greece is characterized by a significant lack of implementation of the fundamental principles of UNCLOS (1982) and the case law of the ICJ. The principle of justice and impartiality, as well as the concept of proportionality in the delimitation of maritime borders, were not applied in this agreement, which has been assessed as morally and legally dubious. For these reasons, the Constitutional Court of Albania declared the agreement incompatible with the Constitution, interrupting the ratification procedures by the Parliament. The internal and external political situation has influenced Greece's efforts to force Albania to ratify the agreement, thus continuing the dispute over the delimitation of maritime borders in the Corfu Channel.

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TRANSITION FROM BODY SHAME TO BODY PRIDE: ANALYZING THE IMPACT OF LAW IN COMBATTING BODY SHAMING PRACTICES IN INDIA

Bharti Nair Khan
UPES, Assistant Professor Sr. Scale, School of Law
ORCID: 0000-0003-0994-0616

Abstract
Body shaming in any form is completely unjustified. Negative comments like someone calling an individual too fat, too thin, short, tall, dark, or black are some of the body shaming remarks people should not make. It is indeed true that a set of changing circumstances will transform our bodies, minds, and emotions over time. All people irrespective of gender need to take extra care when formulating comments about other people. Body shaming is a feeling experienced when a person is subjected to thinking that they are considered 'unusual' or not accepted in a crowd comprising of people who mostly look up to preconceived notions of beauty. It comprises a feeling of shame that manifests in one's body when subjected to negative criticism for their physical appearance in relation to what is regarded as an ideal body. The paper highlights the diverse standards on the ground of which beauty is measured. This difference in perception could also depend on the community's observation and retaliation towards body shaming.
The expected outcomes of this paper are: -
1. Accentuating the act of body shaming and highlighting the various rigid standards of beauty based on which an individual is treated.
2. Underscoring the various causes of body shame and spotlight the psychological and physical impact that it has on victims.
3. Underlining the fact that there is no specific and exclusive legislation that defines and penalizes the act of body shaming. Calling attention to certain recommendations to check body shaming.
Keywords: Body shaming, body pride, psychological impact, discrimination, legislation.

LEGAL ASPECTS AND CHALLENGES IN REGULATING STARVATION AS A METHOD OF WARFARE

Assoc. Prof. Dr. Dijana Gracin
Dr. Franjo Tuđman Defense and Security University, Zagreb, Republic of Croatia
ORCID: 0000-0002-6732-2659

Assist. Prof. Dr. Ivica Kinder
Dr. Franjo Tuđman Defense and Security University, Zagreb, Republic of Croatia
ORCID: 0009-0004-7383-6447

Abstract
Proper consideration of the prohibition of starvation is crucial not only for legal doctrine but also for its practical application in international law. In the absence of a universally accepted definition of starvation, the authors aim to conceptualize its impact on civilian populations through a range of widespread practices. Tracing the evolution of starvation as a method of warfare from World War II to the present, they critically examine the scope and substance of contemporary international humanitarian and criminal law. The authors analyze legal norms that directly address starvation, alongside other provisions related to siege, blockade, evacuation, humanitarian aid operations, and the protection of vulnerable populations. This legal analysis is further enriched by the perspectives of legal scholars, jurisprudence from international tribunals, and provisions enshrined in the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Rome Statute of the International Criminal Court (ICC). Based on this, they offer a critical assessment of the current legal framework and suggest potential avenues for its further development. Specifically, the authors propose amending the Rome Statute to introduce a distinction between basic and aggravated forms of the criminal offense related to starvation. Given the increasing use of starvation as a tactic in armed conflicts, the authors stress the urgent need for moral condemnation, consistent legal categorization of such acts, and the prosecution of perpetrators. To strengthen the legal response, they advocate for the systematic use of the term “starvation” in initiating criminal proceedings. They also emphasize the importance of thorough research and documentation to improve evidence collection, particularly regarding the subjective elements of the crime. Ultimately, the authors call for the refinement and expansion of legal mechanisms to ensure more effective prevention, accountability, and the protection of civilian populations from the devastating consequences of this method of warfare.
Keywords: starvation, international humanitarian law, war crimes, ICC, armed conflict

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THE ROLE OF WOMEN IN POLITICAL DECISION-MAKING DURING THE COMMUNIST PERIOD IN ALBANIA

Enkeleida Shyle
University of Tirana, Faculty of Law, Tirana Albania
ORCID: 0009-0008-6332-2310,

Abstract
The communist period in Albania (1944-1991) brought significant changes to the role of women in public and political life by integrating them into decision-making processes at various levels of governance. Within the framework of communist ideology and the policies of the Party of Labour of Albania, gender equality was promoted as a key element of socialist modernization, aiming to increase women's participation in institutional and state affairs. This study examines the evolution of women's representation in politics during this period, focusing on their presence in parliament and government, as well as on some of the most prominent female figures who served as deputies or held executive positions. Through the analysis of archival sources, official documents, and historical literature, this research explores how women were integrated into the political system and the nature of their role in decision-making. This research holds particular significance for Albania's political and social history, as it sheds light on an often-overlooked aspect of the communist period: women's role in governance. Studying women's involvement in political decision-making during communism is essential for understanding the dynamics of gender equality in Albania. Although the number of women in politics increased considerably during this time, their participation remained controlled and constrained by the structure of the communist power system. This period left behind a complex legacy: on the one hand, it created new models of women's participation in public life; on the other hand, it did not establish genuine equality in decision-making. In this context, it is crucial to analyze not only numerical representation but also the nature of this representation by questioning: Was gender equality truly a reality under communism, or merely a propaganda tool of the regime? Analyzing the representation of women in government and parliament during this period helps in understanding the actual dimensions of gender equality policies and assessing their impact on the structure of power and decision-making in Albania. This study aims to illuminate the real role of women in decision-making processes under communism by examining their challenges, limitations, and influence on the country's political life. Alongside an evaluation of efforts toward women's emancipation, this research also raises critical questions about the true nature of gender equality under the communist regime and the legacy it left on women's political representation in the years following the system's collapse.
Keywords: Women, Decision-Making, Communism, Gender Equality, Gender Representation

1. Introduction

In the history of Albania's social and institutional development, the role of women in politics and decision-making has been a significant issue for political systems, particularly during the communist period (1944–1991). The emancipation of women, as promoted by the Albanian Party of Labour following the establishment of the socialist regime, was presented as one of the key pillars of modernization and the construction of a new society. The state undertook a series of reforms aimed at increasing the participation of women in public and institutional life, based on Marxist-Leninist principles, by promoting their involvement in parliament, government, and social organizations.

These political reforms, more symbolic than substantive, aimed to create full equality between men and women by ensuring their representation in state structures and decision-making processes. Nevertheless, during this period, the number of women holding leadership positions in state institutions increased significantly compared to previous eras. In several key institutions, such as the People's Assembly, women were appointed as members of parliament. There were also women who served as members of the Politburo and held ministerial positions—an uncommon phenomenon in other Eastern European countries during the same period.

However, when analyzing the data on women's involvement in active political life, this numerical representation did not always translate into real power or independent influence in decision-making. Women had limited opportunities for independent political action due to the centralized nature of the regime, in which all major decisions were made by a narrow circle of senior Party leaders. Many women advanced through the state hierarchy primarily due to their loyalty to the communist ideology and leadership, rather than as a result of personal initiative or open political competition.

This study aims to analyze the involvement of women in decision-making processes during the communist era, focusing on their numbers in government and parliament, the most prominent female figures who served as MPs, and the true nature of the power they exercised. Through an analytical approach to historical documents and existing literature, the research seeks to shed light on the challenges and limitations that accompanied women's political participation at the time, and to assess the impact of this experience on women's political representation following the fall of the communist regime.

2. Research Objective

This study aims to analyze the role of women in decision-making during the communist period in Albania (1944–1991), with a particular focus on their representation in state and political institutions. The primary objective is to assess whether, and to what extent, the increased participation of women in government and parliament during this period translated into real influence in policymaking, or whether it was predominantly a formal representation driven by the ideological strategies of the Party of Labour.

2.1 Significance of the Research

This research holds particular significance for the political and social history of Albania, as it sheds light on an often overlooked aspect of the communist period: the role of women in decision-making. Analyzing the representation of women in government and parliament during this era contributes to a better understanding of the actual dimensions of gender equality policies and allows for an assessment of the impact these policies had on the structure of power and decision-making in Albania. To what extent, and in what capacity, did the inclusion of women in politics during the communist period in Albania influence decision-making, taking into consideration their numbers in government and parliament, as well as their actual impact on the decision-making process?

3. Methodology

To carry out this research, two primary methods have been employed: the historical method and the qualitative method. The historical method involved the analysis of historical sources and official documents reflecting the policies of the communist regime regarding the inclusion of women in state institutions. This includes the study of archival materials, legislation, and speeches by political leaders of the time, as well as statistical data on the representation of women in parliament and government.

The qualitative method focused on the analysis of the biographies of key female figures who served as members of parliament and government ministers during the regime. This study assessed the careers of prominent women, examining their influence on decision-making and their involvement in the political developments of the period. This methodological approach has enabled a comprehensive overview of women's roles in communist politics and their impact on decision-making processes.

4. The Historical, Political, and Social Landscape of Women's Participation in National Life

During the communist period, Marxist-Leninist ideology presented gender equality as a fundamental principle for the development of a socialist society. The communist regime—and later, the Albanian socialist state—sought to promote women's participation in political and social life by enabling them to serve in leadership positions within the administration and various sectors. However, in practice, although women were encouraged to engage in public life, they often lacked the authority to make fully impactful decisions, especially at the political level. This contradiction between ideological principles and the reality of practical policies is a crucial aspect that helps explain the limitations of women's roles in decision-making during the communist era. Furthermore, this contradiction is central to understanding women's political involvement, as the regime frequently used female figures in leadership positions to support the image of progress and gender equality, while their actual role in core policymaking remained limited. Despite being encouraged to serve in high-ranking positions, women were often supervised by male leaders and lacked the autonomy to make independent decisions that could influence the direction of the country.

Another key factor that must be emphasized is the influence of the patriarchal structure of Albanian society during the communist period. Despite the regime’s efforts to promote gender equality, Albanian society remained heavily based on a patriarchal model. Although women were encouraged to participate in the workforce and social activities, they faced numerous barriers. Traditional norms and customs often constrained women to conventional familial and social roles. This social influence was a significant factor that restricted women's real opportunities to make important decisions at the state and political levels. The patriarchal structure of Albanian society prevented many women from gaining influence in foreign policy, decision-making, and key sectors of the administration. This phenomenon indicates that although the regime mobilized efforts to increase women's involvement in leadership roles, in reality, they were still forced to operate within a society deeply shaped by patriarchy.

The inclusion of women in leadership positions within the state administration and the Party was one of the main elements that contributed to the advancement of women's rights during the communist period. However, it is important to highlight that women's involvement in foreign policy and high-level leadership roles was limited. Women who held such positions often lacked the ability to exercise their authority, and their participation in the formation of foreign policies was restricted. In most cases, women serving in senior leadership roles were expected to implement policies determined by other party and state leaders and did not have the opportunity to act as significant players in the development of international relations. This element is essential to understanding the limitations of women's political power, even when they occupied leadership positions.

Another important area was women’s involvement in social and educational activities. The communist regime encouraged women's participation in initiatives aimed at raising the educational and social status of Albanian women by enabling them to attend courses, training programs, and cultural activities.

However, these activities were often designed to reinforce the regime's image and were not directly linked to opportunities for real influence on state policies or decision-making within high-level institutions. Although the regime facilitated women's engagement in these initiatives, they were often limited to fields considered "appropriate" for women's roles and had little influence over key sectors of state administration, such as foreign policy or the implementation of major reforms.

Another crucial aspect is the role of women in the organizational and party structures of the Communist Party. The Albanian communist regime encouraged women's participation in party activities and mass organizations such as trade unions and the Women's Union, which aimed to promote socialist ideology and mobilize the population. Women were present in these structures and often served as leaders of various groups, contributing to the mobilization of women and the support of the regime. However, as was often the case with other positions, women's actual influence within these structures remained limited. While they were active in organizational and educational activities, they frequently lacked the authority to make important decisions at the highest levels of the Party. This limitation is yet another factor that provides deeper insight into the role of women in Albanian society during the communist period.

5. Representation and role of women in representative and political bodies during the communist regime.

During the period 1945-1990, Albania was a socialist country governed by a single party and the system of government was classified as a dictatorship of the proletariat. The legal status of women improved in some aspects, during the two periods of the adoption of the Constitutions during the communist and socialist periods. Initially, it should be noted that in the beginnings of the Albanian state, women did not have the right to vote or be elected. Albania signed the Convention on the Rights of Women in 1921, but recognized the right to vote and run for high political positions only in 1945.

In the law on the "Election of Deputies" dated December 5, 1920, there is no mention of women's right to vote, and in fact, in article 6, it is emphasized: "All men who are 20 years of age and older, whether they pay a fine or not, have the right to vote in any electoral office for a second election". Meanwhile, a few years later in the law "On the Election of the Members of the Constituent Assembly", approved by the Parliament on October 5, 1923, in article 8, it is emphasized that "The first voter is every male Albanian citizen who is registered in the voter lists and who has reached the age of 18 years".

In the Fundamental Statute of the Albanian Kingdom, it is emphasized: "All citizens enjoy equal political and civil rights, and are admitted to all civil and military offices, except for exceptions specified by law[1]." For the first time in Albania, the right to vote for women was recognized in 1945, and later it was sanctioned at the constitutional level in the Statute of the People's Republic of Albania of 1946, in the chapter "Rights and Duties of Citizens". Article 14 emphasizes: "All citizens, regardless of sex, nationality, race, religion, cultural level or residence and who have reached the age of 18, have the right to elect and be elected to all organs of state power", while in article 17 it is emphasized that "Women are equal to men in every area of private, political and social life[2]".

[1] https://shtetiweb.org/wp-content/uploads/2012/10/Statuti-i-Mbretnis-Shqiptare.pdf

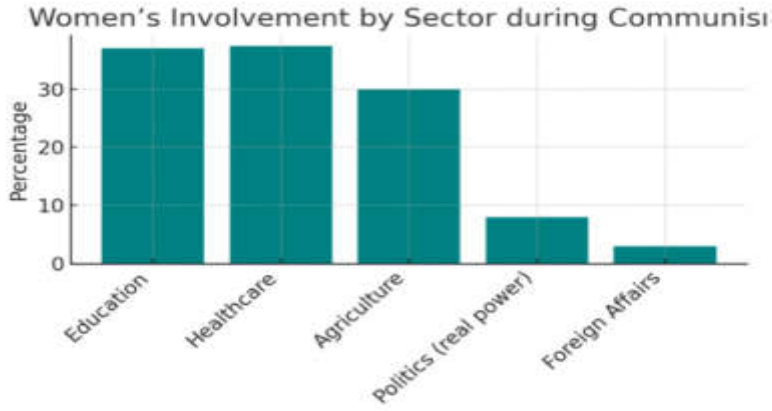
[2]https://data.globalcit.eu/NationalDB/docs/ALB%20Constitution%20of%20the%20People's%20Republic%201946_ ORIGINAL%20LANGUAGE.pdf See more, to understand the ideology of the functioning of PPSH 1966-1970, dokumentin:https://www.marxists.org/shqip/subjekt/dokumenteshqiptare /ppsh/dokumentet_kryesore /05/vellimi5.1.pdf

This constitutional principle was also legally materialized in the electoral law No. 783, dated 20.I.1950 in the chapter "General Provisions" article 5, and further, where for the first time it is added that "Women have the right to elect and be elected to the People's Assembly equally with men". After the approval of this law, for the first time female deputies were elected to the People's Assembly, in its first Legislature, 1945-1950. Out of a total of 82 deputies, 6 of them were women: Eleni Terezi, Liri Belishova, Liri Gega, Naxhije Dume, Nexhmije Hoxha, Ollga Plumbi at a percentage of 6%.

Women played an important role in public and political life, as communist ideology promoted gender equality as one of its fundamental principles. However, this equality was often more theoretical than practical, and women's real participation in decision-making remained limited.

During the communist period, women had a wide involvement in various areas of society, such as education, health, industry, and agriculture. It is believed that during the period 1945-1990 women had more rights, including the right to vote, the right to education and employment equal to men, allowing women to study and work in "traditionally male fields" such as engineering, medicine and agriculture. While the communist regime gave women greater space compared to previous periods, their representation in decision-making was still limited and more symbolic. Their political role was often more a reflection of state ideology than a true sign of gender equality, as can be seen from the data in the figure below[3].

Figure 2: Women's Involvement by Sector during Communism



Meanwhile, gender relations in the People's Assembly also reflect the communist regime's efforts to present the country as one of the most progressive countries in terms of gender equality policies.

[3] Statistical Yearbook, 1961, page 49.

Table No. 1: Number of deputies of the People's Assembly for the years 1945; 1950; 1954; 1958, 1962.[4]

ELECTION DATE	NO.DEPUTIES TOTAL	NO.FEMALE DEPUTIES	% OF WOMEN
02.12.1945	82	6	7.3
28.05.1950	121	17	14
30.05.1954	134	15	11.2
01.06.1958	188	17	9
03.06.1962	214	25	11.7

As can be seen, from a chronological point of view in the comparability of the figures, in the above time series, the representation of women in the legislative branch shows fluctuations. Although from legislature to legislature the numbers of women deputies are seen to increase, until the last legislature this figure did not exceed 12%.

It seems that the percentage of women's representation was almost fictitious in terms of the weight that women had in communist society. In reality, men also had the same weight of votes since the vote in the communist system had no meaning. Although on the one hand communism empowered women as equal to men, as part of the proletariat and necessary in the "class struggle", at the same time this approach confirms the theory of Marx and Engels, which denies the existence of any class other than the proletariat and the bourgeoisie, which was the greatest enemy of women in the long term, as this approach denies any existence of women as a social group with their own specific problems and concerns[5].

However, efforts to respect women's rights in the public sphere were not accompanied with the same intensity in the private sphere[6]. Thus, the communist era in Albania simply erased the existence of Woman as a category and denied the possibility of any feminist politics in itself. The years of the communist regime in Albania (1946-1991) absolutely did not destroy deeply rooted patriarchal attitudes, including those related to the Kanun of Lekë Dukagjini[7], which are enforced in some areas of the country. In fact, men and women in some areas of Albania still refer to the Kanun to explain attitudes and opinions on gender roles and patriarchal authority, including the right of a man to "punish" his wife, who is considered his property. An article of the Kanun quotes "When a man beats his wife, he does not make a mistake.[8]" Despite legal regulations, there are no complete studies of today's standards[9]. The table below presents some data on reports to the People's Assembly, by district.

[4] Statistical Yearbook, 1961, page 49.
[5] Marx K. dhe Engels.F., The Communist Manifesto, 1848, faqe 14-27.
[6]USAID, Report on the assessment of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Albania. December 2005. Page 1.
[7] "Mjaft" Organization & Amnesty International, "Enough Violence Against Women", Tirana, 2006, page 6. SAID, Report on the evaluation of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Albania. December 2005. Page 1.
[8] The Canon of Lek Dukagjini, published by Gjonlekaj Publ. Co, June 1989, article 43, chapter XII.
[9] Doctorate-Erisa-Xhixho-Faculty-of-Law-Department-of-Public-Law.pdf, page 9.

Table No. 2: Number of deputies by districts for the years 1945; 1950; 1954; 1958 and 1962[10].

Women Deputies by Region – 1962

Region	Total Deputies	% Women
Tirana	16	37.5%
Gramsh	3	33.3%
Lushnje	8	25%
Shkodër	17	11.5%
Korçë	19	10.5%

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As can be seen from the table, there was no woman among the deputies of the country's districts. This indicates the lack of a clear vision from the regime for increasing the representation of women in this important institution of the country's government. The representation of women marked higher quotas in the large cities and southern areas of the country. Therefore, Albanian politics achieved visible results, comparing it with the reality before 1945, with the inclusion of women in production in the few enterprises, factories, and plants that were opened. Only their participation in agriculture was significantly achieved, influenced by the collective spirit of work and the need for labor force to ensure the production rate. The regime had a significant impact on the emancipation of women. This had to do with the lack of economic dependence of women on men, an aspect that in the poor Albanian reality was significantly noticeable, both in the economic and cultural direction. It is enough to quote parts of the Kanun of Lekë Dukagjini, the law of the time in the areas of the Northern Highlands: “A man has the right: a) to advise and reprimand his wife; b) to beat and tie his wife, when she comes to despise the word of command.[11]

1. 5. Representation and role of women in representative and political bodies during the socialist regime

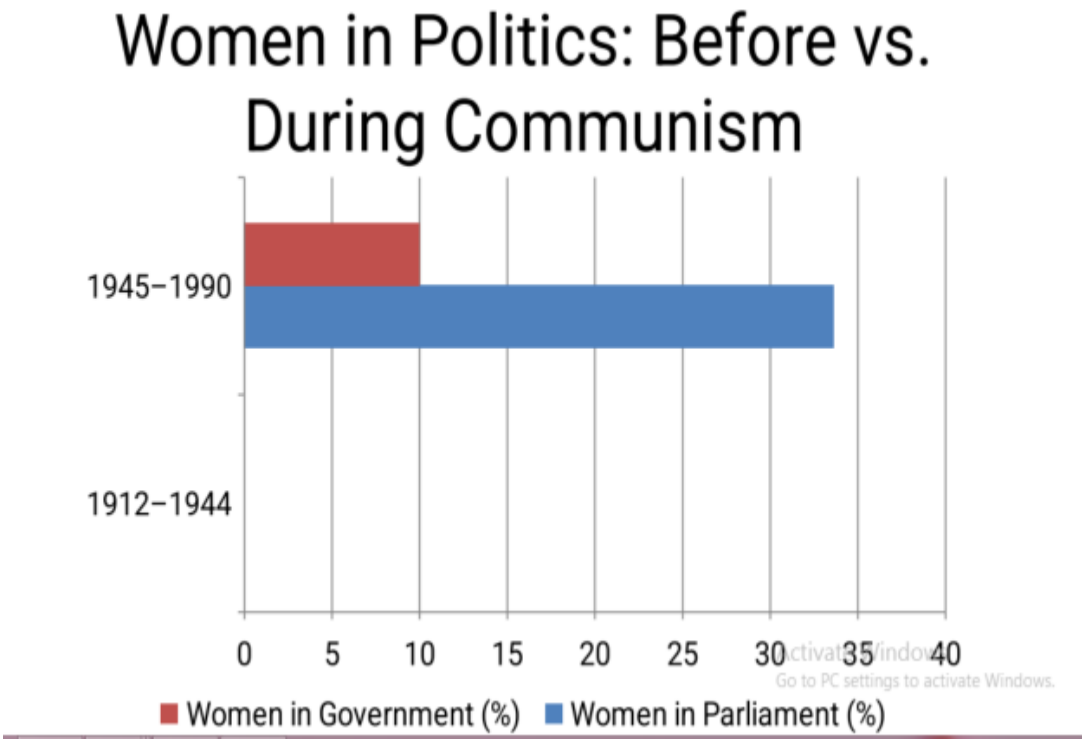
In the Constitution of the People's Socialist Republic of Albania (1976), Article 41 states that: "Women, freed from political oppression and economic exploitation, as a great force of the revolution, actively participate in the socialist construction of the country and in the defense of the homeland", and "Women enjoy equal rights with men in work, remuneration, rest, social security, education, all socio-political activity and in the family.[12]" These socialist slogans were concretized in more visible participation of women in parliamentary life.

The statistical yearbooks of the communist era listed the composition of the assembly by gender, by age group and by educational level. Regarding gender, the communist era can ironically be considered a golden period for women’s participation in politics, however, this participation was simply a lie for both women and men.

[10] Right there.
[11] Kanuni i Lekë Dukagjinit, 1933:21.
[12]https://data.globalcit.eu/NationalDB/docs/ALB%20Kushtetuta%20e%20Republikes%20Socialiste%20Popullore%2 0e%20Shqiperise%201976.pdf

Although Albanians voted during the communist era, through compulsory voting they simply certified the candidate selected by the Party of Labor.
In the first elections after World War II, Albania had 82 deputies of whom 6 or 7.3% were women. The percentage of women increased continuously, reaching a peak in 1974, while violence and massive human rights violations also multiplied during this period. However, statistically, Albania had 83 female deputies elected in the elections of October 6, 1974 out of a total of 250 deputies. With 33.6% of the parliament composed of women, Albania would likely have held first place in the world for women's participation in politics at that time. This massive participation of women in politics at that time does not serve as an indicator of the country's achievements in democracy.

Figure no. 1: Number of deputies in the People's Assembly[13]



The presence of women in Parliament increased progressively until the 1974-1978 legislature, where out of 250 deputies in Parliament, 88 of them or 35 percent were women. Some women were also members of the Politburo of those years, and were appointed ministers for more than one mandate. The longest-serving female minister in Parliament before 1990 was Themie Thomai, Minister of Agriculture in the years 1976-1989. Tefta Cami, another well-known political figure of the communist system, served for 11 years at the head of the Ministry of Education, in the years 1976-1987. Vito Kapo held the post of Minister of Light Industry for 8 years from 1982 to 1990. In the most recent legislature, before the overthrow of the communist system, in the years 1987-1991, 75 women entered Parliament[14].

[13] https://www.instat.gov.al/media/6230/vjetari-statistikor-i-shqiperise-1991_.pdf
[14] Women in politics: http://top-channel. 23/04/2013

Based on these indicators, the Western press was often not far behind, publishing data that were oriented towards supporting the wings of European leftist politics, echoing the achievements of the socialist system in Albania in terms of the country and the role of Albanian women in the country's social and political life.[15]

In the political methodology of dealing with the problem, in the previous system, within propaganda and reality, the phenomenon of quantitative engagement functioned, which also offered qualitative benefits in the representation of Albanian women and girls in all areas of social activity, up to the highest instances of the state pyramid. An activity that brought the results of representation from the bottom up, but which was controlled and made efficient from above.

Between 1945 and 1990, the one-party system contributed to the numerical improvement of women's representation in decision-making within the party, but essentially, the system, being non-competitive, cared about image and propaganda, not about horizontal social, economic, political and cultural representation. It is worth noting that the women with the highest positions in the party and state were Nexhmije Hoxha, Fiqiret Shehu and Vito Kapo, respectively the wives of the three main leaders of the communist state, Enver Hoxha, Mehmet Shehu and Hysni Kapo. Musine Kokalari[16] was the first woman to lead a party, the Social Democratic Party, from 1944 to 1946. She remains an inspiring symbol of women in politics, a different name, an extraordinary politician and personality. Her end was tragic, like all anti-communist political dissidents. But Musine was not the only woman to have representation in political life. Here are some of the women who served as MPs during this period[17]. Eleni Terezi one of the first women elected to the Albanian parliament in 1945. Liri Belishova: Elected as a deputy in the first legislature of the Albanian parliament in 1945. Liri Gega one of the first women elected to the Albanian parliament in 1945. Naxhije Dume: Elected as a deputy in the first legislature of the Albanian parliament in 1945. Nexhmije Hoxha one of the first women elected to the Albanian parliament in 1945. Ollga Plumbi: Elected as a deputy in the first legislature of the Albanian parliament in 1945. Themie Thomai: Served as Minister of Agriculture in 1976–1989 and was a deputy for several legislatures. Vito Kapo: Elected as a member of parliament in 1950, she served in this role until 1991. Lenka Çuko: Served as Minister of Light and Food Industry from 1987 to 1991.

In December 1990, more than 57 female students and teachers signed the creation of the first political opposition, – the highest act of women's representation in decision-making and political influence. In 1991, political life began, with all new parties dominated by men.

[15] Newspaper "La Stampa", 1981:4 "After the visit of the 3 French deputies to Albania in 1981, the publication of their opinion in the newspaper "Le Mond", would be followed by the Italian newspaper "La Stampa", which would write among other things: "Albanian women, emancipated, thanks to the socialist revolution, are equal to men in all aspects, now exercise a leading role". Before the liberation, the life of a woman was still regulated by the backward customs of the 15th century, which left the father in charge of selling his daughter, and the man he was going to marry had the right to kill the "unfaithful" wife. Today, a woman can carry, like every Albanian citizen, a personal weapon of her own, to participate in the defense of the country. However, if we take a look at how many women and girls spend the evening in the cities and villages, the foreign visitor remains impressed by the low level of women who prefer to stay with men. Few, even couples, few are the lovers embraced: perhaps the citizens of this virtuous and puritanical country want to avoid pretending to play with feelings that are not political.

[16] https://www.youtube.com/watch?v=k86-6yQgi5

[17] https://kuvendiwebfiles.blob.core.windows.net/webfiles/LigjvenesitNeVite.pdf

6. Historical participation of women in political decision-making

Comparing three periods of historical changes in Albania in the 20th century, brings an interesting reflection of the role of women in the socio-political life of Albania.

1. In the first governing group of Albania, from 1912 by the first Prime Minister, Ismail Qemal Bey Vlora, until the beginning of the political leadership of Ahmet Zogu, in the 13 Albanian governments that have led the country, not a single woman's name appears.
2. In the period of the government of Albania by Ahmet Zogu, after the three Congresses of Lushnja and then the government cabinets after his proclamation as King of the Albanians, [a total of 18 such], not a single woman with ministerial duties and other state duties appears.
3. During the period of the fascist occupation of Albania, in the 9 government cabinets that led the life of the country, not a single woman's name appears with ministerial duties. The Albanian governments of this period were under the control and authority of the High Command of the Italian and German fascist armies.

The leadership of the Albanian state under the authority of the communist political system began with the government that emerged from the Berat conference on October 23, 1944, which led Albania to its next term on March 21, 1946. The first government under the authority of the Albanian People's Liberation Army began on March 22, 1946, and lasted until October 1, 1948. In 1954, the first term of Mehmet Shehu's government began, followed by 7 consecutive terms, until December 18, 1981. Then, the executive leadership of Albania would be followed by the Adil Çarçani government, which lasted three terms until its overthrow and the opening of the possibilities of political pluralism in Albania[18]. In this century-long history, we highlight the first case of an Albanian woman being appointed to a high ministerial position in the state.

In the governance of Albania during the communist system, a female minister was appointed to the government cabinets for the first time in 1946, with the position of Minister of Education, Naxhije Dume.

In the years 1933-1941, she graduated from the “Nana Mbretereshë” Women's Institute. In 1943, she participated in the First Conference of the P. K. Sh. of the country and, when she was only 23 years old, was elected one of the 15 members of the P. K. Sh. Central Committee. A year later, she was elected a delegate of the Korça district to the Përmet Congress, from where she returned as a member of the Antifascist Council. Together with Kristo Themelko, she organized the 22nd Assault Brigade. Naxhija was one of the women who participated in the meeting for the creation of the first Albanian Government, in Berat. With the transfer of the new Government to Tirana, she was appointed to the apparatus of the K. Q of the P. P. SH and later First Secretary of the Party Committee for Tirana, where she remained until 1947. In December 1946, she was elected a deputy in the People's Assembly. While on February 6, 1948, Naxhija Dume was appointed Minister of Education[19].

7. Conclusions and recommendations

In conclusion, this study demonstrates that although communism created new spaces for women's participation in politics, these opportunities were constrained by the prevailing ideology and the power structures of the time.

The analysis of this period provides valuable insights into the challenges and progress of women's roles in Albanian politics, offering a clearer perspective on the future of gender representation in decision-making.

[18] https://wikipedia.org, 1991
[19] Harka, Sejdo. 2015: http://www.tiranaobserver.

Women's representation was higher in certain sectors

Women had greater representation in fields such as education, healthcare, and social organizations, while their involvement in critical areas like foreign policy and national security was minimal. This reflects a division of roles based on traditional gender perceptions, despite the thetoric of equality.

The impact of the patriarchal structure

Despite the regime's promotion of women's participation in public and political life, patriarchal norms remained deeply rooted. Women continued to face numerous societal limitations, and their involvement in politics did not necessarily lead to substantial changes in their social status.

The legacy of the communist period in post-1990 politics

Following the fall of communism, the number of women in politics initially declined, indicating that their inclusion under the regime was not the result of deep-rooted emancipation, but rather a party-controlled policy. Nevertheless, the experience of women's participation in state structures left an important legacy for their engagement in public life in later periods.

Women's representation was largely symbolic

Although the communist regime promoted women's participation in politics and administration, their representation was often more a tool of propaganda than a true reflection of gender equality. Statistics show an increase in the number of women in parliament and state institutions, but their role in decision-making remained limited.

Women did not hold real decision-making power

Despite the considerable percentage of women serving as deputies and some holding ministerial positions, significant decision-making remained concentrated in the hands of male leaders of the Party of Labour. Women in politics lacked full autonomy and largely operated within frameworks set by the party's male leadership.

Recommendations

Women's representation in politics should be not only quantitative but also qualitative

The experience of the communist period shows that an increase in the number of women in politics does not automatically guarantee real participation in decision-making. Therefore, today's gender equality policies should focus not only on numerical representation but also on ensuring meaningful opportunities for women to engage in policymaking and governance.

Enhancing political education for women

Whereas during communism women's involvement in politics was directed by the party, today there is a need for initiatives that encourage women to participate independently in decision-making. This can be achieved through educational programs, leadership training, and the strengthening of women's political networks.

Preserving the positive legacy without repeating a failed model

Despite the limitations of the communist system, certain elements—such as encouraging women's participation in various sectors—can serve as a foundation for modern policies. However, the model in which women were involved merely as part of state propaganda should be avoided.

The role of political parties in improving women's representation

In communism, women's inclusion was a top-down decision controlled by the party. Today, political parties must adopt a new approach by implementing clear mechanisms that promote women into leadership roles and by actively supporting them throughout their political careers.

Empowering women beyond politics – a comprehensive approach

While under communism women's representation was state-organized, current policies should aim to empower women across all levels of society, including business, academia, and civil society. Effective political representation is the result of a society where women are actively engaged and empowered in multiple sectors.

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WEB: www.iksadkongre.com/law
E-MAIL: hukukkongresi@gmail.com

FORENSIC SCIENCE IN INTERNATIONAL LAW: UTILIZING FORENSIC EVIDENCE TO ENSURE HUMAN RIGHTS ACCOUNTABILITY

Satish Kumar Singh
Department of Law, Central University of Punjab

ABSTRACT

By offering unbiased, scientifically supported evidence that is essential for the investigation and punishment of human rights violators, forensic science plays a critical role in promoting human rights accountability within international law. Forensic evidence has grown essential in criminal justice and human rights advocacy as atrocities like torture, genocide, and war crimes are increasingly covered by international legal frameworks. Methods like ballistics, forensic anthropology, and DNA analysis have been used to identify victims, connect criminals to crimes, and support witness statements in court. Legal or political barriers may impede access to conventional types of evidence, but these techniques facilitate the administration of justice. Beyond criminal courts, forensic evidence is used in human rights matters to support truth commissions, restitution procedures, and the recording of violations for future legal and historical use. As a result, forensic science not only aids in the resolution of specific cases but also assists larger worldwide initiatives to preserve human dignity, provide victim's families closure, and establish accountability. Notwithstanding its increasing significance, there are still issues, such as the necessity for qualified and expert personnel in international organisations, the possibility of scientific evidence being misused, and the limitations of forensic capabilities in war zones. However, forensic science's incorporation into international law is still developing, highlighting its critical role in guaranteeing that those responsible for violations of human rights are held accountable and that everyone has access to justice. To improve the international rule of law, this multidisciplinary approach emphasises the continuous need for innovation and cooperation within the legal, humanitarian, and scientific domains.

Keywords: Forensic Science, Human Rights Accountability, International Law, Forensic Evidence, Humanitarian Justice.

CURRENT TRENDS IN SCIENTIFIC RESEARCH ON COUNTERING ILLEGAL SEIZURE OF VEHICLES COMMITTED BY YOUNG PEOPLE

Denis Chekin
«National Scientific Center «Hon. Prof. M.S. Bokarius Forensic Science Institute»
ORCID: 0000-0002-9893-1588

ABSTRACT

Illicit seizure of vehicles remains one of the most hazardous criminal offenses and is a serious problem that negatively affects public safety, the country's economic state, and results in significant material losses for owners and legal entities. In the context of aggressive actions by the Russian Federation, this problem has become even more pressing, as it has also led to an increase in the activity of criminally-minded young individuals in committing illicit seizure of vehicles. Young individuals increasingly use modern technologies and conspiracy methods during the preparation or commission of this type of crime, which complicates their prevention, detection, and detention by operational units.

The problematic issues of countering operational units' illicit seizure of vehicles were the subject of research in various fields of legal sciences. S.O. Pavlenko rightly expressed the scientific position that a thorough analysis of the scientific achievements of domestic and foreign scholars from different historical periods is the main condition for any scientific research. Such an analysis will provide an opportunity to identify the most significant of them, which became the theoretical basis for the research subject, on the one hand, and to focus on the problematic aspects that remained outside the scope of the predecessors' research, in the context of socio-economic, political, normative-legal, criminogenic, and other factors - on the other hand.(Pavlenko S.O., 2018).

In his research, S.E. Petrov examined the problematic issues of detecting and disclosing illicit seizure of vehicles, the peculiarities of using sources of operational information to establish individuals involved in the theft of vehicles, and the problems of their legalization. Based on the results of the research and their generalization, he came to the conclusion that employees of operational units, based on operational-search information, should establish and verify the involvement in the legalization of individuals who: 1) systematically commit theft of vehicles, as well as forge necessary documents for vehicles; 2) hide stolen vehicles in rented garages (hangars) for further sale or legalization; 3) systematically replace the numbers of vehicle components and aggregates, reprogram the software of modern vehicles; 4) sell legalized vehicles on the automotive market, in car showrooms, on the Internet; 5) engage in the dismantling of vehicles or accept and hand over their parts for scrap metal; 6) transport vehicles from abroad on order; 7) were previously involved in the commission of illicit seizure of vehicles, forgery of documents for vehicles, etc.; 8) employees of notary offices who, in violation of the law, issue general powers of attorney for the disposal of vehicles. **(**Drozd V.Yu. Chaplinsky K.O., 2018, Petrov S.E.,2010)**.**

The scientist D.B. Strelecheko, who defined the actions for the preparation of unlawful seizure of vehicles, determined that in some cases, during the commission of robbery attacks on drivers, information about the vehicle, the nature of its cargo, and the route of passage may be transmitted to members of an organized crime group (Strelecheko D.V.,2008) among whom may be young individuals.

The results of V.V. Emelyanenko's dissertation research include the improvement of the scientific position, according to which the violent seizure of someone else's vehicle should be considered completed not from the moment of application of violence, but from the moment when the perpetrator committed the unlawful seizure of the vehicle (Emelyanov V.V.. 2009) and gained control over it.

In his research, Yu.F. Ivanov carried out an in-depth analysis of the causes and conditions that determine the commission of the crimes under study and attempted to develop theoretical and practical proposals for the prevention of criminal encroachments on property, the object of which is vehicles, in market conditions, (Drozd V.Yu. Chaplinsky K.O. 2018 .Ivaniv Yu.F.1999) which can be applied during the implementation of preventive measures to prevent the preparation and commission of crimes of illicit seizure of vehicles by young individuals.

In the study of crime among young people and its prevention, N.V. Yanitskaya highlighted a range of issues related to the problems of countering group mercenary-violent crime among young people. She argued that crime is becoming increasingly organized in Ukraine. She noted changes in the criminological characteristics and structure of criminal groups and reasonably argued that the most common crimes with a mercenary-violent orientation are robbery, extortion, murder with mercenary motives. The scientist separately highlighted that such crimes were committed by two age groups of criminals: 14-17 and 18-28 years old. At the same time, she noted that group mercenary-violent crime among young people is characterized by a high level of corporatism, the presence of leaders who plan the group's activities, a strict internal group hierarchy, a clear division of roles and functions among group members, and the conspiracy of criminal activity.(Yanitska N.V.2000).

It is also necessary to support Professor S.F. Denysov, who, researching the issues of prevention among young people's crime, as an object of criminological research, substantiated the allocation of such crime as an independent object of criminological research. The author notes that there is a scientific and practical need to identify youth crime as a specific object of attention of specialists. The main task of such preventive activity should be the creation of a database of criminological information about the crime of young people (in particular, the determinants of criminal behavior, the consequences of committing crimes, etc.). On this basis, all interested parties should develop, substantiate, and implement the main measures for the prevention of crime with different categories of young people. Preventive measures should be introduced taking into account the specific category, namely the criminally active part of young people aged 18-29 years.(Denysov S.F.2010). However, according to our scientific position, following paragraph 17 of Article 1 of the Law of Ukraine On the Basic Principles of Youth Policy, (Law of Ukraine On the Basic Principles of Youth Policy.2025) young people are individuals aged 14 to 35 who are citizens of Ukraine, foreigners, and stateless persons who are in Ukraine on legal grounds. Therefore, it would be necessary to define the criminally active part of young people not from 18 to 29 years old, as S.F. Denysov believes, but from 14 to 35 years old. As statistical data show, the illicit seizure of vehicles is much less frequently committed by minors from 14 to 18 years old (14.2% of the total number of individuals who committed such crimes), and at the age of 18 to 35 years old, which accounts for an average of 72.3% of the number of individuals we studied who committed such a crime.

The results of our research show that young people are increasingly involved in the preparation and commission of crimes related to the illicit seizure of vehicles, which requires active actions and positive results from the state and law enforcement agencies.

Our results of modern trends in scientific research on countering the illicit seizure of vehicles committed by young people shows that the previously mentioned topic has not been studied.

Based on the results of the research, we identified promising areas for further scientific developments in the field of countering the illicit seizure of vehicles committed by young people, namely: 1) the development of new and improvement of existing methods of countering operational units regarding the illicit seizure of vehicles; 2) the development and implementation of an effective system for the prevention and prevention of the illicit seizure of vehicles among young people; 3) the improvement of existing legislative and regulatory acts, as well as departmental orders of the National Police of Ukraine, which regulate the issues of countering the illicit seizure of vehicles.

OPEN ACCESS BY DESIGN – UNIVERSITY BRANDING AND STRATEGIC POSITIONING THROUGH LEGAL, TECHNOLOGICAL AND INTELLECTUAL ECOSYSTEMS

Assoc. Prof. Dr. Marlena Jankowska
Director of the Center for Design, Fashion and Advertisement Law at the University of Silesia in Katowice
ORCID: 0000-0001-5425-9593

Assoc. Prof. Dr. Mirosław Pawełczyk
Director of the Research Center for Public Competition Law and Sectoral Regulations at the University of Silesia in Katowice
ORCID: 0000-0003-1344-8026

Prof. Dr. José Geraldo Romanello Bueno
Mackenzie Presbyterian University in São Paulo, Brazil; Member of the Center for Design, Fashion and Advertisement Law at the University of Silesia in Katowice
ORCID:0000-0002-1715-081X

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Abstract
Open Access (OA) has emerged as a pivotal strategy for universities seeking to enhance their global visibility, prestige, and societal impact. This paper develops an **"Open Access by Design"** framework that integrates legal policies, technological infrastructures, and intellectual cultures to embed OA into the institutional brand. Through a synthesis of theoretical foundations and empirical evidence, we examine how OA can be leveraged as a strategic asset across the university value chain. Two case studies—UCLA's eScholarship repository and Europe's OpenAIRE/EOSC infrastructure—illustrate the practical outcomes of OA by Design. Recommendations outline governance structures, technological investments, and cultural incentives necessary to operationalize this paradigm.
Keywords: Open Access, university branding, repository infrastructure, intellectual ecosystem, legal framework, OA mandate, strategic positioning

1. Introduction

Universities today operate in an increasingly competitive global environment, where visibility, reputation, and societal engagement directly influence student recruitment, research partnerships, and funding opportunities (Suber, 2012). Open Access (OA)—the free, immediate, online availability of research outputs—offers a powerful mechanism to amplify scholarly reach and institutional brand (Piwowar et al., 2018). Rather than treating OA as a compliance checkbox, the Open Access by Design approach proposes embedding OA holistically into university policy, infrastructure, and culture to generate sustained strategic advantage.

2. Open Access by Design as Economic, Cultural, Social and Symbolic Capital

The **Open Access by Design** framework reconceives institutional OA efforts as strategically valuable, positioning them as unique, non-replicable resources (Barney, 1991). Grounded in the resource-based view of the firm, this framework treats OA capabilities—encompassing legal mandates, technological infrastructures, and intellectual cultures—as resources that yield sustained competitive advantage (Barney, 1991). Simultaneously, signaling theory demonstrates how a proactive OA stance communicates institutional commitment to transparency, social responsibility, and innovation—attributes that resonate with funders, collaborators, and prospective students (Spence, 1973). Central to this framework is the integration of Pierre Bourdieu's forms of capital—economic, cultural, social, and symbolic—into OA strategy: economic capital is realized through cost-efficiencies in library budgets and transformative agreements (e.g., UCLA's 2022 read-and-publish deal with Wiley, yielding a 20 percent cost saving over five years), cultural capital accrues via faculty recognition and prestige from widely cited OA publications, social capital is built through global scholarly networks fostered by open data sharing, and symbolic capital emerges from enhanced institutional reputation in rankings such as the Times Higher Education OA Impact Rankings (Bourdieu, 1986). By deliberately aligning legal mandates, technological infrastructures, and intellectual incentives under a unified design, institutions signal their commitment to transparency, innovation, and public good—attributes that reinforce brand identity and distinguish them in a crowded higher-education marketplace (Spence, 1973; Suber, 2012).

2.1.The University Value Chain and Open Access Integration

Universities create value along a multi-stage chain comprising research production, dissemination, collaboration, and impact assessment. Within the research production phase, OA by Design embeds deposit requirements into grant workflows so that manuscripts arising from funded projects flow automatically into institutional repositories upon acceptance (UNESCO, 2021). During dissemination, institutions employ both Gold OA publishing agreements and Green OA self-archiving workflows—often enabled by SWORD-compatible deposit tools—to remove paywalls and maximize global reach (Gargouri et al., 2010). In the collaboration phase, openly available publications and data accelerate interdisciplinary and public-sector partnerships, as exemplified by universities that have shared climate-model datasets to inform municipal policy development (Tennant et al., 2016). Finally, impact assessment leverages advanced analytics—combining repository download statistics, citation indices, and altmetrics—to generate actionable insights for strategic planning and external branding (Arroyo-Machado & Torres-Salinas, 2023).

2.2. Pillar 1: Legal Ecosystem

The legal ecosystem provides the policy architecture and licensing instruments essential to OA by Design. Landmark declarations—the Budapest Open Access Initiative (2002), the Bethesda Statement (2003), and the Berlin Declaration (2003)—established normative principles calling for the removal of financial, legal, and technical barriers to scholarly outputs (Budapest Open Access Initiative, 2002; Berlin Declaration, 2003). Subsequently, major funders such as the National Institutes of Health and the Wellcome Trust mandated repository deposit and CC BY licensing, respectively, to ensure public access to funded research (NIH, 2008; Wellcome Trust, 2013). More recently, Plan S has advanced these norms by requiring immediate OA publication under CC BY or equivalent licenses for cOAlition S–funded work, coupled with transformative agreements to realign subscription budgets (cOAlition S, 2018).

At the institutional level, rights retention strategies—implemented via standardized author addenda and deposit statements—empower faculty to retain the non-exclusive rights needed for repository archiving, thereby harmonizing researcher autonomy with institutional and funder requirements (Moore, 2023).

2.3. Pillar 2: Technological Ecosystem

The technological ecosystem encompasses the platforms, protocols, and security frameworks that enable seamless deposit, discoverability, and preservation of OA content. Modern repositories built on software such as DSpace and EPrints, often deployed in cloud infrastructures, provide auto-scaling capacity to accommodate deposit surges—whether during thesis submission deadlines or responses to emergencies like the COVID-19 pandemic (Scholze, 2017). Metadata interoperability relies on persistent identifiers (DOIs, ORCID iDs), the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH), and standardized schemas (Dublin Core), which together support automated indexing by global services such as Google Scholar and OpenDOAR (Piwowar et al., 2018). Security and compliance with standards such as ISO 27001 and GDPR ensure stakeholder trust, while extension APIs enable real-time analytics dashboards that aggregate download counts, citation metrics, and altmetrics data for strategic decision-making.

2.4. Pillar 3: Intellectual Ecosystem

The intellectual ecosystem cultivates the values, incentives, and competencies that drive OA adoption. Embedding OA contributions into promotion and tenure guidelines signals to faculty that repository deposits, open peer review, and data sharing are recognized scholarly activities (Odell, Coates & Palmer, 2016). Comprehensive training programs—ranging from workshops on Creative Commons licensing to data management planning sessions—enhance researcher capacity, while seed grants for covering Article Processing Charges (APCs) reduce financial barriers and demonstrate institutional commitment. The formation of peer-advocate networks and departmental OA champions further sustains momentum, creating a community of practice that embodies OA principles.

2.5. Integrative Strategic Framework

Operationalizing OA by Design requires cross-functional governance structures, such as an Open Access Steering Committee that includes library leadership, legal counsel, IT specialists, research officers, and faculty representatives. This committee adopts a Plan-Do-Check-Act cycle, convening quarterly to review compliance metrics, technology performance indicators, and cultural adoption benchmarks.

In the **Plan** phase, the committee reviews emerging funder requirements (for example, new cOAlition S guidelines or changes to national open-science mandates), consults with campus stakeholders to update policy drafts, and identifies resource needs—such as additional repository capacity or author-support staffing. During the **Do** phase, subgroups execute approved initiatives: the Legal Working Group rolls out updated author addenda; the IT Team deploys new API integrations for ORCID and DOI minting; the Outreach Subcommittee organizes training workshops and departmental "OA Champions" appointments. In **Check**, the committee analyzes a suite of performance indicators—including deposit compliance rates, average time from acceptance to repository availability, system uptime statistics, and participation in training sessions—to assess progress against targets. Finally, the **Act** phase focuses on refining strategies: adjusting resource allocations to address bottlenecks (e.g., funding additional metadata librarians), revising policies to incorporate faculty feedback, and planning next-quarter goals.

Through the use of a Balanced Scorecard approach, the committee aligns OA objectives with institutional strategic priorities—ensuring that resource allocations and policy updates remain responsive to evolving external mandates and internal goals.

3. Branding Strategies Through Open Access

Open Access (OA) enables universities to craft compelling brand narratives by providing authentic, high-value content that illustrates institutional impact. Drawing upon Keller's (2013) brand equity model, institutions can leverage OA case studies to enhance brand salience and meaning. For example, a university might develop a multimedia profile of research on water purification whose openly published findings informed municipal infrastructure upgrades; by embedding short video interviews with researchers alongside interactive data visualizations, the institution showcases both scholarly excellence and societal relevance, thereby strengthening emotional resonance and perceived quality among prospective students and external partners (Piwowar et al., 2018; Santos-Hermosa, 2023).

Interactive digital assets further extend reach and reinforce brand differentiation. Universities can deploy web portals that map global download heatmaps—illustrating geographic engagement with OA outputs—and network graphs that visualize cross-disciplinary collaborations and citation trajectories over time. Such tools not only underscore the breadth and depth of institutional research but also invite users to explore content dynamically, fostering a sense of discovery and innovation (Arroyo-Machado & Torres-Salinas, 2023). By integrating these portals into central communications channels—homepage banners, alumni newsletters, and partner dashboards—institutions communicate a unified message of openness and thought leadership, aligning with strategic positioning objectives in the competitive higher-education marketplace.

Social media campaigns anchored in high-visibility events—such as International Open Access Week—amplify these narratives. Utilizing platforms with rich media support (e.g., Twitter threads with infographics, LinkedIn SlideShares of white papers, Instagram Stories featuring researcher "takeovers"), universities can drive engagement beyond academic circles, reaching policymakers, industry stakeholders, and the public (Tennant et al., 2016). Hosting keynote symposia and publishing accompanying white papers on topics such as "Open Data for Climate Resilience" or "Equitable Knowledge Sharing in the Digital Age" further positions the institution as a convener of critical discourse, elevating its reputation as a thought leader in open scholarship. Collectively, these tactics—grounded in evidence from repository analytics and external mentions—cultivate sustained stakeholder engagement, fortify brand differentiation, and reinforce the university's strategic positioning as an innovator committed to transparent, impactful research.

3.1. Measuring Impact

Robust impact assessment integrates quantitative repository analytics—such as total downloads, unique visitors, and geographic distribution—with citation studies that quantify the citation advantage of OA-archived articles (Piwowar et al., 2018). Altmetric data illuminate social media resonance and policy citations, while partnership metrics track the number and value of collaborative grants and industry contracts engendered by OA outputs. By synthesizing these metrics into executive dashboards and annual OA Impact Reports, institutions can demonstrate tangible return on investment and inform ongoing strategic refinements.

Contemporary universities embed Key Performance Indicators (KPIs) within their Open Access (OA) strategies to transform repository operations into strategic assets. For instance, the University of West London's Library Service Standards explicitly track the percentage of eligible research outputs deposited in its institutional repository, aiming for 100 percent compliance by 2028 (University of West London Libraries, 2023). This clear, time-bound target drives both operational focus and executive accountability, ensuring that library staff and academic departments prioritize repository deposits as an institutional performance metric. At a global scale, Robinson-García, Costas, and van Leeuwen (2020) developed a suite of OA indicators—encompassing the proportion of a university's total publications made openly available and disciplinary variations in uptake—across 963 institutions. Their analysis revealed significant regional disparities and highlighted the utility of cross-institutional benchmarking in identifying best practices and galvanizing underperforming campuses to adopt more effective OA workflows.

In the United Kingdom, Jisc's Open Research Compliance Service offers interactive dashboards and benchmarking reports that aggregate multiple OA KPIs—including deposit rates, average embargo lengths, coverage of transformative agreements, and Article Processing Charge (APC) expenditures—which enable institutions to compare their performance against sector peers and to make data-driven decisions about resource allocation (Jisc, 2025). By synthesizing repository analytics (total deposits, unique visitors, geographic distribution), compliance measures (percentage of mandated outputs deposited within policy timelines), usage indicators (download and view counts), citation-advantage studies, and Altmetric scores into annual OA Impact Reports, universities can demonstrate measurable returns on their investments in repository infrastructure and staffing. Establishing incremental targets—such as raising deposit compliance from 70 percent to 95 percent over a two-year period—and reviewing these KPIs through quarterly governance cycles ensures that OA objectives remain aligned with broader strategic priorities, from enhancing research visibility to showcasing institutional commitments to transparency and innovation.

3.2. Case Studies: UCLA, OpenAIRE, EOSC

A diverse range of universities have adopted OA by Design to enhance their brand and strategic positioning. One notable example is the University of California system, which in 2013 implemented a system-wide OA mandate requiring deposit of peer-reviewed manuscripts within three months of publication; this policy, supported by a standardized repository-deposit workflow and rights retention addendum, achieved near-universal compliance and drove a sustained increase in global downloads and citations (University of California Libraries, 2025). Another illustrative case is Europe's federated OpenAIRE and the European Open Science Cloud (EOSC), which aggregate metadata and data from thousands of repositories and Horizon Europe projects, creating a pan-European OA infrastructure that reinforces the EU's research branding and facilitates cross-border collaboration (European Commission, 2022; OpenAIRE, 2025).

4. Recommendations and Next Steps

To translate the Open Access by Design framework into sustained institutional practice, universities must undertake a coordinated series of governance, policy, technological, and cultural initiatives. First, institutions should formalize cross-pillar governance by constituting an Open Access Steering Committee endowed with a clear charter, membership criteria, decision-making authority, and reporting lines to senior leadership (Deming, 1986).

This committee's terms of reference should delineate roles for library leadership, legal counsel, IT specialists, research officers, and faculty representatives; establish quarterly meeting schedules; and mandate biannual reports to the Provost or equivalent executive office to ensure visibility and accountability (Kaplan & Norton, 1992).

Second, a comprehensive policy review must be conducted within the first academic year to harmonize institutional mandates with funder requirements and best practices. This review should incorporate rights retention addenda—such as SPARC-approved author addenda—to secure non-exclusive repository rights, and should standardize the use of Creative Commons Attribution (CC BY 4.0) licenses for all new OA outputs, in alignment with Plan S principles (cOAlition S, 2018; Moore, 2023). Stakeholder consultation—through faculty workshops and governance forums—will be essential to refine embargo provisions, waiver mechanisms, and disciplinary nuances.

Third, institutions must upgrade their technological infrastructure to support scalable, interoperable workflows. Repositories should migrate to cloud-native, API-driven platforms (e.g., DSpace 7 or EPrints with microservices architecture), integrate ORCID authentication to automate author attribution, and adopt SWORD federated deposit protocols to streamline batch ingest and metadata synchronization (Piwowar et al., 2018). Metadata pipelines should employ interoperable schemas (Dublin Core, DataCite) and persistent identifiers (DOIs, ORCID iDs) to enable real-time analytics and discovery across internal dashboards and external aggregators (Suber, 2012).

Fourth, cultural interventions are required to embed OA values across the academic community. Mandatory OA training modules—covering topics such as open licensing, data management planning, and repository submission processes—should be integrated into new faculty orientation and graduate-student curricula. The creation of a departmental OA Champions program, with small stipends and recognition for advocates who mentor peers and liaise with the library, will foster grassroots engagement (Odell, Coates, and Palmer, 2016). Moreover, incorporating OA metrics—including deposit compliance rates and download analytics—into annual faculty performance reviews and promotion criteria will signal institutional commitment and drive behavioral change.

Finally, the Steering Committee should adopt quarterly Plan–Do–Check–Act (PDCA) cycles to maintain agility (Deming, 1986). During each Plan phase, the committee will review emerging mandates and resource requirements; in Do, execute approved policy, technical, and outreach initiatives; in Check, analyze a balanced scorecard of KPIs (e.g., deposit rates, system uptime, training participation); and in Act, refine strategies, reallocate resources, and set next-quarter objectives (Kaplan & Norton, 1992). Publication of an annual OA Impact Report, featuring executive dashboards and case vignettes, will sustain external branding momentum and reinforce the university's strategic positioning.

5. Conclusion

The Open Access by Design paradigm elevates OA from a reactive compliance exercise to a proactive strategic differentiator that enhances institutional branding, fosters innovation, and amplifies scholarly impact. By weaving together robust governance structures, harmonized legal frameworks, next-generation technological infrastructures, and a culture of open scholarship, universities can demonstrate measurable returns on OA investments and solidify their distinctive identity in the global higher-education landscape. In doing so, they not only fulfill their mission of disseminating knowledge for the public good but also reinforce their competitive standing as leaders in transparent, impactful research.

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ULUSLARARASI HUKUK UYGULAMALARI KONGRESİ 28-29 Nisan 2025 tarihleri arasında Konya / Türkiye'de 12 farklı ülkenin (Türkiye-19, Diğer Ülkelerden-32) akademisyen/araştırmacılarının katılımıyla gerçekleşmiştir. Kongre 16 Ocak 2020 Akademik Teşvik Ödeneği Yönetmeliğine getirilen "Tebliğlerin sunulduğu yurt içinde veya yurt dışındaki etkinliğin uluslararası olarak nitelendirilebilmesi için Türkiye dışında en az beş farklı ülkeden sözlü tebliğ sunan konuşmacının katılım sağlaması ve tebliğlerin yarıdan fazlasının Türkiye dışından katılımcılar tarafından sunulması esastır." değişikliğine uygun düzenlenmiştir.

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Saygılarımla.

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President of IKSAD Institute

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Telefon : 3322410045 Faks : 3322410105
e-Posta:hukuk@selcuk.edu.tr Web:www.selcuk.edu.tr
Kep Adresi : selcukuniversitesi@hs01.kep.tr

Bilgi için : Zehra KIRAN
Ünvanı : Bilgisayar İşletmeni
Tel No : 03322233239