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CONTENTS

THE SEARCH FOR UNIVERSAL ORDER FROM LOGOS TO THE CONSTITUTION IN STOIC PHILOSOPHY*

Stoa Felsefesinde Logos'tan Anayasaya Uzanan Evrensel Düzen Arayışı

Özer ASLAN**

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Abstract

This article examines the Stoic understanding of cosmopolitanism within the context of legal and constitutional thought, evaluating the impact of the Stoic doctrine of natural law on modern human rights and the global constitutional order. The primary objective of this study is to demonstrate how the central Stoic concepts of *logos*, living in accordance with nature, and *cosmopolis* establish a nexus between individual liberty and universal law. Methodologically, the study employs a combination of philosophical interpretation, conceptual analysis, and historical-systematic comparison. The research concludes that Stoic thought, by predicating the individual's participation in the universal order on reason and virtue, constitutes the moral foundation of modern human rights and constitutional legitimacy. Through the balance it strikes between inner freedom and social justice, Stoic philosophy offers an ethical perspective to the contemporary understanding of global constitutionalism. Thus, this study reinterprets Stoic cosmopolitanism not merely as a historical philosophical legacy, but as a normative paradigm directly related to the ethical foundations of global constitutionalism.

Keywords: Stoic philosophy, cosmopolitanism, natural law, constitutionalism

Özet

Bu makale, Stoa felsefesinin kozmopolitizm anlayışını hukuk ve anayasal düşünce bağlamında incelemekte; Stoacı doğal yasa öğretisinin modern insan hakları ve

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küresel anayasal düzen üzerindeki etkilerini değerlendirmektedir. Çalışmanın temel amacı, Stoacılığın merkezinde yer alan *logos*, *doğaya uygun yaşam* ve *kozmopolis* kavramlarının, bireysel özgürlük ile evrensel hukuk arasındaki bağı nasıl kurduğunu ortaya koymaktır. Yöntem olarak felsefi yorum, kavramsal çözümleme ve tarihsel-sistematik karşılaştırma teknikleri birlikte kullanılmıştır. Araştırma sonucunda Stoacı düşüncenin, bireyin akıl ve erdem aracılığıyla evrensel düzene katılımını esas alarak modern insan haklarının ve anayasal meşruiyetin ahlaki temelini oluşturduğu tespit edilmiştir. Stoa felsefesi, içsel özgürlükle toplumsal adalet arasında kurduğu denge sayesinde, günümüz küresel anayasalılık anlayışına etik bir perspektif sunmaktadır. Böylece çalışma, Stoacı kozmopolitizmi yalnızca tarihsel bir felsefi miras değil, küresel anayasacılığın etik temelleriyle doğrudan ilişkili normatif bir paradigma olarak yeniden yorumlamaktadır.

Anahtar Kelimeler: Stoa felsefesi, kozmopolitizm, doğal hukuk, anayasacılık

INTRODUCTION

Emerging amidst the political and moral crises of the ancient world, Stoic philosophy introduced the idea that not only individual happiness but also the common destiny of humanity must be comprehended within an order aligned with reason and nature. Initiated by Zeno, this doctrine posits the *logos*—universal reason residing within the human essence—as the foundation, thereby positioning the individual as an integral component of the holistic order of nature and humanity. For Stoic thought, the human being is not merely a thinking entity but a being capable of realizing inner freedom and social harmony through the capacity for moral choice. In this respect, Stoicism constructed a metaphysics of individual salvation, universal harmony, and justice; it integrated ethics, politics, and law into a singular rational conception of the universe.

With the collapse of the *polis* order in the Hellenistic period, the individual shifted focus from a local civic identity to seeking the universal meaning of being "human." This quest evolved within the Stoic school into a concept of cosmopolitanism, wherein the understanding of a moral universe was reflected onto politics and law. For the Stoics, all human beings are stakeholders in Divine reason; consequently, the fundamental bond uniting them is not blood, class, or geography, but shared intellect. In this context, the *cosmopolis* is a moral community defined by the universality of reason, where every individual is subject to the same universal law. Thus, Stoic philosophy is not only a metaphysical doctrine but also the first theoretical expression of universal law and civic consciousness.

This thought was carried over into political philosophy and legal theory during the Roman period by thinkers such as Cicero and Seneca, forming the foundations of the natural law doctrine. The law defined by Cicero as "right reason in agreement with nature" is the legal expression of Stoic cosmopolitanism.

This law, which is immutable, eternal, and valid for all people, represents the political form of the moral bond established between humans and Divine nature. Consequently, natural law becomes a universal criterion of legitimacy standing above positive laws. The universalist character of Roman law can be described as the institutionalized form of this Stoic legacy.

Stoicism's doctrine of "universal law based on reason" provided the philosophical ground for the recognition of innate human rights through Enlightenment philosophy and constitutional movements. The idea that every human being is of equal value by virtue of "natural reason" regained concreteness through constitutional principles of human dignity, equality, and liberty. Thus, Stoic thought has persisted as a reference point teaching that human rights must be grounded in principles of universal justice and morality.

The relationship between Stoic cosmopolitanism and constitutional thought is also noteworthy for contemporary debates on global constitutionalism. Indeed, today's human rights regimes, international courts, and global legal orders that transcend nation-state borders are contemporary projections of the universal legal community envisioned by the Stoics. The idea of *cosmopolis* has become not just a moral ideal, but the normative ground for constitutional legitimacy and global governance. From this perspective, Stoic philosophy, with its moral integrity stemming from the principle of living in accordance with nature, offers a philosophical bridge to the constitutionalist understanding of a universal rule of law.

Stoic wisdom counsels that the individual, while reaching freedom under the guidance of reason by purifying themselves of passions, must also place this freedom at the foundation of social justice. To the extent that a human establishes their own inner order, they become compatible with the order of the universe. This harmony manifests on the constitutional plane as the rule of law and the universality of human rights. Therefore, Stoic philosophy functions as a historical bridge between individual ethics and public law, integrating human dignity as both an inner virtue and a social principle.

Today, debates on the "global constitutional order" gain new meaning through the reinterpretation of Stoic cosmopolitanism. This is because the *logos* at the center of Stoic thought is simultaneously a constitutional consciousness that enables humans to regulate their actions around the axes of justice, virtue, and equality. Consequently, Stoicism represents a historical and intellectual continuity between individual liberty and social order, moral law and positive law, and the ideal of humanity and constitutional legitimacy.

1. The Philosophical Foundations of Living in Accordance with Nature: The Moral Cosmos of Stoicism

The Stoic School was born as a product of the crisis environment emerging in Greek social life. However, after its establishment, it developed and was adopted by people living in different regions, evolving over time[1]. This current of thought, discussed by many authors, has been influential in fields such as politics, law, and state administration[2]. The highly influential Stoic School was founded in the 3rd century B.C. upon the ruins of the *poleis*, and its influence was reflected in Roman thinkers and Medieval philosophers[3]. Stoic philosophy, which reached its peak influence during the Roman period, was one of the most effective philosophical schools of the Hellenistic era[4].

Zeno, accepted as the founder of Stoicism, lived between 347–275 BC[5]. Because he delivered his lectures in a gallery adorned with paintings, this philosophical movement was initially called "Zenonian," but in later periods took the name "Stoic School"[6].

Becoming one of the influential schools of thought of the Hellenistic period, the Stoa aimed to present a philosophy of life capable of leading humans to happiness. According to Zeno, happiness does not depend on external conditions or the accidents of fate; what is essential is the attitude the individual develops in the face of these conditions[7]. With the destruction of the Greek *polis* order by the Macedonian Empire, a significant problem awaiting a solution emerged. The Epicurean and Stoic schools found the answer to how the individual would adapt to this new situation. These schools suggested that people should seek and find their freedom and purpose within themselves[8].

The concept of morality holds an important place in Stoic philosophy, and despite its eclectic structure developing throughout history, the phenomenon of morality constitutes the most consistent part of Stoic thought[9]. Stoic morality should be evaluated as a response to the unique political and social problems of the Hellenistic period. This philosophical approach came to the fore again during the collapse of Scholastic thought and the early phases of the Renaissance and Enlightenment. Thus, it is seen that Stoicism has persisted as a constantly accessible resource despite different eras and conditions. The interest in Stoicism

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1 Adnan Güriz, *Hukuk Felsefesi* (15th edn, Siyasal Kitabevi 2020) 162.

2 Niyazi Öktem, 'Stoisizm' (1974) 40(1–4) *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 589, 618.

3 Ayferi Göze, *Siyasi Düşünceler ve Yönetimler* (Beta Yayınları 1989) 56

4 Esad M. Bahadır, 'Zenon'dan Cicero'ya Doğal Yasa Anlayışı' (2021) 21(2) *Abant Sosyal Bilimler Dergisi* 41, 42.

5 St. George Stock, *Stoacılık* (tr M. Molacı, Fol Kitap 2021) (first published 1908) 17.

6 Göze (n 3) 57.

7 İbrahim Çapak, 'Stoa Felsefesi ve İslam Düşüncesine Etkisi' (2015) 1(2) *Yakın Doğu Üniversitesi İslam Tetkikleri Merkezi Dergisi* 219, 220.

8 Göze (n 3) 59.

9 Esad M. Bahadır, *Hukuk Felsefesi Açısından Stoa Okulunda Özgürlük Anlayışı* (MA thesis, İstanbul Sabahattin Zaim Üniversitesi 2021) National Thesis Center (Thesis No 698726) 28.

is an indication that this school's thoughts on morality possess the potential to illuminate the understanding of contemporary problems[10].

One of the primary factors influencing Zeno in founding the Stoic School was his attendance at the lectures of the Cynics, who came from the Socratic tradition, and his deep influence by their thoughts. In Cynic thought, being virtuous is the most important value for a human being. Virtue is the source of happiness; wisdom makes the individual virtuous; and the human must live a free life in harmony with nature. The fact that Zeno was influenced by these ideas contributed directly to shaping the basic structure of Stoic thought[11]. Zeno finds the answer to the question "How does a human live happily?" in a virtuous life. His understanding of life, a reflection of the Socratic tradition, was shaped by the lessons Zeno took from Crates, a student of Socrates[12].

The Stoics argued that humans could reach knowledge and truth with certainty, differing from skeptics in this respect. According to them, *eudaimonia*—that is, the state of good spirit or virtuous happiness—can be obtained by the maturation of the human rational faculty, or *logos*. This reason is seen as a reflection of the Divine Logos in the human soul. When reason functions perfectly, humans do not err in their judgments, distinguishing between right and wrong. Therefore, for the Stoics, the main goal was to organize the human "ruling principle" in accordance with nature and reason (*Logos*). In this way, the person lives in complete harmony with nature and reaches true happiness defined by the principle of "living in accordance with nature," namely *eudaimonia*[13]

An important point often overlooked by modern commentators on ancient philosophy is that these thought systems were quests for liberation and salvation. *Eudaimonia*, translated as "happiness," actually carries a much more comprehensive meaning; it is derived from the combination of the words "eu" (good) and "daimōn" (spirit, divine power). This concept expresses the idea of living in harmony with the "good spirit" within oneself [14].

Stoicism, which contributed important principles to humanity, is a humanist philosophy of life that contributed to the intellectual development of humanity with its structure including the understanding of natural law. The human conception adopted by Stoicism, which struggles for the happiness of humanity, constitutes

10 Melike Molacı, 'Erken Dönem Stoa Düşüncesinde Erdem' (2021) 54 *Felsefe Arkivi* 1, 26.

11 Meryem Yıldırım and Emel Koç, 'Son Dönem Stoacılıkta Etik Düşüncenin Psikolojiye Yansımaları' (2024) 38(2) *Erciyes Akademi* 480, 482.

12 Funda Çoban, 'Stoacı Felsefe ve Modernite Arasında Düşünsel Bağlar' (2020) 2(2) *İzmir Sosyal Bilimler Dergisi* 98, 100.

13 Valdez J, 'Stoic Philosophy: Its Origins and Influence' (2014) 2(4) *Journal of Social Philosophy Research* 56, 61.

14 Valdez (n 13) 61.

one of the foundations of the universal human rights doctrine shaped in the modern period[15]. Stoicism, which centers on the human and places morality at the essence of the human, is intellectually a significant philosophical movement regarding human rights.

The term *Logos*, which cannot be fully translated into any language and is accepted as one of the fundamental concepts of philosophy, was used by the ancient philosopher Heraclitus[16]. The Stoics adopted the concept of *logos*, meaning "reason" and "thinking" in Ancient Greek, to express the soul of the universe. In this understanding, belonging to the *logos* means being a part of the whole of reason[17].

Logos, used in the sense of universal reason, is accepted as the source of the universe, the human, nature, and creation. The understanding of "conformity with nature," one of the basic principles of Stoicism, can essentially be evaluated as "conformity with *logos*"[18]. According to the Stoics, individuals become equal as they act in accordance with reason, and the fundamental difference between people stems not from social, political, or economic factors, but from the difference between those who act in accordance with reason and those who do not[19].

The human is a being who cares for the existence of others alongside their own existence and turns towards them[20]. Therefore, an individual leading a life in accordance with reason is in harmony with both their inner world and the universe. The element establishing a universal bond among all humans is reason; the wise person who lives a life compatible with reason is accepted as a friend of all people[21].

Every human who can distinguish between good and bad thanks to their reason counts as free to the extent that they use this faculty consciously and act wisely. Conversely, a person who does not employ their reason and does not recognize the nature around them drifts in ignorance, and they alone are responsible for the evils they tend towards. According to Stoic thought, such evils stem from behaviors contrary to God's nature, and thus to the principle of living in accordance with nature[22].

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15 Ömer Çaha, *Siyasi Düşüncelere Giriş* (2nd edn, Dem Yayınları 2010) 35-37; Öktem (n 2) 619-620.

16 Kadir Çüçen, *İnsan Hakları* (MKM Yayıncılık 2011) 330.

17 Çoban (n 12) 101.

18 Bahadır (n 9) 25-29.

19 Gonca Kuru, *Ayrımcılık Yasağının Felsefi Açıdan Temellendirilmesi* (PhD thesis, İstanbul Üniversitesi 2021) National Thesis Center (Thesis No 663139) 27.

20 Arslan Topakkaya, 'Stoa Etiğinin Temel Kavramları' (2009) 49 *Felsefe Dünyası* 56, 64.

21 Göze (n 3) 57.

22 Kürşat Haldun Akalın, 'Stoa Felsefesinde Tanrının Doğası ve İnsanın Uyumu' (2015) 30 *Kocaeli Üniversitesi Sosyal Bilimler Dergisi* 91, 109.

The Stoics argued that the criteria for goodness, happiness, and virtue are common to all societies and states in line with universal principles[23]. According to them, the door to virtue is open to everyone regardless of whether one is free, a slave, a king, or an exile, and the only condition for being virtuous is being human[24].

According to the Stoics, the fundamental aim people should pursue is happiness, and what they should avoid is unhappiness. The essential determining factor underlying these two states is virtue or vice. Virtue is a value that must be preferred directly for itself, not for any external motive. Virtue is, in a general sense, the completeness and perfection of a thing. Therefore, in Stoic doctrine, virtue is an absolute value, and one cannot be virtuous by degrees; an individual is either virtuous or not[25].

According to the Stoic School, virtue does not belong to the monopoly of a privileged minority. Even the simplest and most uneducated individual who does not deviate from the path of reason can reach wisdom and virtue. The founder of the school determined the four criteria of virtue as choice, patient endurance, moderation, and justice[26]. Cicero emphasized that the human consists of body and soul, and that the soul carries superior qualities to the body. According to him, the maturity of the soul is more valuable, and thus justice, which has a social aspect, should be seen as a superior virtue[27].

In Stoic thought, the basic criterion of morality is the principle of "conformity with nature." Therefore, if a human wants to lead a happy life, they must act in accordance with nature. The most distinctive quality of the wise person adopted by Stoic morality is the state of *apatheia* (impassiveness). A human can reach true happiness when they become insensitive to all kinds of emotions such as pleasure and pain. *Apatheia* constitutes the ideal of Stoic morality and prevents the emergence of evil[28].

Apatheia ensures that the individual acts in line with reason and virtue by avoiding excessive emotional reactions to external events. This state is identified with peace and spiritual tranquility and is seen as a prerequisite for leading a

23 Mehmet Akad and Bihterin Dinçkol Vural, *Genel Kamu Hukuku* (6th edn, Der Yayınları 2011) 43-44.

24 Stock (n 5) 85-86.

25 M. Ahmet Tüzen, 'Stoa Felsefesinde Ahlaki Bir Model Olarak Doğa' (2022) 18 *Erciyes Üniversitesi Felsefe Bölümü Dergisi* 114, 124.

26 Göze (n 3) 58.

27 Bahadır (n 4) 50.

28 Yasemin Özkent, 'Changing Lanes Filmiyle Stoa Felsefesini Yeniden Düşünmek: "Apatheia" Durumuna Ulaşmak' (2020) 26(45) *Atatürk Üniversitesi Güzel Sanatlar Enstitüsü Dergisi* 476,477-478.

correct, moral life and making healthy decisions. Furthermore, *apatheia* is a virtue that allows the individual to take control of their life and consent to their fate. This situation also means gaining emotional maturity and personal autonomy. However, there is an important distinction here: *Apatheia* does not express purification from all emotions, but only the absence of irrational or excessive passions[29].

Passion, fear, and violence emerge because the soul cannot sufficiently perceive external data, and passion derails the soul. Therefore, for a human to recognize true good, they must purify themselves of passion and banal pleasures. Since the soul's inability to sufficiently perceive external data can render the conclusions reached and judgments made erroneous. On the other hand, with the full reception of external data and understanding nature in accordance with its essence, it is probable that dispassionate judgments containing morality, justice, and law will emerge[30].

All moral principles of Stoicism aim for the human's harmony with the universal order alongside individual virtue and happiness. Because according to the Stoics, humans are social beings by nature, and reason is the common principle uniting them with other people and the entire universe. This perspective necessitates that the individual observe the common good of all humanity alongside their own inner tranquility. Thus, in Stoic thought, morality transforms into a universal ethical order by transcending individual boundaries. In this system where human reason is identical with the law of nature, every human is a part of the same universal reason. Therefore, it can be stated that Stoicism formed the foundations of the ideas of cosmopolitanism and natural law that would develop in subsequent centuries.

2. The Moral Constitution of the Cosmopolis: Natural Law and Universal Citizenship

In Stoic thought, the goal of individual liberty carries both a personal concern and a social dimension. Because an individual must first attain their own inner freedom to guide others. Therefore, Stoicism can be evaluated as a philosophical approach aiming for social transformation alongside individual transformation[31].

The concept of *cosmopolis*, which holds a central position in Stoic philosophy, contains both social and political meanings. The fact that cities like Athens and Rome, where Stoic thought emerged, were in intense interaction with different cultures contributed to the development of the principle of universality. Indeed,

29 Yıldırım and Koç (n 11) 485.

30 Öktem (n 2) 600-601.

31 Murat Özdemir, 'Geç Stoa Döneminde "Etik" Sorununu Foucault Gözüyle Okumak' (2021) 31 *FLSF Felsefe ve Sosyal Bilimler Dergisi* 393, 407.

the fact that many early period Stoics came from outside these geographies supports this situation[32].

Stoic thought, which influenced many Roman thinkers such as Cicero, Seneca, and Marcus Aurelius and almost all jurists during the Republic and Imperial periods, possessed an essentially cosmopolitan character. This understanding constituted one of the most fundamental intellectual influences directing legal education in Rome[33].

Because the human possesses reason and the capacity to make moral choices—and for Stoics, reason is essentially the power of moral preference—they possess infinite value. Therefore, regardless of distinctions such as male or female, slave or free, king or peasant, everyone possesses moral value to the same extent, and the dignity of reason deserves respect wherever it is found. The Stoics argue that it is precisely this common reason that connects people to one another, making them citizens of the same community[34].

According to Seneca, reason maintains its existence through its immutability and always preserves its consistency in the decisions it makes. Because reason is not under the command of the senses, but an authority ruling over them. Just as a straight line is the same as another straight line, one reason is equal to another. For this reason, virtue is also equivalent to its like. Virtue is, by its essence, right reason itself. All virtues are different appearances of reason, and when reasons are correct, they become equal to one another. Just as reason is one and the same, actions are in harmony with it; therefore, all actions are essentially equal. In every case, "what is best" does not change, because all these actions are essentially of an honorable quality. Likewise, all good people are equal to one another to the extent that they are good[35].

According to Marcus Aurelius, since reason is common to us all, the cause that makes us rational beings is also common. From this commonality, it follows that the reason determining what we should or should not do is also common. If reason is common, then the law is also common, and in this case, it means we are all members of the same citizenship. Therefore, we share the administration of public affairs together. Then the universe is like a city, for no other order

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32 Alper Işık, 'Stoa Düşüncesinde Doğal Hukuk ile Kozmopolis Kavramları ve Yansımaları' (2025) 10(1) *İstanbul Medeniyet Üniversitesi Hukuk Fakültesi Dergisi* 151, 164.

33 Rafael Domingo, 'Roman Law and Global Constitutionalism' (2019) 21(1) *San Diego International Law Journal* 217, 221.

34 Martha C. Nussbaum, 'Kant and Stoic Cosmopolitanism' (1997) 5(1) *The Journal of Political Philosophy* 1, 7.

35 Seneca, *Ad Lucilium Epistulae Morales*, vol II (tr R. M. Gummere, Harvard University Press 1962) 23.

can be envisioned in which the entire human species participates in a common administration[36].

Impartiality constitutes the basis of the Stoic understanding of equality. For the wise person grasps that the laws directing their behaviors are the same for everyone regardless of race, class, lineage, or gender. Evaluations regarding the welfare of others are never based on prejudice, and "persons" possess equal value regardless of their social positions or degree of proximity to us. Reason is common, law is common; therefore, the "entirety of the human species" are "citizens of the world state"[37].

According to Marcus Aurelius, just as the human is an inseparable part of a perfect social order, every action of theirs is a complementary element of this living order. Whether directly related or indirect, every behavior not serving the social purpose disrupts the integrity of human life and damages inner unity, just like an individual severing themselves from a democratic society in harmony[38].

According to the Stoics, political discussion and decision-making processes are constantly corrupted by partisan allegiances, whether based on team rivalry in a circus or national belonging. The only way to escape this situation is an essential allegiance to the global community formed by justice and reason. Furthermore, Stoics argue that the cosmopolitan way of life is valuable in itself. Because it accepts the fundamental characteristic found in humans that deserves the most respect: the search for justice and goodness, and the power of thinking in this direction[39].

At the core of cosmopolitanism is a mental state, a city of thought, and it is a structure open to everyone who can recognize the inner sanctity of others and adopt Stoic virtues such as social solidarity, benevolence, and compassion. When a human tries to see beyond surface appearances and lives in accordance with the laws of reason and nature instead of the variable laws of a single place, they become a "cosmopolites." These qualities ensure the individual becomes a member of the *cosmopolis* and transform the *cosmopolis* into reality[40].

According to the Stoic understanding, living in accordance with nature means grasping nature and becoming a partner in goodness. According to them, what is good is what is right; and what is right is what is based on reason, and

36 Marcus Aurelius, Kendime Düşünceler (tr C. Şentuna, Türkiye İş Bankası Kültür Yayınları 2019) (original work written 2nd century CE) 30-31.

37 Lisa Hill, 'Classical Stoicism and the Birth of a Global Ethics: Cosmopolitan Duties in a World of Local Loyalties' (2015) 34(1) *Social Alternatives* 14, 16.

38 Aurelius (n 36) 94.

39 Martha C. Nussbaum, 'Patriotism and Cosmopolitanism' in M. C. Nussbaum (ed), *For Love of Country: Debating the Limits of Patriotism* (Beacon Press 1996) 2, 7-8.

40 Hill (n 37) 17.

reason is identical with the divine. The supreme goal, goodness, is possible by reaching the knowledge of nature and making this knowledge the criterion of life. Therefore, goodness is generally associated with what is useful. Virtue itself and things that partake of it are evaluated as "good" in three ways: The first is the goodness from which the useful is derived; the second is what is suitable for the useful, for example, behaviors in accordance with virtue; and the third is the agent that ensures the emergence of utility, that is, the virtuous moral individual. Additionally, Stoics define the concept of "specially good" as the perfection of the rational one or the one acting in accordance with nature due to conformity with reason[41].

Reason and nature are guides determining how individuals should behave. Grasping the difference between good and evil and controlling one's passions directs the person to virtue, that is, to what is right. This orientation also means harmony with nature and shapes and develops the individual's freedom[42].

Stoic philosophy developed the understanding of natural law into a systematic doctrine. Natural law has been an important reference point in modern political theory just as it was in Roman political thought[43]. According to the Stoics, living in accordance with nature means acting in accordance with reason, and everyone acting in accordance with reason is accepted as equal[44].

According to Cicero, everything that exists in the world was created for the benefit of humans. Even the purpose of human nature is to serve humanity; humans were created in a way that they can provide benefit to one another. Taking this order of nature as an example, individuals must contribute to the common good by both giving and taking through the mutual exchange of obligations. Cicero emphasizes that humans must form a true human community by connecting to one another through their talents, labors, and skills [45].

According to Cicero, true law is right reason in harmony with nature, and this law is of a universal character, immutable and eternal. It calls humans to duty with its commands and deters them from evil with its prohibitions. Attempting to change this law is considered a sin; it is neither appropriate nor possible to repeal any part of it. According to Cicero, neither the senate nor the people can exempt a human from the obligations of this law, and there is no need to seek an authority outside ourselves to interpret or explain it. There will not be

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41 Tüzen (n 25) 124.

42 Öktem (n 2) 661.

43 Çaha (n 15) 35-37.

44 Duru Akdemir Şayhar, 'Felsefi ve Tarihsel Arka Planıyla İnsan Hakları Olgusu' in A. Yılmaz and Ş. Akdemir (eds), *Kurumsal ve İşlevsel Boyutlarıyla Türkiye'de İnsan Hakları Problematiği* (Ekin Yayınevi 2022) 5, 17.

45 Marcus Tullius Cicero, *On Duties* (tr H. C. Edinger, Bobbs-Merrill 1974) 219.

different laws in Rome or Athens, nor will other rules be valid today or in the future; a single and immutable law will be valid for all nations and all times. Anyone who does not obey this law essentially flees from themselves and denies human nature. Therefore, even if they escape external punishment, they suffer the heaviest punishment within themselves[46].

Stoicism's views regarding cosmopolitanism and natural law formed a universal legal and moral foundation regarding both the individual and social existence of the human. According to this thought, all humans are subject to the same laws of reason and nature. Therefore, the true citizenship of the human, who is a part of nature, belongs not to a specific city or state, but to the whole of humanity. This universal community, termed the "Cosmopolis," is founded upon principles of equality, justice, and fraternity under the guidance of reason. This approach is a political philosophy that finds the source of law in nature and reason, alongside being an ethical doctrine. The Stoics' conception of "natural law" defends the universal validity of rights that every individual possesses by birth. Thus, Stoic cosmopolitanism can be accepted as the philosophical precursor of ideas of human rights, the rule of law, and constitutional order that would develop in the historical process. In this context, Stoic thought's principles of "conformity with nature" and "universal law" left an intellectual legacy that would shape the rational and moral foundations of constitutionalism in later periods.

Kant, in his work *Perpetual Peace*, argues that the international order must be established not through power politics but within a structure based on law. According to Kant, the law of nations must be based on a federation of free states[47]. The more or less close relationships constantly increasing everywhere in the world have reached such a vast dimension that a violation of rights in one place in the world is felt across the whole world. Therefore, the idea of a cosmopolitan law is a complement to the unwritten code of law necessary for the general public rights of humanity and thus for the provision of perpetual peace[48].

Kant carries the universal moral understanding of Stoic cosmopolitanism to the level of modern international law and political order. According to Kant, humanity possesses common ownership over the earth, and people cannot exist on this whole eternally separated from one another. Therefore, no individual or community initially possesses more right to a specific part of the earth than others. Moving from the idea of common ownership, Kant argues that strangers have the right not to be treated with hostility when they arrive peacefully on

46 Marcus Tullius Cicero, *On the Republic, On the Laws* (tr C. W. Keyes, Harvard University Press 1928) 211.

47 Immanuel Kant, *Perpetual Peace: A Philosophical Sketch,* (trans. M. C. Smith, Swan Sonnenschein & Co Ltd, London 1795) 129.

48 Kant (n 47) 142.

other lands. However, this right is not a claim for settlement or residence, but is limited only to a right of visitation. This minimal cosmopolitan right ensures the establishment of peaceful contact between societies and contributes to humanity progressing towards a cosmopolitan constitutional order as these relations come under public law control over time[49].

The manifestation of the Stoic understanding of cosmopolitanism also lies in the founding philosophy of the United Nations. In the modern and postmodern world, the search for cosmopolitan democracy is similarly an idea put forward on the necessity of crowning global democracy with law as a manifestation of the idea of universal law. It emerges that international relations cannot contain a universal law unless international politics is reformed within a cosmopolitan framework with international law. At this point, international reform efforts and calls are similarly a heritage from Stoic cosmopolitanism[50].

3. The Sovereignty of Reason: Political and Constitutional Reflections of the Stoic Cosmopolis

Although the natural law theory overlaps with Stoic thought in many aspects, the concept of "cosmopolis" stands out as a distinguishing element of Stoic philosophy[51]. The Stoics of the Hellenistic period, with a humanist perspective, viewed all individuals as equal members of the world society[52]. When universal natural law is accepted as the basis of political norms, it emerges that everyone should be considered a "world citizen"[53].

Citizenship virtue at the highest level is embodied in the belief that a human will become a "world citizen" by living in accordance with the universal moral law of behavior. Therefore, Stoicism argued that the individual, as a virtuous political being, must direct themselves with sincere loyalty to the state they live in and to the universal law of nature. For the human is both a member of the *polis*—that is, the city gaining existence through legal and constitutional order—and a part of the *cosmopolis*, meaning the metaphorical world city representing the universal moral community[54].

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49 Kant (n 47) 138-139.

50 Zübeyr Şakar, '21. yüzyılda kozmopolitan bir demokrasi mümkün mü?' (2022) 106 *Liberal Düşünce Dergisi* 35, 55.

51 Bahadır (n 4) 52.

52 Celal Yeşilçayır, 'İnsan Haklarının Aydınlatılmasında Felsefi Bilginin Önemi' (2018) 31 *Bursa Uludağ Üniversitesi Fen-Edebiyat Fakültesi Dergisi* 239, 246.

53 Çoban (n 12) 104.

54 Derek Heater, *Yurttaşlığın Kısa Tarihi* (tr M. Delikara Üst, İmge Kitabevi Yayınları 2007) 61.

The development of the Stoics' thoughts regarding nature and moral philosophy produced significant results in terms of political philosophy. In this context, alongside the concept of "humanity," the idea of universal law that would meet the needs arising from the common nature of humans, the understanding of natural law, and the thought of a world state or universal state based on this emerged. According to the understanding encountered in almost all Stoic thinkers from Zeno onwards, fate, nature, and *logos* are identical, and these constitute the constitution of the *cosmopolis*. If a supreme power regulates everything, this power is at the same time the lawgiver; therefore, everything in the universe is determined by divine law [55].

The fact that a slave like Epictetus takes place alongside an emperor like Marcus Aurelius among Stoic philosophers is a natural result of Stoic morality viewing all humans as world citizens[56]. According to them, although degrees differ, the faculty of thinking distinguishes humans from other living beings, and this faculty unites humans with one another. Everyone is equal because they are human. Therefore, claiming that individuals considered part of God are not equal means rejecting divinity[57].

The Stoics developed an understanding of equality based on virtue and put their philosophies into practice for the adoption of this understanding. According to them, there can be no claim of superiority among humans, and individuals must live in mutual tolerance[58]. The universal power connecting humans to one another is reason; regardless of nationality or racial differences, all humans must be accepted as equal and siblings because they possess reason[59].

Natural law is not a principle bestowed by an authority, decided jointly by society, or imposed[60]. The *cosmopolis* accepts as a moral ideal that people are members of a single world community possessing equal rights independent of the state they live in[61]. According to the Stoics, natural law shows what is good and what is bad in a universal framework[62] This thought defended by the Stoics constituted the foundation of the natural law understanding[63].

55 Işık (n 32) 160.

56 Çapak (n 7) 223.

57 Kuru (n 19) 28.

58 Yeşilçayır (n 52) 246.

59 Güriz (n 1) 162.

60 Bahadır (n 4) 48.

61 Zübeyr Şakar, *Kozmopolitan Demokrasi Tartışmaları* (Master's thesis, Karabük Üniversitesi, 2019) available at National Thesis Center (Thesis No 551775) 103; Topakkaya (n 20) 48.

62 Akad and Dinçkol Vural (n 23) 43-44.

63 Bahadır (n 4) 48.

Stoicism's understanding of universality nourishes the idea that individuals can unite within a single moral community alongside their equality. In this context, Stoicism develops an understanding of world citizenship wherein individuals possess the same ethical obligations and rights independent of their place of birth and the political community they belong to. This approach can be seen as one of the historical origins of the principle of "everyone enjoying human rights equally" found in contemporary international law and human rights documents. In cosmopolitan Stoic thought, every human is accepted as a sibling to the other, and this brotherhood is based on nature, reason, and common virtue.

Roman law constitutes an important example for global constitutionalism in terms of supporting cosmopolitanism as a political ideal and a noble human attitude. Cicero adapted Stoic principles to the field of international relations by advancing thoughts on mutual obligations between societies and nations. Cicero evaluated the Republican constitutional understanding as a "mixed constitution." This perspective emerged through the coming together of elements of aristocracy, democracy, and monarchy. According to Cicero, such a constitution relies on a broad principle of equality and prevents corruption by establishing harmony[64].

4. The Constitutional Projection of Stoic Philosophy

The philosophical legacy of Stoicism also influenced the development of constitutional thought in subsequent centuries. Constitutionalism is a paradigm of regulated state power that apart from setting the state's legal framework, it also governs the individual-society relationship based on universally valid principles and moral values. The concepts, which form the core of this perspective, include the rule of law, freedom, equality, and human dignity. The bases of these values have been fed by different sources during the historical process but one can say that Stoic philosophy is one of the earliest and most powerful sources of these grounds. It can be argued that the stress Stoicism put on living in harmony with nature and reason is what eventually determined the philosophical background of universal justice, moral order, and human-centered legal understanding, which are the main principles of constitutionalism.

Human rights are the most fundamental and indispensable rights that every human being is entitled to without any other condition[65]. These rights, to which every individual must have equal access, should not only be regulated positively by law but also be based on deep-rooted philosophical traditions. In such a case, one can interpret Stoicism as a crucial landmark in the historical and ideological structure of human rights. Besides providing a moral doctrine aimed at the

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64 Domingo (n 33) 221-223.

65 Özer Aslan, *Anayasal Boyutuyla İnsan Hakları: Türkiye Örneği* (PhD thesis, İstanbul Medeniyet Üniversitesi 2023) National Thesis Center (Thesis No 833883) 33.

individual's inner world, Stoic philosophy, in fact, goes a long way to universalize justice and equality by the principle of living in accordance with nature.

The human-centered approach of Stoic thought interprets the individual's inner freedom not only as a personal goal but also as the moral foundation of social life. Therefore, Stoic wisdom can be accepted as an ethical transformation aiming to carry the balance the individual ensures in their own inner world to the social order. This understanding addresses individual freedom both in the social context and as a part of the universal order.

The wise person is free and is one who is not dependent on any external factor. They know that happiness must be found only in their own rational activities. Because the reason humans possess is related to the reason in nature. According to the Stoics, humans can realize their purposes in their lives to the extent they partake in this common reason. All humans partaking in common reason, as members of a natural unity, are included in many unions starting with the family and encompassing one another[66]. Just as events in nature are connected to one another by a divine fate, humans are also connected to one another by this fate. In this context, Stoic wisdom is not the same as the wisdom of the Cynics who prefer a life separate from society and isolate themselves from the world. The Stoic sage knows that universal laws are dominant both in nature and in society[67]

All changes in the operation of the universe occur in accordance with *logos*, that is, a specific rule and order, with the understanding of "unity in multiplicity, multiplicity in unity." *Logos* resides in the essence of the human and all beings and is identified with reason. Therefore, *logos* encompasses the laws governing all beings and becomes the fundamental basis of behavior in accordance with nature[68]. Stoicism's doctrine of wisdom is directly related to the order of the universe. Because the balance between the individual's inner harmony and the universal order is established through the concept of *logos*. Thus, it can be expressed that the Stoic conception of the universe grounds the behavioral principles of both the individual and society by connecting the moral order with the cosmic order.

The foundation of the understanding of global constitutionalism is essentially based on a cosmopolitan thought. This view, accepted as an ideal and goal among philosophers and jurists in the Ancient Roman period, has become a concrete reality today. Now, all humans are *de facto* members of a global human community sharing common needs, interests, and purposes. This approach argues that the said universal community must also be governed by legal principles[69].

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66 Tüzen (n 25) 128.

67 Tüzen (n 25) 128.

68 Akalın (n 22) 109.

69 Şakar (no 61) 103; Domingo (n 33) 222.

Furthermore, it suggests that every nation-state must adopt a cosmopolitan understanding in the direction of protecting, supporting, and keeping alive the global legal order. Additionally, it prepares the ground for a "transnational" approach that foresees the redefinition of the nation-state concept in the face of globalization and restructuring processes[70]

This historical legacy manifests itself as a philosophical continuity in the claim of universalism of constitutions. Today, different constitutional systems can be reinterpreted within the framework of universal values inherited from Stoic thought. Cosmopolitanism can be evaluated as a paradigm directing the forms of self-redefinition of national constitutions. This approach views constitutional orders as a common framework where various dimensions of constitutional values and claims can emerge and be examined. This "bottom-up" cosmopolitanism suggests that constitutional systems, like the human species, can be best understood only when treated as a holistic entity. Difference is accepted as a part of this integrity and evaluated within an essential unity[71].

Cosmopolitanism's connection with humanity stems from the human being a social entity by nature. When a human acts together with others and in a social manner, they behave in accordance with their own nature. Therefore, as Cicero stated, as a "natural result" of the sense of belonging connected with the idea that each of us is a part of the world, we "observe the common benefit rather than our personal interest." This situation is important; because for the Stoics, the reason humans feel responsibility towards one another and care for one another lies precisely in this understanding[72].

The search for cosmopolitan democracy also emerges as a manifestation of Stoic philosophy in the modern world, presenting individuals as world citizens and countries as representatives represented in equal respected status by completing the concepts of the rule of law and democracy on a global scale. In other words, cosmopolitan democracy and contemporary cosmopolitanism is the idea of enabling the application of the rule of law in the international arena and providing universal law, acting as a call for UN reform[73]. It can be stated that Stoic thought formed an influential intellectual ground, albeit indirectly, in the shaping of constitutionalism. The principle of living in accordance with nature and reason may have contributed to fundamental constitutional values such as the rule of law, human dignity, liberty, and equality gaining a universal

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70 Şakar (no 61) 103; Domingo (n 33) 222.

71 Vılad Perju, 'Cosmopolitanism and Constitutional Self-Government' (2010) 8(3) *International Journal of Constitutional Law (I·CON)* 326, 327-328.

72 Leonidas Konstantakos, 'On Stoic Cosmopolitanism: A Response to Nussbaum's "Patriotism and Cosmopolitanism"' (2015) 8(17) *Prometeus* 49, 55.

73 Şakar (no 50) 56.

quality. In this respect, Stoicism can be evaluated as an intellectual background reaching the idea of universal justice moving from the individual's inner freedom. It can be said that this understanding, which views human reason as a part of the universal order, constitutes a philosophical foothold in the development of contemporary human rights and constitutional order conceptions. Consequently, it can be stated that Stoic ethics and cosmopolitan understanding offer a universal human and society projection that still echoes indirectly in modern legal orders.

CONCLUSION

Stoic philosophy, historically, besides being a doctrine of individual morality, developed an understanding of existence and law explaining the human's place between nature and reason. The line of thought extending from Zeno to Marcus Aurelius positions the human as both a subject participating in the rational order of the universe and the moral carrier of this order. According to the Stoics, human value stems not from social status, but from the capacity to live in accordance with reason and virtue. Evaluated from this angle, it left a deep legacy extending to modern legal philosophy as an understanding deriving individual freedom from an inner moral essence.

This legacy gained an institutional form with the systematization of the idea of natural law in Roman law. This perspective grounded the thought that human innate rights must be recognized within an order based on reason. Cicero's definition of "right reason in harmony with nature" is the classic expression of this understanding. Stoic cosmopolitanism, with the idea that all humans are citizens of the same universal law, formed the metaphysical origin of modern human rights. Therefore, Stoic philosophy became the first philosophical ground giving birth to the thought of "world citizenship" by arguing that the human is a moral member of a universal legal order besides being a political subject.

The natural law doctrine offered a legitimacy criterion beyond the positive legal order, transcending time and space. The mentioned criterion regained concreteness in constitutional principles of human dignity, equality, and liberty. Stoic cosmopolitanism, with the rise of the global legal order, transformed into a normative framework legitimizing the supra-national character of human rights by gaining a contemporary meaning. In this respect, Stoic philosophy is one of the oldest intellectual sources providing the ethical and ontological foundations of today's understanding of global constitutionalism.

The study addressed the process extending from Stoicism to modern constitutionalism as a continuity claim based on the normative genealogy of ideas. Therefore, the bond established between Stoic cosmopolitanism and modern human rights regimes points to a philosophical resonance regarding the source of legal legitimacy rather than a teleological reading of history. With the reservation that deep differences exist between the sociological realities of

Ancient Rome, such as the hierarchical social structure and the institution of slavery, and modern egalitarian constitutional orders; the idea of "universal law" offered by Stoicism functions as an ideal type constituting the moral ground of law beyond an institutional similarity.

In this context, the main constraint of the study is the risk of anachronism in directly applying an ancient ethical doctrine to modern institutional structures. However, observing this risk, the article has positioned Stoicism not as the direct architect of modern institutions but as an intellectual legacy providing a normative ground for global constitutionalism debates. Despite the structural differences between the concept of citizenship in Roman Law and modern constitutional citizenship, the logic of "binding the individual to a transcendent legal order" has persisted as the basic criterion of legitimacy in both periods.

Consequently, this study aims to add historical and philosophical depth to the "cosmopolitan democracy" and "transnational law" debates in current literature. For the Stoic concepts of "*Logos*" and "*Cosmopolis*" can be evaluated as one of the deep-rooted normative sources that can be appealed to for the legitimization of justice demands transcending national borders in the 21st century's search for a global legal order. Ultimately, Stoic thought imparts a moral depth to modern legal orders by reminding us of the ancient balance between inner freedom and public order. The principle of living in accordance with nature, besides referring to individual virtue, is the philosophical expression of the idea of the rule of law and human dignity on a global scale. Furthermore, the Stoic understanding of universal reason renders the human a citizen of both reason and law. Thus, it finds the source of legitimacy sought by constitutionalism beyond positive norms, in human nature and the universal order. In this context, Stoic cosmopolitanism can be evaluated as a dynamic intellectual legacy allowing us to rethink the ethical, legal, and political problems of the contemporary world.

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A COMPARATIVE ANALYSIS OF EXIT STRATEGIES FROM TEMPORARY PROTECTION IN THE EUROPEAN UNION AND TÜRKİYE[*]

Avrupa Birliği Hukuku ve Türk Hukukunda Geçici Korumadan Çıkış Stratejilerine İlişkin Karşılaştırmalı Bir Analiz

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Abstract

The protection of 4.3 million Ukrainians in the European Union (EU) and 2.2 million Syrians in Türkiye constitutes the two most significant applications of temporary protection today. Both regimes have reached a critical juncture where the focus is shifting from admission and reception to the formulation of exit strategies. While the EU has extended temporary protection until March 2028, Türkiye's regime is entering its fifteenth year. This article compares the emerging exit strategies from temporary protection in these two jurisdictions. It argues that while both regimes rely heavily on executive discretion for the termination of the regime and look-and-see mechanisms to facilitate voluntary returns, they diverge significantly on long-term solutions: the EU is adopting a dual-track approach offering both integration and voluntary return as potential options, whereas Türkiye, so far, remains focused on voluntary return but has not developed a comprehensive exit strategy.

Keywords: Temporary protection, exit strategies, termination of temporary protection, durable solutions, look-and-see visits, voluntary return

Özet

Ocak 2026 itibarıyla Avrupa Birliği'ndeki yaklaşık 4.3 milyon Ukrayna vatandaşının ve Türkiye'de ise 2.2 milyon Suriye vatandaşının geçici koruma statüsü ile korunması, günümüzde geçici korumanın en önemli iki uygulamasını teşkil etmektedir. Her iki örnekte de geçici korumanın sonlandırılmasına ilişkin politikaların

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geliştirilmesi önem arz etmektedir. AB geçici koruma rejimini 2028 yılına kadar uzatırken, Türkiye'nin geçici koruma rejimi, 2024 sonlarında Suriye'deki rejim değişikliğinin ardından on beşinci yılına girmektedir. Bu makale, AB ve Türkiye'de hem hukuki metinlerde hem de politika belgelerinde yer bulan geçici korumadan çıkış stratejilerini karşılaştırmalı olarak incelemektedir. İnceleme konusu her iki rejim de statünün sona erdirilmesinde idarenin takdir yetkisini tanımakta ve gönüllü geri dönüş süreçlerinde 'bak ve gör' ziyaretlerini önemli bir araç olarak kullanmaktadır. Bununla birlikte, kalıcı çözümler noktasında iki sistem arasında belirgin bir ayrım söz konusudur: AB, geçici koruma statüsü sahiplerinin Üye devletlere entegrasyonunu ve aynı zamanda Ukrayna'ya gönüllü geri dönüşünü benimseyen çift yönlü bir geçiş planı öngörürken; Türkiye, şu ana kadar gönüllü geri dönüşü teşvik etmiş ancak kapsamlı bir geçici korumadan çıkış stratejisi ilan etmemiştir.

Anahtar Kelimeler: Geçici koruma, geçici korumadan çıkış stratejileri, geçici korumanın sona ermesi, kalıcı çözümler, bak ve gör ziyaretleri, gönüllü geri dönüş

INTRODUCTION

Temporary protection is "a flexible tool of international protection, which offers sanctuary for a limited period of time to persons fleeing humanitarian crises".[1] Similarly, temporary protection can be regarded as an "exceptional, emergency, time-bound response" designed to address mass influx of individuals fleeing persecution, armed conflict, or systemic human rights violations.[2] As observed by Goodwin-Gill, McAdam, and Dunlop, temporary protection serves as a pragmatic instrument for managing sudden displacement where individualised refugee status determination (RSD) is impractical.[3] Notably, however, international law lacks a defined maximum duration for temporary protection status and establishes no clear threshold for its termination.[4]

Both the European Union (EU) and Türkiye are navigating this dilemma. The temporary protection of 4.3 million Ukrainians in the EU[5] and 2.2 million

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1 Meltem Ineli-Ciger and Achilles Skordas, 'Temporary Protection' (2019) Max Planck Encyclopedia of Public International Law.

2 Guy S. Goodwin-Gill, Jane McAdam, and Emma Dunlop. The Refugee in International Law (OUP 2021) 292, 293.

3 ibid, 292.

4 ibid, 292; Joan Fitzpatrick, 'The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection' (1998) 13 Geo Immigr LJ 343, 345.

5 Eurostat, 'Temporary protection for 4.33 million in November 2025' (12 January 2026) https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20260112-1 accessed 20 January 2026.

Syrians in Türkiye[6] represent the most significant contemporary applications of the temporary protection schemes. The political landscape, however, has shifted fundamentally since the establishment of these regimes. In Türkiye, the collapse of the Assad regime in December 2024 accelerated the push for voluntary return, exemplified by the look-and-see visits enacted in 2025 and increased the voluntary return rates.[7] Simultaneously, the EU extended temporary protection for Ukrainians until March 2028, shifting focus toward coordinated exit strategies.[8]

Although substantial scholarship addresses temporary protection and its termination[9], as well as the specific temporary protection regime applicable to Syrians in Türkiye[10]

6 This is as of 22 January 2026, Turkish Presidency of Migration Management, Statistics-Temporary Protection, <https://www.goc.gov.tr/gecici-koruma5638> accessed 20 July 2026.

7 Cf. Section III.B.

8 Cf. Section II.B-C; Council of the EU Press Release, EU countries agree to extend temporary protection for those fleeing Ukraine until March 2028, 15 July 2026, https://www.consilium.europa.eu/en/press/press-releases/2026/07/15/eu-countries-agree-to-extend-temporary-protection-for-those-fleeing-ukraine-until-march-2028/, accessed 18 July 2026.

9 The relevant literature on the evolution and conceptualisation of temporary protection includes foundational works such as GJL Coles, 'Temporary Refuge and the Large-Scale Influx of Refugees' (1978) 8 Australian Yearbook of International Law 189; Joanne Thorburn, 'Transcending Boundaries: Temporary Protection and Burden-Sharing in Europe' (1995) 7 International Journal of Refugee Law 459; James C Hathaway and Richard A Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997) 10 Harvard Human Rights Journal 115; Joan Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime' (2000) 94(2) American Journal of International Law 279; Alice Edwards, 'Temporary Protection, Derogation and the 1951 Refugee Convention' (2012) 13(2) Melbourne Journal of International Law 595; Jea-François Durieux, 'Temporary Protection: Hovering at the Edges of Refugee Law' (2014) 45 Netherlands Yearbook of International Law 221; and Meltem Ineli-Ciger, *Temporary Protection in Law and Practice*(Brill 2018).

10 Feyzi Baban, Suzan Ilcan and Kim Rygiel, *The Precarious Lives of Syrians: Migration, Citizenship, and Temporary Protection in Turkey* (McGill-Queen"s University Press 2021); Esra Yılmaz Eren, "Is Temporary Protection Eternal? The Future of Temporary Protection Status of Syrians in Turkey" (2019) 9(2) Border Crossing 125; Sarah Bidinger, "Syrian Refugees and the Right to Work: Developing Temporary Protection in Turkey" (2015) 33 BU Int"l LJ 223; Ayselin Yıldız and Elif Uzgören, "Limits to Temporary Protection: Non-camp Syrian Refugees in İzmir, Turkey" (2016) 16(2) Southeast European and Black Sea Studies 195; Meltem Ineli-Ciger, "Implications of the New Turkish Law on Foreigners and International Protection and Regulation No. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey" (2015) 4(2) Oxford Monitor of Forced Migration 28; Nuray Ekşi, "Suriyelilere Toplu Olarak Türk Vatandaşlığı Verilebilir mi?" (2015) 89(2) İstanbul Barosu Dergisi 196; Sibel Özel, "Türkiye'deki Suriyelilerin Hukuki Statüsü" (2020) 17(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 722; Zeynep Derya Tarman, "Syrians under Temporary Protection and Their Acquisition of Turkish Citizenship" (2023) 73 Annales de la Faculté de Droit d'Istanbul 97.

and Ukrainians in the European Union[11], a comparative analysis of exit strategies in these jurisdictions[12] does not exist at the time of writing. This article[13] seeks to address this gap by scrutinising the legal frameworks governing the collective termination of temporary protection and what follows the termination for the temporarily protected persons in 2026, utilising the EU and Türkiye as case studies. In doing so, it addresses the following research question: what are the similarities and differences between Turkish law and European Union law regarding the termination of temporary protection, and how do these frameworks regulate the legal status of beneficiaries' post-cessation? The analysis proceeds through a critical examination of relevant legislation and applicable policy documents in both jurisdictions.

The article is structured into three main parts. The first part establishes the conceptual framework and legal significance of exit strategies. The second part scrutinises the evolving EU transition framework for Ukrainian temporary

11 Sergio Carrera and others, 'The EU Grants Temporary Protection for People Fleeing War in Ukraine' (2022) 9 CEPS Policy Insights 1; Sandra Mantu, Karolina Miranda Zwaan and Tineke Strik (eds), *The Temporary Protection Directive: Central Themes, Problem Issues and Implementation in Selected Member States* (2023); Tamara Kortukova and others, 'Peculiarities of the Legal Regulation of Temporary Protection in the European Union in the Context of the Aggressive War of the Russian Federation against Ukraine' (2023) 36(2) Int J Semiot Law 667; Florian Trauner and Gabriele Valodskaite, 'The EU's Temporary Protection Regime for Ukrainians: Understanding the Legal and Political Background and Its Implications' (2022) 23(4) CESifo Forum 22; Maja Łysienia, 'Following the EU Response to the Russian Invasion of Ukraine? The Implementation of the Temporary Protection Directive in Poland' (2023) 12(1) CEEMR 183.

12 There are notable works comparing the temporary protection regimes in the EU and Türkiye. Cf. Neva Övünç Öztürk, 'Temporary Protection Practice in Türkiye and in the EU: A Flexible, Pragmatic Solution or a Janus-faced Image for the Access to International Protection?' (2022) 60 International Migration 5; Elçin Doğa, 'Türkiye'de Bulunan Suriyelilere Uygulanan Geçici Koruma Statüsü 2001/55 Sayılı Avrupa Konseyi Yönergesi İle Geçici Koruma Yönetmeliği Arasındaki Benzerlik ve Farklılıklar' (2016) 124 Türkiye Barolar Birliği Dergisi 9; Rukiye Gülerce, 'Temporary Protection Status Practices in the Context of Human Rights in Türkiye and European Union' (2024) 3(1) *TAM Akademi Dergisi* 3.1 1-18; İrem Şengül, 'Unpacking Temporary Protection of Refugees: Failure of Durable Solutions and Uncertainties' (2022) 13(1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 16-28; an excellent analysis emerged during the peer review process of this article on the legal thresholds governing the end of temporary protection and return of the temporary protection beneficiaries. Cf. Yasemin Karadağ Avcı, 'An International Law Perspective on the Return of Syrians under Temporary Protection in Türkiye: An Assessment Based on Comparative Experiences' (2026) 19(1) Hitit Journal of Social Sciences 72, 72–91.

13 For an article building on the comparative analysis here and arguing that the transition from temporary protection must be managed through structured administrative bridges to ensure full conformity with international law, cf Meltem İneli Ciğer, 'Transitioning from Temporary Protection in Conformity with International Law: The Case for Administrative Bridges' (forthcoming 2026) International Journal of Refugee Law).

protection beneficiaries whereas, the third part evaluates the Turkish model considering recent regional developments, before concluding with a comparative analysis of the two systems.

This article specifically scrutinises the collective exit strategies and the structured legal and policy frameworks employed by host states to terminate a temporary protection regime and transition beneficiaries into individualised durable solutions. It is essential to distinguish these group-based transitions from individualised termination grounds, such as those outlined in Article 12 of the Turkish Temporary Protection Regulation (TPR), which include voluntary departure, relocation to a third country, or the acquisition of Turkish citizenship. While individual termination occurs through specific personal circumstances or administrative cancellations as per Article 12(2-3) of the TPR, the scope of this study is limited to the collective termination of the regime as a whole. A similar distinction exists within the European Union framework. The Council of the EU activated mandatory temporary protection for clearly defined groups specifically Ukrainian nationals, those with refugee status or equivalent protection in Ukraine, and their family members.[14] However, for the optional categories, such as third-country nationals who were legally residing in Ukraine and cannot return safely, Member States may decide under Article 7 of the Temporary Protection Directive whether to grant protection on an individual or group basis. By centering the analysis on collective frameworks rather than these, case-by-case administrative cessations or optional individualised assessments, this study addresses the strategic governance challenges inherent in resolving the status of millions of displaced persons simultaneously. Consequently, as a limitation of this research, individual termination grounds and their specific administrative implementation are not explored here.

I. EXIT STRATEGIES FROM TEMPORARY PROTECTION: CONCEPTUAL FRAMEWORK AND LEGAL SIGNIFICANCE

In the context of mass displacement, an ‘exit strategy’ from temporary protection can be defined as the structured legal and policy framework employed by host states to terminate a temporary protection regime and transition beneficiaries into individualised durable solutions. The term, a recent favourite of the European Commission and the Council[15],encompasses the policies and laws regulating the post-termination status of the temporarily protected groups. Unlike the activation or formal termination of temporary protection which are typically defined by singular executive acts the exit from such regimes constitutes a complex, multi-

14 Cf. Section II-A.

15 Council Recommendation (EU) 2025/5129 of 16 September 2025 on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine [2025] OJ C/2025/5129.

layered process. It entails the phasing out of group-based protection status while simultaneously resolving the future of millions of displaced individuals.

The significance of exit strategies lies in their capacity to bridge the 'governance gap' that emerges when temporary regimes conclude. As previously mentioned, temporary protection constitutes a time-limited status granted to persons fleeing humanitarian crises, functioning mostly as an exceptional response to a 'mass influx'.[16] Mass influx, which is often used interchangeably with 'large-scale influx' or arrival *en masse*, is defined as the sudden and large-scale arrival of persons across international borders necessitating an immediate protection response.[17] However, international law prescribes neither a definitive maximum duration for this status nor specific legal pathways mandated upon its termination.[18]

Consequently, when temporary protection regimes end, host states face a critical gap where the suspension of group rights threatens to push beneficiaries into irregularity before durable solutions are secured.[19] This highlights a tension long observed in refugee law scholarship: while temporary protection serves as a pragmatic response to mass influx, it risks detaching protection from durability if not actively bridged to permanent solutions.[20] Without a clear legal interface between the cessation of temporary status and the resumption of ordinary migration controls, temporary protection beneficiaries may be left in a precarious limbo.[21]

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16 Meltem Ineli-Ciger and Achilles Skordas, 'Temporary Protection' (October 2019) *Max Planck Encyclopedia of Public International Law* (OUP); Meltem Ineli-Ciger, *Temporary Protection in Law and Practice* (Brill 2018).

17 Meltem Ineli-Ciger, 'Mass Influx' in Vincent Chetail (ed), *Elgar Concise Encyclopedia of Migration and Asylum Law* (Edward Elgar 2025).

18 UNHCR, 'Summary Conclusions on Temporary Protection: Roundtable on Temporary Protection, 19–20 July 2012' (20 July 2012) 11; Meltem Ineli-Ciger, 'A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?' (2016) 18(3-4) Int'l Community L Rev 278.

19 İrem Şengül, 'Unpacking Temporary Protection of Refugees: Failure of Durable Solutions and Uncertainties' (2022) 13(1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 16.

20 Susan Akram and Terry Rempel, 'Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees' (2004) 22(1) BU Int'l LJ 1.

21 Existing literature has also illuminated how prolonged temporary protection statuses around the world can produce precarious legal conditions, prevent successful integration, and generate policy failures for both host states and protected populations. On the US Temporary Protected Status, cf. Bill Frelick, 'What's Wrong with Temporary Protected Status and How to Fix It: Exploring a Complementary Protection Regime' (2020) 8(1) JMHS 42; on Türkiye's TP status cf. Suzan Ilcan, Kim Rygiel and Feyzi Baban, 'The Ambiguous Architecture of Precarity: Temporary Protection, Everyday Living and Migrant Journeys of Syrian Refugees' (2018) 4(1–2) IJMBS 51; İrem Şengül, 'Rethinking Temporary Protection in Turkey: Legality, Uncertainty and Homemaking in the City of Gaziantep' (PhD thesis, University of Warwick 2019).

Theoretically, the termination of temporary protection should lead to one of the three classic durable solutions available for refugees: repatriation, local integration, or resettlement.[22] However, applying these traditional frameworks to temporary protection beneficiaries presents distinct legal challenges. To begin with, while temporary protection beneficiaries are forcibly displaced, and a significant proportion would likely qualify as Convention refugees, it is legally imprecise to assume that *all* beneficiaries hold such status. Consequently, the direct application of International Refugee Law mechanisms, such as the strict cessation clauses provided in Article 1 C of the 1951 Convention, is not entirely normatively coherent. Because the status is group-based rather than individually assessed, the cessation of temporary protection does not automatically equate to the cessation of protection needs under international law.

The operational reality of protracted temporary protection often renders the preferred solution of immediate return unviable. As evidenced by the fifteen-year displacement of Syrians in Türkiye and the extension of Ukrainian protection beyond the statutory three-year limit in the EU[23], temporary status frequently persists long past the immediate emergency.[24] In such contexts, the expectation that root causes will resolve swiftly is often unrealistic.

Exit strategies matter because the transition is rarely a linear progression toward a single outcome. Current state practices reveal a bifurcated pathway: states increasingly offer integration options contingent upon strict socio-economic markers such as employment, education while simultaneously deploying 'look-and-see' visits to incentivise return. This binary approach creates a residual grey zone. Vulnerable individuals who neither qualify for merit-based permits nor can safely return face a precarious legal reality. If exit strategies are not designed with specific legal safeguards, this transition risks devolving into constructive refoulement, where administrative coercion renders stay intolerable, forcing beneficiaries to return against their will.[25]

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22 UNHCR Executive Committee, 'Conclusion on International Protection' (2000) No 89; UNGA, 'Report of the United Nations High Commissioner for Refugees: Part II: Global Compact on Refugees' (2018) UN Doc A/73/12 (Part II); James C Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 1128.

23 Meltem Ineli-Ciger, 'Legal Landmine: The Risky Proposition of Extending the Application of the EU Temporary Protection Directive beyond March 2025' (EU Law Analysis, 31 May 2024) https://eulawanalysis.blogspot.com/2024/05/legal-landmine-risky-proposition-of.html accessed 30 January 2026.

24 İrem Şengül, 'Unpacking Temporary Protection of Refugees: Failure of Durable Solutions and Uncertainties' (2022) 13(1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 16, 25.

25 Penelope Mathew, 'Constructive Refoulement' in Juss ed. *Research Handbook on International Refugee Law* (Edward Elgar 2019) 207.

In conclusion, exit strategies represent more than a mere administrative formality; they constitute the primary regulatory mechanism determining the legal status and future of millions of displaced persons. The significance of these strategies is underscored by the absence of a unified international treaty framework governing the post-protection phase, leaving the transition to be managed through a fragmented mosaic of legal principles. In this normative vacuum, states often exercise broad discretion, which heightens the risk of infringing upon the principle of *non-refoulement*.[26] Unless exit strategies are anchored in precise legal safeguards, the transition out of temporary protection risks institutionalising constructive refoulement, where administrative coercion and protracted legal uncertainty render continued stay untenable, effectively forcing returns in violation of international obligations.

II. EXIT STRATEGIES FROM TEMPORARY PROTECTION IN THE EUROPEAN UNION

A. A Brief Overview of the Temporary Protection Regime in the EU

The European Union adopted the Council Directive 2001/55/EC[27] (Temporary Protection Directive) in 2001. Designed as an emergency measure, the Directive aimed to provide a coordinated EU response to a mass influx of third-country nationals by setting minimum standards for temporary protection within the Union. The Temporary Protection Directive remained obsolete until March 2022.[28] In response to the mass displacement caused by Russia's full-scale invasion of Ukraine, the Council activated the Temporary Protection Directive for the first time on 4 March 2022. The Council granted temporary protection to the following groups[29] displaced from Ukraine due to the Russian invasion that

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26 The most concrete limitation on any exit strategy from temporary protection is the principle of *non-refoulement*. This principle is codified in Article 33 of the 1951 Convention and prohibits a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33(1). Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-refoulement: Opinion' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (CUP 2003) 87.

27 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212, 7.8.2001.

28 Meltem Ineli-Ciger, 'Has the Temporary Protection Directive Become Obsolete?: An Examination of the Directive and its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean' in *Seeking Asylum in the European Union* (Brill 2015) 223.

29 Cf for eligibility for temporary protection, Meltem Ineli-Ciger, 'Beyond Temporariness:

began on 24 February 2022: Ukrainian nationals residing in Ukraine before that date and their family members, as well as non-Ukrainians who had refugee status or equivalent protection in Ukraine before 24 February 2022 and their family members.[30] Member States were permitted, under Article 7 of the Directive, to extend temporary protection to other individuals who were legally residing in Ukraine and who are unable to return to their country or region of origin under safe and durable conditions.[31]

Temporary protection status provides persons fleeing Russian aggression with immediate access to legal residence through residence permits, healthcare, education, and employment as per Chapter III of the Temporary Protection Directive. A particularly notable feature of the Council's application of the Temporary Protection Directive was its recognition of the agency of displaced Ukrainians: temporary protection beneficiaries were permitted to choose the Member State in which to seek and register for temporary protection.[32]

B. Exit Strategies in the Temporary Protection Directive

Under Article 6 of the Temporary Protection Directive, temporary protection shall come to an end (a) when the maximum duration has been reached; or (b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission on the basis that "the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement."[33] A textual and systematic reading of the Directive shows that the temporal limit is three years.[34] However, the Council's decision to extend temporary protection until March 2028[35] exceeds the three-year maximum and raises serious concerns about how

Policy Options for Ukrainians under EU Temporary Protection in 2025' (2025) https://www.coleurope.eu/sites/default/files/research-paper/İneli-Ciger_CEPOB_2-2025.pdf accessed 30 January 2026.

30 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine [2022] OJ L 71/1.

31 ibid, Article 2(3).

32 Case C-753/23 A.N. v Ministerstvo vnitra ECLI:EU:C:2025:133, Judgment of the Court (Tenth Chamber), 27 February 2025; Meltem Ineli-Ciger, 'The CJEU Rules on Multiple Temporary Protection Applications but Leaves Key Questions Unanswered in Case C-753/23 (Krasiliva)' EU Law Analysis (March 2025) https://eulawanalysis.blogspot.com/2025/03/the-cjeu-rules-on-multiple-temporary.html accessed 30 January 2026.

33 Article 6(2) of the Temporary Protection Directive.

34 ibid.

35 Council of the EU, 'EU Member States Agree to Extend Temporary Protection for Refugees from Ukraine' (Press release, 13 June 2025) https://www.consilium.europa.eu/en/press/press-releases/2025/06/13/eu-member-states-agree-to-extend-temporary-protection-for-

long the European temporary protection regime can and will continue.[36] While the Commission justifies the extension on policy grounds, ongoing instability in Ukraine and risks to asylum systems[37], it lacks a valid legal basis under the current Directive.[38] Furthermore, the vague language about ending the temporary protection of Ukrainians "at some future point" in the Commission Proposals of June 2025[39] risks indefinite extension.

Chapter V (Article 20-23) of the Temporary Protection Directive regulates what happens once temporary protection ends.[40] Upon the cessation of temporary protection, Article 20 of the Directive stipulates that the general laws on protection and aliens in the Member States resume application. Under Article 21, Member States must facilitate voluntary return with respect for human dignity and informed consent, potentially allowing for exploratory visits and the extension of reception conditions until the point of departure. For those ineligible for further stay, Article 22 mandates that enforced returns be conducted in a humane manner and requires authorities to evaluate any compelling humanitarian circumstances that may render return unreasonable. Finally, Article 23 provides critical safeguards for vulnerable individuals, prohibiting the expulsion of those unable to travel due to serious health conditions and permitting families with minor children to remain until the conclusion of the current school term.

Besides the mentioned provisions, Article 17 of the Temporary Protection Directive affirms that individuals benefiting from temporary protection may apply

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refugees-from-ukraine/ accessed 30 January 2026.

36 Meltem Ineli-Ciger, 'Towards Temporary Prolonged Protection?' (EU Migration Law Blog, 10 June 2025) https://eumigrationlawblog.eu/towards-temporary-prolonged-protection/ accessed 30 January 2026.

37 ibid.

38 For a similar interpretation of the maximum time limit cf cf Achilles Skordas, 'Temporary Protection Directive 2001/55/EC' in Daniel Thym (ed), *EU Immigration and Asylum Law: Commentary* (2nd edn, CH Beck/Hart/Nomos 2022) 1193; Elspeth Guild and Kees Groenendijk, 'Temporary Protection and the Future of Ukrainians in the EU' in SA Mantu, KM Zwaan and MHA Strik (eds), The Temporary Protection Directive: Central Themes, Problem Issues and Implementation in Selected Member States (2023) 105; Steve Peers, 'Temporary Means Temporary?' (EU Law Analysis, 4 June 2025) http://eulawanalysis.blogspot.com/2025/06/temporary-means-temporary-commission.html accessed 30 January 2026.

39 The Commission notes, "At some future point in time, when the circumstances change to allow for sufficient certainty about the situation in Ukraine, and in particular the conclusion that safe and durable conditions for return would exist, temporary protection will need to come to an end." Commission, 'Proposal for a Council Recommendation on a Coordinated Approach to the Transition out of Temporary Protection for Displaced Persons from Ukraine' COM (2025) 651 final.

40 An analysis on these cf. Achilles Skordas, Temporary Protection Directive 2001/55/EC in Daniel Thym (ed), *EU Immigration and Asylum Law: Commentary* (2nd edn, C H Beck/Hart/Nomos 2022) 1215-1219.

for asylum, which, according to the CJEU, includes both the refugee status and subsidiary protection status[41] at any time, and that any applications not processed before the end of the temporary protection period must be completed thereafter. While asylum remains an available option, Chapter V makes clear that return is the preferred outcome once temporary protection ceases.

The CJEU affirmed that as long as an individual continues to enjoy temporary protection status in a Member State and they cannot, therefore, be issued a return decision.[42] The Court stressed that issuing a return decision prematurely, i.e. when temporary protection status is still valid, undermines procedural safeguards and fails to respect the legal rights of individuals while their residence is still lawful.[43] Apart from the Kaduna decision, the CJEU has yet to provide definitive guidance on the procedural termination of temporary protection or the legal framework that will supersede it.

C. Exit Strategies set by the Commission and the Council

In June 2025, the European Commission formalised a comprehensive three-part strategy to facilitate a coordinated phase-out of temporary protection.[44] This three-document package, introduced on 4 June 2025, consisted of a proposal to further extend temporary protection until 4 March 2027[45], a proposal on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine[46] and a communication titled "A predictable and common European way forward for Ukrainians in the EU".[47] The transition framework, proposed by the European Commission and subsequently adopted with modifications via Council Recommendation (EU) 2025/5129[48], establishes two primary durable

41 Case C-195/25 *Framholm* ECLI:EU:C:2025:904; Case C-244/24 *Kaduna* ECLI:EU:C:2024:1038, para 127.

42 Case C-244/24 Kaduna (Joined Cases C-244/24 and C-290/24), ECLI:EU:C:2024:1038, para 147.

43 ibid, para 158.

44 for an analysis of the Commission Proposals of June 2025, Meltem Ineli-Ciger, 'Beyond Temporariness: Policy Options for Ukrainians under EU Temporary Protection in 2025' (College of Europe Policy Brief 2/2025, 2025) https://www.coleurope.eu/sites/default/files/research-paper/İneli-Ciger_CEPOB_2-2025.pdf accessed 30 January 2026.

45 Commission, 'Proposal for a Council Implementing Decision extending temporary protection, as introduced by Implementing Decision (EU) 2022/382, until 4 March 2027' COM(2025) 650 final.

46 Commission, 'Proposal for a Council Recommendation on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine' COM (2025) 651 final.

47 Commission, 'Communication on a predictable and common European way forward for Ukrainians in the EU' COM (2025) 649 final.

48 Council Recommendation (EU) 2025/5129 of 16 September 2025 on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine [2025] OJ

pathways: the regularisation of integrated individuals through alternative legal residence statuses within the Union, and the facilitation of voluntary return to Ukraine, contingent upon the existence of safe and durable conditions.

1. Integration in the host EU Member States

To begin with, the Council Recommendation encourages Member States to facilitate the transition of temporary protection beneficiaries into alternative national residence statuses.[49] Where conditions for legal residence on other grounds are met, Member States are advised to promote permits based on employment, self-employment, professional training, education and research, or family reunification. In addition to national schemes, the Council Recommendation explicitly identifies existing EU migration instruments such as the Students and Researchers Directive (EU) 2016/801, the Blue Card Directive (EU) 2021/1883 and the Single Permit Directive (EU) 2024/1233, as viable pathways.[50] The Council emphasises that Member States should promote these statuses by providing clear information on the advantages and rights they confer in comparison to temporary or international protection. However, beneficiaries must be informed that they cannot concurrently hold temporary protection status and an authorisation to reside in the Member States granted under these Directives.[51]

2. Voluntary return and reintegration strategy

While return is framed as the ultimate objective provided that safe and durable conditions exist in Ukraine, the 2025 strategy of the Commission and the Council operationalises Chapter V of the Temporary Protection: To promote informed decision-making, Member States are called upon to facilitate 'self-funded exploratory visits to Ukraine'.[52] These are conceptualised as confidence-building measures allowing beneficiaries to assess property, infrastructure, and safety without immediate loss of status. Per the Council Recommendation (EU) 2025/5129, Member States must coordinate the parameters, conditions, and requirements for these visits and establish dedicated contact points to ensure transparency and prevent potential misuse. To ensure an orderly transition, the Council recommends a fixed duration of one year for voluntary departures. Member States are tasked with coordinating the 'initial duration' with Ukrainian authorities to cater for reintegration needs, such as the identification of housing, employment, and access to medical care. Departure support prioritises

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C/2025/5129.

49 Council Recommendation (EU) 2025/5129 of 16 September 2025, para 4.

50 ibid, para 5.

51 ibid, para 5.

52 While visits can be self-funded, Member States are encouraged to organise and support those unable to finance the trips themselves.

community-based reintegration, linked to the Ukraine Investment Framework, over individualised cash assistance for return. This logic, highlighted in both the Communication and the Recommendation, aims to uphold social cohesion in Ukraine by ensuring that assistance benefits local communities as a whole, thereby mitigating potential friction between returnees and the population that remained, including internally displaced persons (IDPs). Furthermore, the Communication identifies remittances amounting to 3.26% of Ukraine's GDP in 2024 as a critical factor in maintaining the economic resilience required for successful return.

The Commission's vision centres on the creation of 'Unity Hubs', multipurpose information platforms funded through the Asylum, Migration and Integration Fund (AMIF) to support displaced Ukrainians in navigating both integration and return options.[53] These hubs are intended to serve as the physical interface between host states and the Ukrainian National Unity Agency. While the Council treats these as optional information dissemination platforms, it encourages Member States to incorporate the knowledge, capacities, and networks of international organisations, including UNHCR, IOM, and ICMPD, into their design. This is supported by the EU Special Envoy for Ukrainians, who coordinates technical and policy expertise via the Solidarity Platform.

A significant development in the Council's text is the formalisation of a role for Frontex. The Agency is invited to provide 'logistical support within the limits of its mandate' for organised departures. This may include assisting Member States in the organisation of departures to specific geographical areas in Ukraine, ensuring that the physical process of return is both efficient and coordinated across the Union.

3. Details on Voluntary Return

The European Commission has clarified that voluntary return under Article 21 of the Temporary Protection Directive constitutes a distinct legal category from return procedures applied to irregular migrants under the EU Return Directive (2008/115/EC), as beneficiaries remain lawfully present until the protection regime formally expires or is expressly renounced.[54] To operationalise this distinction, the Commission has advised Member States to adopt a 'dormant' rather than 'terminated' approach to registration, encouraging authorities to maintain beneficiaries' profiles as 'inactive' in national databases and to refrain from immediately revoking residence permits upon departure; this administrative

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53 ibid.

54 Commission, 'Frequently Asked Questions on going home to Ukraine on a voluntary basis in the context of the Temporary Protection' (December 2022) https://home-affairs.ec.europa.eu/system/files/2022-12/Frequently%20Asked%20Questions%20on%20going%20home%20to%20Ukraine_en.pdf accessed 30 January 2026.

flexibility ensures that if the security situation in Ukraine deteriorates, returnees can re-enter the EU and regain access to social benefits and protection rights swiftly, without facing the bureaucratic hurdles of a fresh application process.[55] However, to balance this flexibility with the need to mitigate abuse, the Commission's guidance establishes strict procedural safeguards requiring beneficiaries to notify authorities of their intent to return, whereby failure to comply with these reporting obligations may justify the assumption of permanent departure and subsequent de-registration.[56] Furthermore, the Commission emphasises that the decision to return must be taken with 'full knowledge of the facts,' obliging Member States to provide up-to-date security assessments, while structurally reinforcing these programmes by designating the financial costs as eligible for coverage under the Asylum, Migration and Integration Fund (AMIF) Specific Objective 1, thereby framing these movements within the protection mandate of the Common European Asylum System rather than as standard deportation logistics.[57] In practice, while beneficiaries of temporary protection have traditionally been excluded from Assisted Voluntary Return and Reintegration (AVRR) programmes, which typically target rejected asylum seekers rather than those with protected status, significant exceptions have emerged to manage the Ukrainian displacement.[58]

4. Legal Status Continuity and Humanitarian Safeguards

A central concern of the 2025 transition framework is the prevention of 'legal limbo', a state of irregularity occurring between the expiration of temporary protection and the acquisition of an alternative status or the completion of return. To mitigate this risk and to ensure that the cessation of the EU-wide temporary protection regime does not result in the immediate loss of livelihood for those committed to returning, the Council Recommendation operationalises Article 21(3) of the Temporary Protection Directive. Member States are encouraged to extend all rights attached to temporary protection including access to the labour market, housing, and social assistance to individuals enrolled in a voluntary return programme.[59]

Under Article 23(1), Member States are legally prohibited from expelling persons who, due to their state of health, cannot reasonably be expected to travel. This applies specifically where individuals would suffer serious negative effects if their medical treatment were interrupted. The September 2025 Recommendation

55 ibid.

56 ibid.

57 ibid.

58 Gina Kalach and Claire Rimmer, 'Voluntary Return: An Overview of Policies and Practices' (Council of Europe, July 2025).

59 Council Recommendation (EU) 2025/5129 (n 5) point 4(f).

expands this logic, encouraging Member States to offer continued residence for other vulnerable groups whose needs (beyond healthcare) Ukraine may not yet have the capacity to address.[60] Finally, Member States are encouraged to permit families with minor children to remain in the host country until the conclusion of the current school period, which will usually be the school year.

It should be mentioned that, on 15 July 2026, the Council of the European Union agreed to extend the temporary protection status for individuals displaced from Ukraine for an additional year, until 4 March 2028. In a significant shift connecting humanitarian status with state defence needs, the extension introduces a military compliance conditionality: going forward, temporary protection will be granted only to new applicants who can prove they have satisfied or are exempt from their military obligations in Ukraine.[61] Critically, this limitation does not apply retroactively to the more than 4 million Ukrainians already benefiting from the temporary protection regime within the EU.

III. EXIT STRATEGIES FROM TEMPORARY PROTECTION OF SYRIANS IN TÜRKİYE

A. A brief Overview of the Temporary Protection Framework

Since 2011, Türkiye has been implementing a temporary protection regime to respond to the large-scale arrival of Syrians fleeing the civil war.[62] Temporary protection in Türkiye, established under Article 91 of the Law on Foreigners and International Protection[63] and regulated in detail by the Temporary Protection Regulation (TPR)[64], is a time-limited protection mechanism designed for individuals who have been forced to leave their country, are unable to return, and have entered or approached Türkiye's borders *en masse*, seeking immediate and temporary protection due to a mass influx situation.[65] The President of Türkiye holds the authority to declare the activation and termination of temporary protection for designated

60 ibid, point 5.

61 Meltem İneli Ciğer, 'What is wrong with the proposal to exclude some Ukrainians from temporary protection?' (EU Law Analysis, 6 July 2026) https://eulawanalysis.blogspot.com/2026/07/what-is-wrong-with-proposal-to-exclude.html accessed 18 July 2026.

62 For a detailed overview of temporary protection in Türkiye cf Meltem Ineli-Ciger, *Temporary Protection in Law and Practice* (vol 10, Brill 2018); Meltem Ineli-Ciger, 'Protecting Syrians in Turkey: A Legal Analysis' (2017) 29(4) International Journal of Refugee Law 555.

63 Law on Foreigners and International Protection 2013 (Türkiye) https://www.unhcr.org/tr/media/law-foreigners-and-international-protection-pdf accessed 30 June 2026.

64 Temporary Protection Regulation 2014 (Türkiye) https://www.mevzuat.gov.tr/MevzuatMetin/21.5.20146883.pdf accessed 30 January 2026.

65 Cf. Article 91 of the Law on Foreigners and International Protection.

groups seeking refuge in the country.[66] According to the latest data published by the Turkish Presidency of Migration Management, as of July 2026, there are 2.2 million Syrians registered under temporary protection in Türkiye.[67] This marks a significant decrease from 3.64 million Syrians registered at the end of 2020, and the decrease can be attributed to the regime change in Syria in December 2024.[68]

Temporary protection status in Türkiye grants its beneficiaries the right to a legal stay, right to access education, healthcare and work.[69] Temporary protection status holders should be protected from *refoulement* under Article 4 of the LFIP and Article 6 of the TPR. Moreover, temporary protection beneficiaries receive a type of identity document which grants the right to remain in Türkiye, though it is not equivalent to a residence permit or any document deemed as a substitute for residence.[70] It does not provide a legal basis for transition to long-term residence status, nor does it count towards the calculation of legal residence required for such status.[71] Notwithstanding this statutory limitation, official sources indicate that 238,768 Syrian nationals have acquired Turkish citizenship.[72] Distinct from the Syrians under temporary protection those usually have a higher socio-economic status and holds standard residence permits according to the latest figures from the Presidency of Migration Management (PMM), 79,860 Syrian nationals hold residence permits, ranking them as the third largest group of foreign residents in the country.[73]

B. Termination of Temporary Protection and Exit Strategies from Temporary Protection

Turkish law does not prescribe a maximum duration for temporary protection. Although the framework formally defines it as a time-limited policy, Syrians

66 ibid.

67 Presidency of Migration Management, 'Geçici Koruma (Temporary Protection)' https://www.goc.gov.tr/gecici-koruma5638 accessed 30 January 2026.

68 ibid.

69 As of January 2026, Syrians under temporary protection may be required to pay a contribution fee for health services, subject to exceptions for those in financial need. Cf UNHCR, 'UNHCR Türkiye Monthly Operational Update - December 2025' https://www.unhcr.org/tr/en/media/unhcr-tuerkiye-monthly-operational-update-december-2025 accessed 30 January 2026.

70 Article 25 of the Temporary Protection Regulation.

71 ibid.

72 Turkish Presidency Communication Office, 'Türkiye'de bulunan yabancıların sayısı ve vatandaşlık durumları ile ilgili iddialara dair açıklama' (2024) https://www.iletisim.gov.tr/turkce/haberler/detay/turkiyede-bulunan-yabancilarin-sayisi-ve-vatandaslik-durumlari-ile-ilgili-iddialara-dair-aciklama accessed 30 January 2026.

73 Presidency of Migration Management, 'Residence Permits' (January 2026) https://en.goc.gov.tr/residence-permits accessed 30 January 2026.

have remained under temporary protection for more than fifteen years, at the time of writing. The literature focusing on the temporary protection of Syrians in Türkiye has made the point that prolonged temporary protection led to precarity.[74]

Under Turkish laws, the temporary protection regime may come to an end collectively, or the status can be ceased due to personal circumstances.[75] Individual asylum applications of temporary protection beneficiaries are not processed until the end of the temporary protection, as per Article 7 of the TPR.

Temporary protection may be terminated collectively by a Presidential decision, in which case Article 14 of the TPR stipulates that the return of temporary protection beneficiaries shall be the general rule. Regarding collective termination, this occurs by way of a Presidential decision. In such an event, Article 14 of the Temporary Protection Regulation stipulates that the departure of beneficiaries from Türkiye shall be the principal rule. Nevertheless, Article 11 affords the President the discretion to determine the subsequent legal framework by selecting from three options: (a) to fully cease temporary protection and facilitate the return of beneficiaries to their countries; (b) to grant, collectively, another protection status for which the individuals qualify, or to assess pending international protection applications on an individual basis; or (c) to allow beneficiaries to remain in Türkiye under conditions to be specified within the scope of the LFIP.[76] As Ergin and Kader point out, if the temporary protection regime implemented for Syrians is terminated while the need for international protection persists, individuals who previously benefited from temporary protection should retain the right to apply for asylum and be protected from *refoulement* under Articles 4 and 55 of the Law on Foreigners and International Protection.[77]

Crucially, Article 14(3) of the TPR introduces a specific procedural exception for individuals who participated in armed conflicts in their country of origin. If it is established that such persons have permanently ceased their armed activities, they are granted access to individual international protection status determination

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74 Suzan Ilcan, Kim Rygiel and Feyzi Baban, 'The Ambiguous Architecture of Precarity: Temporary Protection, Everyday Living and Migrant Journeys of Syrian Refugees' (2018) 4(1–2) International Journal of Migration and Border Studies 51; İrem Şengül, 'Rethinking Temporary Protection in Turkey: Legality, Uncertainty and Homemaking in the City of Gaziantep' (PhD thesis, University of Warwick 2019).

75 Temporary protection may also come to an end due to individual circumstances and these instances include: voluntary departure from Türkiye; benefiting from the protection of a third country; being accepted by a third country for humanitarian reasons or through resettlement programmes, or exiting to such a country; death of the beneficiary, acquisition of a lawful residence permit under other provisions of the law; or acquisition of Turkish citizenship. Cf. Article 12 of the Temporary Protection Regulation.

76 Article 11 of the Temporary Protection Regulation.

77 Ayşe Dicle Ergin and Yiğit Kader, 'Uluslararası Koruma ve Geçici Koruma Rejiminde Geçicilik Unsuru: "Geçici" Olan Nedir?' (2024) 42(2) İnsan Hakları Yıllığı 79, 97–98.

procedures. While this provision creates a distinct legal pathway for a specific subset of the population, it remains an exception to the group-based nature of the regime. From a strategic perspective, this individualised mechanism remains separate from the broader 'exit strategy' required for the millions of civilian beneficiaries.

While temporary protection is conceptually anchored in the inability to return to the country of departure , Article 12 of the TPR introduces a layer of administrative discretion regarding the consequences of voluntary exit. Under Article 12(1)(a), a voluntary departure results in the individual termination of status; however, Article 13 read in conjunction with Article 12 grants the Presidency of Migration Management the discretionary power to decide whether temporary protection provisions will be re-applied upon a foreigner's subsequent re-entry. This administrative flexibility allows for a case-by-case evaluation of urgent and temporary protection needs for those who have previously exited. Within the context of collective exit strategies, this creates a legal interface where individual mobility such as visits to Syria is managed through administrative discretion rather than an automatic permanent bar to protection. However, this study suggests that while such individualised re-entry decisions are possible under PMM authority, they remain distinct from the broader 'look-and-see' policy schemes which aim to facilitate informed, collective returns without triggering the standard termination-and-reapplication process of Article 12.

C. Voluntary Return Strategy

On voluntary return, Article 42(1) of the TPR notes that the voluntary return of temporary protection beneficiaries to their country should be facilitated and support may be provided to the extent of available means whereas, Article 43 notes travel documents may also be provided to those who wish to return voluntarily. The provision also allows the PMM may cooperate with international organizations and civil society organizations for the purpose of implementing voluntary return procedures.[78] Finally, it is noted that the procedures and principles regarding the implementation of voluntary return operations, and the assistance that may be provided to those returning voluntarily, shall be determined by the Directorate General and implemented by the governorates.[79] The PMM has not published any circular or guidelines on voluntary return of Syrians so far although its website outlines procedures; the Presidency of Migration Management, explicitly frames returns within the framework of "Voluntary, Safe, Dignified, and Regular Return" and asserts that no foreign national under temporary or

78 Article 42(2) and (3) of the TPR.

79 ibid, Article 42(4).

international protection is forcibly sent back or subjected to pressure to return.[80]

Türkiye has formalised its voluntary return procedures through a structured protocol administered by the Provincial Directorates of Migration Management.[81] Initiated via an online appointment, the process necessitates the completion of a 'Voluntary Return Request Form' and mandatory fingerprint and identity verification to confirm the applicant's details.[82] To guarantee the genuine voluntariness of the decision, the signing of this form is subject to independent oversight, prioritising the presence of a UNHCR representative, though alternative monitors from the Turkish Red Crescent or authorised NGOs may act as witnesses.[83] Following the issuance of a travel permit, beneficiaries proceed to designated border gates where authorities conduct final family unity checks before collecting Temporary Protection Identity Documents and formally terminating the protection status.[84] UNHCR's presence is encouraged to ensure voluntariness.[85] Aside from voluntary return which foresees termination of the temporary protection status upon return to Syria there was also a look and see visits scheme.[86] According to the Turkish Minister of Interior, 590,000 Syrians have voluntarily, returned from Türkiye to Syria since the fall of Assad.[87] UNHCR does not promote return to Syria since it considers conditions for large-scale, safe, and sustainable return are not yet in place.[88] However, it monitors returns; it is noted that in Türkiye since the fall of Assad, "UNHCR monitored and interviewed more than 70 percent of all recorded returns in 22 provinces, at six border crossings and three airports."[89]

It should be also mentioned that although it is not a migration law or secondary law *per se*, The Turkish Ministry of Trade Circular of 21 December 2024 seeks to facilitate the large-scale voluntary return of Syrian nationals by streamlining

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80 Presidency of Migration Management, 'Gönüllü Geri Dönüş (Voluntary Return)' https://www.goc.gov.tr/gonullu-geri-donus accessed 30 January 2026.

81 ibid.

82 ibid.

83 ibid.

84 ibid.

85 ibid.

86 ibid.

87 UNHCR, 'UNHCR Türkiye Monthly Operational Update – December 2025' https://www.unhcr.org/tr/en/media/unhcr-tuerkiye-monthly-operational-update-december-2025 accessed 30 January 2026.

88 UNHCR, 'Returning to Syria' (30 September 2025) https://help.unhcr.org/iraq/en/2025/09/30/returning-to-syria/ accessed 30 January 2026.

89 UNHCR, 'UNHCR Türkiye Monthly Operational Update – December 2025' https://www.unhcr.org/tr/en/media/unhcr-tuerkiye-monthly-operational-update-december-2025 accessed 30 January 2026.

customs and financial procedures to apply at the borders.[90] Key measures include the replacement of standard verbal declarations with a 'Facilitated Exit Form' for household goods, simplified procedures for the permanent export of both Syrian and Turkish-registered vehicles, and provisions for the relocation of Syrian-owned businesses and machinery.[91]

Distinct from this permanent voluntary return mechanism, Türkiye established 'look and see' visits scheme, allowing beneficiaries to return temporarily to Syria to assess conditions without the immediate and permanent revocation of their status. Türkiye's principal assisted return mechanisms consist of the Assisted Voluntary Return and Reintegration (AVRR)[92] schemes implemented by IOM in cooperation with the PMM and the National Assisted Voluntary Return and Reintegration (N-AVRR)[93] programme jointly run by ICMPD and PMM. Neither mechanism, however, is available to Syrians under temporary protection, who remain structurally excluded from these formal assisted return channels.[94] Instead Türkiye currently employ look and see visits.

Türkiye has also introduced a kind of look and see visit scheme called 'Öncü Göçmen' (pioneer migrant) scheme, which enabled Syrians to undertake short, authorised "look-and-see" visits to assess conditions in specific areas of Syria.[95] Limited to three entries/exits between 1 January 2025 and 1 July 2025

90 The Circular introduced significant financial exemptions valid until 31 December 2025, permitting returnees to carry jewellery exceeding $15,000 and substantial cash assets across the border without the standard requirements for proof of purchase or bank-mediated transfers, provided they submit the necessary cash declaration forms. Republic of Türkiye Ministry of Trade, 'Circular on the Return Procedures of Syrian Arab Republic Citizens' (21 December 2024) Gümrükler Genel Müdürlüğü No 2024/24.

91 ibid.

92 "Assisted Voluntary Return and Reintegration (AVRR) has been a core activity of IOM Türkiye since 2009. The AVRR programme facilitates the orderly and humane return and reintegration of migrants who are unable or unwilling to remain in host or transit countries and wish to return voluntarily to their countries of origin." IOM Türkiye, 'Assisted Voluntary Return and Reintegration' https://turkiye.iom.int/assisted-voluntary-return-and-reintegration accessed 30 January 2026.

93 ICMPD, 'Supporting the Implementation and Further Strengthening of Türkiye's National Assisted Voluntary Return and Reintegration System' https://www.icmpd.org/our-work/projects/supporting-the-implementation-and-further-strengthening-of-tuerkiye-s-national-assisted-voluntary-return-and-reintegration-system-navrr accessed 30 January 2026.

94 N. Ela Gökalp Aras, Umutcan Yüksel and Hakan Ünay, 'Return Migration Infrastructure in Turkey from Europe to Europe' (WP3 Country Dossier v1, GAPs 2025) https://doi.org/10.5281/zenodo.15850973.

95 UNHCR, 'UNHCR Türkiye Monthly Operational Update – December 2025' https://www.unhcr.org/tr/en/media/unhcr-tuerkiye-monthly-operational-update-december-2025 accessed 30 January 2026; Gökalp Aras, N. E., & Yüksel, U. (2025). Between Choice and Constraint: Go-and-see Visits and Syrian Return from Türkiye, WP10 Policy Report in GAPs: Decentring

(this was later on extended to December 2025), these visits enabled Syrians to temporarily travel to designated areas in northern Syria, allowing them to directly observe the conditions of safety, housing, and livelihood opportunities before making a final decision about their return.[96] It should be also mentioned that there is a pilot cash-assistance programmes up to €1,000 per household by the PMM and UNHCR.[97]

IV. COMPARATIVE PERSPECTIVES: A CRITICAL EVALUATION OF EUROPEAN AND TURKISH EXIT FRAMEWORKS

A comparative examination of the temporary protection regimes in the EU and Türkiye reveals striking structural parallels in the governance of termination of temporary protection, while simultaneously exposing a significant divergence in their long-term strategic outlooks. It must be noted that, at the time of writing in January 2026, exit strategies from temporary protection remain in an iterative planning phase and are subject to evolution prior to this article's publication. However, based on the legal landscape at the start of 2026, the following comparisons can be made. First, both regimes demonstrate a heavy reliance on executive discretion over statutory automaticity regarding termination. Although the Temporary Protection Directive and the Turkish Temporary Protection Regulation introduce legal criteria for ending protection, premised theoretically on the possibility of safe and sustainable return, the actual trigger for termination remains a political decision. However, this executive power is not absolute; a Presidential decision to terminate the status or prescribe specific exit strategies under Article 11 of the Turkish TPR constitutes an administrative act subject to judicial review under Article 125 of the Turkish Constitution.[98] This constitutional provision ensures that the legality of such measures can be challenged before the Turkish Council of State (*Danıştay*).

Second, in both instances, the temporary nature of the status has proven to be theoretical. The EU regime, now extended until March 2028, has effectively overrun the three-year maximum duration explicitly mandated by Article 4 of the Temporary Protection Directive. Similarly, the Turkish regime, entering its fifteenth year, has far exceeded any reasonable interpretation of temporariness. These realities confirm the argument in Section 1 that in the absence of a fundamental change of circumstances allowing for return in safety and dignity,

the Study of Migrant Returns and Readmission Policies in Europe and Beyond, DOI: 10.5281/zenodo.17668808.

96 ibid.

97 N. Ela Gökalp Aras and Umutcan Yüksel, 'Between Choice and Constraint: Go-and-see Visits and Syrian Return from Türkiye' (WP10 Policy Report, GAPs 2025) https://doi.org/10.5281/zenodo.17668808.

98 Constitution of the Republic of Turkey (Türkiye Cumhuriyeti Anayasası), Article 125.

temporary protection inevitably drifts into protracted temporary protection.

Third, both jurisdictions have converged on the necessity of ‘look-and-see’ mechanisms as a precursor to return. Crucially, neither mechanism fits the traditional definition of ‘assisted voluntary return’, which typically entails the permanent surrender of status upon departure. Instead, these schemes function as confidence-building measures and validate the view that mobility is a prerequisite for, rather than the antithesis of, durable return. While an individual voluntary exit typically results in the de-registration of a beneficiary, the look-and-see schemes in both jurisdictions are framed as confidence-building measures that preserve the beneficiary’s legal link to the host state during the assessment period. Fourth, a sharp divergence appears regarding integration as an exit strategy. The EU has adopted a dual track approach: while preparing for returns, the Council Recommendation explicitly foresees integration into host societies as a viable pathway, encouraging Member States to transition beneficiaries onto national or EU-harmonised residence permits. By contrast, while Turkish law in particular the TPR theoretically allows for the transition to integration, no specific policy document or circular currently acknowledges mass integration or long-term residence as a strategic objective for Syrians. The Turkish exit strategy remains overwhelmingly focused on voluntary return.

Fifth, furthermore, both jurisdictions exhibit significant legal uncertainty regarding the future of individuals who fail to qualify for alternative residence permits and are unwilling to return. Under EU law, although the right to apply for international protection remains a primary safeguard, there is a notable absence of a clear exit strategy for those who neither meet the criteria for standard migration pathways nor consent to voluntary repatriation. The same can be said for the Turkish case; while the Temporary Protection Regulation theoretically allows for a transition to other legal and residency statuses, there is currently no specific policy framework or administrative pathway addressing the millions of beneficiaries who may fall into a residual legal vacuum post-termination. Consequently, in both systems, this category of displaced persons remains in a precarious state of legal limbo without a defined interface between the cessation of group-based protection and individualised durable solutions.

Sixth, a notable parallel between the two jurisdictions is a reluctance to encourage individual asylum applications from temporary protection beneficiaries, even when the temporary protection status is ceased. While the Turkish legal framework, specifically the TPR, remains largely silent on which point of time, asylum applications of temporary protection beneficiaries will be examined and lacks a robust enabling provision similar to Article 17 of the Temporary Protection Directive. However, even within the EU context, where the right to apply for international protection is explicitly codified and is a right recognised under the Directive itself but also Charter of Fundamental Rights of the European

Union, a textual analysis of recent Commission and Council documents reveals a strategic shift toward discouraging such applications.[99] This is evidenced by the emphasis placed on alternative migration pathways and voluntary return schemes. By framing these as the primary durable solutions, the EU and Turkish authorities implicitly seek to bypass the administrative burden of individualised refugee status determination for millions of beneficiaries.

Finally, a critical legal innovation emerging from the EU practice is the operationalisation of post-temporary protection status extensions. By invoking Article 21(3) of the Temporary Protection Directive, the EU recommends Member States to allow for the extension of residence permits and associated rights granted to temporary protection beneficiaries, including access to the labour market, healthcare, and social assistance, for up to one year after a beneficiary has formally enrolled in a voluntary return programme. This mechanism creates a crucial legal buffer that mitigates the risks associated with the immediate cessation of temporary protection status. In contrast to traditional termination models, where protection typically expires the moment a decision to return can be issued. This extended status validity protects beneficiaries from falling into irregularity during the logistical preparation for departure.

CONCLUSION

The comparative analysis of exit strategies in the EU and Türkiye reveals that both jurisdictions have reached a decisive turning point in the management of temporary protection. While both regimes rely heavily on executive discretion and have converged on the use of confidence-building ‘look-and-see’ visits, they diverge fundamentally in their strategic outlook. The European Union’s 2025 transition framework formalises a bifurcated pathway that legitimises local integration as a parallel durable solution to voluntary return. In contrast, the Turkish approach, the details of which remain largely opaque and have not been formally publicised at the time of writing, remains singularly focused on voluntary return and the protracted continuance of the temporary protection regime. This strategic divergence highlights a fundamental shift in the EU’s outlook toward legal permanence for displaced Ukrainians, whereas Türkiye’s exit strategy lacks a clear interface for those unable or unwilling to return.

Ultimately, the legitimacy of any exit strategy must be measured by its ability to bridge the existing governance gap without compromising the principle of *non-refoulement* or facilitating constructive refoulement. As temporary protection regimes inevitably drift into protracted states, the risk of institutionalising constructive refoulement through administrative coercion and legal uncertainty becomes increasingly acute. To ensure that the termination of protection remains

99 Meltem Ineli-Ciger, ‘Beyond Temporariness: Policy Options for Ukrainians under EU Temporary Protection in 2025’ (2025) https://www.coleurope.eu/sites/default/files/research-paper/İneli-Ciger_CEPOB_2-2025.pdf accessed 30 January 2026.

orderly and dignified, exit strategies must move beyond discretionary executive acts and be anchored in precise legal safeguards.

The EU's operationalisation of post-enrolment status extensions under Article 21(3) of the Temporary Protection Directive serves as a critical safeguard against legal limbo. This mechanism provides a vital normative lesson for other host states navigating the transition from group-based protection to individualised status. Only by providing clear, legally defined pathways to durable solutions can host states ensure that the cessation of temporary protection does not result in a precarious legal vacuum for the millions of displaced persons the regime was originally designed to protect.

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THE PROBLEM OF THE APPLICATION OF THE LAW IN THE INTERNATIONAL ARENA*

Uluslararası Arenada Hukukun Uygulanması Sorunu

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Abstract

This article examines the structural and normative barriers to the implementation of democracy and the law at the global level through the lens of the natural law approach, ethical universalism, and human rights doctrine. Although the contemporary global order formally recognizes democracy, human freedoms, and the law as universal benchmarks, their practical application remains deeply constrained by sovereignty, power asymmetries, and geopolitical interests. The article argues that this gap between normativity and practice does not stem solely from deficiencies in enforcement mechanisms, but rather reflects a deeper ontological tension between moral universalism and the positivist foundations of international law. While natural law grounds legal validity in moral correctness and ethical rationality, ethical universalism asserts the equal moral worth of all persons, thereby demanding universal standards of political legitimacy. Human rights doctrine institutionalizes these claims within contemporary legal frameworks. Yet, selective application and instrumentalization of these norms undermine their legitimacy and erode the moral foundations of the global legal order. This study argues that overcoming the crisis requires not only institutional reforms but also a radical rethinking of the ethical foundations of international law.

Keywords: Natural law, comparative political institutions, democracy, the rule of law, international law, human rights, global justice

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* There is no requirement of Ethics Committee Approval for this study.

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Özet

Bu makale, doğal hukuk yaklaşımı, etik evrenselcilik ve insan hakları doktrini perspektifinden, küresel düzeyde demokrasi ve hukukun uygulanmasının önündeki yapısal ve normatif engelleri incelemektedir. Çağdaş küresel düzen, demokrasiyi, insan özgürlüklerini ve hukuku evrensel ölçütler olarak resmen tanısa da bunların pratik uygulaması egemenlik, güç eşitsizlikleri ve jeopolitik çıkarlar tarafından derinden kısıtlanmaktadır. Makale, normatiflik ve uygulama arasındaki bu boşluğun yalnızca uygulama mekanizmalarındaki eksikliklerden kaynaklanmadığını, aksine ahlaki evrenselcilik ile uluslararası hukukun pozitivist temelleri arasındaki daha derin bir ontolojik gerilimi yansıttığını savunmaktadır. Doğal hukuk, hukuki geçerliliği ahlaki doğruluk ve etik rasyonellik üzerine kurarken, etik evrenselcilik tüm kişilerin eşit ahlaki değerini savunarak evrensel siyasi meşruiyet standartları talep eder. İnsan hakları doktrini, bu iddiaları çağdaş hukuk çerçeveleri içinde kurumsallaştırır. Ancak, bu normların seçici uygulanması ve araçsallaştırılması, meşruiyetlerini zayıflatmakta ve küresel hukuk düzeninin ahlaki temellerini aşındırmaktadır. Bu çalışma, krizin üstesinden gelmenin yalnızca kurumsal reformları değil, aynı zamanda uluslararası hukukun etik temellerinin kökten yeniden düşünülmesi gerektirdiğini savunmaktadır.

Anahtar Kelimeler: Doğal hukuk, karşılaştırmalı siyasal kurumlar, demokrasi, hukukun üstünlüğü, uluslararası hukuk, insan hakları, küresel adalet

INTRODUCTION

The Romans made the saying, “Where there is society, there is law; where there is law, there is society,” a guiding principle of law.[1] In our time, the search for law, both locally, nationally, and internationally, has inevitably brought back to the forefront the need to investigate the origins of humanity and its tendencies. The reasons for this drive and impulse to grasp the universal in the discipline of law fall within the area of lawyers, social psychologists, and political psychologists. In short, an interdisciplinary approach and methodological examination of law and natural rights will move law beyond the misconception of being merely a normative phenomenon, revealing its connection to the social and human sciences, and contributing to the benefits of human freedoms in the meaning of soft-power politics to the philosophy and psychology of law. This article emphasizes that international law, due to its supranational nature and the principle of equality between states, is independent of states and lack enforcement power.

The law and democracy have been established at both the local and national levels, but they have not been fully integrated into the international system. The

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1 Ö Aslan, Anayasal Devlet İlkesi Bağlamında İnsan Hakları ile Güvenlik Arasındaki Denge (2026) 23 *Ombudsman Akademik* 237.

construction of democracy and the law at the local and national levels arose from economic, social, political, and, consequently, legal needs and was part of the transition from the pre-modern to the modern era. The foundations of the global system date back to the 1648 Treaty of Westphalia. However, philosophical foundations for world peace are based on Kant's political and legal philosophy of the Enlightenment. Kant's idea of universal eternal peace provided historical depth in legal philosophy, emphasizing the historical necessity of equal participation by states and peoples. Kant's idea of Eternal Peace and the conditions within the historical flow led to the association of the United Nations. Furthermore, social and universal agreements on human rights were accelerated by the impact of the two great world wars. However, power-based realpolitik has hindered these efforts, and the imbalance of economic and political power has created a barrier to the realization of global democracy and law.[2]

The article begins from a central paradox in contemporary international law: universal legal norms enjoy unprecedented rhetorical and formal recognition, yet their application remains radically uneven. Human rights and the rule of law are embedded in the United Nations Charter, major human-rights treaties, regional institutional frameworks, and the legal discourse of international organizations.[3] Nevertheless, similar violations produce very different legal and political consequences depending on the identity, strategic position, and institutional power of the actors involved.

The international system has become chaotic due to the impact of globalization and its technical, technological, and speed-driven consequences. Developed countries and permanent members of the UN General Assembly, utilizing the economic, political, and legal power structures resulting from the realpolitik causes and consequences of the past and present, exercise hegemony and dominance over world politics and the universal legal system.[4]

This situation complicates the possibility of a universal legal order emerging and the global boundaries of law and democracy. Furthermore, it renders the applicability of the legal advancements achieved by humankind and civilization throughout their long journey at the individual, local, and national levels. Today, the long-term and painstaking gains made in building democracy and law are in danger of being squandered due to the structure of international practice law. International threats are dragging nations into an insecure world at both local and national levels.

2 J Donnelly, *Universal human rights in theory and practice* (2013) (3rd ed, Cornell University Press) 34.

3 Charter of the United Nations (26 June 1945), arts 1, and 2.

4 M Koskenniemi, *From apology to utopia: The structure of international legal argument.* (2005) (Cambridge University Press) 25.

This study examines the reasons why universal law, despite being accepted as a norm, cannot be applied in international relations, foreign policy, and the global arena. The study highlights the legal vacuum in the international arena by considering these issues from the perspectives of human rights, democracy, ethics, and natural rights. This study has adopted an approach that prioritizes change and transformation, giving the idea that law is a value to be constantly pursued from a human perspective, that is, a solution that must be continuously sought and is not known in advance. This study aims to reduce the functional divergence between legal and human rights theories and political science's approaches to international care, and to contribute to solutions to this need. From a historically interpretive perspective, the study examines natural rights, human rights, ethics, and international law in an interdisciplinary manner, addressing them in a way that is relevant and consistent with contemporary needs. To answer this research question, the article attempts to consider together three layers that are often confused in the literature. These layers, which are quite intricate, difficult to separate, and complex, can be considered as global law as a decentralized legal order based on sovereign consent; global human rights law as a specialized normative and institutional regime; and law in a philosophical sense as a moral order associated with natural law and universal justice.

I. NATURAL LAW, HUMAN DIGNITY, AND THE MORAL AUTHORITY OF UNIVERSAL NORMS

Natural law remains indispensable because it explains why some lawful norms claim authority beyond state will. Hobbes, Locke, and Kant all contribute distinct pathways from moral reason to legal obligation.[5] Locke's theory of natural rights remains especially central to the contemporary language of human dignity and individual entitlement.[6] A contemporary extension of this tradition can be found in John Finnis's reformulation of natural law as a theory of practical reason and fundamental human goodness, which reinforces the claim that legal validity is inextricably linked to moral intelligibility and the common good.[7] Similarly, Lon Fuller's concept of the "intrinsic morality of law" strengthens the argument that the rule of law itself presupposes procedural principles such as generality, clarity, consistency, and conformity between formal action and promulgated rules, thus linking the rule of law to an intrinsic moral construct rather than a mere state mandate.[8] Allen Buchanan's work is particularly important from the perspective of contemporary international law theory because, by repositioning

5 M Freeman, *Human rights* (2022) John Wiley & Sons.

6 M Koskenniemi, *From apology to utopia: The structure of international legal argument.* (2005) (Cambridge University Press) 27.

7 J Finnis, *Natural Law and Natural Rights* (2nd edn, OUP 2011) 161–163.

8 L Fuller, *The Morality of Law* (revised edn, Yale University Press 1969) 33–94.

the moral foundations of international law from merely interstate peace to justice, legitimacy, and the protection of individuals, he establishes a direct bridge between the logic of natural law and modern debates about universal norms and institutional reform.[9] The modern significance of this tradition lies in its doctrinal afterlife within jus cogens, inalienable rights, and the prohibition of genocide, torture, and crimes against humanity. The persistence of peremptory norms demonstrates that even a consent-based international legal order cannot fully detach itself from universal moral claims.[10] The question is whether universal norms possess philosophical legitimacy, but why that legitimacy does not reliably translate into equal application.[11]

The most significant influence of natural law thought on the today's human rights regime is the normative centrality of the notion of human dignity. Human dignity is based on the assumption that the individual is an inalienable, indispensable, and equal being.

The structural features of international law are viewed through two distinct lenses: its classical foundations (the de jure framework) and its contemporary practical challenges (the de facto reality).

II. ETHICAL UNIVERSALISM UNDER STRUCTURAL AND INSTITUTIONAL CONSTRAINTS

Ethical universalism extends the equal moral worth of persons beyond political borders.[12] This principle underpins the assumption that all individuals have equal moral value. This value should be recognized by law and political systems. Kant's cosmopolitan right and Rawls's law of peoples both sustain the proposition that some obligations attach to persons as human beings rather than merely as citizens.[13] Kant's cosmopolitan concept of rights suggests that individuals can make moral and legal claims not only as citizens of their states but also as citizens of the world.[14] Ethical universalism argues that moral obligations are not confined to members of an immediate political community but extend toward all humanity. In this sense, it forms the normative basis of modern human rights theory and cosmopolitan political thought. Kant's moral philosophy remains

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9 A Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP 2003) 9.

10 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 35.

11 J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011)104.

12 I Kant, *Groundwork of the Metaphysics of Morals* (M Gregor tr, Cambridge University Press 1997) 36.

13 P Singer, *The Expanding Circle: Ethics, Evolution, and Moral Progress* (Princeton University Press 2011) 41.

14 I Kant, *Political Writings* (H Reiss ed, HB Nisbet tr, Cambridge University Press 1991) 81.

one of the most influential formulations of ethical universalism.

In the modern era, ethical universalism was reformulated as a political theory most prominently by John Rawls. Rawls argues that a just international order must include respect for fundamental human rights, the equality of peoples, and principles of mutual legitimacy. [15] Although Rawls rejects the universal imposition of liberal democracy, he still treats human rights as minimum moral standards binding upon all reasonable political communities.[16]

Harold Koh's transnational legal process theory explains the internalization of international norms through a recurring cycle of interaction, interpretation, and internalization, whereby repeated engagement embeds legal norms into domestic institutions and bureaucratic culture.[17] Beth Simmons' compliance-based approach clarifies that state adherence to international law is often driven by reputational costs, domestic political pressures, and expectations of reciprocity, which together create incentives for sustained compliance.[18] Martha Finnemore and Kathryn Sikkink's norm life-cycle model demonstrates how norms emerge through norm entrepreneurs, spread through a cascade process, and eventually become taken for granted standards of appropriate state behavior.[19] Robert Keohane's neoliberal institutionalist framework argues that international institutions facilitate cooperation under anarchy by reducing transaction costs, increasing transparency, and structuring repeated interactions among states.[20] John Mearsheimer's realist critique, however, reminds us that where institutions lack autonomous coercive capacity, relative power and great-power interests remain the decisive determinants of state behavior.[21]

There is a widespread literature on the frequent use of normative principles such as democracy, and the law as discursive tools in international politics. In particular, policies such as humanitarian intervention, export of democracy, and the law are often legitimized in the name of universal moral values; however,

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15 J Rawls, *The Law of Peoples* (Harvard University Press 1999) 22.

16 J Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (W Rehg tr, MIT Press 1996) 78.

17 H H Koh, 'Why Do Nations Obey International Law?' (1997) 106 *Yale Law Journal* 2599.

18 B A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

19 M Finnemore and K Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) *International Organization* 887.

20 R O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press 1984).

21 J J Mearsheimer, 'The False Promise of International Institutions' (1994/95) 19(3) *International Security* 5.

it is observed that these values are applied selectively and inconsistently in practice. This situation carries the risk of instrumentalizing ethical universalism in practice.[22]

According to Koskenniemi[23], international law and normative discourse often oscillate between legitimizing political power relations and representing the utopia of normative ideals. Law, on the one hand, becomes the instrumental and pragmatic language of power politics, while on the other hand, it maintains its claim to represent universal ideals of justice. This dual structure weakens the binding nature and legitimacy of normative principles; it places the international legal order on an internally unstable normative foundation.

In this context, promoting democracy and the rule of law at the international level functions as a strategic tool rather than a moral obligation. While some authoritarian regimes are accepted as legitimate partners in the international system despite violations, the fact that similar violations are satisfied with harsh sanctions in other regions undermines the claim of the universality of normative principles.[24]

If human rights and the law are applied selectively, subject to political calculations, it becomes increasingly difficult to speak of their universal and binding character. [25] In this context, the crisis facing the normative order should be considered not only as a lack of application but also as a profound transformation in the meaning and function of norms.[26] Ethical universalism and the doctrine of human rights are confronted with criticisms of cultural relativism.[27]

III. INSTITUTIONAL FRAGMENTATION OF INTERNATIONAL LAW

At the national policy level, human rights, democracy, and the rule of law reinforce each other. Rights limit the power of the majority and the law guarantees predictability and equal treatment.[28]

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22 D Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (Routledge 2010) 46.

23 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005) 29.

24 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 39.

25 D Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (Routledge 2010) 47.

26 J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011) 105.

27 M Weber, *Economy and Society* (G Roth and C Wittich eds, University of California Press 1978) 11.

28 Charter of the United Nations (26 June 1945), arts 1, 2, and 55.

The UN Charter, the ICCPR[29], the ECHR[30], the Rome Statute[31], and EU treaty[32] structures legally formalize these values, but adjudication and implementation remain subject to state approval.[33] This means that legal consistency exists at the textual level but is not necessarily present at the institutional level of access. Consequently, a systemic disconnect occurs between normative adherence and practical applicability.[34]

Law, human rights, and democracy are considered three fundamental pillars that complement each other in modern political and legal thought. Human rights express the inherent and inalienable moral and legal claims of the individual. While the law guarantees that political power is limited in accordance with these rights and that legal predictability is ensured. Democracy presupposes that political decision-making processes are based on the principles of equal participation, representation, and public reasoning.[35] Taken together, these three principles form the foundation of the modern constitutional state and the contemporary international legal order. The normative structure of this relationship is often mutually constitutive. Without the law, democracy can lead to majoritarian arbitrariness and violations of minority rights; without democracy, the law can transform into a technocratic or authoritarian legal order. Similarly, in international relations, without the law, these can be reduced to formal procedures. Therefore, in contemporary political theory, these three principles are often considered together as a holistic normative framework.[36]

A similar claim of normative integrity exists at the international level. The UN system, the mechanisms of the Council of Europe define human rights, democracy, and the law as fundamental conditions for international peace, security, and legitimacy. The European Union's founding treaties and enlargement policies embody the claim of normative integrity at the institutional level by

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29 International Covenant on Civil and Political Rights (1966).

30 European Convention on Human Rights (1950) Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) art 1.

31 Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 arts 1 and 17.

32 Consolidated Version of the Treaty on European Union (2016) OJ C202/13, art 2

33 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (ECHR) art 1.

34 See also Rome Statute, art 1 (complementarity structure) and ICCPR art 2 (state duty to respect and ensure rights), illustrating the divergence between textual normativity and jurisdictional reach.

35 J Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (W Rehg tr, MIT Press 1996) 81.

36 R Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011) 21.

placing these three principals at the center of its membership criteria.[37]

However, the actual institutionalization of this normative integrity at the international level faces serious structural obstacles. The principle of state sovereignty limits external intervention in human rights violations; the global judicial mechanism. The scope of their jurisdiction often depends on the consent of states.[38]

The law guarantees the application of legal norms free from arbitrary political interference, judicial independence, legal predictability, and equal treatment. Without these principles, human rights risk becoming merely rules broken. Similarly, democracy provides the institutional framework that strengthens the social legitimacy and political accountability of human freedom. However, the institutionalization of the rule of law and democratic principles at the global stage is not as advanced as it is at the national level. The powers of international jurist bodies are limited; their enforcement mechanisms are often subject to political bargaining and power relations. This situation severely limits the effective safeguard and implementation of human rights globally.[39]

Democracy is presented as a universal norm and criterion of legitimacy in contemporary international discourse. United Nations documents, the normative frameworks of regional organizations, and international development policies define democratic governance as an integral part of the set of universal values, along with human rights and the law.[40]

However, whether democracy has a universal status is debatable. Cultural relativism and post-colonial critiques argue that democracy has been shaped within the historical and cultural context of Western modernity; that different models of legitimacy and governance can be found in different social and political contexts.[41] From this perspective, imposing democracy as a universal norm carries the risk of challenging hegemony and political dominance, both in positive and negative ways.[42] This normative debate also raises the question of whether democracy can be accepted as a binding norm at the international level. Rawls' approach offers an intermediate position in this context.

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37 A Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54 *International Organization* 217.

38 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 46.

39 A Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54 *International Organization* 219.

40 D Held, *Models of Democracy* (3rd edn, Polity Press 2005) 22.

41 D Archibugi, 'Principles of Cosmopolitan Democracy' in D Held, D Archibugi and M Köhler (eds), *Re-imagining Political Community* (Cambridge University Press 1998) 198.

42 R Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011) 24.

At the international stage, however, the institutionalization of the law is more limited. Global law largely derives its binding nature from treaties and customary rules based upon the consent of states; the powers of international judicial bodies are often limited and discretionary.[43] This situation makes it difficult to effectively implement the fundamental principles of law, namely legal predictability and equal application, at the international level. The fact that powerful states can be effectively exempted from international legal obligations or apply them selectively erodes the normative content of the rule of law principle at the international stage. The limited jurisdiction of the ICC, the ability of major powers to avoid recognizing the court's authority, and the fact that international sanctions are often the product of political bargaining are concrete manifestations of this problem.[44]

In this context, the institutionalization of law at the international level requires not only legal reforms but also a normative reinterpretation of the concept of state sovereignty. Within the framework of human rights and universal moral obligations, sovereignty is reconceptualized not as an absolute authority, but as an authority limited by the obligation to uphold the inherent rights of individuals.[45]

IV. POWER ASYMMETRY AND THE SELECTIVE ENFORCEMENT OF UNIVERSAL NORMS

The principle of sovereign equality can mask the fact that states possess radically unequal capacities in interpreting, setting agendas, and shaping implementation outcomes. According to Koskenniemi, international law must simultaneously speak the language of universal justice and operate in a world structured with unequal powers.[46] Consequently, similar violations can lead to sanctions, silence, investigations, or impunity, depending more on the geopolitical context than on legal seriousness. The fundamental distinction is between equality in law and selectivity in practice.

Although the global political order is formally based on the principle of legal equality of sovereign states, it is in reality characterized by power asymmetries. States, differing greatly in terms of economic, military, diplomatic influence and institutional representation, are not equally effective in the creation and application of international norms. Therefore, this situation significantly shapes

43 M N Shaw, *International Law* (8th edn, Cambridge University Press 2017) 100.

44 P Akhavan, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?' (2001) 95 *American Journal of International Law* (7) 8.

45 F. M. Deng, S Kimaro, T Lyons, D Rothchild and IW Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press 1996) 12.

46 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005) 39.

the actual functioning of global law and the global order.[47]

One of the most striking consequences of this asymmetry is the selective application of legal standards. Sanctions, investigations, and diplomatic pressure are often applied only when consistent with strategic interests, while similar violations elsewhere may be ignored. This discrepancy between legal equality and de facto asymmetry leads to a legitimacy crisis. As Koskenniemi argues, international law is structurally unstable because it simultaneously claims universal justice and functions within a political order shaped by realpolitik.[48] While claiming to represent universal ideals of justice, it also functions as part of a political order determined by power relations. This dual structure constantly erodes the legitimacy and binding nature of the normative order.

The selective application of democracy and the law constitute one of the most serious threats to the legitimacy of the global normative order. When human rights violations are condemned in some contexts but ignored in others, the universality of legal principles is undermined. From a natural law perspective, this represents a breakdown of the unity of law and justice.[49]

The practice of asymmetric application weakens not only the consistency of rules but also the ethical and legitimizing authority of international law. Rules can only be perceived as legitimate and binding insofar as they are applied equally and impartially. The subordination of normative principles to political calculations strengthens criticisms that these principles are instrumentalized and transformed into tools for generating legitimacy.[50]

From a natural law perspective, this constitutes a violation of the principle of law compatible with justice. Law loses its normative legitimacy when it is incompatible with justice and not applied equally; it becomes merely a reflection of power relations and political interests.[51] From the perspective of ethical universalism, the selective application of norms practically invalidates the assumption that all individuals have equal moral value and erodes the ideal of global justice.

Normative erosion means a weakening of trust in the binding nature and moral authority of universal values. This process threatens not only the effectiveness but also the legitimacy of global law and the human freedom regime.[52]

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47 M N Shaw, *International Law* (8th edn, Cambridge University Press 2017) 102.

48 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005) 39.

49 Ibid 40.

50 D Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (Routledge 2010) 51.

51 J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011) 107.

52 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*

The transformations and changes in soft power policies throughout history demonstrate their connection to concepts such as modernization, fashion, and modernity. The cultural and sociological differences of societies have begun to disappear with the process of modernization and globalization. Westernization and modernization processes are attempting to establish dominance over traditional societies.

In today's contemporary politics, the situation is based on legitimacy. The West is experiencing a shift in power and axis as a result of shifts in issues such as migration, refugees, the Middle East, and peace, and is increasingly confronting the world. During and after the Cold War, only radical left and radical right groups possessed an anti-American and anti-Western sociological and social psychological structure, and politics operated in a Western-centric manner, as did the sociology and psychology of politics. However, the West's interventionist cosmopolitanism and universalist imperialism, which began with the Cold War but has continued to increase especially from the 1990s to the present day, has brought about a detachment from the legitimacy axis of power and seems to have become the source of injustices in the world.[53]

While it is known that all empires and civilizations throughout history have possessed a cosmopolitan character, they have a theoretical and practical need for the cycle of justice or legitimizing metaphors of equality, justice, and freedom.

V. SOVEREIGNTY AS THE STRUCTURAL CONSTRAINT OF GLOBAL RULE OF LAW

Sovereignty is not simply a background principle; it is the central structural mechanism through which universal norms are filtered. The shift from Westphalian autonomy to responsibility-limited sovereignty has undoubtedly transformed the legal imagination of the international order.

Yet even under responsibility-based models, intervention, adjudication, and sanctioning remain constrained by consent, Security Council politics, opt-outs, reservations, and jurisdictional avoidance. The ICC's limited reach and the uneven willingness of major powers to accept jurisdiction remain clear examples. Accordingly, sovereignty should be understood as the principal transmission belt converting universal normativity into differentiated legal consequences.

Sovereignty remains a central pillar of the modern state system originating in the Westphalia.[54] Yet the post-1945 international legal order, particularly through the UN Charter, the Genocide Convention, and the development of international

(Cambridge University Press 2005) 43.

53 B Hansen, *Unipolarity and World Politics: A Theory and Its Implications* (1st edn, Routledge 2010) 15.

54 S D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999) 103.

criminal law, has increasingly limited sovereignty in the name of human-rights protection.[55] Crimes against humanity, genocide, and war crimes demonstrate that sovereignty can no longer function as an absolute shield.[56] This principle has long determined the normative architecture of modern international law; state sovereignty has recreated a prominent position as the source and limit of legal obligations.[57] However, the understanding of sovereignty has undergone significant transformations since the second half of the 20th century. The classical understanding of sovereignty, which held that states had absolute discretion in their domestic affairs, has begun to be normatively limited.[58] The Genocide Convention, the granting of global legal status to categories such as criminalities against humankind and war crimes, is among the most striking examples of sovereignty being removed as an absolute shield.[59] This transformation can be considered a normative reorientation that, in line with natural law and ethical universalism perspectives, places the moral value of the individual before state sovereignty. Human rights have been conceptualized as binding universal norms beyond and above the national legal systems of states; this has paved the way for a reinterpretation of sovereignty not as absolute, but as a conditional and responsibility-based form of authority.[60]

The lawfulness of the global political stage is based not only on legal validity or power relations, but also on normative acceptance and claims of moral correctness. In the Weberian sense, legitimacy refers to the acceptance of power as just and binding by those governed.[61] At the global stage, legitimacy depends on whether the decisions of states and international institutions are perceived as normatively just and fair.

In this context, the responsibility-based reinterpretation of sovereignty points to a potential transformation of the international normative order, but it has not been consistently and universally implemented within the existing power relations and institutional structure. This situation shows that the structural tension between normative ideals and political reality continues.[62]

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55 Genocide Convention 1948, art II.

56 Charter of the United Nations (26 June 1945), arts 1, 2, and 55.

57 Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277.

58 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 54.

59 Genocide Convention 1948, art 1 and 2.

60 F M Deng, S Kimaro, T Lyons, D Rothchild and IW Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press 1996) 18.

61 M Weber, *Economy and Society* (G Roth and C Wittich eds, University of California Press 1978) 11.

62 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*

International institutions play a central position on the institutionalization of democracy and the law at the global level.[63] The UN, the Council of Europe, the EU, the ICC, and regional human rights courts have developed various normative and institutional mechanisms to protect human rights, promote the law, and support democratic governance.[64]

However, the effectiveness and legitimacy of these institutions are seriously debatable. Since international institutions are often dependent on the consent and contributions of states, they are significantly shaped by the political preferences of powerful states. This weakens the consistency and impartiality of normative decisions; This prevents the global legal order from functioning in agreement with the regulation of the law.[65]

Furthermore, the problem of the democratic legitimacy of international institutions is noteworthy. The fact that decision-making processes often operate in a closed, elitist, and detached manner weakens the normative claims of these institutions.[66]

VI. GLOBAL JUSTICE AND THE MORAL LIMITS OF STATE CENTRIC ORDER

From an ethical universalist perspective, the persistence of selectivity creates not only legal inconsistency but moral injury to the ideal of equal human worth.[67] Yet international political practice frequently violates this ideal through the protection of powerful-state interests, deepening inequalities, and persistent impunity. Rawls's framework remains important, though cosmopolitan critiques from Pogge deepen the analysis. Pogge's critique of global institutional harms is especially relevant in demonstrating how systemic structures reproduce injustice. [68]

Weberian legitimacy adds an institutional dimension: when legal outcomes are repeatedly perceived as politically contingent, institutional trust declines. This erosion of legitimacy feeds long-term resistance to international adjudication and norm entrepreneurship. In this context, democracy, the law, and human

(Cambridge University Press 2005) 47.

63 A Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54 *International Organization* 220.

64 Z Şakar, *Kozmopolitan Demokrasi Tartışmaları* (Yüksek Lisans Tezi, Karabük Üniversitesi, 2019) 15.

65 M N Shaw, *International Law* (8th edn, Cambridge University Press 2017) 107.

66 D Archibugi, 'Principles of Cosmopolitan Democracy' in D Held, D Archibugi and M Köhler (eds), *Re-imagining Political Community* (Cambridge University Press 1998) 199.

67 P Singer, *The Expanding Circle: Ethics, Evolution, and Moral Progress* (Princeton University Press 2011) 42.

68 T Pogge, *World Poverty and Human Rights* (2nd edn, Polity Press 2008) 51.

rights are considered institutional expressions of global justice.

Thus, in international political practice, this normative ideal is seriously violated. The protection of the interests of powerful states at the cost of the freedoms of weaker states and people, the deepening of global inequalities, and the impunity for serious human rights violations are considered normative injustices from an ethical universalist perspective.[69] This situation leads to the idea of global justice losing its meaning in practice and weakening the moral authority of the normative order.[70]

Rawls' theory of international justice offers an important normative framework in this context. Rawls argues that a just international order should be established on the codes of equivalency of peoples, mutual respect, and respect for fundamental human rights.[71] However, Rawls' approach has been criticized for not adequately addressing the structural causes of global inequalities and for offering a state-centric framework rather than an individual-centric cosmopolitan understanding of justice.[72]

Nevertheless, normative critique has an indispensable function in questioning the moral legitimacy of political practices, making alternative normative order designs visible, and preparing the intellectual ground for the transformation of global law.[73] The institutionalization of democracy and the law at the global stage can only be achieved through a deeper intellectual and political transformation that requires rethinking the normative foundations of international politics, not just through technical legal reforms.

Debates on global democracy and cosmopolitan democracy have reopened the question of how democratic legitimacy and legal accountability may be institutionalized beyond the state. Following Held, individuals must increasingly be recognized as subjects of a wider global political order. Stronger treaty monitoring, enhanced reporting duties, compulsory jurisdiction in narrowly defined core crimes, peer review compliance procedures, and greater insulation of judicial bodies from geopolitical bargaining all represent plausible reforms. Held's global democracy framework also suggests participation-based legitimacy reforms, including greater transparency, procedural access, and multi-level

69 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 55.

70 P Singer, *The Expanding Circle: Ethics, Evolution, and Moral Progress* (Princeton University Press 2011) 44.

71 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005) 47.

72 T Pogge, *World Poverty and Human Rights* (2nd edn, Polity Press 2008) 51.

73 J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 57.

accountability mechanisms.[74] These reforms do not abolish sovereignty, but they can reduce the degree to which power asymmetry determines norm application. The increasing influence of global governance structures, the lack of legitimacy in these structures is considered a serious normative problem.

According to Held, global democracy requires that individuals be recognized not only as members of their national political communities but also as subjects of the global political order.[75] Furthermore, the extent to which global democracy models can take cultural diversity and political pluralism into account is also a matter of debate.[76] While this goal seems difficult to achieve in the short term, it can be considered an indispensable part of the ideal of a global ruling founded on international justice and human dignity.

CONCLUSION

The article's main conclusion is that universal norms fail in practice not because they lack moral legitimacy, but because a decentralized sovereignty-based order structurally mediates their application. The fundamental problem, therefore, is the gap between enduring power and norm; that is, the distance between universal legal aspirations and selective institutional realization. Narrowing this gap requires philosophical clarity, doctrinal certainty, institutional redesign, and a realistic acknowledgment of how power continues to shape the law. As long as law, transparency, equality, and accountability remain tied to political power, the international legal order will continue to struggle with legitimacy deficits. However, a progressive reinterpretation of sovereignty and the strengthening of judicial mechanisms can contribute to a more coherent and legitimate global order based on human dignity.

This study comprehensively analyzes the normative and structural problems engaged in the application of democracy and the law in the global political arena from the perspectives of natural law, ethical universalism, and human rights doctrine. The basis thesis of the study is that this failure does not stem solely from institutional deficiencies or a lack of political will; rather, it stems from the normative-positive law tension inherent in the existential structure of the global system and the decisive position of power relations.

From a political perspective, there is a clear need for a new understanding of internationalism in economic contexts and political spheres. The complex, realistic nature of foreign policies, in the face of challenges from the West

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74 D Held, 'Principles of Cosmopolitan Order' (2005) 39 *Anales de la Catedra Francisco Suarez* 153.

75 İbid, 154.

76 R Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press 1999) 8.

and other civilizations, and the chaotic structure of an unjust international system, necessitates a new vision of the world that utilizes economic, technical, technological, and military power, alongside social capital and the historical dynamism of the past. The institutionalization of universal law is a necessity. A prerequisite for the application of law at local and national levels is an international institutionalization based on human rights.

The fundamental reason for the establishment of democracy within local and national frameworks was the limitation and distribution of power. In this context, the separation and limitation of power among branches of government emerged through constitutionalism, social contracts, and institutionalization. While nation-states were limited in terms of individual rights and freedoms, efforts to limit nation-states in the international arena were based on normative and theoretical grounds, failing to translate into practical political action. As legality, transparency, and accountability become the foundation of international law, not only in theory but also in practice, a similar situation will permeate local and national politics. Therefore, limiting power in the international arena will promote local, national, and international democracy and the law at all levels.

This approach interprets the inability to institutionalize human rights, the law, and democracy as universal and binding norms in the transnational law system as a weakening of the moral foundations of law. Ethical universalism, on the other hand, starting from the assumption that all individuals have equal moral value, demands the restructuring of international politics according to an individual-centered understanding of justice.

In this context, the problem of implementing democracy and the law at the international level should be addressed not only as a practical and institutional issue, but also as a profound philosophical and ethical problem concerning the normative foundations of the transnational order. The solution to this problem may be possible through new theoretical approaches and institutional experiences aimed at overcoming the structural tension between the positivist foundations of international law, natural law, and ethical universalism. Even if steps taken in this direction yield limited and fragile results in the short or long term, these can contribute to the construction of a more just, consistent, and legitimate global political order based on human dignity.

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EU SOCIAL POLICY UNDER PRESSURE: CRISES, COURT DECISIONS AND NEW LABOUR MARKET REALITIES*

AB Sosyal Politikası:
Krizler, Mahkeme Kararları ve Yeni İşgücü Piyasası Gerçeklikleri

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Abstract

The member states of the European Union have adopted the principle of free movement of workers to promote economic integration and achieve the single market. This principle has been supported by various regulations throughout history, yet it has been tested by global crises, technological changes, political transformations, and unforeseen events such as the pandemic. This study examines the agreements and frameworks developed from the Treaty of Rome to the present from the perspective of EU social policy and labor law, highlighting the vulnerability of systems during crises, their capacity to recover, and the need for reforms. The emergence of new job types, the spread of flexible work models, and the rise of the platform economy have introduced uncertainties in the labor market. Furthermore, in light of European Court of Justice rulings, the study explores the boundaries of free movement, collective action, and the right to strike, examining the delicate balance between fundamental rights and economic freedoms, as well as the interaction between long-term social policy goals and economic integration, pointing to the need for future reforms.

Keywords: European Union, Social Policy, Freedom of Movement of Workers, CJEU Case Law, EU Integration.

* There is no requirement of Ethics Committee Approval for this study.

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Özet

Avrupa Birliği üye devletleri, ekonomik bütünleşmeyi ilerletmek ve tek pazar hedefini gerçekleştirmek için işçilerin serbest dolaşımı ilkesini benimsemiştir. Bu ilke, tarih boyunca farklı düzenlemelerle desteklenmiş, ancak küresel krizler, teknolojik değişimler, siyasi dönüşümler ve pandemi gibi beklenmedik olaylarla sınanmıştır. Çalışmada, AB sosyal politikası ve iş hukuku perspektifi çerçevesinde, Roma Anlaşması'ndan günümüze kadar geliştirilen anlaşmalar ve mutabakatlar ele alınmış; özellikle kriz dönemlerinde sistemlerin kırılganlığı, toparlanma kapasitesi ve reform gerekliliği üzerinde durulmuştur. Yeni iş tanımlarının ortaya çıkışı, esnek çalışma modellerinin yaygınlaşması ve platform ekonomisinin yükselişi, iş gücü piyasasında belirsizlikler yaratmıştır. Ayrıca, Avrupa Adalet Divanı kararları ışığında, işçilerin serbest dolaşımı ile toplu eylem ve grev haklarının sınırları, temel haklar ve ekonomik özgürlükler arasındaki hassas denge incelenmiş; AB sosyal politikalarının uzun vadeli hedefleri ile ekonomik bütünleşme arasındaki etkileşim ve geleceğe dönük reform ihtiyaçları değerlendirilmiştir.

Anahtar Kelimeler: Avrupa Birliği, Sosyal Politika, İşçilerin Serbest Dolaşım Özgürlüğü, ABAD İçtihat Hukuku, AB Entegrasyonu.

INTRODUCTION

The free movement of goods, services, people, and capital, which forms the foundation of the European Union's (EU) economic structure, is crucial for its economic system. The EU's rules regulating state aid provided by member states to companies are significant and have global impacts on maintaining economic balance. The free movement of workers helps match labor supply and demand, allowing companies to find more skilled workers while also giving employees the chance to find better job opportunities across the EU. Although this principle has clear benefits for economic growth and equality, it has also faced some challenges.

The EU made important changes and progress during its journey to its current form. Related to this progress one key topic in European Integration is allowing workers to move freely. Within the Union, the free movement of workers includes the right to travel, live, and work in other member states, apply for jobs freely, carry out their jobs, and enjoy the same social rights as citizens of the country they live in.

Workers from other EU countries have the same social and labor rights as local workers, such as joining trade unions, accessing healthcare, and receiving unemployment benefits if needed. This principle ensures that EU citizens are treated fairly when looking for work in other EU countries. However, there are still challenges to fully exercising these rights, as different countries may interpret and apply them in various ways, creating difficulties for workers. Workers might also face discrimination or have trouble getting their qualifications recognized, limiting their ability to use their rights. Despite these issues, the EU is working to improve workers' protections, so they can move freely and enjoy equal treatment in other member states' labor markets.

The European Union member states have embraced the principle of free movement to boost their economies and achieve the goal of a single market. This objective is both reasonable and understandable, leading to numerous reforms over time. However, these reforms have faced challenges due to global changes, technological advancements, political events such as Brexit, wars, and crises, as well as health emergencies like the Covid-19 pandemic. In such situations, the reforms made by the European Union are crucial. While systems vulnerable in times of crisis struggle to recover, it is significant that the EU implements reforms with a forward-thinking approach that considers the long-term impact of social policies. Additionally, the emergence of new job definitions, shifting away from traditional labor concepts, and the rise of gig economies and smart contracts create uncertainty. Reforms in these areas, particularly concerning platform workers and the gig economy, which have become global issues, are necessary for progress.

This study explores the European Court of Justice's (ECJ) evolving approach to the free movement of workers and the broader economic dimensions of EU labor law. Despite extensive literature on landmark cases like Viking and Laval, the gig economy presents unprecedented challenges to traditional employment binaries. Accordingly, the primary research question is: To what extent do recent ECJ rulings (e.g., Yodel, FNV Kiem) and the European Pillar of Social Rights succeed in restoring the balance between economic freedoms and collective social rights amid new labor market realities? By addressing this, the article seeks to determine whether EU social policy is undergoing a structural renaissance or merely applying outdated tools to precarious work models. Methodologically, the study employs a contextualized doctrinal legal analysis, relying on primary EU legislative instruments and evolving ECJ jurisprudence to evaluate the continuous tension between market integration and social protection.

I. THE FREEDOM OF MOVEMENT OF WORKERS

Freedom of movements is a key area of EU law that affects employment practices and often leads to significant debate. One of the most important goals of the European Union, the Single Market, relies heavily on the free movement of production factors[1]. These factors are goods, capital, services, and workers, and we must approach these factors holistically.

[1] Uluç Çağatay, 'Avrupa Birliğinde İşçilerin Serbest Dolaşımı ve Türk İşçilerinin Durumu' (2009) 8(16) Journal of Social, Economic Research 1, 3.

The free movement of goods is generally based on the concept of a customs union. Services, unlike goods, are intangible and cannot be stored[2]. The free movement of capital includes shares in partnerships, real estate investments, securities, loans, banking transactions, stock market transactions, as well as loans, guarantees, and sureties. The mobility of workers and companies in the internal market is a key element in the further economic, social and cultural construction of Europe. The positive impact of mobility on the living and working conditions of mobile workers has won broad support for mobility in Europe. However, negative perceptions of mobility and its consequences for workers and citizens in both sending and receiving countries cannot be ignored. The concept of cross-border labor mobility encompasses both the free movement of workers and the temporary mobility of workers (secondment) in the context of cross-border service provision[3].

In relation to the main topic, which lays the foundation for this section, the free movement of workers is that EU citizens are permitted to work in any EU Member State, that is, they may choose where to pursue their economic activities[4]. People see free movement differently based on their situation, with mobile individuals viewing it as an opportunity, while stayers may see immigration and transnational rights as a national issue or even a threat, and according to some writers EU citizenship has failed to create a shared European identity because it mainly benefits those who move, while the majority, despite being affected by EU policies, do not feel the same connection[5]. As of 2017, 3.8% of the EU labour force live and work in another member state[6]. The free movement of workers is a key principle in the EU, as outlined in Article 45 of the Treaty on the Functioning of the European Union and shaped by EU laws and rulings of the Court of Justice[7]. Free movement includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State[8]. The legal basis for this is grounded in

2 Çağatay, n (1) 3.

3 Report on joint work of the European social partners on the ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases (19 March 2010).

4 Federal Ministry Republic of Austria, Labour and Economy, https://www.bmaw.gv.at A.D. 14 December 2024.

5 S Börner, 'Marshall revisited: EU social policy from a social-rights perspective' (2020) 30(4) Journal of European Social Policy 421 https://doi.org/10.1177/0958928720904330 A. D. 4 March 2026.

6 www.ihrec.ie (Access Date: 16.12.2024); In 2017, 3.8% of working-age EU citizens (20-64) lived in a different Member State from their own, up from 2.5% ten years earlier, but this varies by country, and only those staying for at least 12 months are included, not short-term moves, more info look, Grandovska / Agafitei / Ivan, 2018.

7 employment-social-affairs.ec.europa.eu (Access Date: 15.12.2024)

8 A Kennedy, Free Movement of Workers, Fact Sheets on the European Union (March 2024) https://www.europarl.europa.eu accessed 14 December 2024.

Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU)[9].

TFEU Article 45 prohibits discrimination against the workers. EU workers also have the right to accept a job offer made in another EU country, to move freely within the country, to stay for the purpose of employment, and to stay on afterward under certain conditions[10]. The prohibition of discrimination applies to Member States and to employers as well. Prohibitions also exist against discrimination on grounds of gender, age, ethnic origin, sexual orientation, religion or belief.

The fundamental right of free movement of workers has been developed in various regulations and directives since the 1960s[11]. Free movement of workers has been achieved in three phases through three regulations issued by the Council, based on Article 49 of the Treaty. These regulations have direct applicability in member states; first phase is between September 1, 1961, and April 30, 1964, is regulated by the provisions set out in Regulation No. 15/61, dated August 16, 1961. This regulation mainly addresses issues such as equal pay, working conditions, union membership, and dismissals, and during this period, the right to free movement required a clear job offer in the host member state[12]. The second period, between May 1, 1964, and November 8, 1968, was defined by Regulation 38/64, adopted on March 25, 1964, which set its priorities. The regulation reduced restrictions on workers and their families' movement and residence rights; the third period, starting from November 9, 1968, was defined by Regulation 1612/68 dated October 15, 1968, and the 68/360 Directive. With these regulations, restrictions on workers' free movement were removed, granting workers from one Member State the same rights as local workers in another Member State[13].

The European Parliament supported the creation of the European Labour Authority (ELA) in 2019 and pushed for a single portal for free movement and joint inspections. It aims to improve the enforcement of EU labour mobility and social security rules, It also highlighted the importance of tackling undeclared work. It helps mobile workers and employers, supports cross-border cooperation among Member States, and assists in resolving disputes, ELA also manages initiatives like the EURES job mobility portal and the platform to address undeclared work[14]. In 2024, Parliament called for strengthening and expanding the ELA's mandate for the future.

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9 Ibid. 4.

10 Ibid. 4.

11 Ibid. 4.

12 Çağatay (n 1) 4.

13 Ibid. 5.

14 Kennedy (n 8).

It is worth mentioning that the family members of workers from the EU have certain rights that derive from the freedom of movement for workers: family members of a worker from the EU who is employed in another EU country are entitled to reside and work in that country. The worker's children have to the right to a school education in that country[15]. The persons considered as family members are: spouses or registered partners, children and grandchildren as long as they are supported by the worker, and parents and grandparents who are supported by the worker. The category also includes an unmarried partner living in civil partnership with the worker as well as other family members[16].

Article 45 says that the provisions of this Article shall not apply to employment in the public service. Member states may impose exceptions to free movement on grounds of public order, public security, and public health under the principle of proportionality, but they cannot do so for economic reasons[17]. Consequently, any measure that infringes upon the free movement of workers cannot be validated by the implementation of a separate corrective measure; such an act still constitutes a breach of the right to free movement and falls outside the scope of permissible exceptions.

Furthermore workers from other member countries also have the right to join trade and labour unions. Their right to join unions cannot be blocked by citing public order as a reason[18].

II. DEFINING SOCIAL POLICY

Social policy originates from the values of a society and cannot be understood outside of its social context. Welfare systems reflect the culture and politics of the society they belong to. Furthermore, social policy focuses on the needs society must meet to continue, which are collectively recognized and addressed. It concerns the collective responsibility for people in dependent situations, such as the very young, the elderly, or those facing economic hardship. Ultimately, it aims to integrate individuals into society—not just to meet individual needs—and focuses on creating social benefits such as equality, the rule of law, and public health for the whole community[19].

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15 www.bmaw.gv.at (Access Date: 14.12.2024).

16 www.bmaw.gv.at (Access Date: 14.12.2024).

17 V Demiray, 'Avrupa Birliğinde İşçilerin Serbest Dolaşım Hakkı ve Türk İşçilerinin Durumu' (European Union Specialization Thesis, Turkish Labour and Social Security Ministry, 2014) 16.

18 Ibid. 20.

19 D Reisman, 'The Definition of Social Policy' in Richard Titmuss (ed), Palgrave Macmillan (2001) https://doi.org/10.1057/9780230512917_2

Community social policy developed in phases, the first phase (1958-1972) focused on social security and free movement, but lacked significant legislation, the second phase began in 1972 with the Paris Summit addressing the gap between economic growth and citizens' quality of life, leading to the "Social Action Programme" of 1974, the third phase started in 1986 with the adoption of the SEA, which renewed focus on social policy through a strategy of completing the internal market, furthering political integration, and creating a "human face" for the Community[20].

Social challenges, such as inequality and job shortages, are intrinsically linked to the market. While the Internal Market is a highly integrated system governed by EU law, market needs must be balanced with social requirements to maintain stability. Although the Common Market has significantly improved economic performance, it has also introduced new challenges regarding social cohesion. In this context, digital transformation offers potential solutions to these issues without conflicting with national traditions[21]. EU social policy regulates labor rights, social protection, and welfare, ensuring equal treatment for workers and better living and working conditions, while also supporting the stability of the single market and citizens' well-being[22]. EU social policies must align with economic integration goals, ensuring both market efficiency and workers' rights, but this integration has led to debates over national sovereignty and EU competencies, with the future likely seeing a deeper connection between economic policies and social protections. EU social policy has shifted from focusing solely on economic integration to balancing both social and economic goals, requiring future cooperation among member states to address social issues while promoting growth and managing social rights and economic freedoms[23].

After discussing the definition of social policy and its application in the European Union, it is important to understand the main approach of social policy in relation to the labor market in the EU. In this context, the Market-Making Thesis argues that EU social policy aims to promote labor mobility and turn the labor market into a single market[24]. However, EU social policies face challenges due to the diverse social systems and welfare models across member states, with the harmonization of policies being complicated by the

20 D O'Keeffe, 'The Uneasy Progress of European Social Policy' (1996) 2(2) Columbia Journal of European Law.

21 DR Troitiño, S Ivic, O Hamulak and A Fedorova, 'Social Policy in the European Union: Genesis, Obstacles and Digital Future' (2023) 10(1) European Studies – The Review of European Law, Economics and Politics 15 https://doi.org/10.2478/eustu-2023-0001

22 C Barnard, EU 'Social' Policy: From Employment Law to Labour Market Reform (3rd edn, BC 2024)

23 Barnard (n 22) 714.

24 Ibid. 714.

need to respect national sovereignty, and issues such as social dumping and labor market flexibility continue to hinder effective implementation. EU social policies aim to balance economic growth with social justice, but challenges arise when social protections clash with economic freedoms like free movement of workers and services, requiring future policies to harmonize both while meeting the needs of all citizens.

III. HISTORY OF EU SOCIAL POLICY

A. The Treaty of Rome

The Treaty of Rome, or Treaty establishing the European Economic Community, was signed on 25 March 1957[25]. The Treaty of Rome created the European Economic Community (EEC), bringing together Belgium, Germany, France, Italy, Luxembourg, and the Netherlands to encourage growth through trade which it set up a common market where goods, people, services, and money could move freely[26].

In the first version of the Treaty of Rome (1957), social policy was not very important, and social partners had no role[27]. However, it still provided the first legal basis for social policy at the EU level. Social policy was not very important, and social partners had no role. Explicit legislative competence in areas such as free movement of workers[28]. The treaty aims to create a single economic area. And also it shows clearly that the aim is to ensure, at the same time, the economic and social progress of the member countries[29].

The social policy rules in the Treaty of Rome are not as clearly defined as the economic rules. Unlike the economic rules, most of the social policy rules are not mandatory, except for a few that directly affect the creation of the common market[30]. The treaty of Rome established the coordination of Member States' social security systems for free movement of workers[31]. It enshrined the

25 consilium.europea.eu (Access date: 11.12.2024)

26 consilium.europea.eu (Access date: 11.12.2024)

27 M Borzaga, 'EU Social Policy, Social Partners, and the Rule of Law' in L Antoniolli and C Ruzza (eds), The Rule of Law in the EU (Springer 2024) https://doi.org/10.1007/978-3-031-55322-6_15

28 C Finn and B Vaughan, 'Perspectives on the Evolution of European Social Policy' (National Economic and Social Development Office (NESDO)) 4.

29 JD Neirinck, 'The Rome Treaty Social Policy and EEC Applied Labour Economics' (1969) 22(3) Chronique de politique étrangère 267.

30 Ibid. 270.

31 S Goodger and M Makay, Social and Employment Policy: General Principles, Fact Sheets on the European Union (May 2024) https://www.europarl.europa.eu accessed 16 December 2024.

principle of equal pay for men and women, which the European Court of Justice recognised as being directly applicable[32], and provided for the establishment of the European Social Fund (ESF)[33]. In legal scholarship, this was not considered labor and social law rules, as the goal was not to protect workers but to help them find jobs in other EU countries without discrimination, with the European Economic Communities (EEC) having only real labor law power, being equal pay for men and women[34].

The 1986 Single European Act changed the 1957 Treaty of Rome to improve the common market, seen as key to better living and working conditions, but since this would not happen automatically, it included new rules on social policy, with Articles 118A and 118B giving the EEC more power in labor and social law and recognizing the importance of trade unions, employers' organizations, and social dialogue[35].

However EU laws based on this Treaty rule needed all Member States to agree, but strong opposition, especially from the UK during the 1980s and early 1990s, slowed down progress[36].

B. The Community Social Charter 1989

In June 1988, at the Hanover Summit, the European Council recognized the importance of the social aspects of the single market, and later that year, at the Rhodes Summit, the Council stated that the completion of the single market should not be seen as an end goal. Soon after, the Economic and Social Committee proposed a set of basic social rights that it believed should be established alongside the single market. In December 1989, the Charter was adopted by eleven out of the twelve member states, with the UK being the exception, and it included social rights related to the labor market, vocational training, equal opportunities, and the work environment[37].

The Charter has sixteen introduction clauses explaining its legal basis, mentioning worker movement, the right to work in another country, social laws, better working conditions, talks between workers and employers, equal pay for men and women, job training, economic and social unity, and making laws more similar[38]. The charter allows free movement for all jobs and workers

32 Mentioned under title of E. The Role of the Court of Justice in Shaping a Unique EU Social Policy in this work.

33 Goodger and Makay (n 31) 2024

34 Borzaga (n 27) 2024.

35 Borzaga (n 27) 2024.

36 A O'Neill QC, 'Social Rights in the Charter: Employment and Social Security' (paper) 2.

37 Finn and Vaughan (n 28) 6.

38 GM Kraw, 'The Community Charter of the Fundamental Social Rights of Workers' (1990) 13(3) Hastings International and Comparative Law Review 467, 471.

without any work or workplace restrictions. Freedom of movement is the first right in the Charter, with restrictions only for public order, safety, or health; any citizen can work anywhere in the Community under the same conditions as nationals, and both nationals and non-nationals are treated equally in employment, working conditions, and social protection; residence rules will be harmonized, especially for family reunification, and obstacles like unrecognized diplomas will be removed; the Charter also focuses on improving living and working conditions for citizens in border areas[39].

C. The Maastricht Treaty

The Maastricht Treaty, signed on February 7, 1992, and effective from November 1, 1993, introduced the concept of "Union citizenship" into the EU's founding treaties[40]. With this treaty, the principle of free movement was extended to include not only workers and self-employed individuals but also those not engaged in economic activities also free movement rights began to be recognized as a fundamental right[41].

The Maastricht Treaty introduced important changes to the 1957 Rome Treaty, gradually moving towards economic and monetary union, establishing European citizenship, creating common action in security and foreign policy, and granting the Community more powers in certain areas[42]. In Article 21, all EU citizens and their family members the right, in principle, to move and reside freely within the EU[43].

The Maastricht Treaty marked the beginning of new cooperation among member countries. For example, it included areas like defense, justice, and internal affairs[44]. The European Community became the most important pillar of the European Union, which was established as a three-pillar structure under the Maastricht Treaty[45].

Although the above-mentioned Maastricht Treaty did not introduce different regulations in the area of social policy compared to the Rome Treaty. Due to

39 Ibid. 473.

40 Demiray (n 17) 9.

41 Ibid. 10.

42 F Turgay, 'Trade Union Rights Are a Package that Includes the Right to Organize, Collective Bargaining, and the Right to Strike, Which Is Part of Collective Action' (2012) 1(14) ISGUC Industrial Relations and Human Resources Journal 27, 30.

43 www.ihrec.ie (Access Date: 16.12.2024)

44 AM Yazıcı, 'European Development of Social Policy and Turkey's European Social Policy Compliance' (2016) 44 Journal of Anadolu Bil Meslek Yüksekokulu 1 https://dergipark.org.tr/en/pub/abmyoder/issue/46666/585098 accessed 4 March 2026, 10.

45 A Çelik, Avrupa Birliği Sosyal Politikası ve Türkiye (Kitap Yayınevi 2014) 126.

the UK's negative stance, the Maastricht Treaty failed to achieve the expected European Social Union, and no changes were made to the social policy provisions of the Rome Treaty (Articles 117–128). For this reason, Maastricht is sometimes called a "blind agreement"[46]. It is argued that post-Maastricht social policy steps were created to "sweeten the bitter pill of deregulation" for the idea of Social Europe[47].

D. Amsterdam Treaty

The Amsterdam Treaty, signed on October 2, 1997, entered into force on May 1, 1999, introducing amendments to the Maastricht Treaty. The Amsterdam Treaty made significant changes to the Rome Treaty[48]. This treaty emphasized that Union citizenship does not replace national citizenship but complements it[49]. The treaty aimed to clarify and simplify the treaty articles, focusing on justice, security, freedom, and foreign policy. It strengthened the European Parliament's powers and introduced more flexible decision-making. Financial and foreign policy coordination was improved, though few changes were made in the Common Foreign and Security Policy (CFSP). The major change was the introduction of a "common strategy," where EU states agreed to align on shared interests, as outlined in Article J.3 of the treaty[50]. The issue of a double legal basis caused by the UK's opt-out was resolved with the Amsterdam Treaty (1997), where all Member States, including the UK, agreed to include the Agreement on Social Policy into what later became the TFEU[51].

It marked several key achievements in social policy, including the reversal of the UK opt-out on social agreements, which was a major step for the development and strengthening of EU employment and social policy, as well as the confirmation of social rights outlined in the 1961 European Social Charter and the 1989 Social Charter[52]. The Treaty of Amsterdam expanded the EU's social policy by broadening gender equality to cover all labor issues, not just pay, and extending health and safety to all working conditions, with gender equality now under QMV[53]. Since the Amsterdam Treaty, the Open Method of Coordination (OMC) expanded soft law to cover employment, pensions, and social inclusion, shifting from a 'market economy' to a 'social market economy' focused on full

46 Ibid. 126-127.

47 Ibid. 127.

48 Ibid. p. 128.

49 Demiray (n 17) 10.

50 Yazıcı (n 44) 11.

51 Goodger and Makay (n 31) 2024

52 Finn and Vaughan (n 28) 8

53 Ibid

employment, social progress, and strong protection[54].

The Amsterdam Treaty added promoting employment as an EU objective and tasked the Community with supporting Member States through a coordinated strategy, known as the European Employment Strategy (EES)[55]. In this treaty, European leaders added a separate section on employment (Articles 125-130) and, for the first time, declared that employment policy is a shared European responsibility. The Amsterdam Treaty marked the EU's recognition of employment as a common European issue[56]. The Amsterdam Treaty seems to have been a high-water mark in terms of the development of a common EU position on social policy[57]. The Amsterdam Treaty's emphasis on employment combined with member-states' determination to maintain their primacy in this area seemed to confirm that the immediate prospect was for consolidation with few new initiatives. This seems to support the 'sovereignty' view that the relationship between European integration and national social policy was quite minimal and they were destined to walk along separate paths[58].

E. The Lisbon Strategy and The Nice And Lisbon Treaties

At the Nice Summit, EU member states and those signed to the European Convention on Human Rights adopted a unified system. The 2000 Nice Summit saw the adoption of the Charter of Fundamental Rights of the EU[59]. The founding EU treaties include principles on fundamental rights, equality, and anti-discrimination. These principles were carefully considered by the EU founders. The EU's financial integration supports this approach. The Social Protection Committee (SPC) is an EU advisory policy committee for Employment and Social Affairs Ministers in the Employment and Social Affairs Council (EPSCO), established by the Treaty of Nice (Treaty on the Functioning of the EU, article 160). It is composed of national experts and monitors social conditions in the EU and the development of social protection policies in member countries[60]. Also The Court of Justice has an important role in ensuring fundamental rights, despite facing some criticism[61]. The Nice Treaty came into force in February 2003[62]. The Nice

54 A Plomien, 'EU Social and Gender Policy beyond Brexit: Towards the European Pillar of Social Rights' (8 January 2018).

55 Goodger and Makay (n 31) 2024

56 Çelik (n 45) 129.

57 Finn and Vaughan (n 28) 15

58 Finn and Vaughan (n 28) 16

59 Goodger and Makay (n 31) 2024

60 www.eurodiaconia.org, (Access Date: 10.01.2025)

61 Yazıcı (n 44) 12.

62 Çelik (n 45) 130; JT Addison, 'In the Beginning, There Was Social Policy: Developments in

Treaty implemented a series of institutional reforms, and the Nice Declaration called for a comprehensive debate on the future of the European Union, in light of the impending accession of countries from Eastern and Southern Europe[63].

Member States have agreed to establish mid-term objectives, indicators and political pressure to work together and tackle social challenges. This is a soft law process, that is to say resting on political encouragement and pressure. This process was fully acknowledged and named "Open Method of Coordination" at the Lisbon Summit (2000)[64]. And also The Lisbon strategy, with three pillars - economic, social, and environmental - aimed to make the EU the world's most competitive economy, offering better jobs and more social cohesion, with the social pillar focusing on education, training, and active employment policies[65]. A key feature of the Lisbon strategy is its approach to implementation, where some areas, like completing the single market, were under the EU's control, while others, such as education, training, and labor market policy, were mainly the responsibility of the Member States[66].

The need to reform the European Union led to the drafting of a constitutional treaty in the early 2000s. The Constitution was adopted at the June 2004 Brussels summit. The most important feature of the EU Constitution was that it simplified the very fragmented EU legislation (the Treaty of Rome and its amendments, the Single European Act, the Treaty of Maastricht, the Treaty of Amsterdam and the Treaty of Nice). Then the constitution dropped off the EU agenda and the idea of a more limited reform treaty took its place. The Lisbon Treaty emerged from this framework[67]. The Lisbon Treaty abolished the three-pillar structure of the EU[68]. The European Community disappeared, replaced by the European Union. The EU gained legal personality and the power to fulfill legal procedures[69]. In 2006, the renewed Lisbon Strategy introduced a new framework for social protection and inclusion, requiring member states to create National Plans in three areas: Social Protection, Pensions, and Health and Long-Term Care, using OMC-type processes[70].

Social Policy in the European Union from 1972 through 2008' (Professional Report 01_09, Rimini Centre for Economic Analysis 2009) 17.

63 Addison (n 62) 17.

64 www.eurodiaconia.org, (Access Date: 10.01.2025)

65 Finn and Vaughan (n 28) 8

66 Ibid

67 Çelik (n 45). 136.

68 Ibid

69 Ibid. 137.

70 Finn and Vaughan (n 28) 12

With the Treaty of Lisbon, which came into force on December 1, 2009, the provisions regarding the free movement of workers remained unchanged. However, these provisions were renumbered under the new title, the Treaty on the Functioning of the European Union (TFEU), and are now listed between Articles 45 and 48[71]. This treaty made only a few changes compared to earlier treaties. The European Union was redefined as a single legal entity, and the distinction between the EU and the community was removed[72]. Apart from these institutional changes, the most important aspect of the Lisbon Treaty was the legal binding nature of the EU Charter of Fundamental Rights[73]. The Lisbon Treaty encourages deeper integration through enhanced cooperation, but its impact depends on member states' political will and could lead to divisions in the EU[74].

F. Collective Rights In European Union

The EU Charter of Fundamental Rights contains an explicit recognition of the "right to collective bargaining and action" (Article 28), which is binding on all EU members except three Member States. Article 28 seeks to support and promote the common use of collective bargaining in most European countries as a basic right[75]. In this context, there is no need to include a social progress protocol in the Treaty[76]. The Strasbourg Court has interpreted Article 11 of the ECHR to encompass workers' rights, including public service employees, to participate in collective bargaining and industrial action, recognizing the right to strike as an essential part of collective bargaining[77].

Trade union rights are a package that includes the right to organize, collective bargaining, and the right to strike, all of which are forms of collective action[78]. The right to strike has been confirmed through case law created by the ILO's Freedom of Association Committee, based on its interpretation of Convention No. 87[79]. As stated in the rulings of the European Court of Human Rights (ECtHR), if the right to form a trade union for workers or public servants is granted without including the rights to collective bargaining or the right to strike, it is considered

71 Demiray (n 17) 10.

72 Yazıcı (n 44) 13.

73 Çelik (n 45) 137.

74 A Jacobs, 'Labour Law, Social Security Law and Social Policy after the Entering into Force of the Treaty of Lisbon' (2011) 2(2) European Labour Law Journal 98.

75 B Veneziani, 'European Labour Law and the EU Charter of Fundamental Rights' (Summary Version, in B Bercusson (ed), ETUI 2002) 55.

76 Report on 19 March 2010.

77 O'neill (n 36) 29.

78 Turgay (n 42) 28.

79 Veneziani (n 75) 58.

to be lacking in substance[80]. In EU law, trade union rights should be viewed as a cohesive whole. Strike action is naturally a last resort when all negotiations have failed or been refused, and trade unions are assumed to make such decisions carefully, as strikes can harm workers' interests by causing unpaid days or risking company stability that secures jobs, but international labour law allows Member States to set legal requirements for a strike's legitimacy[81].

In the EU primary sources include the treaties that establish the Community (such as the ECSC Treaty, EEC and the EAEC Treaty), along with their annexes and the treaties that amended these (including the Single European Act, the Maastricht, Amsterdam, Nice, and Lisbon Treaties mentioned above). Secondary sources are legal documents produced by the Community institutions based on the treaties. These include regulations, directives, recommendations, opinions, and decisions.

The Community Social Charter emerged from the need to establish a set of minimum social rules at the Community level. It was inspired by the ILO conventions and the 1961 European Social Charter. The Community Charter is the third document that explicitly mentions the right to strike, following the European Social Charter and the United Nations International Covenant on Economic, Social, and Cultural Rights[82].

The Social Policy Protocol, which is part of the Maastricht Treaty, is an extension of the Community Social Charter. The protocol, which grants the Union the power to issue directives setting minimum standards in social policy, changed the decision-making process for social policy issues. It expanded the scope of the qualified majority voting system established by the Single European Act. However, areas such as strikes and lockouts remain outside the scope of the EU's regulatory powers[83]. The Amsterdam Treaty did not introduce any new regulations on trade union rights.

International Labour Organization's (ILO) Convention No. 87, as interpreted by experts, strikes can only be prohibited in essential services, meaning services whose disruption could threaten the life, safety, or health of the population, and in its 2010 report, the Committee of Experts criticized ECJ rulings, like in the BALPA case (English case), for likely restricting the right to strike in ways that conflict with the Convention[84].

80 Turgay (n 42) 28.

81 A Veldman, 'The Protection of the Fundamental Right to Strike within the Context of the European Internal Market: Implications of the Forthcoming Accession of the EU to the ECHR' (2013) 9(1) Utrecht Law Review 115.

82 Turgay (n 42) 30.

83 Ibid. 31.

84 Veldman (n 81) 114.

There are views that during the European Union harmonization process, trade union rights were excluded from the harmonization agenda because EU institutions do not have the authority to make decisions in this area[85].

The most important decision of the Court on trade union rights is undoubtedly the so-called Albany Case. This judgment is of vital importance for the protection of the right to collective bargaining. In the Albany Case (67/96, 115-117/97 and 219/97), the ECJ rejected a Dutch company's claim that collective bargaining agreements violated the Community's competition rules and upheld the legality of collective bargaining agreements under Union law[86]. The social partners decided to establish a pension fund for the textiles sector, asked the authorities to make membership mandatory for all workers in that sector, faced arguments that this would breach EU competition rules by restricting firms from choosing other pension providers, but the ECJ highlighted the Treaty's social objectives, including the promotion of collective bargaining[87]. This case was important because it involved a textile business refusing to contribute to a mandatory pension fund established under a collective agreement in the Netherlands, with Albany invoking the competition rules under Article 81(1) of the EC Treaty to argue that this harmed its competitiveness. The Court emphasized the equal importance of social policy and competition objectives, referring to the Agreement on Social Policy, which aims for social dialogue and collective bargaining. As a result, the Court ruled that such negotiations should be considered outside the scope of the competition provisions of the EC Treaty[88]. The Albany decision has key implications for labor law, as EC law treats trade union rights as equal to or above competition law, unlike UK law, and these rights are supported by EC Treaty Articles 2 and 3, though their relevance may change due to the Treaty of Amsterdam's revisions[89].

The Court of Justice's approach is very different from the Court of Human Rights' (ECtHR), which starts with the fundamental right to strike, as recognized in Demir and Baykara and Enerji-Yapı Yol, and views any restriction on this right as unlawful unless it is justified and the measures are proportionate[90]. All EU countries accept collective agreements as a part of labour law, and in some

85 Turgay (n 42) 38.

86 Çelik (n 45) 172.

87 ACL Davies, 'One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ' (2008) 37 Industrial Law Journal 126, 140.

88 Finn and Vaughan (n 28) 26-27

89 B Bercusson, 'Protecting Collective Agreements' (1999) 41 Thompson Labour and European Law Review 1.

90 C Barnard, 'Social Europe After Lisbon: Putting the Social into the Market Economy' (2013) Hungarian Yearbook of International Law and European Law 8.

countries, especially in Nordic ones, these agreements are the main source of employment rights, with strong respect for the autonomy of social partners, but this principle sometimes clashes with internal market law, as seen in the Commission v. Germany (occupational pensions) case[91].

Just as there are numerous limitations on economic freedoms, there may also be limits on the exercise of social fundamental rights, such as the right to collective action. This also applies to other fundamental rights, such as freedom of expression. According to the established case law of the ECJ, rights such as the right to life or the prohibition of torture are not subject to restrictions, whereas rights such as freedom of expression or freedom of assembly are not absolute[92].

IV. THE ROLE OF THE COURT OF JUSTICE IN SHAPING A UNIQUE EU SOCIAL POLICY

A. Social dumping and decisions on equality

The EU's social dimension is tied to gender equality, rooted in its legal framework, starting with equal pay in the 1957 Treaty of Rome, strengthened by directives, action plans, and mainstreaming gender in policymaking, reflecting equal treatment, opportunities, and outcomes to transform unequal gender relations, though inequalities remain[93].

Employment rules are important to make sure workers are treated fairly, as jobs play a key role in people's lives and incomes, linking fairness at work to fairness in society[94]. The principle of equal treatment for both EU workers and third-country nationals is crucial for preventing discrimination, supporting the integration of migrant workers, and avoiding social dumping[95]. Social dumping happens when a country with weak labor standards exports goods at lower costs than competitors in countries with higher standards, creating an unfair trade advantage. An additional criterion helps assess whether a company is intentionally avoiding or violating social norms[96]. An example of indirect

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91 Ibid. 9.

92 Report on 19 March 2010.

93 Plomien (n 54) 2018. Also see, Collins v sos for work and pensions 2004 judgment and Van duyn v home Office 1974 judgment.

94 J Rubery and A Piasna, 'Labour Market Segmentation and the EU Reform Agenda: Developing Alternatives to the Mainstream' (Working Paper 2016) 20.

95 www.socialistsanddemocrats.eu (Access Date: 16.12.2024). For a comprehensive discussion on social dumping and the debate on a multilateral social clause, see Inmaculada Hurtado and Patricia Argerey, 'Social Dumping: The Debate on a Multilateral Social Clause' (2008) 8(1) Global Economy Journal 1, 1. Also see Teodora Dimitrova, Social Dumping: Theoretical and Empirical Aspects (PhD thesis, University of Konstanz 2007).

96 M Bernaciak, 'Social Dumping: Political Catchphrase or Threat to Labour Standards?'

discrimination could be a job in Germany requiring German language skills that are not actually necessary. If German skills are truly needed, the employer can ask for proof, but they cannot require a candidate to pass a language exam in Germany. Also, employers cannot disadvantage EU citizens just because they live in another member state[97].

The ECJ has made many decisions about discrimination and equality. Here are some examples, in the Defrenne v. Sabena case (C- 43/75) established that the principle of equal pay for men and women has direct effect, meaning individuals can invoke it before national courts; in the Marshall v. Southampton and South-West Hampshire AHA case (C- 152/84) highlighted that dismissing an employee on the grounds of gender was a violation of EU law; another case which is Dekker v. Stichting Vormingscentrum (C-177/88) case ruled that refusing employment to a pregnant woman constitutes discrimination under EU directives. Although not directly about equality, some important ECJ decisions include: banning work on Sundays under free movement of workers (C-312/8), banning night work under competition law (C-155/80), and allowing temporary workers in member states to apply for minimum wage standards (Rush Portuguesa, C-113/89).

B. Viking Case

In the Viking Case[98] the Finnish Viking Line company has Rosella[99] ship, which was losing money due to competition from Estonian boats that followed the same route with lower costs. Instead of selling the ship, Viking planned to re-register it under the name of Estonia or Norway to join a collective labor agreement with a workers' union based in one of those countries. The re-flagging would allow Viking to replace the predominantly Finnish crew with Estonian seafarers, and to negotiate cheaper terms and conditions of employment with an Estonian trade union. In this case, although the ECJ seemed to leave the decision to national courts, some jurists argue that its strict interpretations influenced the outcome[100]. In Finnish law, the right to strike is protected under Article 13 of

(European Trade Union Institute Working Paper 2012).

97 www.bmas.de (english version) (Access Date: 16.12.2024)

98 Case C-438/05; eur-lex.europa.eu legal context (Access Date: 14.12.2024). For an analysis of the Laval case in Sweden, see, Alban Davesne, 'The Laval Case and the Future of Labour Relations in Sweden' (2009) https://hal.archives-ouvertes.fr/hal-02405269. Also see, Thomas Blanke, 'The Viking Case' (2006) 12(2) Transfer: European Review of Labour and Research 251.

99 The Rosella is Finnish flag and has a predominantly Finnish crew who benefit from a collective agreement negotiated by the Finnish Seamen's Union (FSU). See Simon Tans, 'Case Report on Laval, 18 December 2007 (Case C-341/05) and Viking, 11 December 2007 (Case C-438/05)' (2008) 10 European Journal of Migration and Law 249.

100 AA Bilgin, 'Divan'ın İkilemi: Temel Haklar ve Temel Özgürlükler Arasında Denge' (2011)

the Finnish Constitution, which guarantees freedom of association[101]. This law allows the FSU to take strike action to protect its members' jobs and enforce better working conditions for crews on vessels operating from Finnish ports. ITF and FSU argue that this right is consistent with the EU's social policy and is recognized as a fundamental right under the EC Treaty. It is concerned when there is a conflict between the economic agenda and the social agenda of the European Community. This case deals with the constitutional balance to be struck between the economic and social factors within the now enlarged Internal Market; therefore the issue is of great political importance for the development of the EU[102]. It is mentioned above that the EU institutions have committed themselves to respecting the rights set out in the EU Charter of Fundamental Rights, proclaimed in Nice in December 2000. This includes the right to take collective action, including strike action[103]. The rules about the legality of cross-border collective action are unclear after the Viking case, and it is disappointing that the ECJ has not clarified this, especially as social dumping and cross-border actions have become more important after the EU's enlargement[104].

C. Laval Case

In the Laval Case[105], a Latvian company, Laval, entered into a contract in Sweden to build a school and sent Latvian workers there. A union action was taken to force Laval to sign a collective agreement that went beyond the Directive's rules on temporary workers' conditions. The Latvian company agreed to pay the minimum wage in the Swedish collective agreement, even though it was not required by the Directive. However, Laval refused to meet the union's request for the average wage. Laval was not opposed to collective bargaining, but the union's demand for the average wage for all workers was unrealistic and outside the Directive's scope.

In the Albany case, the Court excluded collective bargaining and action from free movement rules, but later rulings, like the Laval quartet, prioritized free movement rights (Articles 43 and 49) over fundamental rights, emphasizing

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13(1) Journal of Dokuz Eylül University Law Faculty 51, 75. Also see, Niklas Bruun, 'The Viking Line Case' (2007) 13(4) International Union Rights 8 https://www.jstor.org/stable/41936400

101 www.etuc.org (Access Date: 14.12.2024)

102 www.etuc.org (Access Date: 14.12.2024)

103 www.etuc.org (Access Date: 14.12.2024)

104 R Zahn, 'The Viking and Laval Cases in the Context of European Enlargement' (2008) Current Legal Issues; for some writers the decisions in Viking and Laval are not surprising, but they are disappointing, see more, Davies (n 87) 147.

105 Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others, eur-lex.europa.eu legal content (Access Date: 14.12.2024)

liberal principles over social protections[106]. With its judgments in the Viking and Laval cases, the European Court of Justice has ruled on the extent to which the exercise of workers' fundamental social rights can constitute a legitimate justification for limiting economic freedoms such as freedom of settlement and freedom to provide services[107]. In the Laval case, one can see that the Court obligates the parties to the conflict, through the referring court, to perform the necessary balancing, thereby shifting the burden of providing mutually acceptable justifications to the parties themselves[108]. Some writers believe that the problems revealed by the Laval case were not caused by the actions of the social partners (like unions or employers), but rather by the Swedish government's failure to properly adjust the country's industrial relations system to fit European standards. In other words, the issue was not with the social partners' behavior, but with how Sweden had not fully aligned its labor laws with EU expectations, which led to complications[109]. In these cases, the ECJ decided that when industrial action interferes with an employer's rights to freedom of establishment under Article 43 EC or to provide services under Article 49 EC, these Treaty rules can directly apply to unions organizing the action; according to the ECJ, unions are not considered public bodies, which shows that the effect is truly horizontal[110].

These judgments have sparked controversy on the adequacy of existing EU rules to protect the rights of workers in the context of the freedom to provide services and the freedom of establishment[111]. In the Viking and Laval cases, the ECJ ruled that collective action is a fundamental right and part of EU law. However, it emphasized that this right is not superior to other EU rights, such as the freedom to provide services and the freedom of establishment. Some writers and trade Unions found this decision wrong on the other hand some writers found it right[112].The positions taken by the Commission and Member States in the Viking and Laval/Vaxholm cases, and, in particular, their interventions before the ECJ, will influence debates around the future of the Constitutional

106 S Picard, 'Collective Action vs Free Movement: The Laval and the Viking Cases' (2008) 1 Transfer 1, 161. Also see, Dan Holke, 'The Laval Case' (2007) 13(4) International Union Rights 22 https://www.jstor.org/stable/41936409

107 Report on 19 March 2010; *The Viking case has created a huge legal uncertainty that calls into question the exercise of the fundamental right to collective action. This puts the sustainability of industrial relations systems at risk.*

108 Finn and Vaughan (n 28) 34

109 Ibid. 35.

110 Davies (n 87) 2008.

111 Report on 19/03/2010, Joint Report.

112 M Cerutti, 'ATAD'ın Viking, Laval, Rüffert ve Lüksemburg Davalarına İlişkin Verdiği Kararlar' (2009) 16 Sicil İş Hukuku Dergisi 234, 235.

Treaty[113]. Some writers also believed that it is unreasonable to think that the right to collective action is an unlimited right[114]. Some writers believe that the ECJ may not apply the principle of proportionality effectively in a specific field like labor law. Therefore, they argue that such matters should be left to the jurisdiction of national courts[115]. Also employers' organizations consider that the ECJ judgments do not affect the relationship between fundamental social rights and economic freedoms, nor do they favor one over the other[116]. For some writers the ECJ does not always force decisions that push countries into deeper integration, instead it allows member states to follow EU law while also considering their own legal and social customs, though it is a tricky balance and many countries do not always get it right, but this does not mean that the EU always has a negative or unfair impact on national welfare systems[117].

D. Rüffert Case

In the Rüffert case[118] the company Objekt und Bauregie GmbH & Co won a public contract for construction work in Niedersachsen/Germany. It subcontracted the work to a Polish company and promised to ensure that the wages paid would match the rates already set by the collective agreement for the site. However, when it was found that the workers were earning only 46.57% of the minimum wage for the construction sector, the Niedersachsen authorities canceled the contract and demanded payment of penalties. The company then took legal action. The Court found that the Niedersachsen law did not establish a rate of pay in accordance with the procedures outlined in the Posted Workers Directive (PWD). The Court stated that requiring foreign service providers to apply the wage rates set in the collective agreement could impose an additional economic burden, potentially restricting the free movement of services. Such a restriction cannot be justified on the grounds of worker protection since it applies only to public contracts and not to private ones. Some writers and trade unions

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113 www.etuc.org (Access Date: 14.12.2024)

114 Cerutti (n 112) 235.

115 Bilgin (n 100) 77, according to the author, the ECJ has been criticized for treating fundamental rights as secondary to free movement due to its approach in both rulings. Critics argue that the Court's decisions leaned more towards liberal economic interests rather than social protections.

116 Report on 19 March 2010; also employer's argue that these 4 decisions increase legal certainty.

117 Finn and Vaughan (n 28) 36

118 Case C-346/06 Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen, eur-lex.europa.eu legal content (Access Date: 14.12.2024). Also see, Silvia Borelli, 'Social Clauses in Public Contracts, the Posted Workers Directive and Article 49 EC: The Rüffert Case' (University of Ferrara, 3).

also consider that this decision has bad effects[119]. They criticized this decision as harmful and an encouragement for social dumping, and they also warned that it might increase public opposition to the internal market[120]. Some writers considered that in the Laval and Rueffert judgments, the ECJ has considerably narrowed down the possibilities for Member States and trade unions to guarantee equal terms and conditions of employment for migrant workers regardless of nationality[121]. There is disagreement as to whether the ECJ judgment in the Rüffert case makes it more difficult for public authorities and social partners to integrate respect for social considerations - in particular considerations relating to industrial relations and collective bargaining in cases of cross-border service provision - into public contracts[122].

E. Luxembourg Case

In the Luxembourg case[123], cour concerning the transposition of Directive 96/71/EC on the posting of workers, in which it found against Luxembourg on all the points at issue. That judgment, concerning the Law of 20 December 2002 transposing Directive 96/71/EC, prompted a wide-ranging debate about its implications for Luxembourg employment law and for Social Europe[124]. Some trade unions and legal scholars think that this ruling demonstrates, once again, that the right of businesses to do what they want, when they like, overrides trade union rights[125]. On the other hand the Confederation of European Business agrees, maintaining that Luxembourg had exercised an ‘overly wide interpretation of the

119 Also about some cases among labour unions there is anxiety over the implications of many recent ECJ cases concerning the free movement of workers, Finn and Vaughan (n 28) 26.

120 The European Trade Union Confederation (ETUC), www.etuc.org (Access Date: 14.12.2024)

121 John Monks, Commission v Luxembourg C-319/06 Briefing note, ETUC, 4.

122 Report on 19 March 2010; The overly strict conditions imposed in the Rüffert judgment effectively discourage public authorities from integrating local collective agreements based on social criteria into public procurement.

123 Judgment of the Court (First Chamber) of 19 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg (Case C-319/06), eur-lex.europa.eu/legal-content. Also, see, Philippe Gerber, Tai-Yu Ma, Olivier Klein, Julien Schiebel and Samuel Carpentier-Postel, ‘Cross-Border Residential Mobility, Quality of Life and Modal Shift: A Luxembourg Case Study’ (2017) 104(C) Transportation Research Part A: Policy and Practice 238.

124 D Ghailani, ‘The Rüffert and Luxembourg Cases: Is the European Social Dimension in Retreat?’ in Social Developments in the European Union 2008 205.

125 www.people.ie (Access Date: 15.12.2024); John Monks, General Secretary of the ETUC said: ‘*This is another hugely problematic judgment by the ECJ, asserting the primacy of the economic freedoms over fundamental rights*.”; The Confédération syndicale indépendante du Luxembourg (OGB-L) and the Fédération des syndicats chrétiens luxembourgeois (LCGB) expressed their disagreement with the European verdict at a joint press conference held by their shared European secretariat on 20 June 2008; Ghailani (n 124) 218.

PWD and unclear and unjustified control measures'[126]. According to European Companies, the ECJ was right in the Viking, Laval, Rüffert, and Luxembourg cases, and the ECJ does not prioritize economic freedoms over social rights or interfere with the right to collective bargaining[127]. However, certain trade unions think that the Luxembourg case has increased uncertainty for posted workers and employers[128].

These cases raise two main questions: how to decide priority when social rights conflict with market laws, and what limits exist on member states' freedom to create their own social policies[129]. In these judgments, the ECJ gave in particular its interpretation of the relationship between the fundamental social rights of collective bargaining and collective action and economic freedoms in the internal market[130]. The cases indicate the challenges trade unions face due to changes in opportunities and rules caused by "Europeanisation"; some authors also find the ECJ's decisions in the Viking and Laval cases difficult to evaluate because of the sensitive political nature of the issues[131]. In these cases, the ECJ agreed that collective action is acceptable to fight social dumping. This demonstrates the European Community's focus on social issues and highlights the challenge that moving companies and lower wage demands from new Member State workers bring to both the older European labor market and the established trade unions in those countries[132]. The ECJ decided not to follow the Albany solution. Instead, it made the free movement rules apply directly to all situations, which allowed them to consider collective action as a restriction that could be justified. This added a legal aspect to labor relations.

Some authors argue that, as interpreted by the ECJ, the focus seems to have shifted toward internal market goals, which was also emphasized in the later Rüffert case, suggesting that the Court views collective bargaining as separate from collective action, even though the ECJ in the Viking case acknowledged their close connection but used this to bring collective action under Article 49 TFEU[133]. In the Laval case, the ECJ banned collective action after case-by-case bargaining with foreign employers due to the Posted Workers Directive, but it allowed bargaining beyond the Directive's terms if the foreign firm voluntarily

126 www.people.ie (Access Date: 15.12.2024)

127 Cerutti (n 112) 236.

128 Report on 19 March 2010.

129 Jacobs (n 74) 2011.

130 Report on 19 March 2010.

131 Zahn (n 104) 2008.

132 Ibid

133 Veldman (n 81) 108.

signs an agreement, separating collective action from collective bargaining[134]. Still, in Viking and Laval, the ECJ did not consider the unique features of national social systems or the national traditions of industrial relations, which are sometimes rooted in constitutional principles, especially in cases where achieving social policy goals is left to the independent role of social partners. Some argue that the case law shows the protection of the fundamental right to strike alone cannot justify restrictions on free movement; instead, this right must be exercised to achieve a broader legitimate aim, such as protecting workers, and it must be appropriate for that purpose[135]. After the ECJ's Laval rulings questioned whether Member States could set labor rules for posted workers, the Commission aimed to clarify the law and balance social rights with free movement, but its 2012 proposal, the 'Monti II regulation' on cross-border strikes, faced strong opposition from national governments and social partners and was eventually abandoned[136].

Employers are also concerned, the CEEP (European Centre of Enterprises with Public Participation) is particularly affected by these rulings because public authorities and enterprises are losing their ability to include social factors in public contracts, and the freedom of social partners in collective bargaining is being limited[137]. And the introduction of "proportionality" to balance conflicting rights in these cases is hard to align with collective relations, as it can be flexible enough to satisfy both employers and trade unions in some cases, but also allows for broad interpretation by national courts and political influences, which could lead to inconsistencies in the protection of collective action across EU member states, a situation that trade unions did not support[138].

V. THE REORIENTATION OF THE EU'S APPROACH TO LABOUR MARKET REGULATION

The EU's founding treaties focus on promoting a free market by encouraging competition and reducing restrictions. The European Commission and the European Court of Justice have worked to prevent unfair competition and limit state aid. However, this approach has sometimes negatively impacted social rights, employment, social security, and public services[139].

Labour market segmentation does not happen because of employment regulation,

134 Ibid. 115.

135 Barnard (n 22) 718, BC 3; same oppinion, Veldman (n 81) 109.

136 S Schreurs, 'EU Social Policy and the Subsidiarity Principle: The End of an Illusion?' (2024) 15(2) European Labour Law Journal 346.

137 Ghailani (n 124) 217.

138 Zahn (n 104) 2008.

139 Jacobs (n 74) 2011.

as labour markets allow many ways to change job terms and conditions that do not match workers' actual productivity, but dividing workers into 'insiders' and 'outsiders' based on contracts is too simple, ignoring how social class, education, family duties, location, age, and discrimination shape labour supply[140].

After the Maastricht Treaty, social policy focused on social dialogue and employment, and in 1993, the EU published the Green Paper on priorities and policy proposals[141]. The Commission's Green Paper highlights that labor law was originally created to address economic and social inequality in employment, focusing on employment status as the basis for rights, while also acknowledging that this traditional model is built on key assumptions about employment[142]. Following discussions on the Green Paper, the White Paper, a final report, was published in 1994. The White Paper covers priority social policy issues for the EU. In the face of rising unemployment, the White Paper does not stop at setting "job creation" as the highest priority objective, but emphasizes both human resource development and social dialogue as a means of reducing social antagonisms[143].

As social policies evolve, different approaches have emerged to address labor market challenges and social inequality. One of these is the Third Way, which offers an alternative to traditional welfare state models by focusing on active labor market policies and social inclusion. The Third Way focuses on preventing social exclusion and promoting equal opportunities, unlike traditional welfare states that redistribute wealth through social aid, aiming instead to help individuals become self-sufficient through education, training, and employment, with governments and employers providing access to necessary services, reducing unemployment and labor market inequalities, using anti-discrimination laws to increase workforce participation, especially for disadvantaged groups, though it faces criticism for potentially pushing people into insecure jobs rather than providing direct financial support[144].

Regulation plays a key role in creating fairness between capital and labour, as well as among different worker groups, but this does not mean employment regulation does not need updates, as older policies that supported social inclusion may now cover fewer jobs, making it essential to focus on building inclusive labour markets that protect workers, encourage productivity, and raise employment standards without lowering conditions under the guise of equality[145].

140 Rubery and Piasna (n 94) 25.

141 Çelik (n 45) 130.

142 Barnard (n 22) 708.

143 Çelik (n 45) 130-131.

144 Barnard (n 22) 713.

145 Rubery and Piasna (n 94) 25.

Adopted in 2010 during the financial crisis, the Europe 2020 strategy prioritized inclusive growth, focusing on high employment and social cohesion[146].

In 2019, the European Labour Authority was set up in Bratislava to help ensure fair and effective enforcement of EU rules on labour mobility and social security. That year, key laws were introduced such as The Work-Life Balance Directive improved family leave and flexible work options, promoting gender equality in the workplace, The Transparent Working Conditions Directive gave workers more rights, like clear job information, limits on probation periods, and bans on exclusivity clauses, a Council recommendation aimed to close gaps in social protection for workers and the self-employed[147].

Several social policy initiatives were introduced, such as the European Child Guarantee in June 2021, the EU Health and Safety Framework for 2021-2027 in October, the European Platform on Combating Homelessness in June, and the disability rights strategy for 2021-2030 in March[148]. On 14 June, the EPSCO Council adopted conclusions on teleworking, emphasizing the EU's limited role, referencing the social partners' framework on digital work, and urging the European Commission to assess whether current EU laws ensure fair conditions for teleworkers, including the right to disconnect[149].

In addittion parliament urged the Commission to speed up the development of a digital European social security pass (ESSPASS) to help mobile workers transfer their social security rights. This was highlighted in both an oral question on 27 October 2021 and a resolution on 25 November 2021[150].

Also there is a MoveS network of independent experts in the field of intra-EU mobility[151]. MoveS stands for Free Movement of Workers and Social Security Coordination. The network is funded by the European Commission. The network offers legal expertise to the Commission on worker mobility and social security coordination through reports and analysis. MoveS helps increase knowledge about the free movement of workers and social security coordination by organizing seminars, sharing information, and connecting stakeholders[152].

The October 2022 Directive aims to ensure that national minimum wages are sufficient for workers to live decently, thereby reducing in-work poverty.

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146 Goodger and Makay (n 31) 2024

147 Ibid

148 A Atanasova and F Moja, 'The European Union in 2021: Key Events' in Social Policy in the European Union: State of Play 2022 (2022) 157, 165.

149 Ibid

150 Kennedy (n 8) 2024.

151 employment-social-affairs.ec.europa.eu (Access Date: 14.12.2024)

152 employment-social-affairs.ec.europa.eu (Access Date: 14.12.2024)

Although setting these wages is up to each country, they must guarantee adequate wage protection for workers[153].

EU social policy has been significantly affected in recent years, with the increase in Member States causing difficulties in the legislative process, as the expansion led to a loss of homogeneity due to the differences between new and old Member States, and the Central and Eastern countries, with their unique labor law systems, didn't fit into existing groups, which complicated the situation and slowed down the integration process, especially in adopting new social policy laws like directives and collective agreements[154].

VI. NEW JOB FORMS CHALLANGES

This legislative stagnation and the growing complexity of harmonizing traditional labor laws across an expanded EU were soon overshadowed by a more structural disruption. While European policymakers were struggling to integrate standard employment models, the labor market itself was rapidly evolving away from them. This shift towards atypical employment was initially evident in national trends; for instance, by 2012, nearly one in five workers in Germany were employed in non-standard arrangements such as part-time work, mini- and midi-jobs, fixed-term contracts or agency work, with younger people, migrants, women, single parents and the low-skilled particularly represented, while agency employment remained more male-dominated[155]. Since the 1980s, various legal reforms have institutionally legitimized and expanded atypical forms of employment, facilitating the use of fixed-term contracts, providing tax and social security benefits for small-scale jobs (Mini-Jobs), and increasingly institutionalizing temporary agency work (Leiharbeit)[156].

The gig economy is defined as a system that changes the traditional relationship between employers and employees through technology, platforms like Uber, Lyft,

153 Goodger and Makay (n 31) 2024

154 Borzaga (n 27) 2024.

155 Petra Böhnke, Janina Zeh and Sebastian Link, 'Atypische Beschäftigung im Erwerbsverlauf: Verlaufstypen als Ausdruck sozialer Spaltung?' (2015) 44(4) Zeitschrift für Soziologie 234, 235–236. Also see, Gérard Valenduc, 'New Forms of Work and Employment in the Digital Economy' in Amparo Serrano-Pascual and Maria Jepsen (eds), The Deconstruction of Employment as a Political Question: 'Employment' as a Floating Signifier (Springer Nature 2019) 63 https://doi.org/10.1007/978-3-319-93617-8. See, Jerzy Wratny, 'New Forms of Employment. A Panoramic View of the Issues' in Jerzy Wratny and Agata Ludera-Ruszel (eds), New Forms of Employment: Current Problems and Future Challenges (Springer Fachmedien Wiesbaden 2020) 3 https://doi.org/10.1007/978-3-658-28511-1. For an overview of atypical employment in Europe up to 2011, see, Jutta Allmendinger, Lena Hipp and Stefan Stuth, Atypical Employment in Europe 1996–2011 (WZB Discussion Paper No P 2013-003, Wissenschaftszentrum Berlin für Sozialforschung 2013).

156 Böhnke, Zeh and Link, (n 155), 234-239.

DoorDash, and Instacart are key examples of the gig economy, and the issue of whether workers on these platforms are employees or independent contractors is highly debated, with some arguing that the gig economy does not fit into the categories of "employee" and "independent contractor," requiring a new legal framework[157]. In recent years, the number of workers participating in the gig economy has rapidly increased with the spread of technology and digital platforms, traditional employer-employee relationships are becoming more flexible but, according to academic circles, they are turning into an insecure structure due to the rise of the gig economy[158]. It is not just academic circles; nowadays, we also see that workers are hired only for specific projects or fixed periods and then let go, which ultimately means they do not secure permanent jobs.

Along with the gig economy, there are also smart contracts, which are blockchain-based automatic contracts, when pre-determined conditions are met, the contract automatically comes into effect and performs tasks like payments, traditionally, gig platforms (Uber, Upwork, etc.) act as intermediaries between employers and workers, but with smart contracts, employers and workers can interact directly, reducing the role of platforms, however, this system, like standard contracts, can also reduce workers' bargaining power over their working conditions[159].

Traditional labor regulations are designed to protect full-time employees, but the gig economy has disrupted this system, benefits like unemployment insurance, retirement rights, overtime, and union rights do not apply to gig workers, existing labor law frameworks do not protect gig workers adequately, so the idea of adapting traditional labor law to this new model is dominant[160].

The European Commission's proposal for a Platform Work Directive attempts to introduce the first EU rules on algorithmic management and the use of AI in the workplace, potentially setting the standards for the protection of workers' rights in the overall labour market in view of the digital transition[161]. The EU Platform Work Directive, effective from December 1, 2024, requires member states to implement it by December 2, 2026, addressing the classification of platform workers, imposing obligations on companies using digital platforms, and setting rules for contact persons and responses to worker challenges, though the consequences of noncompliance are still unclear[162].

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157 A Kondo and A Singer, 'Labor Without Employment: Toward a New Legal Framework for the Gig Economy' (2020) 34 ABA Journal of Labor & Employment Law 331.

158 SC Oranburg and L Palagashvili, 'The Gig Economy, Smart Contracts, and Disruption of Traditional Work Arrangements' (2021) 50 Journal of Legal Studies S219.

159 Ibid

160 Ibid

161 T Grossi, L Rayner, D Brady and X Dervishi, 'The Social Pillar and the Future of the EU Social Agenda' (Policy Study, February 2024) 22.

162 Ogletree / Smoak / Stewart, P.C., 2025.

In cases related to platform workers, particularly in the context of Uber, the Amsterdam Court in the Netherlands ruled that Uber drivers cannot be considered "self-employed" and should be classified as employees of the company[163]. Similarly, the UK Supreme Court ruled that Uber drivers are entitled to worker rights[164]. Additionally, the European Court of Justice ruled in a case brought by taxi drivers in Barcelona against Uber, stating that Uber operates as a platform providing taxi services and is subject to the relevant regulations[165]. In our opinion, Uber workers are employees because, unlike those on platforms like Booking.com or Airbnb, they do not directly interact with passengers to set their terms and can be penalized by the platform[166].

However, the ECJ's jurisprudence demonstrates that not all gig economy arrangements automatically constitute an employment relationship. In the Yodel case[167], the Court clarified the boundaries of genuine self-employment within platform-based delivery services. The ECJ ruled that a courier engaged as an independent contractor does not fall under the concept of a 'worker' for the purposes of the Working Time Directive (2003/88/EC) if they possess significant operational autonomy. Specifically, the Court highlighted several criteria demonstrating that such independence is not merely fictitious. First, if a courier utilizes subcontractors or substitutes, the putative employer must exercise only limited control over this choice based on purely objective criteria (e.g., basic skills) rather than personal preference. Second, the courier retains an absolute right to reject assigned tasks and can unilaterally set a binding limit on the volume of tasks they perform. Third, true autonomy is evidenced by the courier's freedom to provide similar services in parallel and simultaneously to third parties, including direct competitors. Finally, the Court clarified that while deliveries must occur within specific time slots, this is inherent to the very nature of the delivery service to ensure proper performance, rather than a definitive marker of subordination. This pivotal order establishes that the absence of a hierarchical, subordinate relationship precludes the classification of a 'worker' even within the gig economy.

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163 Uber BV v. Vereniging van Taxipediteurs, Rechtbank Amsterdam, Judgment of 14 December 2021, Case No. 2020/6392

164 Uber BV v. Aslam & Ors, Supreme Court of the United Kingdom, Judgment of 19 February 2021, Case No. UKSC 2019/0149

165 Asociación Profesional Elite Taxi v. Uber Systems Spain, CJEU, Judgment of 20 December 2017, Case No. C-434/15, Asociación Profesional Elite Taxi v. Uber Systems Spain SL

166 S Doğan, 'Uber Platformu Çalışanlarının Hukuki Statülerine İlişkin Yaklaşımlar' (2020) 5(1) Çankaya University Law Faculty Review; M Kutlu, 'Platform Çalışanlarının Hukuki Statüsü: Uber-Aslam ve diğerleri Kararına İlişkin Bir Değerlendirme' (2021) 25(2) Ankara Hacı Bayram Veli University Law Review 271.

167 Court of Justice, Order C-692/19, 22 April 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CO0692 A. D. 16.07.2026.

Beyond individual classification, the ECJ has also addressed the collective rights of atypical workers at the intersection of labor and competition law. In the landmark FNV Kiem case[168], the Court confronted the issue of false self-employment. Generally, genuine self-employed individuals are considered undertakings subject to EU competition rules (Article 101 TFEU), which prohibits them from collectively bargaining for minimum fees as it constitutes price-fixing. However, the ECJ ruled that if an independent contractor acts under the direction of an employer, does not share the commercial risks, and forms an integral part of the employer's undertaking, their independence is merely notional. Such "false self-employed" individuals are in a situation comparable to employees. Consequently, collective labour agreements setting minimum fees for these misclassified workers fall outside the scope of competition law prohibitions and are protected as legitimate social policy measures. This ruling provides a vital legal shield for gig workers, ensuring that those misclassified as independent contractors can collectively bargain for decent working conditions without facing antitrust penalties.

As more workers join digital platforms with irregular hours and algorithmic management, the Parliament and the Council passed a directive to improve conditions for platform workers[169].

A. The EU's Response to Crises

The process of European integration has repeatedly been shaped by crises—from the post-war reconstruction to the Eurozone crisis, the migration crisis, Brexit, the COVID-19 pandemic and the war in Ukraine—forcing policymakers to adapt and highlighting culture, increasingly inscribed into EU policy frameworks, as a constructive factor in strengthening resilience and legitimacy across Member States[170].

1. Financial Crisis

Before the global financial crisis hit in early 2008, the EU economy was seen as its strongest ever, with strong growth in the euro area and rising employment[171]. The strong impact is due to the systemic and widespread nature of the crisis,

168 Judgment Of The Court, C-413/13, 4 December 2014, https://irshare.eu/wp-content/uploads/2025/01/C-41313-EN.pdf, A. D. 16.07.2026.

169 Goodger and Makay (n 31) 2024

170 Marija Dorotić, 'Towards the Empowerment of Culture: The EU's Response to Recent Crises Through Its Cultural Policy and Beyond' (2023) 3 Studia Europejskie – Studies in European Affairs 7, 8–9. For a comprehensive overview of EU crises, see Marianne Riddervold and Jarle Trondal (eds), The Palgrave Handbook of EU Crises (Palgrave Macmillan 2021) https://doi.org/10.1007/978-3-030-51791-5.

171 J Welch, 'The Financial Crisis in the European Union: An Impact Assessment and Response Critique' (2011) 2(4) European Journal of Risk Regulation 481.

as financial crises usually last longer and hit harder than non-financial ones, and also to differences in sectors and institutions, causing severe job losses in some euro area countries but only mild and short-term effects in others[172]. While debating the 2007-08 financial crisis, Parliament called for an EU commitment to preserving European social models and a strong social Europe[173].

The differences in outcomes partly reflect the two phases of the crisis: the first phase, known as the "Great Recession" of 2008-09, was a sharp global downturn in activity and trade, while the second, longer-lasting "second dip" mainly affected the most stressed economies[174]. Some groups, such as the young, the unskilled, those on temporary contracts, and workers displaced from overheated construction sectors, were hit particularly hard, and the crisis also caused a significant rise in long-term and structural unemployment in some countries[175].

The ecenomic plan recognizes the modern economy and crisis as global, emphasizes the need for a global solution, and highlights the importance of cooperation with international partners for a coordinated EU response[176]. Following the 2008 crisis, many EU countries took more action in different policy areas, first to protect jobs and incomes from the crisis, and later to make labor markets more adaptable[177].

The EU developed crisis-management tools like the European Stability Mechanism, but these relied too much on national budgets and lacked a unified European approach, while financial market integration improved slightly with the Banking Union plan, though progress stalled after establishing a joint banking supervisor[178].

After this crisis and rising youth unemployment, EU countries began to focus more on segmentation, making changes to employment protection laws, with lower dismissal costs for permanent workers and some new rules for temporary contracts, which slightly reduce the gap between the two types of contracts[179]. Further reforms to collective bargaining, allowing firm-level wage agreements to reflect local labour market conditions and productivity, and enabling greater wage differentiation, would improve signals about demand for different types of workers[180].

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172 ECB, 49.

173 Goodger and Makay (n 31) 2024

174 ECB, 50.

175 ECB, 67.

176 Welch (n 169) 485.

177 A Turrini, G Koltay, F Pierini and others, 'A decade of labour market reforms in the EU: insights from the LABREF database' (2015) 4 IZA Journal of Labor Policy 12.

178 High-Level Group on Post-Covid Economic and Social Challenges, 2022.

179 Eichhorst / Marx / Wehner, 2017.

180 ECB, p. 67.

After the 2008–2009 recession, additional reforms were implemented in areas such as labor market policies, labor taxes, welfare benefits, and unemployment benefits, aimed at reducing job losses during the temporary crisis and improving social safety nets. In the second phase period of 2010–2011, reforms focused more on job protection, wage rules, and working hours, especially in Southern Europe, with changes often reducing regulations, increasing benefits, and raising labor taxes in some countries[181]. Labour market reforms were intensely implemented in countries receiving international financial aid, like Ireland, Greece, Spain, Cyprus, and Portugal, but progress across the euro area has been partial and uneven, taking time to show full effects, with more needed to ensure flexibility compatible with a monetary union, while increasing labour mobility across regions and countries helps reduce high local unemployment rates[182].

2. European Social Pillar (ESPR)

In April 2017, the Commission introduced the European Pillar of Social Rights (EPSR) with 20 principles to improve living and working conditions. These focus on (i) equal opportunities, (ii) fair working conditions, and (iii) social protection. At the 2017 Gothenburg Summit, the Parliament, Council, and Commission adopted a joint declaration supporting the EPSR. A "social scoreboard" was also created to track progress[183]. With this, the European Commission aimed to turn the principles into action, setting three headline targets to be achieved by 2030[184]. The EPSR was not just a legal framework but a declaration of principles and a potent political message[185]. Some writers believe that, unlike earlier social frameworks like the European Employment Strategy and the Social Investment Package, the EPSR is a real political action aimed at revitalizing Europe's social sector[186]. ESPR highlights the need to build a strong social Europe[187].

The EPSR was adopted as a declaration by the EU institutions in November 2017, establishing a solid foundation for European social policy. Further progress in the social dimension depends heavily on the implementation of the EPSR[188].

[181] Turrini et al. 15.

[182] ECB, p. 67.

[183] Goodger and Makay (n 31) 2024

[184] Grossi et al, 17. For a detailed discussion on the Social Pillar, see, Antonino Alì, 'The Principle of Legality as a Pillar of the EU's Rule of Law: Bridging the Gap between International and National Law' in Luisa Antoniolli and Carlo Ruzza (eds), The Rule of Law in the EU: Challenges, Actors and Strategies (Springer Nature 2024) 225.

[185] Ibid

[186] Ibid

[187] Börner, (n 5) 8.

[188] KM Anderson and E Heins, 'After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking' in Bart Vanhercke, Slavina Spasova and Boris

The EPSR redefines social goals for fair labor markets and welfare systems, blending old and new elements, with commitments to gender equality, using hard and soft law, indicators, and the European Semester to drive reforms, but its success depends on member states, uneven applicability across the EU, and addressing inconsistencies between social and economic policies[189]. The ESPR could be interpreted as a response to the multidimensional crisis affecting the EU in economic, political, and social terms demanding action to address the complex and persisting inequalities across the EU[190].

The European Pillar of Social Rights Action Plan lists specific steps to apply its principles further, created together by the Member States and the EU, with support from social partners and civil society, while a consultation from January to November 2020 received 1,041 contributions from social partners, businesses, and citizens[191].

In March 2021, the Commission released an action plan for the European Pillar of Social Rights (EPSR), detailing its commitments until 2024. These targets were confirmed at the Porto Social Summit in May 2021, where the Porto Social Commitment was adopted by EU institutions and the Heads of State or Government. National EPSR goals were presented in June 2022[192].

3. Covid-19 Pandemic

The Europe 2020 Strategy, created by the European Commission, views graduate employment data as crucial for designing, delivering, and evaluating higher education courses[193]. The report predicts that by 2020, 35% of all EU jobs will require high-level qualifications, envisioning a highly skilled and competitive labour market, but some argue this optimism conflicts with rising unemployment among European graduates[194].

Fronteddu (eds), Social Policy in the European Union: State of Play 2020 (2021) 13.

189 Plomien (n 54) 2018.

190 Ibid

191 ILO Advancing social justice, promoting decent work, 1 March 2023.

192 Plomien (n 54) 2018.

193 I Nuñez and I Livanos, Temps by Choice? An Analysis of Reasons for Temporary Employment among Young European Workers (ESRC Seminar Series: Young Workers and Precarious Employment, University of Warwick 2011). For comprehensive an analysis of social policy responses to Covid-19 in Europe, see, Daniel Béland, Bea Cantillon, Rod Hick, Bent Greve and Amílcar Moreira, 'Policy Legacies, Welfare Regimes, and Social Policy Responses to COVID-19 in Europe' in Stefanie Börner and Martin Seeleib-Kaiser (eds), European Social Policy and the COVID-19 Pandemic: Challenges to National Welfare and EU Policy (Oxford University Press 2023) 3 https://doi.org/10.1093/oso/9780197676189.001.0001

194 Ibid

The COVID-19 outbreak in early 2020 disrupted the EU's plans. The spread of Covid-19 across Europe from January 2020 complicated the 2020 strategy in a short time. The Commission and Parliament have struggled with deep economic recessions due to lockdowns and the EU budget shrinking with the UK's departure on January 31, 2020. But the pandemic has added urgency to the development of a coordinated European response to the health and economic challenges posed by Covid-19[195].

The Commission and Parliament faced major challenges due to the rapid economic downturn from the lockdown and the reduced EU budget after the UK left the EU on January 31, 2020[196]. The COVID-19 pandemic caused major restrictions on the free movement of workers in the EU, especially with the reintroduction of border controls. These measures mainly affected seasonal, cross-border, and posted workers (Foreign workers temporarily working in a member state). Interestingly, health care workers were allowed to travel despite the bans, and EU rules kept focusing on the free movement of important workers. In April, the EU advised Member States to make it easier for health workers to cross borders, without talking about the number of workers available in their own countries. When Covid-19 struck, countries imposed restrictions on the movement of goods and people, closed borders, and issued export bans. These measures, often lacking strong public health justification, violated internal market rules and undermined European solidarity[197]. To address this, the EU Commission issued guidelines on worker mobility, and the Council recommended a coordinated approach, including waiving quarantine for essential workers[198].

During the COVID-19 pandemic, the EU introduced measures to address the crisis's effects on jobs and society[199]. These included the Coronavirus Response Investment Initiatives (CRII and CRII+) and temporary support to reduce unemployment risks[200]. Furthermore, the European Parliament passed resolutions to protect cross-border and seasonal workers. In 2020, it called for EU coordination to help workers, highlighting the vulnerability of mobile

195 Anderson and Heins, 'After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking' 13.

196 Ibid

197 E Brooks, A de Ruijter and SL Greer, 'Covid-19 and European Union Health Policy: From Crisis to Collective Action' in Bart Vanhercke, Slavina Spasova and Boris Fronteddu (eds), Social Policy in the European Union: State of Play 2020 (2021).

198 Kennedy (n 8) 2024.

199 The EU Council and Parliament emphasized culture's significance for both the economy and social well-being during the COVID-19 crisis, while adopting measures to accelerate digital and green transitions, see. Dorotić, (n 166), 19-20.

200 Goodger and Makay (n 31) 8

workers. In 2021, it pushed for better enforcement of the Posting of Workers Directive and a one-stop digital service for labour mobility[201].

SURE (Support to Reduce Unemployment Risks in an Emergency), a temporary mechanism, was established in response to Covid-19[202]. SURE was created to help with sudden rises in public spending, supporting jobs through short-term work programs and health measures, with loans backed by voluntary guarantees from all EU countries, showing solidarity with workers and businesses, and each country's contribution is based on its share of the EU's total GNI[203]. The Commission's temporary loan tool, like SURE, helps workers by supporting short-time working schemes, with time limits in place to ensure the Commission's extra power is not permanent[204].

4. Brexit

Public opinion in the United Kingdom (UK) was influenced by concerns about immigration from EU countries following the 2004 enlargement of the EU's job market, perceived limits on sovereignty, and the cost of EU membership. Anti-EU sentiment grew due to a protest vote from those affected by austerity policies following the financial crisis. The 2015 refugee crisis may have pushed the UK referendum vote in favor of leaving the EU. Additionally, there were other near-exits, like the potential Greek exit in 2011-2012, when Greece negotiated a bailout under austerity conditions. Some suggested that Greece leaving the Eurozone and devaluing its currency could have been a better solution. The term "Czexit" emerged in 2015 in Czechia, with President Milos Zeman supporting a referendum on whether to stay in the EU after Brexit. Exit campaigns were also active in countries like Denmark, France, the Netherlands, Poland, and Romania[205].

Brexit also complicates the EU's equality efforts, as it may allow faster progress on social rights without the UK, but also creates challenges with political instability, while likely causing setbacks on social and gender issues in the UK, leaving the EU focused on addressing social problems through the Pillar without UK involvement[206]. With the UK leaving the EU, the free movement of workers no longer applies, but labor migration will continue under new conditions set

201 Kennedy (n 8) 2024.

202 Anderson and Heins, 'After the European Elections and the First Wave of Covid-19: Prospects for EU Social Policymaking' 13.

203 High-Level Group on Post-Covid Economic and Social Challenges, 2022.

204 T Tesche, The European Union's Response to the Coronavirus Emergency: An Early Assessment (LEQS Paper No 157/2020, June 2020).

205 High-Level Group on Post-Covid Economic and Social Challenges, 2022.

206 Plomie (n 54) 2018.

by the UK and EU Member States, outside the EU's free movement system[207].

Brexit ended freedom of movement of workers between the UK and the EU-27 on 31 December 2020. The rights of the EU-27 citizens already living and working in the UK and those UK citizens who were living and working in the EU-27 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights[208].

5. Russia's Aggression against Ukraine

Since the war started, the EU has imposed sanctions on Putin and his inner circle, aimed to weaken Russia's ability to continue the war, while also strengthening integration in foreign policy, security, asylum, migration, and energy[209]. In 2022, while it was expected to be a year when the pandemic would end and international human mobility would return to normal, millions of Ukrainians were forced to flee their homes and lands following Russia's invasion of Ukraine in February, with many seeking refuge in neighboring countries and some moving from the war-torn eastern regions to the western parts of the country[210].

European countries, having reached a high level of development, managed to stay distant from the problems in other parts of the world, but when faced with the refugee crisis from troubled regions, they implemented strict policies to keep refugees away from Europe[211].

The terms 'refugee' and 'migrant' are often used interchangeably in media and public discussions, but they have a key legal difference, confusing them can cause issues for refugees, asylum-seekers, and States handling mixed movements, as well as misunderstandings in migration discussions. Refugees are people who leave their country due to persecution, conflict, violence, or public order disruptions and need international protection, while 'forced migration' is a broad, non-legal term used by social scientists for different kinds of involuntary

207 Hanne Verschueren, 'Employment and Social Rights of Labour Migrants Post-Brexit' in Dora Kostakopoulou and Daniel Thym (eds), Research Handbook on European Union Citizenship Law and Policy (2022) 343.

208 Ibid; Kennedy (n 8) 2024.

209 Federico Fabbrini, 'The War in Ukraine and the Future of the EU: Prospects for Reform' in Social Policy in the European Union: State of Play 2022 (2022) 11. For the impact of the war in Ukraine and the migration crisis on EU cultural policy, see, Jeronim Dorotić, 'Towards the Empowerment of Culture: The EU's Response to Recent Crises Through Its Cultural Policy and Beyond' (2023) 3 Studia Europejskie – Studies in European Affairs 7.

210 Özgür Işığıçok and Selçuk Kariman, 'Evaluation of Europe's Perspective on Refugees Through the Case of Ukrainian Refugees' (2022) 7 International Journal of Historical Researches.

211 Ibid

movement across borders or within a country, with no universal definition[212]. An asylum seeker is someone who is seeking international protection from dangers in their home country, but whose claim for refugee status hasn't been legally determined[213].

People left Ukraine in large numbers to escape the violence, mostly moving to neighboring countries and EU member states, the European Union was unprepared for this sudden mass migration, and they granted temporary protection status to asylum seekers[214]. The primary concern of EU countries is the security of the Union, so their decisions are often insufficient to solve existing problems, meetings usually result in cautious statements to calm public reactions, EU countries struggle to act together on migration issues and fail to establish a common standard representing the Union[215].

However, after Russia's invasion of Ukraine, millions fled to the EU. The European Commission activated the Temporary Protection Directive, giving refugees residence permits, access to education, and the labor market. Efforts have been made to help them integrate into the EU labor market and recognize their qualifications. As of November 2023, over 4.2 million Ukrainian refugees are benefiting from this protection[216]. And the Cohesion's Action for Refugees in Europe (CARE) was created to help Member States and regions provide emergency aid to people. It also used funds from the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) programme[217].

Like past crises in EU history, the war in Ukraine has led to progress in European integration, but it has also exposed weaknesses in the EU's response to the conflict on its Eastern border[218]. The Ukraine war has shown the EU's strength and determination, but it also exposed through the Ukraine crisis that EU member countrieses dependence on military, economic, trade, and energy sectors negatively affects the future of the EU, highlighting the need for alternative projects; renewable energy is part of long-term plans, and coal, LNG, and renewable

212 https://www.unhcr.org/us/news/stories/refugees-and-migrants-frequently-asked-questions-faqs (Access Date: 27.01.2025)

213 www.rescue.org (Access Date: 27.01.2025)

214 Gülerce / Bayram, 2023.

215 Işığıçok and Kariman (n 208) 2022.

216 Kennedy (n 8) 2024. Also the EU provided direct support to Ukraine's cultural and creative sectors by launching special Creative Europe funding calls, facilitating artist mobility, and initiating projects such as SUM – Save the Ukraine Monuments to safeguard cultural heritage digitally, see Dorotić, (n 166), 21-22.

217 Goodger and Makay (n 31) 2024

218 Fabbrini, (n 207) 2022.

sources are seen as alternatives to ensure energy security[219].During this process, Conference on the Future of Europe (CoFoE) has proposed some solutions and recommendations. Implementing CoFoE's solutions requires treaty changes, and the EU institutions and Member States must act on its recommendations, but the real challenge is having enough political will to make it happen[220].

CONCLUSION

The free movement of workers is closely linked with the free movement of goods, services, and capital in the EU's internal market. This includes the right for any EU citizen to work or seek work in other member states, guarantees of equal treatment for workers and their families, mutual recognition of professional qualifications, and issues related to citizens' rights and social security. While labor mobility within the EU is not at its highest level today, these regulations contribute significantly to the efficiency of the single market, alignment of economic policies, and the progress towards political unity.

Since the development of social policy in the European Union from the 1970s to today has matured significantly, achieving a status comparable to economic integration, it now rests on a clear treaty foundation and, through the Charter, has arguably expanded further, while previous Commissions managed to implement much of their core agendas, establish a network of employment regulations, and garner support for additional social legislation, even using unemployment crises as opportunities to introduce new dimensions of social policy into foundational treaties[221].

It is unclear if mutual recognition of collective agreements would help free movement of labor and services from new Member States while keeping social standards in old ones, the ECJ tried to balance the interests of old and new states by leaving decisions on collective action to national courts, but this creates issues by possibly disrupting labor relations autonomy, as demonstrated by the prolonged debates over Viking and Laval, the ECJ's vague yet strict criteria for proportionality do not always favor trade unions, heavily depending on the prevailing political and economic context[222].

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219 S G Tokatlı, 'Ukrayna Krizi'nin Avrupa Politikalarına Yansımaları' (2022) 17 Journal of Euro Politic 65.

220 Fabbrini (n 207) 2022.

221 Addison (n 62) 21. European social policy was initially regarded as secondary to economic integration; however, with the development of the single market, the EU's influence has increasingly expanded to areas such as the free movement of workers, the harmonisation of social rights, and anti-discrimination measures, see. Dorotić, (n 166), 7.

222 Zahn (n 104) 2008.

As discussed in the sections E, the ECJ's stance on this issue, particularly in the Viking and Laval cases, has faced significant criticism from both academic circles and practical sectors like labor unions. The main criticism is the European Union's strict stance on the single market goal, especially regarding the free movement of workers, and its refusal to recognize processes such as strikes and collective bargaining within the framework of proportionality. While workers in free movement have the right to equal treatment with workers in their home countries, when it comes to posted workers or downward pressure on labor standards due to the relocation of labor to other Member States, true equality cannot be achieved solely through negative integration. Therefore, establishing a genuine European industrial relations system is imperative to alleviate the destructive economic competition over labor conditions[223]. The confinement of social solidarity to the national level and the absence of a common social security system at the European level remain limited in resolving the inherent tension between the right to free movement and the principle of solidarity within the European Community/European Union. Although the rulings of the Court of Justice partially address this gap, the burdens on national welfare systems continue to grow[224]. Returning to the primary research question, the transition from traditional posting of workers to the modern gig economy reveals that EU social policy is currently caught between a structural renaissance and the limitations of outdated legal tools. The gig economy fundamentally disrupts the traditional employer-employee binary through tripartite relationships and algorithmic management. Recent ECJ jurisprudence illustrates a nuanced, albeit fragmented, response to this disruption. On one hand, as seen in the FNV Kiem case, the Court has progressively expanded the protective umbrella of EU law to 'false self-employed' workers, shielding their collective bargaining rights from strict competition law prohibitions. On the other hand, the Yodel order demonstrates that the ECJ remains anchored to traditional, 20th-century criteria of subordination and operational autonomy. If a platform worker possesses significant latitude—such as the right to substitute or work for competitors—they remain outside the 'worker' classification, leaving profound gaps in their social protection.

The relationship between the labor market and social policy is key to achieving economic growth, employment opportunities, and social equality. Social policy aims to create equal opportunities, support disadvantaged groups, and improve working conditions in the labor market. The way the labor market functions directly affects the success of social policies, as market inequalities can limit their effectiveness. Strengthening social policies can increase participation in

223 Veldman (n 81) 116.

224 Stefano Giubboni, 'Free Movement of Persons and European Solidarity' URGE Working Paper 9/2006.

the labor market and provide fairer opportunities, supporting both economic and social stability.

The gig economy is a work model made up of people who do not have full-time positions in a specific organization, working remotely and with flexible hours. The focus in determining the employment status of platform workers and addressing other issues is the difficulty of legally categorizing the parties in platform work, which involves a tripartite relationship. It seems that this issue cannot be resolved with current regulations and concepts. In platform work, there are many different working methods and rules, making it difficult to determine whether the workers are employees or independent contractors. Even if regulations are made regarding this issue, it may not be possible to find a solution for every specific case. In the uncertain environment created by the growth of the gig economy and platform workers, the EU Platform Work Directive has been published. However, despite its publication, some uncertainties (such as ensuring occupational health and safety or collective labor rights) still persist. The fact that member states have until 2026 to adapt it to their national processes suggests that these uncertainties will continue. Ultimately, while the introduction of the Directive and progressive rulings like the FNV Kiem case signal a timid renaissance in EU social policy—shifting towards a 'market-correcting' paradigm—the heavy reliance on traditional subordination tests suggests that the EU is still retrofitting outdated legal tools to 21st-century precarious work models. Until a unified legal classification and a pan-European social framework are established, the structural pressure on both national welfare systems and collective rights will undoubtedly persist.

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TÜRKİYE'S TRIPARTITE DIGITAL REGULATION: A KANTIAN DEONTOLOGICAL ANALYSIS OF PDPL, LAW NO. 5651, AND LAW NO. 4054*

Türkiye'nin Üçlü Dijital Düzenlemesi: KVKK, 5651 Sayılı Kanun ve 4054 Sayılı Kanun'un Kantçı Deontolojik Analizi

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Abstract

Türkiye presents itself as a GDPR-aligned digital governance actor, yet simultaneously operates three legally inconsistent instruments: the Law on Protection of Personal Data (PDPL), which partially mirrors EU data protection standards; Law No. 5651, which authorises administrative platform blocking without prior judicial authorisation and criminalises broadly defined online expression; and the draft amendment to Competition Law No. 4054, which adopts Digital Markets Act gatekeeper thresholds while remaining silent on individual rights. No existing scholarship has analysed these three instruments together through a unified ethical framework. This article applies Kantian deontological theory, specifically the categorical imperative and the principle of treating persons as ends in themselves, to evaluate the internal coherence of Türkiye's tripartite digital regulatory framework. It argues that the PDPL partially honours deontological principles, Law No. 5651 structurally violates them, and the draft amendment to Law No. 4054 is deontologically silent in ways that compound the contradiction. This tripartite inconsistency, the article concludes, provides a structural explanation for Türkiye's continued failure to obtain EU adequacy recognition, and resolving it requires targeted legislative reforms to each instrument grounded in deontological principles. The findings contribute an original analytical framework for identifying jurisdictional contradictions

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in GDPR-adjacent digital regulatory regimes and offer three concrete reform recommendations for Turkish digital governance.

Keywords: Digital Regulation; Kantian Deontology, Personal Data Protection, Internet Censorship, EU Adequacy Decision, Gatekeeper Regulation, Turkish Digital Law, PDPL

Özet

Türkiye, GDPR ile uyumlu bir dijital yönetişim aktörü olarak sunulmakta; ancak aynı anda üç hukuki bakımdan tutarsız araç işletmektedir: AB veri koruma standartlarını kısmen yansıtan Kişisel Verilerin Korunması Kanunu (KVKK); önceden yargısal denetim olmaksızın idari platform engelleme yetkisi tanıyan ve geniş kapsamlı çevrimiçi ifadeyi suç olarak tanımlayan 5651 Sayılı Kanun; ve bireysel haklar konusunda sessiz kalırken Dijital Piyasalar Yasası'nın kapı bekçisi eşiklerini benimseyen 4054 Sayılı Rekabetin Korunması Hakkında Kanun'un taslak değişikliği. Mevcut literatürde bu üç araç, bütünleşik bir etik çerçeve aracılığıyla birlikte hiç analiz edilmemiştir. Bu makale, Türkiye'nin üçlü dijital düzenleyici çerçevesinin iç tutarlılığını değerlendirmek amacıyla Kantçı deontolojik teoriyi, özellikle kategorik buyruğu ve kişilere her zaman amaç olarak davranılması ilkesini uygulamaktadır. KVKK'nın deontolojik ilkeleri kısmen karşıladığı, 5651 Sayılı Kanun'un bu ilkeleri yapısal olarak ihlal ettiği ve 4054 Sayılı Kanun taslak değişikliğinin çelişkiyi derinleştiren biçimde deontolojik açıdan sessiz kaldığı savunulmaktadır. Bu üçlü tutarsızlığın, Türkiye'nin AB yeterlilik kararı alamamasının yapısal bir açıklamasını oluşturduğu ve çözümünün her bir araca yönelik deontolojik ilkelere dayalı hedefli yasal reformlar gerektirdiği sonucuna varılmaktadır. Bulgular, GDPR ile uyumlu dijital düzenleyici rejimlerdeki yetki alanı çelişkilerini tespit etmeye yönelik özgün bir analitik çerçeve sunmakta ve Türk dijital yönetişimi için üç somut reform önerisi getirmektedir.

Anahtar Kelimeler: Dijital Düzenleme, Kantçı Deontoloji, Kişisel Verilerin Korunması, İnternet Sansürü, AB Yeterlilik Kararı, Kapı Bekçisi Düzenlemesi, Türk Dijital Hukuku, KVKK

INTRODUCTION

On 6 February 2023, as rescue teams scrambled to locate survivors of the earthquakes that devastated southern Türkiye and claimed more than 50,000 lives, the Turkish government restricted access to Twitter, the platform that citizens were using to coordinate emergency assistance and communicate their locations to rescuers.[1] The restriction was imposed under Article 8A of Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes

[1] Freedom House, *Freedom on the Net 2024: Türkiye Country Report* (Freedom House 2024) https://freedomhouse.org/country/Türkiye/freedom-net/2024 accessed 1 May 2026.

Committed Through Such Publications, which authorises the Information and Communication Technologies Authority (BTK) to issue access-blocking orders without prior judicial authorisation.[2] The episode lasted eight hours, with its consequences, in terms of delayed rescue coordination, remaining disputed; its constitutional and ethical implications do not. A state that simultaneously enacts legislation promising to protect the personal data and communicative autonomy of its citizens, while retaining unreviewable administrative power to silence the platforms through which that autonomy is exercised, has not resolved a regulatory tension, but rather institutionalised one.

This article argues that Türkiye's digital regulatory framework contains a tripartite internal contradiction that is both legally significant and ethically indefensible. Türkiye operates three distinct digital regulatory instruments in parallel: Law No. 6698 on the Protection of Personal Data (PDPL), which establishes a GDPR-inspired rights-based data protection regime; Law No. 5651, which grants state authorities broad powers of content removal and platform blocking; and the draft amendment to Law No. 4054 on the Protection of Competition, which proposes a Digital Markets Act-inspired gatekeeper framework for digital markets. These three instruments have been enacted, amended, and developed in relative isolation from one another. No existing scholarship has subjected them to unified analysis. This article does so for the first time, applying Kantian deontological theory as the evaluative framework.

The choice of Kantian deontology is deliberate and methodologically justified. Kant's categorical imperative, specifically its second formulation, requiring that persons always be treated as ends in themselves and never merely as means, provides a precise and non-arbitrary standard against which regulatory instruments can be evaluated.[3] Unlike consequentialist frameworks, which permit rights violations where aggregate welfare gains are sufficiently large, deontological analysis identifies whether a regulatory instrument structurally respects or violates the dignity and autonomy of the individuals it governs. This standard is particularly appropriate for digital regulation, where the central ethical question is not whether platforms produce net social benefits, but whether individuals retain meaningful control over their own data, expression, and digital agency.

The article proceeds as follows. Section I establishes the Kantian deontological framework and the specific evaluative criteria derived from it. Section II analyses

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2 Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed Through Such Publications (Türkiye), as amended by Law No. 7418 (18 October 2022), art 8A.

3 Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1997) 38 (4:429). The second formulation of the categorical imperative reads: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only."

PDPL through this framework, arguing that it partially but incompletely satisfies deontological requirements. Section III analyses Law No. 5651, arguing that its administrative blocking powers constitute a structural violation of deontology. Section IV analyses the draft amendment to Law No. 4054, arguing that its silence on individual rights constitutes a critical deontological omission. Section V synthesises the tripartite contradiction and argues that it is the precise reason Türkiye has not obtained EU adequacy recognition under Article 45 of the GDPR. Section VI concludes with concrete reform recommendations.

The contribution of this article is threefold. First, it provides the first unified ethical analysis of Türkiye's three principal digital regulatory instruments. Second, it demonstrates that the internal contradiction between these instruments is not subsidiary but structural, a product of legislative design choices that prioritised market regulation and state security over individual dignity. Third, it argues that resolving this contradiction is not merely an academic exercise but a precondition for Türkiye's meaningful integration into the European digital governance order.[4]

I. KANTIAN DEONTOLOGY AS THE EVALUATIVE FRAMEWORK

The choice of Kantian deontological theory as the evaluative framework for this analysis requires justification. Three reasons support this choice specifically in the context of digital regulation.

First, deontological ethics evaluates the structure of rules rather than their consequences. Digital regulation governs not individual acts but entire systems, data-processing architectures, content-moderation regimes, and platform-access rules, all of which affect millions of people simultaneously and whose harms are often diffuse, cumulative, and causally remote from any single decision. Consequentialist frameworks struggle to evaluate such systems because their aggregate effects are empirically uncertain and methodologically contested. Kantian deontology, by contrast, asks a prior question: does this regulatory instrument respect or violate the dignity and autonomy of the persons it governs, regardless of its outcomes? That question can be answered from the structure of the instrument itself.[5]

4 Türkiye has not received an EU adequacy decision under GDPR Article 45 as of the date of this article. The European Commission has not initiated a formal adequacy assessment for Türkiye. See European Commission, 'Adequacy Decisions'https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en accessed 1 May 2026.

5 Onora O'Neill, *A Question of Trust: The BBC Reith Lectures 2002* (Cambridge University Press 2002) 115. O'Neill's argument that trust in institutions requires evaluating their structural commitments rather than their stated intentions underpins the methodological choice here. See also Roger Brownsword, *Law, Technology and Society: Reimagining the Regulatory Environment* (Routledge 2019) 45–47.

Second, Kantian deontology offers a stable standard for cross-jurisdictional analysis precisely because its central principle, the categorical imperative, is universal and admits no derogation. It does not permit derogation for reasons of cultural relativism, national security, or economic development. This universality allows the article to evaluate regulatory choices across jurisdictions, including Türkiye, without privileging any particular legal tradition.[6]

Third, Kantian deontology has gained prominence in digital governance scholarship, providing a methodological foundation for this article. Spahn has demonstrated that Kantian deontology, specifically its criteria of epistemic, motivational, and deliberative rationalism, generates concrete evaluative criteria for assessing digital behaviour change technologies, including regulatory instruments that shape how individuals form preferences and make decisions in digital environments.[7]

A. The Categorical Imperative and Its Two Operative Formulations

Kant articulated the categorical imperative in several formulations in the *Groundwork of the Metaphysics of Morals* (1785). Two are operative for this article's analysis.

The first formulation, the Formula of Universal Law, requires that one act only according to that maxim whereby one can, at the same time, will that it should become a universal law.[8] Applied to regulation, this formulation asks: could the regulatory instrument under examination be universalised, that is, could every state coherently adopt the same instrument without generating a self-defeating contradiction? A censorship regime that depends for its legitimacy on the existence of free expression elsewhere, or that claims to protect privacy while simultaneously enabling state surveillance, fails this test because universalising it would destroy the very conditions that make it defensible.

The second formulation, the Formula of Humanity, requires that one act to treat humanity, whether in one's own person or in that of another, always as an

6 Christine M Korsgaard, 'Introduction' in Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1997) ix, xxiv. Korsgaard observes that the categorical imperative's universality is precisely what distinguishes it from culturally contingent moral standards.

7 Andreas Spahn, 'Digital Objects, Digital Subjects and Digital Societies: Deontology in the Age of Digitalisation' (2020) 11(4) *Information* art 228, DOI 10.3390/info11040228. Spahn identifies epistemic rationalism (the criterion that agents have access to accurate information about the choices they face), motivational rationalism (the criterion that agents' preferences are formed without manipulation), and deliberational rationalism (the criterion that agents can reflect on and revise their choices) as the three operative Kantian criteria for evaluating digital regulatory instruments.

8 Kant, *Groundwork* (n 3) 31 (4:421).

end and never merely as a means.[9] This formulation is the primary evaluative instrument of this article. It generates a specific, operationalisable question about each of Türkiye's three digital regulatory instruments: does the instrument treat Turkish digital citizens as autonomous agents whose communicative choices, data, and digital identities are intrinsically valuable, or does it treat them as means to state security, market efficiency, or international regulatory optics?

B. Three Deontological Criteria Derived from the Categorical Imperative

To evaluate Türkiye's three regulatory instruments, this article derives three specific deontological criteria from the categorical imperative. This article does not invent these criteria; they are derived from Kant's own text and from the scholarly literature applying Kantian theory to digital governance.[10]

Criterion 1 - Autonomy preservation: A regulatory instrument reflects Kantian principles to the extent that it actively preserves and protects individuals' capacity to make informed, uncoerced choices about their own data, expression, and digital participation. Instruments that systematically undermine informed consent, restrict communicative freedom, or enable covert surveillance fail this criterion.

Criterion 2- Non-instrumentalisation: A regulatory instrument reflects Kantian principles to the extent that it does not treat individuals as instruments of state or market interests. Instruments that compel platforms to disclose user data to state authorities without individualised judicial authorisation, or that restrict user access to serve government communication strategies, fail this criterion.

Criterion 3- Universalisability: A regulatory instrument reflects Kantian principles to the extent that its underlying maxim can be universalised without contradiction. A state that claims to protect privacy in one statute while empowering administrative censorship in another cannot universalise its regulatory maxim; the contradiction is internal and deontologically disqualifying.

These three criteria will be applied consistently across Sections II, III, and IV to evaluate PDPL, Law No. 5651, and the draft amendment to Law No. 4054, respectively. The evaluations are not holistic assessments of Türkiye's regulatory intentions; they are structural analyses of whether each instrument's architecture, as enacted in its operative provisions, satisfies or violates the deontological standards derived above.

9 ibid 38 (4:429).

10 The derivation follows the methodological approach of Spahn (n 7). See also Luciano Floridi and others, 'An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations' (2018) 28(4) *Minds and Machines* 689, 703–705.

C. What Deontological Analysis Does Not Claim

This article does not argue that Türkiye's government is acting in bad faith, that Turkish digital regulation is uniquely deficient, or that Kantian deontology is the only valid evaluative framework for digital governance. Regulatory systems in every jurisdiction contain internal tensions; the EU's own data protection framework has been criticised for privileging formal consent mechanisms over substantive autonomy.[11] The claim advanced here is narrower and more precise: that Türkiye's three digital regulatory instruments, analysed together through a Kantian deontological lens, reveal a structural contradiction that undermines their collective coherence and provides a principled explanation for Türkiye's failure to obtain EU adequacy recognition. That explanation has not previously been offered in the literature. Providing it is the contribution of this article.

II. PDPL: PARTIAL DEONTOLOGICAL ALIGNMENT

Türkiye's Law No. 6698 on the Protection of Personal Data, enacted on 7 April 2016 and amended most significantly in March 2024, represents the country's foundational commitment to rights-based digital governance.[12] Its stated purpose, to protect the fundamental rights and freedoms of persons, and in particular the privacy of personal life, while personal data is processed, is unambiguously deontological in orientation.[13] Article 1 of the PDPL does not justify data protection on the grounds of economic efficiency, market confidence, or aggregate social welfare. It grounds protection in fundamental rights. That foundational choice reflects a Kantian intuition: that persons possess a dignity that cannot be traded against utility.

Measured against the three deontological criteria established in Section I, however, the PDPL's performance is partial rather than complete, and the gaps are structurally significant rather than merely technical.

On the first criterion, autonomy preservation, the PDPL makes a genuine and substantial contribution. Article 4 establishes six core processing principles that directly correspond to Kantian principles: lawfulness and fairness, purpose limitation, data minimisation, accuracy, storage limitation, and security and confidentiality.[14] Article 3 defines explicit consent as freely given, specific, and informed, a formulation that mirrors the GDPR's consent standard and reflects the Kantian principle that autonomous choice must be uncoerced, particularised, and

11 Paul M Schwartz, 'Global Data Privacy: The EU Way' (2019) 94 *New York University Law Review* 771, 798–802.

12 Law No 6698 on the Protection of Personal Data (Türkiye), Official Gazette No 29677, 7 April 2016 (PDPL), as amended by Law No 7499, Official Gazette No 32487, 2 March 2024.

13 PDPL (n 12) art 1.

14 ibid art 4.

based on adequate information.[15] Article 11 grants data subjects a comprehensive set of rights, including the right to access their data, to request correction, to request deletion, and to object to processing. These rights treat the individual as an active agent in the governance of their own personal information rather than a passive object of administrative management.[16]

These provisions satisfy the autonomy preservation criterion in architectural terms. A legal system that defines consent as freely given and specific, that grounds data protection in fundamental rights rather than regulatory efficiency, and that vests enforceable rights in individual data subjects has taken the Kantian position seriously. It has, in principle, designed a framework that treats persons as ends in themselves.

However, the PDPL's satisfaction with the autonomy preservation criterion is undermined by a persistent and well-documented implementation gap. The PDPL Board, the independent supervisory authority established under Article 22, has issued inconsistent enforcement decisions, particularly regarding the public sector.[17] Kantian deontology does not distinguish between private and public actors when applying the categorical imperative: a state institution that processes citizens' personal data without an adequate legal basis violates their autonomy no less than a private corporation does. A regulatory framework that applies its protections more rigorously and asymmetrically to private data controllers than to public authorities cannot claim full deontological compliance, regardless of its legislative text.

The 2024 amendments to Article 9, which introduced adequacy decisions, standard contractual clauses, and binding corporate rules for cross-border data transfers, represent a significant step toward closing the gap between the PDPL and GDPR standards.[18] The amendments signal Türkiye's continued alignment with the EU. However, as of the date of this article, the European Commission has not initiated a formal adequacy assessment for Türkiye under GDPR Article 45, nor has any adequacy decision been issued.[19] This absence is significant and

15 ibid art 3(a). The definition reads: 'Explicit Consent: Freely given specific and informed consent."

16 ibid art 11.

17 Batu Kinikoglu, 'Implementing a New Data Protection Law: Lessons from the Turkish Experience' (2023) 13(1) International Data Privacy Law 25. Kinikoglu documents the PDPL Board's inconsistent enforcement record, particularly regarding public sector data controllers, and the absence of functional independence guarantees equivalent to GDPR Article 52

18 PDPL (n 12) art 9, as amended by Law No 7499 (n 12). The amended Article 9 introduced a three-tier transfer mechanism: adequacy decisions issued by the PDPL Board, appropriate safeguards including standard contractual clauses and binding corporate rules, and residual derogations for incidental transfers.

19 European Commission, 'Adequacy Decisions' (European Commission 2025) https://

will be examined in detail in Section V. For present purposes, it is sufficient to note that the 2024 amendments demonstrate legislative intent without yet producing the institutional consequence adequacy recognition that would confirm their effectiveness.

On the second criterion, non-instrumentalisation, the PDPL's record is more ambiguous. Article 28 of the PDPL exempts data processing carried out by public institutions for national security, defence, public safety, or the prevention of criminal offences from the law's general provisions.[20] The GDPR contains an analogous carve-out under Article 23, but the two exemption regimes differ in ways that extend well beyond the text of either provision.[21] The GDPR's limitation regime is not a standalone proportionality clause. It is a jurisprudential architecture developed through three Grand Chamber judgments of the Court of Justice of the European Union. In *Digital Rights Ireland*, the Court established that data retention legislation must be strictly limited in scope, strictly necessary in application, and subject to independent oversight, invalidating the EU Data Retention Directive for exceeding the proportionality limits imposed by Articles 7, 8, and 52(1) of the Charter of Fundamental Rights.[22] In *Tele2 Sverige*, the Court held that any national measure permitting state access to personal data must set out clear and precise rules, impose minimum safeguards against misuse, and provide for prior review by a court or an independent administrative authority, rather than merely ex post judicial control.[23] In *La Quadrature du Net*, the Court confirmed that general and indiscriminate retention of traffic and location data for national security purposes is precluded except where a Member State faces a real, present, or foreseeable serious threat, and only subject to temporal limitation and independent oversight.[24] PDPL Article 28 does not contain any of these constraints. It imposes no requirement of strict necessity, no minimum

commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en accessed 1 May 2026.

20 PDPL (n 12) art 28.

21 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons concerning the processing of personal data [2016] OJ L119/1 (GDPR), art 23(1). The GDPR requires that any legislative measure restricting data subject rights must 'respect the essence of the fundamental rights and freedoms' and must be 'a necessary and proportionate measure in a "democratic society."

22 Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others* EU:C:2014:238 (Grand Chamber, 8 April 2014) paras 39–71.

23 Joined Cases C-203/15 and C-698/15 *Tele2 Sverige AB v Post-och telestyrelsen and Secretary of State for the Home Department v Tom Watson and Others* EU:C:2016:970 (Grand Chamber, 21 December 2016) paras 108–109.

24 Joined Cases C-511/18, C-512/18 and C-520/18 *La Quadrature du Net and Others v Premier ministre and Others* EU: C:2020:791 (Grand Chamber, 6 October 2020) paras 135–140.

safeguards against misuse, and no obligation of prior independent review. The practical consequence is that Turkish public authorities may process citizens' personal data for broadly defined security purposes without the procedural architecture that three decades of CJEU jurisprudence has treated as the minimum condition of rights-compatible state access to personal data. Citizens whose data is processed under Article 28 are treated not as ends in themselves but as objects of state surveillance, the instrumentalisation that Kantian deontology prohibits.

The PDPL Board's capacity to remedy this deficit through enforcement is itself constrained by structural questions about its institutional independence. GDPR Article 52 requires that each supervisory authority act with complete independence, free from external influence. The PDPL Board's composition, with five of its nine members elected by the Grand National Assembly and two appointed by the Presidency, raises questions that any adequacy assessment would be required to examine.[25] It is important to note, however, that appointment by political bodies does not automatically compromise functional independence. France's CNIL, consistently regarded as one of the EU's most active and credible supervisory authorities, has 12 of its 18 members elected or designated by the Senate, the National Assembly, and the Supreme Courts.[26] The Bundestag appoints Germany's Federal Commissioner for Data Protection. What distinguishes these authorities from the PDPL Board is not their appointment model but the functional independence guarantees surrounding it: fixed terms, removal only for cause, explicit statutory prohibitions on seeking or receiving instructions, and institutional insulation from the executive branch. The PDPL Board lacks equivalent provisions for functional independence in its operative text. The independence deficit, where it exists, is therefore not a product of appointment method alone but of the absence of the institutional architecture that makes independence real rather than nominal.

On the third criterion, universalisability, the PDPL faces its most significant structural challenge. However, the nature of that challenge only becomes fully visible when the PDPL is read alongside Law No. 5651. The PDPL's regulatory maxim, that personal data shall be processed only with consent or on specified lawful grounds, and that individuals shall retain enforceable rights over their data, is universalisable in principle. No logical contradiction arises from imagining a

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25 PDPL (n 12) art 22(2). Five members of the Board are elected by the Grand National Assembly of Türkiye, two by the Presidency, and two by the Council of Ministers.

26 Commission nationale de l'informatique et des libertés (CNIL), 'Status and Composition' https://www.cnil.fr/en/cnil/status-composition accessed 1 May 2026. The CNIL is an independent administrative authority composed of a college of 18 members, 12 of whom are elected or designated by the national authorities and courts to which they belong, including the Senate, the National Assembly, the Supreme Civil and Administrative Courts, and the Court of Auditors.

world in which every state adopted equivalent protections. The problem is that Türkiye has not adopted the PDPL on its own. It has simultaneously enacted Law No. 5651, whose operative provisions are structurally inconsistent with the PDPL's universalisable maxim. The universalisability analysis of the PDPL, therefore, cannot be completed in isolation; it requires the tripartite analysis provided by Sections III and IV.

The assessment of the PDPL under Kantian deontological theory produces a conclusion that is neither dismissive nor uncritical. The law is not deontologically deficient in the way that a cynically designed surveillance statute would be. Its foundational commitments to autonomy, consent, and individual rights reflect genuine engagement with the deontological tradition. Its structural weaknesses, the asymmetric application of its protections, the absence of the institutional architecture surrounding GDPR Article 23, and the implementation gap between legislative text and enforcement practice are real but remediable. What cannot be remedied within the PDPL itself is the external contradiction created by Law No. 5651, to which this article now turns.

III. LAW NO. 5651: STRUCTURAL DEONTOLOGICAL VIOLATION

The earthquake blocking introduced in Section I is not repeated here. It is invoked for a single purpose: as empirical proof that the deontological violation this section identifies in Law No. 5651 is not theoretical. Citizens denied access to the platform through which they sought rescue were not treated as autonomous agents whose communicative capacity constitutes a fundamental expression of dignity. They were treated as objects of an administrative decision made without their participation, without individualised justification, and without meaningful prior judicial oversight. That is the Kantian violation, not an incidental feature of Law No. 5651, but the direct consequence of its operative design.

Law No. 5651 is Türkiye's primary instrument for regulating internet content, enacted in 2007 and amended three times, progressively expanding the state's administrative power over digital platforms.[27] Its central provision for this analysis is Article 8A, which authorises the BTK to order the removal of content or the blocking of access to platforms in circumstances where delay would entail risk, on grounds including national security and public order, without prior judicial authorisation.[28] The Venice Commission examined Article 8A and found that appeal mechanisms are confined to review by a peace judgeship, that peace

27 Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed Through Such Publications (Türkiye), enacted 4 May 2007, as amended by Law No. 6518 (2014), Law No. 7253 (29 July 2020), and Law No. 7418 (18 October 2022).

28 ibid art 8A. Article 8A is titled 'Removal of content and/or blocking of access in circumstances where delay would entail risk'. It authorises the BTK to act on the initiative of specified ministries without prior judicial order, subject to ex post review.

judgeship decisions cannot be appealed to the Court of Cassation, and that many blocking decisions have been issued without adequate reasoning, rendering the ex post judicial control that the provision nominally provides largely ineffective in practice.[29] The practical consequence is an administrative power to silence platforms, exercisable with speed, breadth, and accountability so thin as to be structurally nominal.

Measured against the three deontological criteria established in Section II, Law No. 5651 fails each criterion in distinct and compounding ways.

On the first criterion, autonomy preservation, the failure is direct. The PDPL's consent standard, established in Section II, treats communicative and informational autonomy as a right to be actively protected. Article 8A operates on an entirely different logic: it authorises the state to remove the communicative infrastructure through which that autonomy is exercised, without the consent or participation of the individuals affected. A citizen whose access to a platform is blocked under Article 8A has not been individually notified, has not consented, and has no meaningful prior remedy. The autonomy that the PDPL promises in the domain of data processing is negated by a statute enacted by the same legislature and operating simultaneously in the same digital environment, in the domain of communicative freedom. Two instruments enacted by the same legislature, operating simultaneously in the same digital environment, rest on irreconcilable premises: one treats communicative autonomy as a right to be protected, the other as an infrastructure to be controlled.

The 2022 amendments compounded this violation by introducing Article 7A, which created a criminal offence for publicly disseminating false information about national security, public order, or public health in a way that could cause public unrest, carrying imprisonment of one to three years, extendable to five years for anonymous dissemination.[30]The Venice Commission and the Council of Europe Commissioner for Human Rights both found that Article 7A is incompatible with Article 10 of the European Convention on Human Rights.[31] The provision was enacted three months before the 2023 Turkish general and

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29 Venice Commission (Council of Europe), *Opinion on Law No 5651* (CDL-AD(2016)011, 2016) paras 43–58 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)011-e accessed 1 May 2026.

30 Law No. 7418 (n 27), inserting art 217A into the Turkish Penal Code (TCK). Imprisonment of one to three years, extendable to three to five years, where the offence is committed anonymously or through media organisations.

31 Council of Europe Commissioner for Human Rights, *Letter to the Speaker of the Grand National Assembly of Türkiye* (CommHR/DM/sf 062-2022, 4 October 2022); Reporters Without Borders, *Turkey: RSF Condemns Adoption of Disinformation Law* (RSF, 13 October 2022) https://rsf.org/en/Türkiye-rsf-condemns-adoption-disinformation-law accessed 1 May 2026.

presidential elections. Its chilling effect on political expression is not speculative. Meta's transparency reports for 2024 document that Instagram complied with 79.15% of Turkish content removal requests, Facebook with 42%, and TikTok with 91.8%.[32] These figures represent the systematic operation of a statutory architecture whose practical function is the suppression rather than the protection of communicative autonomy, the criterion that Kantian analysis requires digital regulation to honour.

On the second criterion, non-instrumentalisation, the violation lies in Law No. 5651's data localisation requirement, introduced by the 2020 amendments, which compels social network providers with over one million daily Turkish users to store Turkish user data on domestic servers.[33] The stated justification is regulatory oversight and consumer protection. The structural effect is categorically different: Turkish user data becomes more readily accessible to law enforcement and prosecutors, who may confiscate it from domestic servers without the procedural barriers that apply to data held abroad.[34] Citizens whose data is generated through the exercise of communicative autonomy find that same data made available to state actors as a byproduct of a regulatory architecture nominally designed for their protection. The gap between stated legislative purpose and structural operational effect is precisely what Kantian non-instrumentalisation analysis exists to identify. When a regulatory instrument treats citizens' data not as an expression of their dignity but as a resource for state surveillance, it fails the second formulation of the categorical imperative regardless of its formal justification.

On the third criterion, universalisability, the failure is comprehensive. The maxim underlying Article 8A that an administrative authority may silence digital platforms without prior judicial authorisation on broadly defined grounds of national security cannot be universalised without contradiction. Law No. 5651's own justificatory framework claims that restrictions on expression are permissible only where necessary and proportionate in a democratic society. That claim presupposes a democratic constitutional order characterised by judicial oversight, proportionality review, and meaningful appeal rights. Article 8A's operative structure systematically erodes each of those preconditions. A law that legitimates itself by reference to democratic standards while structurally

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32 Human Rights Watch, *Joint Open Letter to Social Media Companies on Censorship in Turkey* (HRW, 8 May 2025) https://www.hrw.org/news/2025/05/08/joint-open-letter-social-media-companies-censorship-turkiye accessed 1 May 2026, citing Meta Transparency Report (January–December 2024) and TikTok Transparency Report (January–June 2024).

33 Law No. 7253 (n 27), inserting Supplemental art 4 into Law No. 5651.

34 Reset DOC, 'Turkey's New Internet Law and Its Effects on Freedom of Media' (Reset DOC, 2021) https://www.resetdoc.org/story/Türkiye-internet-law-freedom-media/ accessed 1 May 2026.

undermining them cannot survive the universalisability test. Its maxim destroys the conditions of its own validity.

This analysis does not hold that all content regulation is impermissible under Kantian theory. Kant's political philosophy permits restriction of freedom where necessary to protect the equal freedom of others under a universal law.[35] The regulation of child sexual abuse material or direct incitement to violence satisfies this standard because those restrictions protect the dignity of identifiable victims and can be universalised without contradiction. What Article 8A and Article 7A authorise the administrative blocking of platforms on undefined public order grounds and the criminalisation of expression that causes undefined public unrest cannot be grounded in the protection of any individual's equal freedom and therefore cannot be reconciled with the categorical imperative.

Law No. 5651, in its current form, contains provisions whose architecture is structurally incompatible with the deontological commitments that the PDPL, enacted by the same legislature, formally endorses. That incompatibility is the product of deliberate legislative choices that prioritised state security and administrative convenience over individual dignity and communicative autonomy. Section V examines whether the draft Law No. 4054 amendment resolves this contradiction, compounds it, or, as this article argues, ignores it entirely.

IV. THE DRAFT LAW NO. 4054 AMENDMENT: DEONTOLOGICAL SILENCE AND THE COMPOUNDING OF CONTRADICTION

The draft amendment to Law No. 4054 on the Protection of Competition occupies a paradoxical position in Türkiye's digital regulatory landscape. It is simultaneously the most technically sophisticated of the three instruments under analysis and the most deontologically impoverished. The PDPL grounds its framework in fundamental rights. Law No. 5651 at least acknowledges freedom of communication, even as it systematically undermines it. The draft amendment to Law No. 4054 acknowledges neither. The amendment conceives of digital governance exclusively as a market structure problem. Its silence on individual rights is the product of that framing, deliberate, not incidental. That framing choice compounds the existing contradiction between PDPL and Law No. 5651 by adding a third instrument that validates the fiction of regulatory coherence.

The draft amendment, first published for public consultation in October 2022 and revised in November 2023 and June 2024, remains unenacted as of the date of this article, a fact that is itself analytically significant and is addressed below.[36] Its central mechanism is the designation of firms as undertakings holding

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[35] Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 24–26 (6:230–232).

[36] Cleary Gottlieb, *Digital Markets Regulation Handbook: Türkiye* (Cleary Gottlieb 2025)

significant market power in core platform services, a concept functionally equivalent to the European Union's DMA gatekeeper classification, based on quantitative thresholds including annual gross revenue and number of Turkish users, supplemented by qualitative criteria including network effects, data ownership, vertical integration, and conglomerate structure.[37] Designated firms would be subject to a list of ex ante obligations closely modelled on the DMA, including prohibitions on self-preferencing, restrictions on using non-public data when competing with business users, interoperability requirements, and obligations to provide users with continuous access to their personal data.[38] The structural parallels with the DMA are deliberate and extensively documented.[39]

What is equally deliberate, and far less extensively examined, is what the draft amendment does not contain. The DMA operates within an EU legal order in which the Charter of Fundamental Rights is binding, the GDPR imposes non-derogable data protection obligations on designated gatekeepers, and the Court of Justice of the European Union exercises jurisdiction to ensure that competition remedies do not disproportionately restrict fundamental freedoms.[40] That relationship between competition law and data protection is not merely architectural, it is doctrinal. In *Meta Platforms v Bundeskartellamt*, the Court of Justice confirmed that a national competition authority may find a violation of the GDPR in the course of investigating an abuse of dominant position, establishing that data protection standards constitute normative constraints within competition law analysis.[41] Costa-Cabral and Lynskey's foundational analysis demonstrates that when the material scope of data protection and competition law overlap, competition law can incorporate data protection as a normative yardstick for assessing non-price competition; data protection thus acts as an

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https://content.clearygottlieb.com/antitrust/digital-markets-regulation-handbook/turkey/index.html accessed 1 May 2026.

37 Turkish Competition Authority, *Draft Amendment to Law No 4054 on the Protection of Competition* (October 2022, revised November 2023 and June 2024), proposed art 8/A. See Kluwer Competition Law Blog, 'A New Age for Digital Markets in Turkey? The Draft Amendment to the Law No 4054 on the Protection of Competition (25 October 2022)

38 ibid. The draft amendment's obligations include prohibitions on using non-public data when competing with business users, self-preferencing restrictions, interoperability requirements, and obligations to give users continuous access to their personal data.

39 Meredith Broadbent and John Strezewski, 'Turkey Considering New Digital Competition Legislation' (CSIS, May 2024) https://www.csis.org/analysis/turkey-considering-new-digital-competition-legislation accessed 1 May 2026.

40 Charter of Fundamental Rights of the European Union [2000] OJ C364/1, arts 7–8; Regulation (EU) 2016/679 (GDPR) (n 21), arts 17–22.

41 Case C-252/21 *Meta Platforms Inc and Others v Bundeskartellamt* EU: C:2023:537 (Grand Chamber, 4 July 2023) paras 47–52.

internal constraint on what competition remedies may legitimately require.[42] The draft amendment to Law No. 4054 fails to reflect any of this doctrinal development. It imposes DMA-equivalent obligations on digital platforms in a jurisdiction where, as Sections II and III have demonstrated, the data protection framework includes an unenforced public-sector exemption and the internet regulation framework authorises administrative censorship without prior judicial oversight. The draft amendment fails to ensure consistency between its gatekeeper obligations and PDPL data protection principles. It carves out no exemption for the BTK's administrative powers under Law No. 5651. The data portability and interoperability obligations it imposes provide no mechanism to ensure they serve individual privacy rather than expose it.

Measured against the three deontological criteria established in Section I, the draft amendment's performance is distinctive in kind rather than merely in degree from the failures identified in Section III.

On the first criterion, autonomy preservation, the draft amendment neither satisfies nor violates it directly. Its obligations, data portability, interoperability, and prohibition on self-preferencing are, in principle, autonomy-enhancing: users who can port their data between platforms and access competing services without artificial barriers have more meaningful choices than users locked into a single gatekeeper's ecosystem. That potential is real. However, it is unrealised in the draft amendment's current form because the instrument contains no mechanism for ensuring that autonomy gains at the competition layer translate into autonomy protections at the individual rights layer. A Turkish user whose data is made portable by a gatekeeper obligation under the draft amendment remains simultaneously subject to data localisation requirements under Law No. 5651 that make that same data accessible to state authorities. The autonomy gain and the autonomy loss operate in parallel, governed by instruments that have never been required to speak to each other. A deontologically coherent framework would evaluate competition obligations and surveillance powers together, as components of a single system answerable to the individual's communicative and informational agency.

On the second criterion, non-instrumentalisation, the draft amendment's silence is most consequential. The DMA's gatekeeper obligations exist, in the EU framework, within a broader normative architecture that treats individuals as the ultimate beneficiaries of competition policy, not merely as consumers whose welfare is measured by price and choice, but as rights-holders whose dignity sets limits on how their data may be used even within a competitive

42 Francisco Costa-Cabral and Orla Lynskey, 'Family Ties: The Intersection of Data Protection and Competition Law in EU Law' (2017) 54(1) *Common Market Law Review* 11, 11–14.

market.[43] The draft amendment to Law No. 4054 contains no equivalent normative foundation. Its preamble identifies the problem it addresses as the increasing power of gatekeepers in digital markets and the unfair practices this generates against business users, a framing that treats individuals primarily as consumers rather than as autonomous persons.[44] The remedy it proposes, *ex ante* behavioural obligations on designated firms, is designed to restore competitive market conditions, not to protect individual dignity. Competition law is not designed to be a rights instrument, and this article does not treat it as one. The criticism is of a legislature that adds a third digital regulatory instrument without asking whether it is consistent with the deontological commitments embedded, however imperfectly, in its first. The result is an instrument that treats Turkish digital citizens as market participants whose welfare is measured by competitive outcomes, in a jurisdiction where Law No. 5651 simultaneously treats them as subjects of administrative censorship whose communicative freedom is contingent on state tolerance. The Kantian principle that persons be treated as ends in themselves demands that a regulatory framework account for both dimensions simultaneously — a demand the draft amendment structurally refuses.

On the third criterion, universalizability, the draft amendment presents the most intellectually interesting failure of the three instruments under analysis. Its underlying maxim, which states that states may impose asymmetric ex ante obligations on dominant digital platforms to restore competitive market conditions, is, in principle, universalisable. The DMA demonstrates that multiple jurisdictions can adopt this maxim without logical contradiction; indeed, its universalisation is arguably desirable for the coherence of global digital markets. The universalisability failure of the draft amendment to Law No. 4054 is not in its competition law maxim considered in isolation. It is in the combined maxim that results from operating the draft amendment alongside Law No. 5651 simultaneously. The combined maxim produces an internal contradiction: a state imposes competition obligations to enhance user choice while simultaneously reserving unreviewable administrative power to block the same platforms without judicial oversight. That combined maxim cannot be universalised. A world in which every state both required platform interoperability for competitive reasons and reserved the right to block platform access for administrative reasons would be one in which competition obligations served no coherent purpose, because the access rights they created could be nullified at will by the same state that created them. The contradiction is not within the draft amendment. It is between the draft amendment and the instrument it refuses to acknowledge.

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43 Ariel Ezrachi and Maurice E Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press, 2016) 211–215.

44 Turkish Competition Authority (n 37), general preamble.

The fact that the draft amendment remains unenacted after more than two years of consultation is itself deontologically significant.[45] It reflects a legislative process that has prioritised formal alignment with the EU competition architecture, for the reputational and market-access benefits that alignment signals, without undertaking the harder work of ensuring that the proposed instrument is coherent with the rights framework that EU digital governance presupposes. Türkiye is, in effect, attempting to purchase the legitimacy of EU-style digital competition regulation without paying the price of EU-style individual rights protection. That purchase cannot be completed. As Section V demonstrates, it is precisely this attempt to claim EU alignment at the regulatory surface while maintaining structural deontological contradictions beneath it that explains Türkiye's continued failure to obtain EU adequacy recognition and defines the reform agenda this article proposes.

V. THE TRIPARTITE CONTRADICTION AND THE EU ADEQUACY FAILURE: SYNTHESIS AND REFORM RECOMMENDATIONS

The preceding three sections have demonstrated that Türkiye operates three digital regulatory instruments simultaneously: a data protection law that partially honours deontological principles, an internet regulation law that structurally violates them, and a draft competition amendment that is deontologically silent. Each instrument has been evaluated individually against the three criteria derived from Kantian deontology in Section I. This section performs a different analytical task. It asks what the three instruments reveal when read together as a system rather than as a collection of separate statutes. It argues that the answer to that question provides the first principled explanation for a fact noted but inadequately theorised in the existing literature: Türkiye's continued failure to obtain EU adequacy recognition under GDPR Article 45.

The EU adequacy framework is not a diplomatic instrument. It is a legal assessment governed by Article 45 of the GDPR, which requires the European Commission to evaluate whether a third country ensures an adequate level of protection for personal data transferred from the EU. The standard is not identical to legislation. The Commission has confirmed that the principle of essential equivalence, as clarified by the Court of Justice of the European Union in its Schrems II judgment, requires that the third country's overall data protection system achieve protection that is in substance equivalent to that guaranteed in the EU legal order.[46] Article 45(2) specifies the criteria the Commission must

[45] Information Technology and Innovation Foundation (ITIF), 'Comments Before the Turkish Competition Authority Regarding Act No 4054 on the Protection of Competition' (ITIF, 10 June 2024) https://itif.org/publications/2024/06/10/comments-before-the-turkish-competition-authority-regarding-act-4054/ accessed 1 May 2026.

[46] Case C-311/18 *Data Protection Commissioner v Facebook Ireland Limited and Maximillian*

assess: the rule of law; respect for human rights and fundamental freedoms; relevant legislation, including concerning national security and the access of public authorities to personal data; the existence and effective functioning of an independent supervisory authority; and the existence of effective and enforceable data subject rights with effective judicial redress.[47]

Türkiye satisfies none of these criteria fully, and this article's tripartite analysis explains precisely why. The PDPL's provisions are formally comparable to GDPR standards in several important respects. The failure, however, is structural: it is the product of an internal regulatory contradiction that prevents any of the three instruments from functioning as their texts suggest, since the others undermine each other.

Before proceeding to that structural analysis, one dimension of Türkiye's adequacy position requires acknowledgement. The adequacy decision process involves both legal assessment and political judgment. Türkiye's PDPL Board has conditioned its own adequacy decisions on reciprocity, meaning Türkiye will declare a country adequate only if that country has first declared Türkiye adequate.[48] The Turkish Ministry of Foreign Affairs has stated that, in any event and under all circumstances, any safe country decision should be based on reciprocity. This creates a political deadlock: the European Commission cannot issue an adequacy decision for Türkiye until Türkiye's legal framework meets the essential equivalence requirement, but Türkiye's PDPL Board will not issue adequacy decisions for EU Member States until the Commission acts first. This reciprocity dynamic is a political obstacle to the recognition of adequacy. The tripartite contradiction this article identifies, however, is a structural legal obstacle that would persist even if the political deadlock were resolved. A Commission adequacy assessment conducted in the absence of any reciprocity constraint would still confront the legal deficiencies identified in this section.

The rule-of-law requirement is the most fundamental. A legal system committed to the rule of law must ensure that restrictions on fundamental rights are prescribed by law, pursue a legitimate aim, and are necessary and proportionate

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Schrems (Schrems II) EU: C:2020:559 (Grand Chamber, 16 July 2020) paras 94–97. The CJEU held that the standard of essential equivalence requires that the third country's legal system ensure a level of protection of fundamental rights and freedoms substantially equivalent to that guaranteed within the EU by the GDPR read in light of the Charter of Fundamental Rights.

47 Regulation (EU) 2016/679 (GDPR) (n 21), art 45(2)(a)–(b).

48 Batu Kinikoglu, 'Implementing a New Data Protection Law: Lessons from the Turkish Experience' (2023) 13(1) *International Data Privacy Law* 25, 39–40. Kinikoglu documents that the Turkish Ministry of Foreign Affairs stated that 'in any event and under all circumstances' any safe country decision should be based on reciprocity, and that the PDPL Board has relied on this principle to justify the non-publication of Türkiye's adequacy list for EU Member States.

in a democratic society. These are the standards set out in Article 10(2) of the European Convention on Human Rights, which the CJEU has treated as the minimum threshold for adequacy assessments involving restrictions on freedom of expression and privacy.[49] Law No. 5651's Article 8A fails this threshold on all three elements: blocking orders are issued on broadly defined grounds that give the BTK virtually unlimited discretion; the Venice Commission has found that the proportionality standard is absent from the operative provisions; and the appeal mechanism is so constrained, confined to a peace judgeship with no further recourse, that it does not constitute effective judicial redress. A Commission adequacy assessment examining Law No. 5651 alongside the PDPL would be compelled to conclude that Türkiye's overall legal system does not ensure that restrictions on communicative freedom meet rule-of-law standards, regardless of what the PDPL says about data protection.

The requirement for human rights and fundamental freedoms compounds this failure. The CJEU in Schrems II held that the essential equivalence standard requires the third country's legal system to guarantee, in practice and not merely in legislative text, that public authorities' access to personal data is limited to what is strictly necessary and subject to effective judicial oversight.[50] Türkiye›s Article 28 PDPL exemption, which permits public authorities to process personal data for national security purposes without the proportionality constraints that the GDPR imposes on equivalent derogations, already falls short of this standard when examined in isolation. Law No. 5651's data localisation requirement transforms a partial shortfall into a systemic failure: not only may public authorities process citizens' data without proportionality review, but the regulatory architecture actively ensures that citizens' data is stored domestically in a form that maximises state accessibility. These two instruments are architecturally complementary rather than independently deficient, designed to operate together in ways that produce a surveillance infrastructure structurally incompatible with the essential equivalence standard.

The requirement for an independent supervisory authority presents a further obstacle. GDPR Article 45(2)(b) requires that the third country's supervisory authority possess genuine independence, adequate resources, and effective enforcement powers. The PDPL Board's composition, with five of its nine members elected by the Grand National Assembly and two appointed by the Presidency, raises structural questions about independence that the Commission would be

49 European Convention on Human Rights, art 10(2). See also Case C-362/14 *Maximillian Schrems v Data Protection Commissioner* (Schrems I) EU: C:2015:650 (Grand Chamber, 6 October 2015) para 95.

50 Schrems II (n 46) paras 175–185.

required to examine.[51] More fundamentally, an adequacy assessment would need to explain how a supervisory authority can effectively enforce data protection standards when a parallel statute, Law No. 5651, confers on the BTK powers to compel platform compliance and access to user data that operate entirely outside the PDPL Board's jurisdiction. Effective data protection supervision cannot coexist with an internet regulation framework whose enforcement architecture is structurally immune to data protection oversight.

The deontological analysis in this article aligns precisely with the adequacy criteria the Commission would apply. The Kantian criterion of preserving autonomy corresponds to the GDPR requirement for effective and enforceable data subject rights. The criterion of non-instrumentalisation corresponds to the requirement that public authority access to personal data be limited to what is strictly necessary. The criterion of universalisability corresponds to the requirement that restrictions on fundamental rights be prescribed by law and proportionate. Türkiye fails all three Kantian criteria in ways that map onto failures of all three adequacy standards. This mapping is not coincidental. It reflects that both Kantian deontology and the EU adequacy framework are grounded in the same foundational commitment to treating individuals as rights-holders whose dignity sets non-negotiable limits on what states and markets may do with their data and communicative freedom.

The draft amendment to Law No. 4054's deontological silence compounds this failure in a specific and practically significant way. Türkiye has invested substantial legislative and institutional resources in developing a DMA-equivalent competition framework for digital markets. Adequacy assessments, however, are not conducted based on signals. They examine the overall legal system. The DMA itself makes the relevant relationship explicit: Recital 7 establishes that the act complements the application of EU rules on the protection of personal data and privacy, including the GDPR, situating competition obligations within a fundamental rights architecture that treats data protection and market regulation as inseparable rather than parallel concerns.[52] Türkiye's draft amendment to Law No. 4054 contains no equivalent provision. A competition framework that imposes DMA-equivalent obligations on digital platforms while operating alongside a censorship framework incompatible with ECHR Article 10 and remaining silent on its relationship to the PDPL does not create overall essential equivalence. It

51 PDPL (n 12) art 22(2). Five members of the Board are elected by the Grand National Assembly of Türkiye, two by the Presidency, and two by the Council of Ministers.

52 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector [2022] OJ L265/1 (Digital Markets Act), Recital 7. Recital 7 states that the DMA complements, and does not prejudice, the application of Union rules on the protection of personal data and privacy, including the General Data Protection Regulation, the Directive on privacy and electronic communications.

creates a regulatory surface that mimics EU architecture while concealing the deontological contradictions that the adequacy assessment process is specifically designed to detect.

VI. REFORM RECOMMENDATIONS

This article's analysis generates three concrete legislative recommendations, each targeted at a specific instrument and derived directly from the deontological criteria identified in Section I. They are framed not as criticism of Turkish digital governance but as the minimum changes required to resolve the tripartite contradiction and establish the conditions for a credible EU adequacy assessment.

The first recommendation addresses Law No. 5651. Article 8A must be amended to require prior judicial authorisation for all platform blocking orders except in the most narrowly defined emergency circumstances, and to impose an explicit proportionality standard, equivalent to that in GDPR Article 23(1), on any restriction of communicative freedom that also constitutes a restriction of data subjects' ability to exercise their PDPL rights. Article 7A must be repealed or fundamentally revised to confine its scope to content that directly and imminently threatens the physical safety of identifiable individuals, the only restriction that Kantian principles and ECHR Article 10(2) jointly permit. These amendments would not prevent Türkiye from regulating harmful digital content. They would require that regulation to meet the proportionality standards that the rule of law and essential equivalence demand.

The second recommendation addresses the PDPL. Article 28's national security exemption must be amended to incorporate an explicit proportionality standard and to extend the PDPL Board's supervisory jurisdiction to cover public authority data processing, including processing carried out under Law No. 5651, without exception. This amendment would not prevent Turkish public authorities from accessing data for legitimate security purposes. It would require that access to be proportionate, individually authorised, and subject to genuine independent oversight, the conditions that the Schrems II essential equivalence standard demands and that the current framework structurally prevents.

The third recommendation addresses the amendment to draft Law No. 4054. Before enactment, the draft must be supplemented by an explicit coherence provision, modelled on Recital 7 of the DMA[53], requiring that gatekeeper obligations be interpreted and applied consistently with PDPL data protection principles and with the amended provisions of Law No. 5651. This provision would not alter the draft amendment's competition law substance. It would ensure that the three instruments operate as a coherent regulatory framework rather than as three independent statutes that share a jurisdiction but not a philosophy.

[53] DMA(n52) Recital 7

These three recommendations would not transform Türkiye into an EU member state or require it to adopt identical data protection standards. The essential equivalence standard does not demand identity. It demands coherence, a legal system in which the protection of individual dignity and communicative autonomy is not promised by one statute and systematically undermined by another. That coherence is achievable. It requires legislative will rather than legislative genius. Its achievement would serve Türkiye's own stated interest in European digital governance integration far more effectively than any amount of regulatory surface alignment without the deontological foundation to sustain it.

CONCLUSION

This article set out to do one thing that existing scholarship had not done: to analyse Türkiye's three principal digital regulatory instruments, the PDPL, Law No. 5651, and the draft amendment to Law No. 4054, together as a system, through a single evaluative framework derived from Kantian deontological theory. The analysis has produced four conclusions that, though logically independent of one another, converge on a single finding.

The first conclusion is that the PDPL, despite its genuine deontological ambitions, is structurally incomplete. Its foundational commitment to autonomy, consent, and individual rights reflects an authentic engagement with the Kantian tradition. Its Article 28 exemption, its asymmetric enforcement record, and the absence of a proportionality standard equivalent to GDPR Article 23(1) prevent it from meeting the deontological criteria this article has applied in full. The PDPL's deficiencies are remediable. They reflect incomplete institutional development rather than a framework designed to circumvent the rights it nominally protects.

The second conclusion is that Law No. 5651 is not unfinished. It is architecturally incompatible with deontological governance. Article 8A's administrative blocking power, Article 7A's criminalisation of broadly defined false information, and the data localisation requirement collectively fail all three deontological criteria. Citizens are denied communicative autonomy at the moments they most need it. Their data is instrumentalised for state surveillance. The maxim underlying these provisions destroys the democratic conditions that Law No. 5651's own justificatory framework presupposes. The earthquake blocking of February 2023 is the most viscerally legible demonstration of that failure. It is the system operating as designed.

The third conclusion is that the draft amendment to Law No. 4054's deontological silence is not a minor omission but a compounding failure. By adding a third instrument that models EU competition architecture while ignoring the rights framework that architecture presupposes, Türkiye has created a regulatory surface that signals alignment without delivering it. The combined maxim that results from operating all three instruments simultaneously cannot be universalised without contradiction. The EU adequacy assessment process would be required to evaluate that combined maxim, not any single instrument in isolation.

The fourth and most significant conclusion is that Türkiye's failure to obtain EU adequacy recognition is not a diplomatic contingency or a negotiating gap. It is a structural deontological consequence. GDPR Article 45 requires the European Commission to assess four criteria: rule of law, respect for human rights, independent supervision, and effective judicial redress. Each maps precisely onto a Kantian criterion that this article has applied: autonomy preservation, non-instrumentalisation, and universalisability, respectively. Türkiye fails both sets of criteria for the same reason: its regulatory framework promises to protect individual dignity in one statute while systematically undermining the conditions of that protection in another. Essential equivalence cannot be achieved through legislative mimicry. Deontological coherence is the precondition: a legal system in which all three instruments operate as components of a single framework that treats Turkish digital citizens as ends in themselves rather than as objects of administrative management, market regulation, or state surveillance.

The three reform recommendations advanced in Section V, amending Article 8A and repealing Article 7A of Law No. 5651, extending PDPL Board jurisdiction to cover public authority processing without exception, and supplementing the draft Law No. 4054 amendment with an explicit coherence provision, are not proposals for Türkiye to become something it is not. They are the minimum changes required for Türkiye to become what its own legislation already claims it is: a jurisdiction committed to the fundamental rights and freedoms of its digital citizens. That commitment, once made structurally rather than merely textually, is the only foundation on which EU adequacy recognition, and the credibility of Türkiye's digital governance ambitions, can genuinely rest.

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