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Delving into Global Laws: A Journey through Justice and Legal Protections

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Email

jurnalnuranihk@untirta.ac.id

Editorial Office

Lt. 3 Faculty of Law, Universitas Sultan Ageng Tirtayasa, Jl. Tirtayasa,
Sindangsari, Kec. Pabuaran, Serang, Provinsi Banten



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FOREWORD

Journal Nurani Hukum: Jurnal Ilmu Hukum, also known as Nurani Hukum, is a peer-reviewed journal focused on legal studies. The journal aims to publish high-quality research across various areas of legal scholarship, including but not limited to law and history, legal philosophy, sociology of law, socio-legal studies, international law, environmental law, criminal law, private law, Islamic law, agrarian law, administrative law, criminal procedural law, commercial law, constitutional law, human rights law, civil procedural law, and adat law. Published by the Faculty of Law, Universitas Sultan Ageng Tirtayasa in collaboration with the Asosiasi Pengelola Jurnal Hukum Indonesia (APJHI), the journal is released biannually in June and December. Each issue is made available on the website and further distributed in hardcopy format.

The editorial of Nurani Hukum presents Volume VI, Issue 2, July-December 2023, under the theme "**Delving into Global Laws: A Journey through Justice and Legal Protections**" This issue covers a wide range of topics, including Refugees and Migration; Cryptocurrencies Regulations; Anthropology and Islamic Law; Labor and Gender; Academic Freedom and Content Restrictions. The articles in this edition originate from **Netherlands; Hungary; Iran; Malaysia; Indonesia; Bangladesh.**

Osario from Netherlands explores the role of migration and international human right law, while our correspondent from Hungary, Kerekes, delves into Rugulating Cryptocurrencies and shielding the Digital Financing from Terrorism. Muhtadi et-all, from Iran, Malaysia and Indonesia Addressing Discourses of Violence on Arab Society Fiqh. Our Bangladeshi contributors Sony discuss EU Laws and Practice on Gender Priorities. Lastly, this December issues is sum up by Siska Katalin also from Hungary delves into Academic Freedom and Restrictions in Turkish Publication.

We hope that the articles presented in this journal will serve as a valuable and enlightening resource for all readers.

Sindangsari, December 2023



Afandi Sitamala, S.H., LL.M.

 0000-0001-6586-3497



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Type: **Research Article**



Bridges, Not Walls: The Role of Migration and International Human Rights Law in Harnessing the Impending Demographic Tsunami

Chad Patrick T. Osorio ¹  

¹ Wageningen University and Research, Netherland

 chad.osorio@wur.nl.

ABSTRACT

The significant contribution of migrants to the global economy through remittances exceeds in developing countries and underscores economic values. Despite this, a substantial number of migrants face perilous journeys, resulting in over 46,000 migrant deaths since 2000. Human rights abuses further compound their struggles. This article delves into the intricate issues faced by millions of migrants, examining their economic role and the lack of comprehensive legal protection. Highlighting the looming demographic challenge, it explores the potential of migration in mitigating its impact. Emphasizing the necessity for strong legal frameworks based on international human rights laws, the article advocates for upholding migrants' fundamental rights as a pivotal strategy to avert the impending crisis. It employs a Critical Research framework, analyzing international human rights laws and proposing policy recommendations to mitigate the demographic tsunami's adverse effects. The article concluded that the urgent need to embrace a human rights-centered approach to migration is evident, emphasizing its potential to mitigate the looming demographic challenges and drive inclusive economic development through the recognition of migrants as valuable human capital.

Keywords: Migration, Legal Protection, Human Rights, Demographic, United Nations Treaties.



“As long as you look on migration as a problem, as something to solve, you’re not going to get anywhere. You have to look at it as a human reality that’s as old as humankind.”

– William L. Swing

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. ... Unless these rights have meaning there, they have little meaning anywhere.”

– Eleanor Roosevelt

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INTRODUCTION

The contribution of migrants to the global economy is indisputably colossal. In 2017 alone, migrant remittances to their home states amounted to an estimated \$596 billion, \$450 billion of which went to support developing countries, shifting global economic debt, equalizing socioeconomic opportunities, and helping alleviate abject poverty.¹ These remittances supported the families and loved ones of more than 800 million people,² and amounted to three times the global development aid given by foreign nations.³

And yet, an unimaginable number of migrants have perished through the years. Since 2000, more than 46,000 migrants have died along international migratory routes.⁴ In 2015 alone, more than 5,400 migrants have lost their lives in transit, nearly 70% of them in the Mediterranean on their way to Europe.⁵ This is not to mention the literally countless human rights abuses faced by these migrants once they reach their destination, which encompasses a myriad of sources, including foreign employer abuse, human trafficking by international syndicates, and systemic government neglect.

Such is the nature of this conundrum facing 258 million global citizens, approximately 3.4% of the world's total population.⁶ If they are such a valuable economic resource for both sending and receiving states, especially providing so many advantages for both citizens and governments of developing nations, then why are many of them not afforded primary protection under national and international law?

¹ World Bank. *Migration and Remittances*, in Recent Developments and Outlook, Migration and Development Brief 28 October 2017, Washington, DC

² William Lacy Swing. *How migrants who send money home have become a global economic force*, in World Economic Forum, 14 June 2018, available at <https://www.weforum.org/agenda/2018/06/migrants-remittance-global-economic-force/>

³ Report of the Secretary-General. *Making Migration Work for All*, 12 December 2017.

⁴ Missing Migrants Project, available at <https://missingmigrants.iom.int>

⁵ *Id.*

⁶ United Nations Department of Economic and Social Affairs. Population Facts, No. 2017/5, December 2017.

And beyond looking at them as mere economic assets, they are not properly granted the fundamental rights that should be enjoyed by every living person on the planet.

There is even worse to come: a demographic tsunami brewing on the sidelines, a catastrophe which could result in political upheavals and socioeconomic crises on the global scale. How can this affect migrants from all over the world, and how do we prevent this from happening in the first place?

This article will talk about the key role of migration in preventing the impending demographic tsunami, and instead harness its tremendous energy towards a global, inclusive economic growth. More than that, it will discuss the necessity of adopting domestic and transnational legal frameworks on migration and international labor forces based on international human rights laws. It argues that enforcing the fundamental human rights of migrants is a key element in ensuring that global migration can and will provide a buffer of protection against the most catastrophic effects of the imminent demographic tsunami.

Part I of the article will talk about this looming sociopolitical global crisis. It will explain the concept of the demographic tsunami and its etymology, identifying the various factors which contribute to its build-up as well as its myriad effects, providing an analysis on three levels: domestic, regional and global. Part II will detail how migration can play an important role in buffering the worst of the consequences of the demographic tsunami. Part III will then discuss the protection of the fundamental human rights of migrants, outlining the current international legal framework on migration, assessing its efficacy through comprehensive critical evaluation. Lastly, Part IV will illustrate how strengthening this system of domestic and regional labor and migrations frameworks by adopting a strong human rights position as its point of pivot can greatly contribute to global efforts on mitigating the negative backlash created by the demographic tsunami on the politico legal, economic and sociocultural aspects of its impact.

From the data summary and keyword analysis of applicable international human rights laws, treaties and resolutions, which include the Universal Declaration of Human Rights, resolutions of the United Nations, International Labor Organization treaties, and select domestic legislation of both labor-sending and labor-receiving states as well as binding and non-binding regional agreements alike, the article adopts a Critical Research framework in providing a comprehensive discussion of the issues at hand, and proposes policy recommendations rooted in international human rights law to prevent the demographic tsunami from the havoc it promises to wreck.

ON WALLS AND TSUNAMIS

The last two hundred thousand years have seen *Homo sapiens* on constant move, from the bosom of Africa to the farthest corners of the earth. From wandering on foot and travelling in family tribes, the discovery of weapons, tools and clothing allowed these early humans to move to harsher environments. Overpopulation in communities, lack of available resources and even the human need to explore have also fueled the waves of migration which allowed the creation and movement of human settlements, staking out territories which gradually expanded into communities, nations and empires.

And as old as human civilization, it is undeniable that geographic borders have been in existence for millennia. Indeed, the oldest surviving map, the *Imago Mundi*, illustrates a number of regions marked by distances in between them.⁷ Although meant to illustrate a Babylonian perspective of their mythology, it remains an

⁷ Jennifer Block. *Where to see some of the world's oldest and most interesting maps*. The Smithsonian, 18 July 2017, available at <https://www.smithsonianmag.com/travel/where-see-some-worlds-oldest-maps-180963855/>

ancient example of early geography, with defined geographical areas and margins.⁸

More telling than maps are the physical manifestations of these borders. Traditionally, walls have been built for “defense, privacy, and to protect the people of a certain region from the influence or perceived danger posed by outsiders.”⁹ Examples of these include the walled city of Uruk in ancient Sumer, reputed to have been built by King Gilgamesh himself.¹⁰ The Ishtar Gate to the walled city of Babylon, constructed by King Nebuchadnezzar II, has been itself considered one of the wonders of the ancient world.¹¹ Popular mythology, based on real historical events, talks about the famed walls of Troy, said to be brought down only by the cunning of the Greeks.¹²

It is undeniable then that there has always been a sense of propriety over national territories, with walls erected and wars fought on account of them.

Important it is to note then that these borders have always existed in one form or another, in order to understand the reason for their inception. They are as much rooted in culture and psychology as they are geophysical and political barriers, and taking this nature of national borders into account helps understand the recent attitudes towards migration, the lack of protection towards migrants and the steps which could be taken in order to uphold the rights of the latter.

This matter is all the more necessary to scrutinize because of the rapid developments in the last century or so. Due to improved

⁸ Jan van der Crabben. *Babylonian Map of the world*. Ancient History Encyclopedia, 26 April 2012, available at <https://www.ancient.eu/image/526/babylonian-map-of-the-world/>

⁹ Joshua J. Marck. *Wall*. Ancient History Encyclopedia, 2 September 2009, available at <https://www.ancient.eu/wall/>

¹⁰ Joshua J. Mark. *Uruk*. Ancient History Encyclopedia, 28 April 2011, available at <https://www.ancient.eu/uruk/>

¹¹ Brittany Garcia. *Ishtar Gate*. Ancient History Encyclopedia, 23 August 2013, available at https://www.ancient.eu/Ishtar_Gate/

¹² Mark Cartwright. *Troy*. Ancient History Encyclopedia, 11 May 2018, available at <https://www.ancient.eu/troy/>

transportation technologies, the creation of new countries and the rise of the global community, states have deemed it necessary to adopt more stringent measures to control the ebb and flow of travel and migration around the world.¹³ At the same time, in the past few decades, the fear of unmitigated migration has exponentially risen, especially concerning developed nations seeking to stem the tide of strangers coming into their lands. A considerable number of citizens of these nations worry about public safety, increased competition for state-granted benefits, and reduced employment for them, both in the public and private spheres, to name a few. Populist governments have done well by playing up these concerns, leading to the rise of unprincipled political leaders who seek to heighten this apprehension beyond the level of reason for their own political gain.¹⁴

Never mind that the aggregate economic research data shows that these fears regarding migrants are largely unfounded, or are otherwise mitigated by the benefits received by the state hosting them. The 2018 Citi Report, in partnership with the Oxford Martin School at the University of Oxford, outlines the following conclusion:

“Overall, the evidence that we have surveyed suggests that the fiscal impact of migration is either positive or, to the extent that immigrants produce fiscal costs, these costs tend to be small, short-lived and localized. To the extent that they arise, short term costs are usually compensated for by the dynamic contributions of migrants over time, particularly in those countries which are rapidly aging. Moreover, in most cases we find that migrants consume fewer benefits and receive less from the public purse in comparison to natives in similar circumstances.”¹⁵

¹³ Ian Goldin, Andre Pitt, Benjamin Nabarro & Kathleen Boyle. *MIGRATION AND THE ECONOMY: ECONOMIC REALITIES, SOCIAL IMPACTS AND POLITICAL CHOICES*. Oxford Martin School, September 2018.

¹⁴ Martin A. Schain. *SHIFTING TIDES: RADICAL-RIGHT POPULISM AND IMMIGRATION POLICY IN EUROPE AND THE UNITED STATES*. Migration Policy Institute, August 2018.

¹⁵ *Supra* Note 13, p. 7

The report highlights a number of examples from around the world which properly illustrates the points above. Canada is an excellent example of this. Despite having lower employment rates, Canadian migrants utilize less social welfare benefits, including housing support, social security and unemployment benefits compared to native citizens.¹⁶ Migrants in European countries with stable economies like Germany and the United Kingdom are no more dependent on welfare than domestic residents; the same is true even in struggling European economies like Greece, Spain and Portugal.¹⁷ Nordic countries like Sweden, Denmark and the Netherlands are an exception to this rule, where migrants tend to consume more benefits than their labor market outcomes. However, this is explained by the unique labor market characteristics of the immigrants therein, particularly because the migrants demographics are composed of ageing workers; having provided controls for this particular factor, studies show that their statistics should follow the general trend of migrants consuming equal or even less social welfare benefits than their native counterparts.¹⁸

Indeed, economic benefits from the presence of the additional workforce provided by migrants can outweigh the costs of their stay in the host country. With more skilled labor, the cost of public services may also decrease in proportion. The U.K. healthcare industry paints a good example of this, whereby a considerable fraction of its health and social care sector are comprised of workers of foreign origin.¹⁹

Public safety and security is another concern. Indeed, many people, particularly in the US, are afraid of migrants “because they think immigrants are a threat to their safety and engage in many violent and property crimes.”²⁰ However, this cannot be further from

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* Note 13, p. 102

¹⁹ *Supra* Note 13, p. 7

²⁰ Frances Bernat. *Immigration and Crime*. Criminology and Criminal Justice, April 2017, available at

the truth. Indeed, studies of foreign-born immigrants in the United States show that they are more likely to desist from the commission of crimes overall, particularly those of a serious nature, because doing so would draw attention to themselves and jeopardize their sources of income. This is true especially for those who receive state-funded benefits.²¹ Indeed, they are more likely to be victims of crimes rather than being the perpetrators themselves.²²

Critics of this meta-study point to government-supported research in Germany. The German state of Lower Saxony, where there has been an increase of migrants in the past few years, have seen its crime rate steadily rising.²³ However, criminology experts are quick to point out that such results are not a matter of migration but rather that of demographics: with the increase of young men in the region, regardless of origin, crimes are sure to also peak.²⁴ “Young men commit more crimes in every society,” according to Dr Dominic Kudlacek, from the Criminological Research Unit of Lower Saxony.

The third primary concern of native citizens regarding migrants is limited employment; this matter holds slightly more weight than the two previous causes of agitation over migration. A simple view of the circumstances would seem to indicate that more migrants coming into a country would cause higher job competition

<http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-93>

²¹ *Id.*

²² Stephanie Leutert. *Trump Has It Backward: Many Migrants Are Victims of Crime*. The New York Times, 18 September 2018, available at <https://www.nytimes.com/2018/09/18/opinion/trump-has-it-backward-many-migrants-are-victims-of-crime.html>

²³ Reuters. *Germany: Migrants 'may have fuelled violent crime rise'*. BBC News, 3 January 2018, available at <https://www.bbc.com/news/world-europe-42557828>; Reuters. *German study links increased crime rate to migrant arrivals*. DW, 3 January 2018, available at <https://www.dw.com/en/german-study-links-increased-crime-rate-to-migrant-arrivals/a-42006484>

²⁴ Reality Check Team. *Reality Check: Are migrants driving crime in Germany?*. BBC News, 13 September 2018, available at <https://www.bbc.com/news/world-europe-45419466>

as well as dilute the individual income of industry labourers. However, this perspective fails to take into account a variety of factors which affects employment competition and industry pay, including the level of skill of labourers, their substitutability and educational attainment, among others. Instead, migrant workers are seen as easy scapegoats for this multi-faceted socioeconomic dilemma.²⁵

Unfortunately, despite all these aggregate studies disputing the claims and falsities against migration, the fear of migrants still persist, particularly for states of destination. Building on the grossly misinformed communal anxiety of citizens regarding the issue, the mass movement of migrants towards specific developed countries has been characterized by some as a 'migration tsunami.'²⁶ Similar to its namesake of the natural disaster of rapid water movement inland, with up to the amount of energy released by an atomic bomb²⁷, the term suggests pure destruction and mayhem in its wake.

However, this inordinate focus on 'migration tsunamis', affecting certain developed nations particularly in the ideological West, removes the much-needed attention from another kind of potential disaster which is global in scope and even more catastrophic in impact: the demographic tsunami.

The demographic tsunami is a term used to denote the uneven shifts in the demographics of population in different areas of the world. While some countries have a greater number of older people, others have a primarily growing youth population. This is in large part due to fertility rates. What is interesting is that often, developing countries have higher fertility rates than developed ones. For

²⁵ *Supra* Note 13, p. 4

²⁶ Victor Gaetan. *European migration tsunami boosting conservative parties*. The Washington Examiner, 7 November 2015, available at <https://www.washingtonexaminer.com/european-migration-tsunami-boosting-conservative-parties>

²⁷ Kenneth Chang. *The destructive power of water*. The New York Times, 12 March 2011, available at <https://www.nytimes.com/2011/03/13/weekinreview/13water.html>

example, Singapore, Japan and Germany²⁸ all have low fertility rates, whilst countries like Timor-Leste, Niger and Burundi records a significant high on the number of births registered in a given year.²⁹

At the same time, the population aged 65 and above are higher in developed countries. Singapore, Japan and Germany, the same states which have low fertility rates, also have high percentages of senior citizens.³⁰

This turn of events has a number of implications, from the individual and domestic spheres to the national, regional and global arena, ranging from the political, economic and sociocultural dimensions.

Kathy Matsui's seminal work in 1997 brought wider academic attention to the concept of the demographic tsunami. Her research focuses on a socioeconomic aspect of the phenomenon: the allocation and payment of pension in Japan, where the ageing population continues to grow but the workforce remains substantially unreplenished by the younger generation.³¹ These groups also often have different economic interests, goals and work ethics, which can lead to intergenerational conflicts in the organizational and industrial setting.³² When taken from the macro perspective, these conflicting views are predictive indication of support for administration policies, which in turn often translates to political alignment and voting behaviour. Policy questions like increasing pensions at the cost of raising taxes and social security contributions are decided differently

²⁸ *The 20 countries with the lowest fertility rates in 2017*. Statista, available at <https://www.statista.com/statistics/268083/countries-with-the-lowest-fertility-rates/>

²⁹ *The 20 countries with the highest fertility rates in 2017*. Statista, available at <https://www.statista.com/statistics/262884/countries-with-the-highest-fertility-rates/>

³⁰ Faraz Haider. *Countries with the largest aging population in the world*. World Atlas, 25 April 2017, available at <http://www.worldatlas.com/articles/countries-with-the-largest-aging-population-in-the-world.html>

³¹ Matsui Kathy. *Demographic Tsunami*. Look Japan, December 1997, Vol 43, Issue 501 p. 36.

³² Tammy Erickson. *The four biggest reasons for generational conflict in teams*. Harvard Business Review, 16 February 2009, available at <https://hbr.org/2009/02/the-four-biggest-reasons-for-i>

in high-retiree populations compared to those composed of a young majority.³³ The dominant voting populace based on these demographics gets to decide the political leader and their policy action on these matters, though sometimes at the cost of disenfranchisement of the non-majority age group. Key examples include countries like the US and the UK, where the older generations showed tremendous support for ultraconservative nationalistic political decisions like Brexit³⁴, as well as populist leaders like Donald Trump,³⁵ despite vehement objections and protests from youth groups.³⁶

The demographic tsunami also affects transnational politics and economics. Developing nations with high fertility rates lack resources to properly provide for its citizens, meaning they lack the provision of basic rights like sustenance, education and employment. Lack of proper reproductive health education, for one, contributes to higher birth rates, thereby increasing the population yet again without any corresponding improvement in resource management for basic goods and services. And the cycle goes on, resulting to an improperly-educated populace and economic stagnation. The political situation in these countries then tends to affect the global

³³ Pauline Vamos. *A super consensus needed before the demographic tsunami*. Cuffelinks, 13 March 2015, available at <https://cuffelinks.com.au/super-consensus-needed-demographic-tsunami/>

³⁴ Simon Shuster. *The U.K.'s old decided for the young in the Brexit vote*. Time, 24 June 2016, available at <http://time.com/4381878/brexit-generation-gap-older-younger-voters/>

³⁵ Molly Ball. *Trump's graying army*. The Atlantic, 25 October 2016, available at <https://www.theatlantic.com/politics/archive/2016/10/trumps-graying-army/505274/>

³⁶ Vicky Spratt. *The truth about young people and Brexit*. BBC, 5 October 2018, available at <https://www.bbc.co.uk/bbcthree/article/b8d097b0-3ad4-4dd9-aa25-af6374292de0>; Lizzy Buchan. *Final say: army of 10,000 young people to lead major demonstration calling for fresh Brexit referendum*. The Independent, 13 October 2018, available at <https://www.independent.co.uk/news/uk/politics/brexit-protest-eu-referendum-final-say-peoples-vote-march-deal-a8581566.html>; Qadira Miller. *The upside of Trump's election: it inspired my generation to fight back*. The Guardian, 2 August 2018, available at <https://www.theguardian.com/us-news/2018/aug/02/trump-election-generation-z-teenagers-activism>

community, whether it be on issues of public health or international security threats like extremism and terrorism.

The case of the Philippines provides sufficient illustration on the matter. Despite the potential for massive economic development, due in part to its rich human and natural resources, the high fertility rates of the Filipino poor skews inclusive socioeconomic development, providing fodder for the old adage 'the rich get richer, while the poor get poorer'.³⁷ Certain communities in its southernmost islands, with its booming population yet unreached by adequate government services, are also more prone to being recruited by religious extremists and rebel groups for the simple fact of economic promise.³⁸ Its citizenry has elected a populist leader in the name of Rodrigo Duterte, who has issued kill orders outside the bounds of the rule of law, and has imprisoned his political critics on false charges.³⁹

Having national leaders such as Duterte and Trump increases the tension of international politics and transnational relations. Concerted efforts like preventing China from claiming the entirety of the South China Sea are undermined by political partnerships founded on corruption and greed.⁴⁰ The largest environmental polluters are primarily developed countries, or those with high

³⁷ Bea Orante. *Despite high economic growth, PH poverty on the rise*. Rappler, 24 September 2015, available at <http://www.rappler.com/move-ph/106966-economic-growth-ph-poverty>

³⁸ Tom Allard. *Looted cash, gold helps Islamic State recruit in Philippines*. ABS-CBN, 23 January 2018, available at <https://news.abs-cbn.com/news/01/23/18/looted-cash-gold-helps-islamic-state-recruit-in-philippines>

³⁹ Ted Regencia. *Senator: Rodrigo Duterte's drug war has killed 20,000*. Aljazeera, 22 February 2018, available at <https://www.aljazeera.com/news/2018/02/senator-rodrigo-duterte-drug-war-killed-20000-180221134139202.html>; Ted Regencia. *Philippines' Duterte: 'Kill those useless bishops'*. Aljazeera, 6 December 2018, available at <https://www.aljazeera.com/news/2018/12/philippines-duterte-kill-useless-catholic-bishops-181205132220894.html>; Agence France-Presse. *Duterte vs De Lima: A battle over death, drugs, reputation*. ABS-CBN, 24 February 2017, available at <https://news.abs-cbn.com/news/02/24/17/duterte-vs-de-lima-a-battle-over-death-drugs-reputation>

⁴⁰ Chad Patrick Osorio. *Do we let greed continue running the world?*. Rappler, 14 July 2016, available at <https://www.rappler.com/views/imho/139621-greed-china-philippines-arbitration-ruling>

population growth.⁴¹ Human rights take a backseat to fear and violence, and the rule of law is ignored.

These are just some of the ways by which this gross imbalance in the global distribution of population, education and wealth contribute to the snowballing effect of the demographic tsunami. While the cause is local in nature, its effects are global in scope.

But is there a way to offset this demographic tsunami? The answer may lie in the concept of human rights and migration.

MIGRATION AND THE DEMOGRAPHIC TSUNAMI

The problem, put simply, is this: some countries have a higher population density, composed primarily of a specific demographic. In many instances, developed nations have a rapidly-ageing workforce, while developing countries have high numbers of the youth population in need of education, skills and training.⁴² Unfortunately, the fertility rates of more than 50% of the countries in the world cannot meet their respective population replacement rates.⁴³ The solution to this global dilemma is a migration shift, correcting the imbalance by encouraging the movement of people of other demographics to where they are most needed for a more heterogeneous social composition.

Doing so solves a lot of the symptoms of the demographic tsunami. Especially for developed nations, it equalizes the constitution of their population; enables entire industries to continue

⁴¹ *Who are the world's biggest polluters?*. Reuters, 2 June 2017, available at <https://www.reuters.com/news/picture/who-are-the-worlds-biggest-polluters-idUSRTXRKSI>

⁴² Chad Patrick Osorio. *Transforming momentum into propulsion: harnessing the demographic tsunami*. Eisaku Sato, 2017, available at <http://satoeisaku.com/se/wp-content/uploads/2017/09/Chad-Patrick-Osorio.pdf>

⁴³ *Supra* Note 14, p. 12

their business processes by augmenting their workforce; and stabilizes pension, healthcare and other social security benefits, especially for retirees. At the same time, it allows for properly-compensated employment of those coming from developing nations, enabling them to support their families, boost the economies of their home countries through remittances and, in the long run, allows the transfer of technologies and knowledge in the management of industries from developed countries to developing ones.

Research data support these social projections. In 2017 alone, 75% of migrants are of working age, compared to the global average of only 57%.⁴⁴ This means that more migrants are moving to their countries of destination with the likelihood of augmenting the workforce therein. This increases productivity levels of the host countries and reduces costs of the services therein. In turn, this boosts industries and provides a taxable income base for government-provided healthcare and welfare support.

There is also a number of beneficial economic ‘side effects’ of migration aside from the rise in national gross domestic product (GDP). This includes the marked improvement of the levels of human capital of migrants. Studies show that immigrants receiving tertiary education have increased by as much as 130% in the span of ten years.⁴⁵ At the same time, global innovation in various industries has risen, as migrants file more than 40% of the patents worldwide.

It seems then that migration by design is a quick and easy panacea to averting the crisis of the global demographic tsunami. However, of course, this is easier said than done, and a number of challenges lies in its wake.

For one, the majority of the global population of migrant workers comes from developing countries, where more often than not, there is a sore lack of advanced education, skills training and technology management for many industries. This often makes a

⁴⁴ *Supra* Note 14, p. 25

⁴⁵ *Supra* Note 14, p. 12

huge fraction of them unfit to immediately join the highly-trained workforce of the labor-receiving state, and requires further training before employment, leading to personal costs and delay for compensated service.⁴⁶ It is therefore imperative that more intensive and extensive effort be given by labor-sending states to invest in human capital, in line with the United Nations' Sustainable Development Goal (SDG) 4 of education through systematic reforms, programs and projects in partnership with the destination country. Training these workers to be more competitive in the global marketplace allows more freedom of choice and a stronger economic bargaining position at the level of the individual; on the macrosocial scale, this translates to a highly-competent migrant workforce for the host state, and greater potential for remittances and expenditure income upon return for their countries of origin.

Worth serious consideration is another pressing challenge to the encouragement of global migration: 'brain drain,' also known as 'human capital flight.'⁴⁷ This interestingly-named phenomenon is an amalgamation of circumstances resulting when the migration of skilled labor leads to "the dearth of a competent labor force from the labor-sending country."⁴⁸

The implications of brain drain are many. As an example, the weakening of industries in the labor-sending state due to the lack of properly-skilled employees. This also translates to inadequate human resources to properly train new batches of industry workers, leading these businesses further into economic decline. The problem is compounded in the long run when skilled labor, honed in years abroad, refuses to return to its country of origin. This phenomenon is the primary reason why labor export and migration are viewed by

⁴⁶ *Supra* Note 42

⁴⁷ Hillel Rapoport. *Who is afraid of the brain drain?*. Stanford Institute for Economic Policy Research, April 2002, available at http://www-siepr.stanford.edu/Papers/briefs/policybrief_apr02.pdf

⁴⁸ Jennifer Francis. *What is brain drain in economics?*. Study Course Navigator, available at <http://study.com/academy/lesson/what-is-brain-drain-in-economics-definition-causes-effects-examples.html>

labor-sending countries merely as a stopgap measure, and not as a sustained economic strategy.⁴⁹

Many developing countries see their university graduates leaving for greener pastures. This includes Guyana and Jamaica, with more than 70% of their tertiary-educated workforce migrating, 65% for Morocco, 64% for Tunisia and 60% for Gambia.⁵⁰ This may prove especially ruinous to the economies of countries particularly in sub-Saharan Africa and the Caribbean, the former due to their low national average of university graduates at only 4%, and the latter because of their small population, which could wipe out entire industries.⁵¹

Even in Asian countries like the Philippines, where skilled migration is buffered by a generally large population possessing tertiary education, the problem still persists. In 2014, the Philippine government advertised that “it needed to hire more than a hundred foreign skilled workers in various industries because its own skilled labourers have either migrated or are not qualified for the vacant positions.”⁵²

Indeed, the encouragement of movement of the young skilled workforce to developed countries from developing ones should take into account this phenomenon, and the latter should not suffer at the expense of meeting the needs of the former.

To respond to this occurrence, it is necessary for both labor-exporting and labor-receiving governments to encourage return service and circular migration, a system beneficial to both. Human capital from the labor-sending state augments the workforce of the labor-receiving state for a limited period, and during that time it supports the industries of the latter as well as its social and pension

⁴⁹ *Supra* Note 42

⁵⁰ *Supra* Note 13, p. 63

⁵¹ *Id.*

⁵² Agence France-Presse. *Top labor exporter PH may use foreign workers to plug shortfall*. Philippine Daily Inquirer, 16 January 2014, available at <http://business.inquirer.net/160369/top-labor-exporter-ph-may-use-foreign-workers-to-plug-shortfall>, in *Supra* Note 42

services; concurrently, it supports the economy of the former thru remittances and expenditures upon return. After the designated period of service, returning migrants bring back with them the education and skills honed through years of experience in the industries of their host state, and are in excellent position to train new batches of young workers from their countries of origin. They can also help improve industry and business practices as well as craft economic and operations policies in their respective fields of practice. In the long run, this allows for marked improvement and greater market competitiveness of the labor-sending state.

Currently, however, there is a stark need to strengthen financial and institutional support for migration, return and reintegration; at the same time, effective mechanisms must be put into place in order for migrants to voluntarily return home to their home countries. While there are such systems currently in place, supported by both home and host states, these plans, programs and projects have had only marginal effects, and it remains necessary to bulk up their foundational structures.⁵³

A strong, interconnected, complementary migration policy, rooted in sound domestic and transnational legal frameworks, coupled with more intensive focus on education and training of skilled workers, can transform 'brain drain' into 'brain gain'. At present, there are also efforts to create networks for diaspora, in order to lessen the negative impact of skilled migration and turn it instead into positive change.⁵⁴

The most pressing challenge to global migration, which deserves a discussion as provided in the two succeeding sections, remains this: that the rights of the migrants are unprotected. Why is it important to fight for these fundamental rights, and what does this

⁵³ John Willoughby. *Preparing contract workers for return and reintegration – relevant for development?*. Global Forum on Migration and Development, November 2009.

⁵⁴ *Supra* Note 14, p. 65

mean for the demographic tsunami and global governance as a whole?

THE INTERNATIONAL LEGAL FRAMEWORK ON MIGRATION AND HUMAN RIGHTS

There is no single instrument in international law that governs the fundamental human rights of migrants. Instead, they are interwoven into the tapestry of international human rights treaties under the general umbrella of the Universal Declaration of Human Rights (1948). This includes the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) and the International Convention on the Elimination of All Forms of Racial Discrimination (1965), among others. For migrant workers in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is a primary international document seeking to uphold the sets of rights embodied therein, together with corresponding International Labour Organization (ILO) Conventions, like ILO Convention No. 29 (Forced Labour Convention, 1930), ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948), ILO Convention No. 98 (Right to Organise and Collective Bargaining Convention, 1949), and ILO Convention No. 100 (Equal Remuneration Convention, 1951).

Special groups of migrants are also provided specific protection under respective treaties, agreements and resolutions of international nature concerning them. For example, the Convention on the Elimination of All Forms of Discrimination against Women (1979) seeks to prevent abuses of human rights done against women,

whether they be migrants or not. The treatment of children as migrants, on the other hand, is guided by the Convention on the Rights of the Child (1989), the Minimum Age Convention (ILO No. 138, 1973) and the Worst Forms of Child Labour Convention (ILO No. 182, 1999), taken together.

Migrants who have been forced to leave their home countries due to various political reasons have also been granted an increasingly robust system of legal protections under the international human rights law regime. For one, refugees and asylum-seekers are protected by specific legal standards, many of them established after the events of World War II. Foremost among these standards are the Convention relating to the Status of Refugees (1951) and its Protocol (1967). Victims of human trafficking, an international offense classified under the United Nations Convention against Transnational Organized Crime (2000), are supported by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

This enumeration of international law instruments is by no means exhaustive. There are many more transnational and regional documents which profess to uphold the human rights of migrants, including the 1986 African Charter on Human and People's Rights, the 2009 Arab Charter on Human Rights, and the 2012 ASEAN Human Rights Declaration. Similarly, bilateral and multilateral treaties abound, between and among state-parties as home and host national entities respectively. These treaties and agreements may either be considered as automatically part of the law of the land of their signatory states, or national legislation may be required in order for them to be incorporated into the domestic legal framework. This completes the top-down overview of the international legal and institutional framework on migration.

There are several noteworthy matters which must be raised at this point. First, while it is important to categorize migrants in order to understand the rights to be granted to them, it is equally imperative to stress that regardless of the type of migrant they are, there are certain inalienable human rights granted to them which could never, under any circumstances, be derogated.⁵⁵ For example, while institutions are tasked to provide special care that the rights of women migrants are upheld under the aforementioned legal instruments, it isn't to say that male migrants should enjoy a lesser number of rights; both of them must still be protected as provided by the general human rights protection framework.

In the same way, irregular migrants, who have not abided by the proper legal processes and pathways in order to be allowed residence in their countries of choice, as well as 'forced' migrants, namely refugees and asylum-seekers, should still enjoy the same fundamental human rights that regular migrants have been granted with the imprimatur of legality. This includes due process, both procedural and substantial, and state protection from enforced disappearance, torture, forced labor and discrimination, among others.

After all, a strict categorization approach is counterinitative to the universal applicability of human rights. The proper perspective is that these categories are instead cross-sectional, and that "migrant workers, refugees, trafficked persons and smuggled migrants can also be migrants with disability, children, pregnant women and women who have suffered sexual and other forms of gender-based violence, migrants, stateless persons, minorities and indigenous migrants, persons with HIV/AIDS, lesbian, gay, bisexual and transgender migrants, and victims of torture."⁵⁶

⁵⁵ These include the rights covered under the UDHR, ICCPR, and ICESCR, among other international conventions.

⁵⁶ United Nations. INTERNATIONAL MIGRATION REPORT 2015, p. 19

This interpretation gives true life to the spirit of Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.” It would have been easier had the problem been only one of interpretation as regards the international human rights framework on migration. A bigger challenge is its adoption and implementation.

For instance, the International Convention on the Protection of All Migrant Worker and Members of their Families only has 38 signatories and 50 parties at the conclusion of December 2016, 28 years after it has opened for signature. Interestingly, most of the signatories are labor-exporting states seeking to protect their migrant worker citizens. Many developed countries with a huge intake of foreign labour forces, like the US, Canada, Japan and the UK, as well as those in the Middle East like Bahrain, Saudi Arabia and Qatar, are curiously absent in the list of countries which have signed and ratified the said Convention.

TABLE 1. Ratification of Relevant United Nations Treaties by Select Countries⁵⁷

Country	ICCPR	ICESCR	CERD	CEDAW	CAT	CRC	CMW	CRPD	CED
Australia	13-Aug-80	10-Dec-75	30-Sep-75	28-Jul-83	8-Aug-89	17-Dec-90	***	17-Jul-08	***
Bahrain	20-Sep-06	27-Sep-07	27-Mar-90	18-Jun-02	6-Mar-98	13-Feb-92	***	22-Sep-11	***
Canada	19-May-76	19-May-76	14-Oct-70	10-Dec-81	24-Jun-87	13-Dec-91	***	11-Mar-10	***
Italy	15-Sep-78	15-Sep-78	5-Jan-76	10-Jun-85	12-Jan-89	5-Sep-91	***	15-May-09	8-Oct-15
Japan	21-Jun-79	21-Jun-79	15-Dec-95	25-Jun-85	29-Jun-99	22-Apr-94	***	20-Jan-14	23-Jul-09
Kuwait	21-May-96	21-May-96	15-Oct-68	2-Sep-94	8-Mar-96	21-Oct-91	***	22-Aug-13	***
Malaysia	***	***	***	5-Jul-95	***	17-Feb-95	***	19-Jul-10	***
Philippines	23-Oct-86	7-Jun-74	15-Sep-67	5-Aug-81	18-Jun-86	21-Aug-90	5-Jul-95	15-Apr-08	***

⁵⁷ The international conventions are represented by the following acronyms: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of all Forms of Racial Discrimination (CERD); International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); Conventions on the Rights of the Child (CRC); International Convention on the Protection of All Migrant Workers and Members of their Families (CMW); Convention on the Rights of Persons with Disabilities (CRPD), and; Convention for the Protection of All Persons from Enforced Disappearance (CED). Data taken from <https://treaties.un.org/> as of March 2016.

Qatar	***	***	22-Jul-76	29-Apr-09	11-Jan-00	3-Apr-95	***	13-May-08	***
Saudi Arabia	***	***	23-Sep-97	7-Sep-00	23-Sep-97	26-Jan-96	***	24-Jun-08	***
Singapore	***	***	**	5-Oct-95	***	5-Oct-95	***	18-Jul-13	***
United Arab Emirates	***	***	20-Jun-74	6-Oct-04	19-Jul-12	3-Jan-97	***	19-Mar-10	***
United Kingdom	20-May-76	20-May-76	7-Mar-69	7-Apr-86	8-Dec-88	16-Dec-91	***	8-Jun-09	***
United States of America	8-Jun-92	**	21-Oct-94	**	21-Oct-94	**	***	**	***

Legend: *date ratified; ** signed but not ratified; *** neither signed nor ratified

ILO treaties fare slightly better when it comes to signature and ratification. It is usually countries like the Philippines, with a huge fraction of its citizens as migrant workers, who earnestly sign and ratify these agreements. It is quite rare for labor-destination countries to complete all eight fundamental ILO conventions. Key exceptions include Italy and the UK. The US, even among its peers, is a stand-out: it has signed and ratified only two ILO conventions in its entire history.

TABLE 2. Ratification of Relevant United Nations Treaties by Select Countries⁵⁸

Country	C029	C087	C098	C100	C105	C111	C138	C182
Australia	2-Jan-32	28-Feb-73	28-Feb-73	10-Dec-74	7-Jun-60	15-Jun-73	***	19-Dec-06
Bahrain	11-Jun-81	***	***	***	14-Jul-98	26-Sep-00	7-Mar-12	23-Mar-01
Canada	13-Jun-11	23-Mar-72	***	16-Nov-72	14-Jul-59	26-Nov-64	***	6-Jun-00
Italy	18-Jun-34	13-May-58	13-May-58	8-Jun-56	15-Mar-68	12-Aug-63	28-Jul-81	7-Jun-00
Japan	21-Nov-32	14-Jun-65	20-Oct-53	24-Aug-67	***	***	5-Jun-00	18-Jun-01
Kuwait	23-Sep-68	21-Sep-61	9-Aug-07	***	21-Sep-61	1-Dec-66	15-Nov-99	15-Aug-00
Malaysia	11-Nov-57	***	5-Jun-61	9-Sep-97	****	***	9-Sep-97	10-Nov-00
Philippines	15-Jul-05	29-Dec-53	29-Dec-53	29-Dec-53	17-Nov-60	17-Nov-60	4-Jun-98	28-Nov-00
Qatar	12-Mar-98	***	***	***	2-Feb-07	18-Aug-76	3-Jan-06	13-May-00
Saudi Arabia	15-Jun-78	***	***	15-Jun-78	15-Jun-78	15-Jun-78	2-Apr-14	8-Oct-01
Singapore	25-Oct-65	***	25-Oct-65	30-May-02	****	***	7-Nov-05	14-Jun-01

⁵⁸ The ILO Conventions are represented by the following: Forced Labor (C029); Freedom of Association Protection of the Right to Organize (C087); Right to Organize and Collective Bargaining (C098); Equal Remuneration (C100); Abolition of Forced Labour (C105); Discrimination (Employment and Occupation) (C111); Minimum Age (C138), and; Worst Forms of Child Labour (C182). Data taken from <https://treaties.un.org/> as of March 2016.

United Arab Emirates	27-May-82	***	***	24-Feb-97	24-Feb-97	28-Jun-01	2-Oct-98	28-Jun-01
United Kingdom	3-Jun-31	27-Jun-49	30-Jun-50	15-Jun-71	30-Dec-57	8-Jun-99	7-Jun-00	22-Mar-00
United States of America	***	***	***	***	29-Sep-91	***	***	2-Dec-99

Legend: *date ratified; ** signed but not ratified; *** neither signed nor ratified; **** subsequently denounced

The data above is disconcerting, to say the least. For international human rights law to be properly upheld and promoted requires full cooperative compliance with these international treaties, agreements and conventions. It is difficult for a one-sided application of these proposed instruments, especially if these are protection policies are largely ignored by countries of intended destination. It is therefore important to incentivize the adoption of the CMW and all other international conventions related to migrant rights, regardless of the type of migration which has occurred. Similarly significant is continued support for all related ILO conventions. Integrating these international human rights law instruments into the domestic legal framework is a great leap forward to prevent acts of abuse and discrimination against all migrants.

BOOSTING HUMAN RIGHTS TO BOOST MIGRATION

The question remains: how does the protection of the human rights of migrants translate to preventing the demographic tsunami? It has always been a primary concern for economic pragmatists to protect migrants for the primary reason of the value of the foreign workforce. More migrants protected from abuse and accorded proper treatment equate to a greater number of available human capital in service and industries. For one, sufficient assistance in integrating these migrants into the community allows for positive interpersonal relations. Further enabling decent standards of life also necessarily

leads to happier individuals. These factors contribute to a higher likelihood of efficient and sustainable output of migrant workers.⁵⁹ Granting them adequate compensation as a necessary aspect of proper employment further increases their spending power, thus widening the market base of local businesses. On the macrolevel, these circumstances domino into marked development in the national economy.

However, regardless of whether these government actions translate to economic benefits or not, it remains the duty of both the host state and the state of origin to provide migrants a decent condition of living and create an enabling environment where their fundamental human rights are fully protected. Regardless of the regularity of these migrants' entry into the jurisdiction of the host state, minimum due process and equal protections of the law must be observed, in accordance with generally-upheld principles and customary international law, together with obligations under treaties and conventions to which the host state is a party. This sets a fair precedent for international conduct and smoothens intercountry relations as well, where every country's citizen, regardless of the status of entry in a given state, are treated with utmost decency and respect and afforded the full protection of law.

Adopting either or both reason for the protection of migrants, it is apparent that strengthening this system of domestic and regional labor and migrations frameworks by advocating for a strong human rights position as its point of pivot can greatly contribute to global efforts on mitigating the negative backlash created by the demographic tsunami on the politico legal, economic and sociocultural aspects of its impact. A human rights-centered approach on international migration governance allows for better intercountry relations, efficient integration into host communities, and protection

⁵⁹ Camille Preston. *Promoting employee happiness benefits everyone*. Forbes, 13 December 2017, available at <https://www.forbes.com/sites/forbescoachescouncil/2017/12/13/promoting-employee-happiness-benefits-everyone/>

from abuses, thereby increasing the human capital necessary to counteract the negative effects of the demographic tsunami. Treating all migrants as humans, regardless of the legality of their entry into the host state, recognizes not only their potential but their humanity as well, as envisioned by international human rights law.

There are a number of policy recommendations which could provide essential support in adopting human rights as a pivot for transnational migration policies, and in turn stemming the demographic tsunami. The first one relies on the persuasive power of the United Nations to encourage all states, especially developed, labor-receiving countries to sign, ratify and implement key international conventions protecting the rights of migrants, either as workers, refugees or asylum seekers. This is the first step in developing a proper system of compensation and the protection of labor and other human rights for immigrants. Fully respecting the terms of multilateral and bilateral agreements also serve the same purpose.

The second recommendation relies on improving the administrative policies of the host countries in need of a young workforce. It is crucial for destination countries to set the proper legal and regulatory pathways to meet the demand for movement, in order to facilitate circular migration. Doing so will set a sturdy foundation for sustainable relationships with labor-sending states, in order to maximize human capital and inclusive economic development.

The third recommendation involves more a change of mindset rather than mere policy alteration: an alternate perspective on how refugees are viewed. According to the UN High Commissioner for Refugees (UNHCR), there is a total of 65.3 million refugees in the world as of Q4 2015.⁶⁰ Considering these millions of people as human capital, with the potential for enormous improvement and social

⁶⁰ Euan McKirdy. *UNHCR report: More displaced now than after WWII*. CNN, 20 June 2016, available at <http://edition.cnn.com/2016/06/20/world/unhcr-displaced-peoples-report/>

contribution value, rather than as mere burdens on the state, changes the perspective on how refugee situations are addressed. While it is of course important that the UN address the root cause of such situations, including armed conflict and environmental disasters, in order to facilitate the return of these refugees back to their home state, it is equally necessary in the meantime to promote initiatory domestic legislation and policies seeking to remove xenophobia and discrimination against refugees, as well as continued community integration efforts, in order to make refugees productive members of their adoptive society.

The fourth and final recommendation in order to maximize human rights and migration against the demographic tsunami is for states to fully comply with the directives of international human rights law: that is, more than just respecting and protecting the fundamental and inalienable rights of migrants, it is also a central obligation of all states to take positive measures in order to “ensure the realization of human rights.”⁶¹ In this sense, migrants are not only passive subjects of domestic and transnational policy-making bodies and legislative processes; instead, they should be consulted at every step, as active participants in the formation and strengthening of the international legal migration framework.

CONCLUSION

Former UN Secretary General Ban Ki-moon defined migration as “an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make-up as a human family”. However, in recent era, toxic political debate and a terribly misinformed populace have painted the doomsday story of a migration tsunami, with immigrants and refugees alike cast in a

⁶¹ United Nations Office of the High Commissioner for Human Rights. *Improving Human Rights-Based Governance of International Migration*, 2015.

negative light. Forgotten instead is a global catastrophe waiting to happen: the impending demographic tsunami. From the comprehensive illustration above, it is clear then that migration should not be viewed as a problem, but rather as a solution. Instead of building walls, we must build bridges, with the way forward lit by the torchlight of a human rights-based perspective. This conclusion is based on both statistical data and historical examples, showing that global migration governance, with human rights as its central pivot, can stem the worst effects of the demographic tsunami.

This is apparent especially when it comes to the economic aspect of the debate, as it promises inclusive development for both host and home states by recognizing all types of migrants as a source of human capital, and advocating circular migration in order to promote sustainability of the entire process. While this idea is a critical argument towards a positive regard for migration, it is equally essential to remember that humans are more than just economic capital. The principles of international human rights embody equality, and guaranty the full protection of the law in all aspects of human existence.

In the end, what migrants can or cannot give should be unimportant: what is essential is that we recognize that in all cases, migrants are first and foremost human, deserving of the full gamut of rights and protection that every human being should enjoy.

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Elimination of all Forms of Racial Discrimination (CERD); International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); Conventions on the Rights of the Child (CRC); International Convention on the Protection of All Migrant Workers and Members of their Families (CMW); Convention on the Rights of Persons with Disabilities (CRPD), and; Convention for the Protection of All Persons from Enforced Disappearance (CED). Data taken from <https://treaties.un.org/> as of March 2016.

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Author Biography

Chad Patrick T Osorio

Chad is a PhD candidate at Wageningen University and Research, and Senior Lecturer at the University of the Philippines Los Banos. As a legal advocate, he works in the intersection of criminal justice and environmental protection. You can read his bio here

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Digital Financial Strategy: New Direction or the Usual Old?

László Kerekes¹

¹ Géza Marton Doctoral School of Legal Study Debrecen University,
Hungary

laszlokrks@gmail.com

ABSTRACT

The development of digital currency through cryptocurrencies left a legal lacuna. This study delves into the relationship between technology and law, namely the legal regulation of technology. In doing so, the author dealing with IoT devices, the blockchain and the challenges caused by cybercrime. The research focus on digital financial strategy, which forms the blockchain-related. This research applying descriptive and comparative method by introducing the technology behind cryptocurrencies and followed by examining the problems with respect to Digital Financial Package of the European Union. The research shows that the digital finance strategy is the most significant comprehensive legislative packages of recent years.

Keywords: *Blockchain, Cryptocurrency, Digital Finance Strategy*

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INTRODUCTION

Digital money, electronic currency, cryptocurrency¹ we have all heard these terms before. Recently, you can hear more and more about them in the news or read on the Internet. But what are they? Many people confuse it, although cryptocurrencies are a type of digital currency. Their working mechanism is similar, but still different on some level. Regarding the regulation of artificial intelligence, it may be worth drawing a conclusion to what extent it can be considered modern-day slavery.²

The research focus on digital financial strategy, which forms the blockchain-related. This research applying descriptive and comparative method by introducing the technology behind cryptocurrencies and followed by examining the problems with respect to Digital Financial Package of the European Union. The research shows that the digital finance strategy is the most significant comprehensive legislative packages of recent years

First, let's look at the technology behind cryptocurrencies, blockchain and distributed ledger systems. The blockchain on which Bitcoin is based is the so-called one possible form of implementation of distributed ledger systems.³ A distributed ledger system is a network in which data is shared among network members in a synchronized manner. In order for the system to function, it is necessary to establish and maintain a connection between all members of the network, and also to create a consensus-based algorithm, on the basis of which network members participate in the activities conducted through the network. The distributed ledger system can be either private or public, so it is not excluded that, for

¹András Györfi, *Kriptopénz abc*, HVG- Orac Lap- és Könyvkiadó Kft, Budapest, 2019, pp.5.

²Szűcs Lászlóné Siska Katalin, *Slavery in Islamic law. Is it over or is it still going on?* Miskolc Law Review 11, pp. 16.

³Mátyás Környei, *Legal issues of blockchain and cryptocurrencies*, 2018, pp. 1. <https://arsboni.hu/a-legnagyobb-talalmany-az-internet-ota-a-blockchain-es-a-kriptoalutak-jogi-kerdesei/> (Downloaded: 2021.06.05)

example, a company creates its own internal DLT-based corporate management system.⁴

The essence of DLT is that (a) the data stored on the network, as well as the algorithm underlying the operation of the network, can be accessed by any member of the network who is entitled to it based on the underlying algorithm, and that (b) ensures that only those activities can take place over the network that comply with the rules of the underlying algorithm.⁵ As a consequence of automation and transparency, there is no need for a single central body to check and approve the activities carried out through the network, but rather they are verified and checked by the members of the network - in an automated way.

However, it should be noted that blockchain and DLT are two different concepts. ⁶More specifically, blockchain is a type of DLT, as we will see later. The most common forms of DLT are:

Blockchain, a gentleman named Stuart Haber first published about the cryptographically encrypted blockchain in 1991, then further developing this theory, an unknown group called Satoshi In 2008, under the name Nakamoto, he created the first blockchain-based implementation, Bitcoin. ⁷The purpose of Bitcoin was to reduce the cost of using money by eliminating financial intermediaries, to increase the security of financial transactions by using DLT, and to create a decentralized, democratic currency with the creation of Bitcoin.

The blockchain technology works in such a way that the party wishing to start a transaction on the network includes the transaction in a block and sends a message to the members of the network stating that they wish to execute the transaction included in the block according to the rules of the network's underlying algorithm. ⁸The

⁴ Környei , pp. 2.

⁵ Környei , pp. 4.

⁶ Környei , pp. 4.

⁷ Satoshi Nakamoto , *A peer-to-peer electronic cash system* , 2008, 1., <https://www.bitcoinbasis.hu/utmutato/szatosi-feher-konyv/> (Downloaded . 2021.06.05.)

⁸Györfi, pp.10

members of the network independently check (verify) the transaction one by one. The copies of the transaction approved in this way, accepted by all members of the network, form a block. The block is encrypted by the members of the network, which in the case of Bitcoin is an extremely complex mathematical puzzle operation.

The approved and encrypted block is added to the chain of blocks previously created in the network, which will thus be one element longer. Blockchain security is ensured by two factors. The first is that the encryption is based on the so-called Merkle tree method, the essence of which is that each encryption is derived from the previous encryption. And the second factor is that the network always accepts the longest blockchain as real, i.e. the longest derived cipher suite. These two factors ensure that in order to hack the blockchain and change the data contained in it, at least the multiplied amount of computing capacity represented by the members of the network would be required.

Hashgraph, based on this technology, several transactions can be stored on the same time stamp. In this case, the accounting process is not linear, but network-like. DAG works on a principle similar to blockchain. Here, the system stores transactions in nodes, the confirmation of which requires several members of the network. In this case, if someone wants to start a transaction, they must first check 2 others, thereby validating their own activity.

Tempo, this solution is also similar to blockchain technology, but in this case the nodes contain only a part, a fragment of the ledger. Thus, speeding up the transaction process.

CRYPTOCURRENCIES AND BITCOIN

First of all, it is important to understand the virtual currency itself, we can find two different concepts. ⁹The first is the opinion of the European Central Bank, according to which: "*virtual currencies are unregulated digital currencies that are put into circulation by users and controlled by developers, and accepted among members of a special virtual community.*" Another interpretation, that of the European Banking Authority, stands in contrast: "*virtual currency is the digital embodiment of a value for which neither a central bank nor an authority is responsible for putting it into circulation, nor can it be linked to traditional currencies.*"¹⁰ It could be used first to break through the wall between cultures.¹¹

It is also important to mention the token, it has a prominent role in the world of cryptocurrencies. ¹²THE token a device that supplements the security of the internet banking system, nothing more than a code generator, which – depending on the time of use and the serial number of the token – provides a one-time use code, which is used as a security code by the internet banking system. ¹³The security code is required when entering the system and when sending orders to the bank. The program running on the bank server checks whether the code sequence generated by the token assigned to the given user is the same as the code generated by the bank server belonging to the token with the given serial number. If the two-code series differ, the server will refuse to enter the system or send the order.¹⁴

The question may arise as to what are the factors that influence the price increase in the case of cryptocurrencies. For example, if its

⁹Gábor Pataki, *Birth and death of cryptocurrencies*, Schönherz College Meetup, 2019

¹⁰Róbert Bacsó, *Virtual currency as the challenge of modern financial market regulation*, Civil Review, 2016, 12th edition. Number 2, 5.

¹¹Szűcs Lászlóné Siska Katalin, *Human rights in the Arab world*, Debrecen, University of Debrecen Publishing House, 2014, pp. 6.

¹² <https://www.tozsdeforum.hu/fogalom/token> (Downloaded: 06/07/2021)

¹³Pataki, pp. 5.

¹⁴Pataki, pp. 5.

popularity increases, it becomes more widespread among more people, its commercial turnover increases significantly, and the geopolitical risks are clear and unambiguous.¹⁵

Using money is quite expensive and complicated and in most cases requires intermediaries: banks, money exchanges. To eliminate this Satoshi Nakamoto created a plan for a virtual money without central authority, manipulation and intermediaries, where there is no central bank and other financial institutions, but buyers and sellers can conduct internet transactions directly with each other, in a peer-to-peer system, just as BitTorrent works, but this comes with volatility. This became bitcoin, the first cryptocurrency, where crypto means cryptography, i.e. encryption, on which the system is based. Which, according to the prophets of the matter, can be the basis of a completely fair and impartial 21st century financial system, since it is forward-looking and innovative.¹⁶ Like the XX. at the beginning of the century, during the Turkish reforms.¹⁷ The media picked up the topic even at that time.¹⁸

Of course, virtual money in itself is not new, there have been plenty of them before. The novelty of the matter was that he solved it by introducing innovative cryptographic solutions so that virtual money could not be forged or spent multiple times. The latter problem arises from the fact that, while cash or metal change hands in a physical transaction, only data sets are used in virtual transactions.¹⁹

¹⁵Bacsó, pp. 6.

¹⁶Bacsó, pp. 11.

¹⁷Szűcs Lászlóné Siska Katalin, Mustafa Kemal Atatürk's impact on the concept of Turkish identity and citizenship, with particular regard to constitutional regulations, *Law State Politics: Journal Of Law And Political Science*. 8 : 1 pp. 61-75 , 15 p. (2016)

¹⁸Szűcs Lászlóné Siska Katalin, *Evaluation of Kamâl Atatürk's reforms in the light of the coverage of the contemporary Hungarian press and the pro-government Turkish Cumhuriyet* , Debrecen, Hungary: Debreceni Egyetemi Kiadó (2020), 383 p.

¹⁹ Hanga Kádár, *Cryptocurrency - Treasure that isn't there?* <https://erdelyinaplo.ro/gazdasag/kriptoaluta-kincs-ami-nincs> , (Downloaded: 2021.06.01.)

The value and popularity of the digital currency increased in a few years, as a decentralized currency independent of government and corporate interests was created, which is not connected to the traditional banking system. One of the biggest advantages is encryption: the parties conducting the transaction can remain completely unknown during the process if they so wish. Anonymity makes the transfers safe and traceable; the only thing users get are the 54 characters and a password for the account, but this also makes it possible to use it for money laundering and financing dubious transactions. As Nakamoto writes: "*What is needed is an electronic payment system based on cryptographic evidence instead of trust, allowing both parties to transfer directly between each other without the need for a trusted third party.*"²⁰

Mining often comes up, and it may seem strange at first, but how can something intangible be mined. The issuer of virtual instruments that can be used for payment is not an institution that has obligations and responsibilities related to the issuance, but a community of users. These devices typically only exist electronically, and the so-called they can be stored in a virtual wallet. For such a device, so-called we can get to it during "mining".²¹ Mining must be imagined in the way that someone makes the resources of the machines available to operate a virtual currency system, and receives money for that. It's essentially a business of sorts. It is similar to printing real money on behalf of the government in the form of a business, for which they would pay, but since it is virtual, it only requires the power of computers.²²

²⁰ Satoshi , pp. 12.

²¹ Géza Sebestyén, Virtual currencies-real risks, 2018, <https://mnbfinanszekblog.hu/2017/11/27/virtualis-valutak-valos-kockazatok/> (Downloaded: 2021.05.29.)

²²Sebestyén, pp. 2.

cryptocurrencies raises many questions ²³. If we look at the situation in China, we can see that China has the largest mining companies, such as AntPool , BTCC. They account for two-thirds of the computing capacity of the bitcoin network. For them, it costs \$3,172 (approx. HUF 850,000) to mine one BTC. It is interesting, however, that SlushPool, wedged between them , is headquartered in the Czech Republic. They owe their popularity to the fact that they were the first mining association in the world and have been operating reliably since their foundation in 2010. Mining in one of the centers of the crypto world, South Korea, is the most expensive. Here, the extraction of 1 bitcoin costs about HUF 7 million, while the cheapest is possible in Venezuela, where barely HUF 140,000 has to be spent only on bills. In our country, our costs would be around HUF 1.4 million.²⁴

According to the *position of* ²⁵the NAV, bitcoin cannot be considered a security based on the current legal regulations, since bitcoin does not have the legally required elements of a security. Nor can it be considered something that can be owned, because it only exists virtually. Due to its nature, it is essentially a payment promise that can be exchanged for money based on the current exchange rate. The acquisition of bitcoins in exchange for consideration therefore does not in itself generate income, and therefore does not result in a tax liability.

The *Department of Financial Regulation of the Ministry of Finance* also spoke about the issue and issued a written statement, according to which:

²³ https://kriptoakademia.com/2018/05/29/ennyibe-kerul-1bitcoineloallitasa?utm_medium=site&utm_source=hirstart (Downloaded : 2021.06.02.)

²⁴Kádár, pp.5.

²⁵ <https://digitalcash.hu/2017/07/17/a-nav-allasfoglasa-a-bitcoinrol-tao-szemponok-alapjan/> (Downloaded : 2021.06.02.)

*"The potential regulation of crypto-assets in Hungary is indeed a complex task, the issue cannot be treated as a civil law phenomenon in itself. From the legislative point of view, it can be said that the use of cryptocurrencies carries many dangers: for example, the risk of money laundering and terrorist financing, supervisory and consumer protection issues, or even the threat of cybercrime."*²⁶

According to Hungarian regulations, cryptocurrencies are not considered a monetary unit. Legal practice is expanding, and there are still many unclear questions. C-264/14. tax law aspects were analyzed in case no.²⁷ David Hedqvist planned to start a business in Sweden that would deal with the exchange of official national currency and bitcoin through his website. The consideration for the company's service would be a commission. The Swedish tax commission deemed the activity exempt from VAT during a conditional tax assessment.

The Swedish tax authority did not agree with this decision, and submitted the case to the European Court of Justice with a request for a preliminary ruling, which came to the decision that the virtual currency of bitcoin has no other purpose than to be used as a means of payment and accepted by some economic actors, therefore it is justified the application of the VAT exemption also in the case of services aimed at converting bitcoin and traditional currencies. After this decision was made, a breakthrough occurred, as the registration of cryptocurrencies and the taxation of transactions became significantly simpler and clearer in the European Union, including in our country.

However, it is important to emphasize that this is only a first-level decision, but the legislative history of the EU shows that the

²⁶ <https://fintechzone.hu/a-penzugyminiszterium-valasza-a-kriptoalutak-szabalyozasaval-kapaksotban/> (Downloaded: 2021.06.05.)

²⁷ Court of Justice of the European Union 128/15. s. PRESS RELEASE Luxembourg, 22 October 2015 – Case C-264/14 s. judgment in Skatteverket v. David Hedqvist

opinion of the General Counsel is a kind of preview of official regulations. This shows an interesting correlation with the minority policy of the late Ottoman Empire²⁸, as well as with Turkey.²⁹

For now, the position of the Ministry of Finance is that it is not, but tokens should be investigated the question of its treatment as a security. Tokens can be divided into two basic groups, utility and securities. Based on this, we can say whether it is a security or not. The utilities token can actually be interpreted as a user token, the security we can talk about a token as a digital asset.³⁰ If it belongs to the utility group, in that case it is not classified as a security, but only as a property-valued right, i.e. the issuer is obliged to pay taxes. In this case, the costs during the issue are minimal, its financing becomes easier, but it gives fraudsters the opportunity to abuse it.

Here it is important to clarify that, according to the Hungarian Penal Code, anyone who misleads or misleads others in order to obtain an unlawful profit, and thus causes damage, commits fraud.³¹ And the civil law situation can be linked here: misleading, intentional deception. In many cases, an issuer makes promises that it cannot necessarily keep, either deliberately deceiving the investor or for reasons other than its own fault, but in many cases the fraud is exhausted by the activity.

The other important fact is that a utilities tokens are extremely uncertain and therefore speculative, it is not possible to know in advance what will cause their value to increase, or what will cause it to decrease and when. In contrast, securities are in stark contrast token, since it is present as a security, we can get it in the form of an open sale, but the disadvantage for the issuer is the high production

²⁸Szűcs Lászlóné Siska Katalin, *Continuity and change. Islam and Secularism in the Late Ottoman Empire and Young Turkey*, JURA 23 : 1 pp. 131-139 , 9 p. (2017)

²⁹Szűcs Lászlóné Siska Katalin ,*The development of minority rights in Turkey, with particular regard to the provisions of the Lausanne Treaty*, IUSTUM AEQUUM SALUTARE 12 : 3 pp. 173-184 , 12 p. (2016)

³⁰ Marco Fisher , *What is cryptocurrency and how to buy it*, 2019 , <https://www.penznindzsa.hu/kriptovaluta/> (Downloaded: 2021.06.02.)

³¹ Fisher , c. 3.

cost, and thus universally less profit. And why is tokenization itself good? An object with an independent value receives a uniform determined value, which also serves as a kind of security.³²

Basically, the thing/tool doesn't stand up, it's more about a service, more precisely the promise of a service aimed at the future. With this approach, several legal problems arise that must be addressed: if it is a service, then the token is subject to VAT, and the income collected by the issuer is subject to TAO. This is important because, in the case of a classic share issue, the issuer does not pay TAO on the consideration for the issue and VAT does not arise, since the purchase of securities, like most securities, is not really included in the scope of VAT.

That is, they are taxed ³³during the ICO, but not during the share issue, and it follows that the legal problem is that in order to avoid securities regulation, the ICO issuers take on a lot of tax payment obligations and pass them on to the buyers, which will/may have a demand-reducing effect on the for customers. Securities regulation is a specific legal environment, usually issuers who comply with very strict information sharing obligations are basically exempt from any legal risk. On the contrary, ICO in many, mainly continental legal systems, such as the Hungarian one, too, is basically considered a promise, which is quite a big risk in terms of both civil and criminal law, since all security elements are missing, which is precisely why the securities were created.

For example, if the ICO's main information sharing document (the so-called "white paper") claims something and then the company does not use the money used in the correct way, then an investor can relatively easily sue the issuing legal entity and the senior officials, and what is simpler, cheaper and more painful, is reporting him for fraud. This is a particularly high risk, since in the case of a

³² Fisher , c. 5.

³³https://index.hu/gazdasag/2017/12/18/bitcoin_kriptopenz_kriptoaluta_blokkklanc_virtualis_penz_befektetesi_lufi_spekulacio_21._szazadi_penzugyi_rendszer/ (Downloaded : 2021.06.02.)

traditional first securities issue, companies that already have at least three closed years and have real income and a market- validated product or service ask for money. ³⁴On the other hand, the ICO is mostly an opportunity for companies that are looking for money for basic product development, i.e. they really have almost nothing yet. So if the development is delayed, the promise is no longer fulfilled.³⁵

The issued token should not be a security, this is a general demand, that's why they try to call it another way, usually as a utility token. Utility token is basically the pre-financing of the specific service or product, which constitutes the *raison d'être* of the issuer's business model, where the signing party receives a token, which represents an entitlement in relation to the availability of the future product/service, which can be priority, a discount or both. As an example, if the Tesla 3 subscription is a utility would work on a token basis, then the token clerk would be given the opportunity to buy the Tesla 3 before the general public (an entitlement in itself), to which other elements can be added, such as e.g. price discount, some extra service.

But the point is that the utilities token is not a share, does not give votes, dividends or other rights and its value cannot depend directly on the issuer's financial situation. This is somewhere a paradox that is really difficult to solve well: utility token's promise is that it is not a security, however, the vast majority of tokens are bought for speculative purposes in the belief that their value will increase.³⁶

Now let's review what these certain stablecoins are, they are nothing more than cryptocurrencies that are tied to some other instrument, covered by it; as a result, they have a stable exchange rate

³⁴Szűcs Lászlóné Siska Katalin *Thoughts on the 21st century search for Turkish foreign policy*, JURA 24 : 1 pp. 427-437, 10 p. (2018)

³⁵Sebestyén, c.5.

³⁶Pataki, c. 6.

on various trading platforms and crypto exchanges.³⁷ If we look at it from Cefi's side, the issuer keeps the given asset in custody, which can be fiat money, or even another cryptocurrency, even precious metals traded on the market, or other goods, but anything else, any asset can be tokenized.

With this solution, stablecoins eliminate high volatility, which is otherwise a common feature of unstable cryptocurrencies found on the market. The reference tools that promise stability are usually not DLT-based, but traditional underlying values that even exist in physical reality, and are stored "off-chain" accordingly, thus also being able to minimize financial risk.³⁸ The accumulated underlying collateral is managed and traded in full accordance with the current, relevant legislation, kept in payment accounts and even in safes; "off-chain" hedged stablecoins therefore actually embody the fiat money that serves as their hedge in the digital space; assets tokenized in this way "stand in" as a kind of guarantee capital for the issued stablecoins.

And what is of particular importance, the same works in reverse: with stablecoins, at least the possibility of return and redemption is guaranteed - so the issued stablecoin can be freely exchanged for the underlying asset held as collateral. The experience so far shows that the issuers of stable cryptocurrencies rarely actually and continuously have the full underlying coverage at their disposal, in fact. The individual who wants to purchase^{39a} a stablecoin is therefore forced to trust the issuer that, on the one hand, it will actually issue the stablecoin, and on the other hand, it will be just as willing to redeem it, even if the price of the given coin is falling on the market.

³⁷ Bálint Masszi , #MiCA #stablecoins #e-money-issuing institutions? 2021, <https://arsboni.hu/mica-stablecoins-elektronikuspenz-kibocsato-intezmenyek/> (Downloaded: 12.06.2021)

³⁸ Masszi , c. 4.

³⁹ Masszi , c. 4.

In other respects, there are no essential guarantees for the rules of redemption, the exchange rates, the actual existence of full coverage and the fact that the issuing entities are not absorbed all of a sudden, in Hungarian there is no essential guarantee for investor protection - unless it counts as such if, for example, a CeFi company the size of Facebook gets involved into a stablecoin project, since in this case people's trust in the product could jump to such an extent, and its acceptance in Facebook's already existing infrastructure would be so broad (Facebook wants to reach billions of new users in the coming years) that it could endanger the traditional financial system.⁴⁰In June 2021, Russia announced an independent stablecoin.⁴¹

THE DIGITAL FINANCIAL PACKAGE

On November 24, 2021, the Council adopted its position on two proposals that are part of the digital financial package - the proposal for a regulation on crypto asset markets (MiCA regulation) and the proposal for a regulation on digital operational resilience (DORA regulation). This agreement constitutes the Council's negotiating mandate for the tripartite negotiations with the European Parliament.⁴² The MiCA Regulation aims to create a regulatory framework for the cryptoassets market that supports innovation and exploits the potential of cryptoassets , while ensuring financial stability and investor protection. The purpose of the DORA regulation is to create a regulatory framework for digital operational resilience , whereby all businesses ensure that they can protect against ICT-

⁴⁰ Masszi , c. 7.

⁴¹Szűcs Lászlóné Siska Katalin, *Basic issues of international law in relation to the theory and history of international relations: textbook for public administration managers* , Debrecen, Hungary: Debreceni Egyetemi Kiadó (2010), 255 p.

⁴²Szűcs Lászlóné Siska Katalin *Thoughts you the Special Relationship between Nationalism and Islam in Particular the Late Ottoman Empire and the Early Turkish Republican Era* , JOURNAL ON EUROPEAN HISTORY OF LAW 8: 1 pp. 121-129 , 9 p. (2017)

related disruptions and threats in order to prevent and mitigate⁴³ cyber threats .

The Commission presented the digital financial services package on September 24, 2020. The package consisted of the following documents: the Communication on the EU Digital Financial Services Strategy and the Regulation on Markets in Crypto Assets (MiCA Regulation), the Regulation on Digital Operational Resilience (DORA Regulation) and the Pilot System for Market Infrastructures Based on Shared Ledger Technology proposal for a regulation (DLT regulation).

The digital finance package bridges the gaps in existing EU legislation by ensuring that the current legal framework does not impede the use of new digital financial instruments, while ensuring that these new technologies and products meet the financial regulation and operational risks of businesses operating in the EU. fall under the scope of its handling rules. Thus, the purpose of the package is to support innovation and the spread of new financial technologies, while simultaneously ensuring an appropriate level of consumer and investor protection.⁴⁴

ISSUES AROUND BLOCKCHAIN AND BITCOIN

Bitcoin has several characteristics that make it a desirable asset in the eyes of criminals. Thus, for example, its anonymity, decentralization, difficult to reserve and speed are all factors that bring benefits not only in everyday life.⁴⁵ In black markets operating

⁴³ <https://www.consilium.europa.eu/hu/press/press-releases/2021/11/24/digital-finance-package-council-reaches-agreement-on-mica-and-dora/>

⁴⁴ <https://www.consilium.europa.eu/hu/press/press-releases/2021/11/24/digital-finance-package-council-reaches-agreement-on-mica-and-dora/>

⁴⁵ László Dornfeld , *Bitcoin , the tulip of modern criminals?* <https://arsboni.hu/bitcoin-a-modernkori-bunozok-tulipanja/> (Downloaded : 12.06.2021)

on the dark web (the part of the Internet that is not indexed by search engines), cryptocurrencies are a common means of payment, and they can be used for many things, from assassins to child pornography to drugs. Silk _ When eradicating the black market known as Road (Silk Road), the FBI seized millions of dollars' worth of bitcoins. While TOR (The Onion Router, an encryption tool developed by the US Navy) created secure access, Bitcoin became the PayPal of black markets operating on the Dark Web.

On Alpha Bay, one of the largest digital black markets, 350,000 different illegal products could be purchased using bitcoin. According to the results of⁴⁶ the research involving all bitcoin transactions, about 24 million people used bitcoin for illegal purposes, that is, a quarter of all users. There are 36 million illegal transactions per year, which is 44% of all transactions, and their total value is \$72 billion per year, or a fifth of the value of all transactions. In addition, half of all bitcoins in existence have been involved in illegal transactions at some point. In addition to transactions, bitcoin can also play a role in other crimes.⁴⁷

For example, the recently increasingly widespread extortion viruses (ransomware), which encrypt the data stored on the computer and promise to unlock it only in return for the payment of a certain amount. The most famous of these was WannaCry, which infected hospitals and companies. These programs usually ask for payment in bitcoin, which, in addition to the previously described advantages, is another reason that it can be used in all parts of the world, as opposed to national currencies.

A good example of the inhumanity of such an incident is the case of the MedStar private clinic in Washington DC, whose systems were infected with a ransomware virus in 2016, so the patients' medical data was also locked, which made it very difficult to provide them with professional care. All of this raises the question: would

⁴⁶ Dornfeld , c. 2.

⁴⁷ Dornfeld , c. 3.

someone be more likely to pay off the blackmailer if their own life depended on it?⁴⁸

We cannot go without saying that not only bitcoin can be used, but also produced illegally.⁴⁹ Bitcoin is created by "mining", that is, by processing and approving transactions using a mathematical algorithm. This requires computing capacity, however, as more and more bitcoins are in circulation, mining requires an ever-greater investment of power. We read about many cases where they wanted to use computers for mining without authorization, for example a supercomputer in Russia. But ordinary users' computers can also be infected with a virus that then uses the machine for mining without the user's knowledge.

The damage to the victim is thus multiple: not only does he not benefit from the mined bitcoins, but his computer also depreciates faster, since the attacker's goal is to generate as many bitcoins as possible, thus deliberately overloading the computer's hardware. However, there are factors that work against the use of bitcoin. As Sarah Meiklejohn points out, if someone catches a drug dealer with cash, they will be charged with a crime, but if they get hold of the bitcoins, the transaction list reveals the entire criminal activity.⁵⁰

The unclear legal status of bitcoin and digital money creates an excellent basis for its use for money laundering.⁵¹ There is already a serious debate about whether these can be defined as money or property. In the United States, *Florida v. In the Espinoza case*, Michell was acquitted of money laundering charges by the district court *Espinoza*, since "*Bitcoin cannot be hidden in a mattress like cash and gold*" and thus does not require the use of banking infrastructure. Such a decision may also result in the fact that digital currencies are not subject to the investigation of anti-money laundering mechanisms,

⁴⁸ Dornfeld , c. 3.

⁴⁹ Anna Alexandra Lakatos, *IT crimes and bitcoin*,. Internal Affairs Review 2017/1. s. 24.

⁵⁰ Locksmith, c. 25.

⁵¹ Dornfeld , c. 5.

which means that their use will be even more attractive for criminals. However, there is no unified position on this either. *United States v. Faiella* case, for example, the court ruled that the transfer of bitcoin is considered a transfer of money.⁵²

One type of money laundering using bitcoin can be using your own money in online video games. In this case, the perpetrators send the in-game money to each other and then exchange it for bitcoins or other digital money, so it may appear that they have paid for some kind of in-game advantage, when in fact they have used it for money laundering. They also have useful tools at their disposal, such as Dark A wallet application that encrypts and mixes the transactions of other users, so that there are no traceable traces of the movement of money using bitcoin. Money laundering on crowdfunding sites is similarly untraceable, and among them there are more and more sites that can be supported with bitcoin.

There is also the possibility that someone can buy bitcoins with a prepaid card on sites that support this (e.g. circle.com), which also creates an opportunity for money laundering. Actions against money laundering committed with such tools also have practical difficulties, since there are as many different mechanisms for their operation as there are digital currencies. It is not possible to develop a uniform model for law enforcement agencies, since, for example, how easy it is to convert individual currencies into traditional cash also varies. In addition, the authorities have to face many investigative problems, such as the fact that there is no central body from which we can request the materials necessary to conduct the procedure.⁵³

The financing of terrorism has been considered a crime in most parts of the world since the UN convention on this matter adopted in 1999. ⁵⁴In many cases, this prohibition is also prohibited by other

⁵² Dornfeld , c. 5.

⁵³ Dornfeld , c. 7.

⁵⁴ András Zoltán Nagy - Kitti Mezei, *The extortion virus and the botnet virus as the two most dangerous computer viruses of today*. In: Gyula Gaál - Zoltán Hautzinger (ed.) *From Saint László to modern Hungarian law enforcement*. Pécs, Hungarian Military Society, Border Guard Department, Pécs Department, 2017. 163.

instruments, such as EU Directive 2017/541 on the fight against terrorism and Directive 2015/849 on their prevention in financial systems. Terrorist financing and money laundering are often treated together, because their tools are similar, but their goals are opposite: while money laundering wants to show the amount of money as coming from a legitimate source, terrorists, on the other hand, seek funds for illegal activities.

However, if bitcoin can be used for money laundering, it is clear that it can also be used to finance terrorism. In December 2017, a Long Island resident was arrested after sending \$85,000 to ISIS in the form of bitcoins. A website close to ISIS published a link where they accept donations in bitcoin. On behalf of the bitcoin community, Kai Sedgwick responded to the allegations, calling it a fear-mongering attempt by senior politicians who "still print the Internet."

In his opinion,⁵⁵ bitcoin is not ideal for terrorists in many ways: transactions can be traced and are not as anonymous as many people think; the daily operating costs of terrorist organizations must be covered in paper money, and the withdrawal of money already leaves visible traces; the amount of handguns they need cannot be purchased online; and the cost of treatment is too high. These arguments do not seem very convincing, since the financing of terrorism through the traditional banking system already faces enormous difficulties these days.⁵⁶ But as with money laundering, the shortcomings illustrated there make online banking and bitcoin a much more attractive alternative, where the outlined problems are more of a nuisance than a deterrent.

The European Union wants to regulate bitcoin precisely in connection with the financing of terrorism. For example, they would require merchant and wallet sites to identify their users, limit the use of prepaid cards, meet transparency requirements, and give member

⁵⁵Nagy-Mezei, c. 165.

⁵⁶Szűcs Lászlóné Siska Katalin, An overview of the development of women's rights from the foundation of the Republic of Turkey to the present day, *Jog Allam Politik: Journal Of Jog And Political Science* 2 pp. 39-54, 16 p. (2017)

state authorities better access to certain data. However, certain member states have taken a stand against the regulation for the time being, fearing that it would negatively affect their economy.⁵⁷

how does data management develop in the case of blockchain and bitcoin? In the bitcoin system, the blockchain technology in such a virtual payment system for development was used in an anonymous way can be used', since it is not necessary to enter personal data to carry out operations with individual coins. Regardless, such a blockchain is imaginable a system using technology, in which the blocks are also used to store personal data, so e.g. stored in the block, basically for payment personal data is also linked to the data used.

If in the blockchain some blocks are also used to store personal data, so the question may arise as to who qualifies as a data controller in this case. Infotv. _ data controller according to the concepts described above primarily that person is considered to be the person handling the personal data its purpose determines, makes relevant decisions and _ executes. Since the blockchain about such a decentralized network we are talking about where there is no central one entity that exercises control over the operation of the system and done with the data over transactions, therefore the data is practically handled by individual users are carried out.⁵⁸

The blockchain regarding therefore, each user who adds blocks and data stored in them to the system (e.g. in connection with the bitcoin system coins " miner ") as a data controller qualifies as. Later, the user who adds data to the system is exclusive disposal gets authority over the data stored in the blocks, so he can determine which transactions the data is will be used for its implementation. If the transactions through stored in the block disposition over personal

⁵⁷Locksmith, c. 30.

⁵⁸ *The National Data Protection Authority and Freedom of information Authorities its position is blockchain technology _ _ data protection regarding its connections* , 2017, 1. https://naih.hu/files/Adatved_allasfoglalas_naih-2017-3495-2-V.pdf (Downloaded : 12.06.2021, in citation: NAIH)

data permission for delivery got another one user, from then on this user (the recipient of the data) acquires exclusive rights over the data provision, so he will be the data controller qualify. The blockchain technology in connection with this, the concept of data processor can be interpreted in the case that the original data controller is authorized to dispose of the data, e.g. an assignment with a contract different " forward defined data management operations (e.g. transactions) are commissioned by another to the user .

In the blockchain stored personal data management its legal basis is currently in force legislation based on the person concerned consent or the legitimate interest of the user can form [Infotv . Section 5 (1) point a) and Section 6 (1)]. If the data subject does not consent to the storage of his personal data by the " user ' in control of the data stored in the block , or to the operations with those complete , furthermore , the user cannot prove a legitimate interest in relation to the data processing , so the data processing cannot be lawful .⁵⁹

Let's take a look at how the question of jurisdiction plays out. Due to its decentralized nature , users will different" states can also be explained by data controllers under their jurisdictions their activities.

Processing of personal data regarding individuals _ protection and on the free flow of such data on the basis of Article 29 of Directive 95 /46/EC (hereinafter : Directive) created Data Protection Working Group (hereinafter : Working Group) on the concepts of " data manager " and " data processor " sóló 1/2010. In his opinion (WP169) he explains in this regard: " *The quality of data management primarily its factual the consequence of a circumstance that a legal entity so decided to own for its purposes processes personal data .*"⁶⁰

The Data Protection Working Group also explained that the definition of the concept of data processing plays a prominent role in deciding which state's national law will be applied to the given data management or to certain operations performed on the data .

⁵⁹NAIH statement, c. 2.

⁶⁰NAIH statement, c. 3.

According to Article 4(1)(a) of the Directive, the main applicable law rule is that each member state applies its national provisions, if the data processing "the Member State in the area of the activities of the data processor or an organization in the framework of are carried out".

About the right to apply, accepted by the Data Protection Working Group's 8/2010. opinion number (WP179) according to the definition of the applicable law in terms of its "activities in the framework of the concept of "is the decision", not where the personal data is stored. The concept of this term does not mean that the applicable law is the law of the Member State where the data controller is established, but where the data controller has an organization for data processing participates in related activities. If a person own activities in the framework of processes personal data, the applicable law will be the law of the Member State where this person is is ⁶¹staying

In connection with the above, the Authority also draws attention to the fact that the European C- 230 / 14 dated October 1, 2015. settlement in judgment no. term C-131/12. in comparison to judgment no. (the so-called Google Spain judgment) interpreted. The EU does so decided C-230/14. in his judgment no. it should be interpreted as if it is possible different Member State to protect personal data concerning the regulation of application, as where the controller of this data is registered, if this data controller is permanently little measure "real and actual is active in this Member State area, in the framework of which this data management takes place.

The blockchain technology in connection with the jurisdiction your question so the clarification of that preliminary question decides to manage the data its purpose determining "data manager" which state area manages the data. This is the blockchain to technology projected, it will be the state where the data controller handles the data related operations is carried out, so e.g. transactional issues

⁶¹NAIH statement, c. 3.

referral commands, accesses the blockchain and adds data to it (e.g. "coins" in connection with the Bitcoin system miner out"), and the operations to perform issues relevant instructions. In the blockchain "physical" location of stored data in this respect irrelevant.⁶²

A blockchain technology user's data manager's data protection in connection with its inspection by the prosecuting authority according to the main rule, it will be the one in which the data controller is responsible for data processing operations performs, e.g. issues referral orders, miner servers operates etc. The international with data transmission and on the border with cross-cutting data management related matters entered into force on May 25, 2018 stepped General Data Protection Regulation Article 50 defines the European Union's member states and data protection authorities for cooperation framework.⁶³

MORE ALTCOINS

Ethereum: The Ethereum⁶⁴ an open source, public, community, blockchain based on distributed computing based computer technology platform and cryptocurrency, which also has a smart contract function (script). Therefore, ethereum is not only a cryptocurrency, i.e. digital or electronic money, but also a platform that can be used to create different applications for the blockchain. A so-called decentralized Turing-complete virtual computer provides Ethereum Virtual Machine, which consists of an international network of public nodes. Ethereum also provides a currency called ether cryptocurrency tokens, which can be transferred between accounts and can be used to compensate for computing performance. "Gas" is an internal transaction pricing mechanism that filters out spam and provides resources for the network. Ethereum is

⁶²NAIH statement, c. 2.

⁶³NAIH statement, c. 2.

⁶⁴ <https://ethereum.org/en/> (Downloaded : 12.06.2021)

perhaps the most famous and well-known cryptocurrency at the moment, i.e. the bitcoin besides being one of the most popular altcoin (this is the name of cryptocurrencies next to bitcoin, which was created by combining the words bitcoin and alternative). In fact, it ranks second in the cryptocurrency rankings based on market capitalization.

Its fans also call it Bitcoin 2.0. The creation of Ethereum in late 2013 Vitalik It was suggested by Buterin, a researcher and programmer of cryptocurrencies. The main goal was to make a create an altcoin, which provides a solution to the problems that occur during the operation and use of bitcoin (for example, the long transaction times in the world of cryptocurrencies, or the 51% hashrate ownership problem that occurs in the case of centralized "miners"). The financial background for the development was provided through an online community fundraiser that took place in July-August 2014. The system was launched on July 30, 2015 with 11.9 million coins, which were "pre-mined" for community purchases. This represents approximately 13% of the total volume in circulation.

Co-founder Dr. Gavin Wood created the technological "Bible" of Ethereum. The latter is a virtual machine (Ethereum Virtual Machine - EVM) that manages the online ledger and runs the smart contracts. Another co-founder, Joseph Lubin, created the Brooklyn-based startup ConsenSys, which develops decentralized applications. In 2016, there were significant movements and fluctuations in the exchange rate, after the opening price of USD 0.94, the price peaked at USD 20.85 on June 17, 2016, then suddenly fell close to USD 10, and ended the year at around USD 8 closed it. The growth was still amazing, 749%.

The sudden drop in the exchange rate was primarily due to hackers taking advantage of security flaws to steal a larger amount. However, users quickly regained their trust in cryptocurrency and since the developers created a so-called with a hardfork, a new coin was created in which the security flaw was eliminated, Ethereum

essentially split in two. Thus, in 2016, the DAO (decentralized autonomous organization) ie decentralized autonomous organization due to the collapse of the project, two separate blockchains were created from Ethereum. The previous version Ethereum Classic continues to run under the name (ETC) and the new, disconnected version continues to be called Ethereum (ETH).

Litecoin: A Litecoin⁶⁵ a cryptocurrency that On October 7, 2011, Charles Lee (formerly of Google) posted a on GitHub. The name also applies to the operator of the means of payment open-source software and the distributed network created with it. Litecoin shares many similarities with With Bitcoin, the main difference between them is in the cryptographic algorithm used to generate new blocks. Like Bitcoin, Litecoin does not depend on central issuers and authorities. Litecoin is a peer-to-peer it relies on a distributed database stored by network nodes. The database contains payment data, guaranteeing the basic requirements for electronic means of payment. The safety digital signatures and proof -of- work given by the system.

Litecoins can be safely stored in a wallet file, on a personal computer, mobile phone, external data carriers , or with cloud-based providers, and to send and receive them , only the Litecoin address of the sender and recipient is required. The peer-to-peer structure and the lack of central control prevent any authority from controlling or influencing the amount of money and transactions in circulation, which makes manipulation and inciting inflation impossible. Due to its unofficial nature, it does not have an ISO code, but it is a commonly used designation LTC.

One of the biggest differences between Bitcoin and Litecoin is the total supply. This is where Litecoin differs from Bitcoin the most. Bitcoin 's network can never have more than 21 million coins , while Litecoin 's number is 84 million. In theory, it seems like a huge advantage, although its real-world impact is negligible. This is because both coins are divisible by millions of times. Divisibility is

⁶⁵ <https://litecoin.org> (Downloaded : 12.06.2021)

important because it allows users to buy very cheap products and services regardless of how high the price of a unit of BTC or LTC is.

Dogecoin: Dogecoin is ⁶⁶a cryptocurrency that appeared in December 2013. The developers originally intended it as a joke, based around a current Internet meme called Doge. Created by Jackson Palmer, the software was created based on the source code of other cryptocurrencies . Users started using it as a like, sending Dogecoin to each other in exchange for interesting content, which made Dogecoin its capitalization jumped to 60 million dollars in just a single month and became a well-known Internet currency. In 2015, one of the most well-known coin types after Bitcoin and Litecoin , it does not depend on the issuing institution, its operation is similar, the technological principles of its operation are the same as those of these two virtual currencies. By the end of April 2017, Dogecoin its capitalization is already more than 81 million dollars. Dogecoin operates independently of governments, financial institutions, or organizations .

Dogecoin addresses start with the letter D or A, each address (public key) has a private key with which transactions are signed. Dogecoin is script _ uses an encryption algorithm , the public key can be clearly calculated from the private key. Only the person who has the corresponding private key can send Dogecoin from the given address. Transaction fees are negligible, a certain number of transactions can be carried out for free in each block. Transactions are executed immediately (typically within one second) and cannot be reversed. The block time of Dogecoin is one minute - this means that transactions are credited within 2-3 minutes and recorded in the blockchain - and it is enough to wait one and a half minutes for the first confirmation of the transaction. Dogecoin is free to mine. During mining, transactions are recorded in the blockchain. Whoever produces the safest, longest block receives the amount of Dogecoin for mining the block. A private key is associated with a normal

⁶⁶ <https://dogecoin.com> (Downloaded : 13.06.2021)

Dogecoin address, but multi-signature addresses can be created with the help of separate web services - in this case, the signatures of several participants are scarce for the transfer from the address (for example, 2 out of 3 or 3 out of 5). In addition to the official Dogecoin client, there are also other clients and online wallets.

CONCLUSION

In summary, cryptocurrencies play a significant role in our everyday life. Nothing proves this better than the fact that several states and international organizations have started to deal with the issue. For example, the state of Honduras will recognize Bitcoin as a means of payment from June 2021. The European Union has a separate recommendation for the legal regulation of blockchain and cryptocurrencies. From November 2021, they will also be included in the effective Hungarian personal income tax law, because the Hungarian state imposes a 15% tax liability.

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

László Kerekes

László is a PhD candidate at Géza Marton Doctoral School of Legal Study Debrecen University, Hungary

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Religious Anthropology: Catalyst for Unravelling Discourses and Fostering Profound Understanding in Arab Society through Islamic Law

Muhtadi Al-Abyadh¹²  , Mohammad Reevany Bustami² 
Ikomatussuniah³ 

¹ Social Research in Ministry of Justice. Iraq

²Centre for Policy Research and International Studies (CenPRIS),
Universiti Sains Malaysia (USM), Penang, Malaysia

³Universitas Sultan Ageng Tirtayasa, Indonesia

 muhtadi@student.usm.my

ABSTRACT

The Arab-Islamic world remains afflicted by a lack of mutual acceptance, both within Islamic sects and among different religions. This study seeks to alleviate this issue by advocating for the advancement of religious anthropology, aiming to enable researchers to comprehend the religious and social dynamics of both them and others. This understanding is pivotal in promoting values of tolerance and peace, replacing the current undercurrents of violence and animosity. Employing anthropological epistemology, the researcher examines the origins of Arab-Islamic violence through deductive analysis. Notably, the study identifies the jurisprudence "Fiqh" as a one of sources the violence and hostility, in stark contrast to the values of tolerance and peace present in the Holy Qur'an – the primary legislative source. To firmly establish these principles, integrating anthropological studies into both educational and religious sciences curricula is essential. This proactive approach aims to reshape perceptions and foster mutual understanding, thereby guiding the Arab-Islamic world towards unity, empathy, and shared progress.

Keywords: Religious anthropology; School Curricula; Violence; Islamic Law; Monotheistic Religions.



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INTRODUCTION

The study of hatred, violence, and interfaith dialogue in Arab-Islamic society is still in its early stages, and a few studies are not sufficient, especially from an anthropological point of view. This topic has become a divergent social phenomenon that requires multiple studies and numerous researchers. Hatred in our society goes beyond religion, as culture plays a significant role, whether it is tribal, religious, or imported. Hatred and violence are linked to a fear of the other first and defense of belief or self-secondly.

The Arab-Islamic society still carries the memories of the Crusades, political domination, and colonialism from the Western world, just as the Western world does not forget the control of Islamic civilization during the dark ages and extremist Islamic movements ¹, while overlooking the common values between them. To overcome this issue, we must draw from the experience of the Western world in overcoming violence and societal hatred.

This can be achieved through the renaissance and renewal of their curricula and the incorporation of humanities, including cultural, social, and religious anthropology, into the academic programs of universities, forums, and scientific journals. Thus, the study in this paper will follow anthropological epistemology, which is concerned with the worldview of a particular culture or society (paradigm) and reflects the cultural and social behaviour stemming from this perspective. Using secondary data. Marianne de Laet says:

“What is emerging in these anthropological renderings is a shift in thinking about knowing. Increasingly, I think, we see knowing emerge as practice, and anthropological inquiry as an investigation of how knowing is done” ².

¹ Muhammad Khalid Masud, “Islamic Modernism,” *Islam and Modernity: Key Issues and Debates*, 2009, 237–60.

² Marianne de Laet, “Anthropology as Social Epistemology?,” *Social Epistemology* 26, no. 3–4 (2012): 419–33, <https://doi.org/10.1080/02691728.2012.727196>.

Furthermore, Wittgenstein's idea of reality, which was formed through language games, aligns with Horton's view that all belief systems, including religious and scientific, are attempts to explain reality, making them comparable in their truth value. Additionally, Lukes and MacIntyre argue that since "native beliefs make assertions about the world," they can "be evaluated as propositions and judged as to whether they correspond to a state of affairs in the world."³

Thus, when we understand the culture of indigenous people or the society under study, through their language, religion, beliefs, and behaviour, we pave the way for self-understanding. Consequently, anthropology's task is to comprehend the other as a means of understanding oneself. In this regard, G. Carter Bentley says:

"Modern theories of interpretation place self-understanding as the necessary complement of understanding the other. Paraphrasing Gadamer, Ulin describes "the fusion of horizons" as "the engaging of distinct traditions, which characterizes every act of understanding and through which meaning and truth are disclosed"⁴.

The Arab world continues to grapple with a deep-seated conflict in its intellectual research, evident both at the academic and religious levels. Academic knowledge originating from the West often faces mistrust in the Arab-Islamic context, leading to a noticeable tension between science and religion. Moreover, the outdated Islamic studies curriculum no longer aligns with the spirit of the present age, fuelling animosity and violence towards others, particularly in jurisprudential and ideological studies.

The impact of humanities, especially anthropology, remains limited in the Arab reality, largely due to scepticism from religious authorities who perceive these disciplines as potential threats, having witnessed their establishment and separation of religious and secular realms in the Western world. Additionally, the Arab-Islamic memory

³ G. Carter Bentley, "On Anthropological Epistemology: Praxis and Critique," *Reviews in Anthropology* 11, no. 3 (1984): 170-84, <https://doi.org/10.1080/00988157.1984.9977681>.

⁴ *Ibid*, Bentley.

carries the recollection of an anthropological approach employed in past colonization by the Western world.

Hence, this research endeavours to explore the role of educational curricula in combating religious hatred and violence towards others, promoting pluralism, diversity, tolerance, and peace. To achieve this, the following questions will be addressed: The methodology employed in this paper is anthropological, specifically relying on cognitive anthropology as a primary model for studying the content of thought or knowledge, as it is distributed across individual societies and observed in natural environments⁵. The data utilized in this research is derived from literary review and analysis of previous studies, especially concerning the culture of violence within Arab society.

This includes some jurisprudential laws related to violence, in addition to addressing Quranic texts that advocate tolerance and acceptance of others. Therefore, the methodology adopted a hermeneutic approach in its analysis, with pioneers in hermeneutical anthropology being Gadamer and Geertz. Gadamer emphasizes that human understanding arises from participation in social traditions, a concept applicable not only to science but also to other forms of human understanding. The central assumption for Gadamer is that understanding, or meaning construction, emerges as an interaction between pre-understanding (prejudice) and the impact of the entity (text, action, artistic work, rituals, oral communication, etc.). In this sense, meaning is regarded as an interactive effect, as it comes into existence in the interaction that occurs when pre-understanding, i.e., structures of meaning, are applied to incoming stimuli (text, action, artistic work, etc.).

Understanding is seen as an effect. Gadamer succinctly summarized this when he wrote, "Understanding is fundamentally an

⁵ David B. Kronenfeld et al., *A Companion to Cognitive Anthropology*, ed. David B. Kronenfeld et al., *Wiley-Blackwell* (Wiley, 2011), <https://doi.org/10.1002/9781444394931>.

effective historical relationship."⁶ Therefore, the research approach involves interpreting the data within the framework of this hermeneutical perspective, drawing on the insights of Gadamer.

VIOLENCE IN ARAB-ISLAMIC SOCIETY OVERVIEW

Many studies analyse Islam's connection to violence, and Ibn Khaldūn's theory linking state emergence to tribal violence is also well-studied⁷⁻⁸. This contribution contextualizes this theory with specific cases: Andalusian Taifas, Almoravid emirate, and Almohad caliphate. These cases show diverse forms of state violence and warfare in Islamic contexts. Mixing secular and religious elements to justify violence challenges the notion of Islam's inherent link to violence. Instead, these cases highlight the intricate ways violence is justified⁹.

The key role of educational reform in promoting pluralism and freedom within the region was highlighted by reports such as the UN Arab Development Reports and the 9/11 Commission. Recent U.S. foreign policy has prioritized educational system reform in the broader Middle East, including Saudi Arabia. The Saudi people themselves have expressed concern. Notably, a comprehensive study in 2003 by former Saudi judge Sheikh Abd Al-'Aziz Al-Qassem and Saudi author/journalist Ibrahim Al-Sakran analysed three curricula

⁶ Anthony Bradley, "HERMENEUTICS AND INTERPRETATION IN ANTHROPOLOGY," in *The Political Economy of Liberation* (Peter Lang, 2016), 304–22, <https://doi.org/10.3726/978-1-4539-0554-8/4>.

⁷ Joseph Alagha, "Ibn Khaldun: A Sociology of History," *International Sociology* 32, no. 2 (2017): 180–88, <https://doi.org/10.1177/0268580916687460>.

⁸ Hamied G. M. Al-Hashimi, "Iraqi Personality in Light of Ali Al-Wardi's Works: A Critical Review," *Sociology Study* 7, no. 1 (January 28, 2017), <https://doi.org/10.17265/2159-5526/2017.01.001>.

⁹ Pascal Buresi, "Violence and Warfare in Medieval Western Islam," *History and Anthropology* 34, no. 1 (January 1, 2023): 39–60, <https://doi.org/10.1080/02757206.2022.2060214>.

for Saudi middle and high schools: Al-Hadith, Al-Fiqh, and Al-Tawhid. This study observed that the Kingdom's religious studies curriculum encourages violence and misguides pupils into believing they must violently repress and even physically eliminate others to protect their religion ¹⁰.

Additionally, Pew Research Centre (2013) ranks Middle East/North Africa highest in religion restrictions, social hostilities. Restrictions increased by 15% from 2010-2011. Fox's analysis (2013): 28 types of religious discrimination in Middle East. US State Department (2013): Christian presence declining. Social harassment surpasses government; mass-level religious intolerance rising ¹¹. According to James Piazza's research ¹², Muslims who do not support equal political rights for non-Muslims in societies with a Muslim majority are more prone to engaging in political violence compared to those who advocate for granting minorities political equality.

Author article delves into the link between warfare and religion in precolonial Africa, showcasing religion's pivotal role in justifying and commemorating violence, and its tie to anticolonial defiance. The author highlights religion's influence on war, including rituals for purification after combat and adherence to specific regulations. The article also notes how spiritual endorsement was crucial for waging war and how Muslim leaders formed religious movements in response to political and economic constraints.¹³.

¹⁰ Nina Shea and Ali Al-Ahmed, *Saudi Arabia's Curriculum of Intolerance with Excerpts from Saudi Ministry of Education Textbooks for Islamic Studies*, Center for Religious Freedom, 2006, www.freedomhouse.org/religion.%0Ahttp://www.hudson.org/index.cfm?fuseaction=published_articles_and_op-eds.

¹¹ Michael Hoffman, "Religion and Tolerance of Minority Sects in the Arab World," *Journal of Conflict Resolution* 64, no. 2-3 (2020): 432-58, <https://doi.org/10.1177/0022002719864404>.

¹² James Piazza, "Intolerance of Non-Muslim Political Rights and Engagement in Political Violence: A Study of Public Opinion in 11 Arab Countries," *Behavioral Sciences of Terrorism and Political Aggression* 0, no. 0 (2022): 1-15, <https://doi.org/10.1080/19434472.2022.2061570>.

¹³ Richard Reid, "Sacred Violence and Spirited Resistance: On War and Religion in African History," *History and Anthropology* 34, no. 1 (2023): 20-38, <https://doi.org/10.1080/02757206.2022.2060213>.

RELIGIOUS ANTHROPOLOGY

According to Charlotte Seymour-Smith's Dictionary, anthropology can be defined as the scientific study of diversity, where each culture pursues its own logic and explores internal integration, sophistication, and humanity. In the context of religious anthropology, it delves into what it terms "the dialectic of practical religion," which refers to the dynamic relationship between the written doctrines of major world religions and the actual local practices observed within those religions¹⁴.

An anthropologist, aiming to comprehend religion beyond idealistic textual prescriptions and theoretical definitions of what religion ought to be, focuses on how it is practically lived and experienced by "real people." This approach leans strongly towards inductive reasoning rather than deductive, and most anthropologists regard their methodology as morally impartial. It adopts a scientific perspective instead of favouring any particular religious culture. The primary interest lies in understanding people's genuine beliefs and perceptions of the world, their comprehension of the divine or supernatural, and their actual behaviours.

When writing ethnographies, the anthropologists generally do not consider it their duty to generate new concepts about how religion or society functions; such innovations are left to religious scholars and philosophers within the specific cultural context.¹⁵ Therefore, from an anthropological perspective, religion is significant in meeting the

¹⁴ Charlotte Seymour-Smith, *Palgrave Dictionary of Anthropology* (Macmillan International Higher Education, 1987).

¹⁵ Fiona Bowie, "An Anthropology of Religious Experience: Spirituality, Gender and Cultural Transmission in the Focolare Movement," *International Journal of Phytoremediation* 68, no. 1 (2003): 49-72, <https://doi.org/10.1080/0014184032000060362>; Fiona Bowie, "Anthropology of Religion," in *Studying Global Pentecostalism Theories and Methods* (University of California Press, 2010), 156-74, <https://doi.org/10.1525/california/9780520266612.003.0009>.

normative requirements of human existence and is considered a sacred aspect of life ¹⁶.

In Arab and Islamic reality, anthropology has had limited influence due to the scarcity of research and teaching resources dedicated to it. However, the importance of this scientific discipline becomes evident in their context, given that Arabs live within an Islamic-tribal society characterized by conflicts, religious fervor, tribal systems, and intricate religious phenomena. Consequently, anthropology becomes indispensable for studying Arab society comprehensively, encompassing its culture, social structures, and humanity ¹⁷.

Renowned thinker Muhammad Arkoun ¹⁸ believes that cultural anthropology offers a potential solution to resolve conflicts and differences between sects, religions, and diverse groups within Islam. He views the religious phenomenon as an anthropological construct that not only pertains to Islam but extends beyond it, encompassing a broader human experience. Here, the term "religious phenomenon" denotes a universal human aspect, as every human society on Earth possesses a religion or a sacred belief system that they adhere to.

Hence, anthropology's mission involves conducting comparative studies of various heritages and religions ¹⁹. These studies yield outcomes that promote a better understanding and reconciliation between different religions and sects. They affirm that the diversity of cultures and religions is a crucial social requirement,

¹⁶ Warsono Warsono and Muhtadi Alabyadh, "Religion: Functional and Dysfunctional, From Daily Life To Become Media Coverage," *The Journal of Society and Media* 6, no. 1 (April 30, 2022): 257-71, <https://doi.org/10.26740/jsm.v6n1.p257-271>.

¹⁷ Zaid Eyadat, Francesca M Corrao, and Mohammed Hashas, *Islam, State, and Modernity Mohammed Abed Al-Jabri and the Future of the Arab World*, ed. Zaid Eyadat, Francesca M. Corrao, and Mohammed Hashas (New York: Palgrave Macmillan US, 2018), <https://doi.org/10.1057/978-1-137-59760-1>.

¹⁸ Mohammed Arkoun, "Liberation of Islamic Consciousness, towards Getting out of the Dogmatic Fences," *Dar Al-Tali'a for Printing and Publishing*, 2011, isbn: 9 789953 409313.

¹⁹ Bowie, "Anthropology of Religion."

arising from the variations in time and place experienced by humanity²⁰.

Consequently, educational institutions in Arab and Islamic societies should strongly endorse this field of study, facilitating students' opportunities to pursue specialized education abroad. By fostering a comprehensive and profound comprehension of anthropology, we can initiate research that fosters unity and mutual recognition between Islamic communities and humanity at large, fostering harmonious relations between the self and others²¹.

Anthropology, encompassing cultural, social, and religious aspects, has faced unparalleled rejection, denial, opposition, and criticism in the Arab world. The relationship between the Arab and Third World societies and this branch of knowledge has consistently been fraught with tension, spanning cultural, social, and political dimensions. Several conditions and considerations intertwine, blending the epistemological, political, and ideological aspects²².

At the ideological and political level, there exists a prevalent notion that anthropology is inherently a colonial science²³, with its

²⁰ Malory Nye, "Religion Is Religion? Anthropology and the Cultural Study of Religion," *Scottish Journal of Religious Studies* 20, no. 2 (1999): 193–243.

²¹ Arkoun, "Liberation of Islamic Consciousness, towards Getting out of the Dogmatic Fences."

²² Ebrahim Moosa, "Colonialism and Islamic Law," *Islam and Modernity: Key Issues and Debates*, 2009, 158–81.

²³ Significantly, anthropology arose from the concerns of compassionate activists who were associated with a distinct circle of British society: the circle of Nonconformists, especially the Quaker philanthropists. Political figures from Nonconformists and Quakers led the campaign against the African slave trade and the legitimacy of the institution of slavery in the British colonies. When slavery was abolished in 1833, this same group addressed the situation of the indigenous people in South Africa by leading the establishment of the Parliamentary Select Committee on the Aborigines and then the formation of the Aborigines Protection Society, with the slogan "ab uno sanguine - 'all men are of one blood'." The Society's aims arose from the stark disparity which its founders saw between the conduct of Britons at home and their conduct abroad, that is, between the devotion to civil liberty and moral and intellectual improvement in England, and the "injuries we have inflicted, and the outrages we have committed abroad," the vices which we have fostered, and the utter ruin and devastation which we have caused" in the colonial territories (Natives Protection Society 1837). Fredrik Barth et al., *One Discipline, Four Ways: British, German, French, and American Anthropology*, NBER Working Papers (The University of Chicago Press, Ltd., London, 2005), <http://www.nber.org/papers/w16019>.

roots traced back to the pre-colonial explorations, continuing through the Orientalist era, colonial period, and extending into the post-colonial era. Meanwhile, at the epistemological level, the Arab mindset seems to struggle in understanding that anthropology has evolved beyond its historical focus on so-called "primitive," "traditional," and "rural" societies and cultures ²⁴.

It is important to recognize that this specialization has been instrumental in helping the Western world emerge from its dark ages and reject narrow-mindedness. Anthropologists have revealed the diversity of religions worldwide, highlighting that no single group is exclusively chosen by God. Such discoveries have led to the realization that religious ideas share similarities across different faiths ²⁵. Consequently, Christianity, for instance, is one of many religions, prompting questions about why hatred and violence exist against those who follow other beliefs.

Through this specialization, a shift in perspective has occurred, where the focus is on understanding humanity itself, rather than defining individuals based solely on their religious affiliations or other characteristics.

Hence, it is imperative to promote and integrate this discipline into the fabric of universities, colleges, and academic platforms within the Arab and Islamic world, with substantial support from governments. The present-day anthropology, often referred to as contemporary anthropology of the worlds, differs significantly from its earlier form due to several factors. The political independence of colonial societies following World War II, alongside profound societal changes witnessed by Western and non-Western nations, including

²⁴ Othman Lakashmi, "For a New Anthropology for a New World," *AlFaisal*, 2019, <https://www.alfaisalmag.com/?p=15189>; Leila Abu-Lughod, "Zones of Theory in the Anthropology of the Arab World Author," *Annual Review of Anthropology* 18, no. 1989 (2008): 267-306, <https://www.jstor.org/stable/2155894%0AREFERENCES>.

²⁵ Naomi Schiller, "Liberalism, Anthropology Of," *International Encyclopedia of the Social & Behavioral Sciences* 14 (2015): 11-17, <https://doi.org/10.1016/B978-0-08-097086-8.12206-8>.

globalization, the rise of new urban lifestyles, and advancements in communication technology, have reshaped the field ²⁶.

Today, anthropology examines the social contract by delving into its consequences across different contexts. This idea, loaded with assumptions about human nature, politics, governance, and concepts like freedom and legitimacy, is ethnographically studied to understand its influence on state-society relations. This shifts the focus towards investigating the social contract itself, including its cultural interpretations and political outcomes ²⁷.

These transformative events have led to the characterization of anthropology, along with other colonial social sciences, as facing a crisis and being subject to scrutiny. Consequently, anthropology has been compelled to reassess its focus and methodology, adapting to the evolving dynamics of the world it seeks to study ²⁸.

To truly comprehend contemporary humanity, which has emerged from history and is currently navigating the aftermath of modernity, anthropology must delve beyond merely understanding the origins of harsh social conditions or the processes through which societies and states were established. It must address the fundamental question of how humanity arrived at its present state. Therefore, anthropology must seek knowledge from real spaces and historical timeframes, avoiding the reliance on super-reality or abstract constructs.

The essence of anthropology often lies within the minds of ordinary individuals who engage with its study. It manifests itself through their perceptions of life, their attitudes towards the world, and even in the nuances of their emotions, such as smiles, sadness, pride, and defeat. Understanding the true nature of contemporary

²⁶ Sergei Gavrov and Igor Klyukanov, "Modernization, Sociological Theories Of," in *International Encyclopedia of the Social & Behavioral Sciences*, Second Edi, vol. 15 (Elsevier, 2015), 707-13, <https://doi.org/10.1016/B978-0-08-097086-8.32094-3>.

²⁷ Gwen Burnyeat and Miranda Sheild Johansson, "An Anthropology of the Social Contract: The Political Power of an Idea," *Critique of Anthropology* 42, no. 3 (2022): 221-37, <https://doi.org/10.1177/0308275X221120168>.

²⁸ Lakashmi, "For a New Anthropology for a New World."

man requires exploring the depths of human experiences, thoughts, and emotions as they have unfolded in tangible reality throughout history²⁹.

Thus, hatred and violence are anthropological data that are inseparable from other factors generating the history of human societies that affect them. And when I say that violence is an anthropological phenomenon, this means that it is a human phenomenon that no human society is free from, and when we say about any phenomenon that it is anthropology, it means that it is universal. Note that violence in its various functions and manifestations is still not well studied. It is still one of the unthinkable phenomena of modern thought. This is intolerable, because violence destroys the lives of people and families³⁰.

FQIH AND THE PRINCIPLES OF VIOLENCE

It is possible for anthropology to engage with and study Fiqh comprehensively, as Fiqh comprises religious rulings related to the law, making it a subject relevant to legal anthropology. Legal anthropology involves studying and comparing legal provisions across diverse societies, including primitive and civilized ones, among others³¹. Darryl Li has submitted an anthropology article examining ethnographic legal practice, which highlights the contextual nature of legal systems. Using the example of conspiracy in early US court cases related to Al Qaeda, the article draws on the

²⁹ Alaa Jawad Kazem, "The Picture Is an Anthropology Story," *Dar Altanwir*, 2013, isbn:139789953582115.

³⁰ Arkoun, "Liberation of Islamic Consciousness, towards Getting out of the Dogmatic Fences."

³¹ Russell Smith and Bronislaw Malinowski, *Crime and Custom in Savage Society* (Routledge, 2018).

author's experience as both a lawyer and anthropologist in War on Terror litigation³².

Consequently, Fiqh serves as fertile ground for anthropological research. It continues to shape the mindset of Arab and Islamic societies, while also intersecting with positive law, modern values, and technological advancements. Thus, Fiqh offers a promising realm for anthropological studies, shedding light on the intricacies of these societies and their legal, cultural, and socio-technological dimensions.

Islamic history has gone through three setbacks that changed his concept and closed his mind and made him stagnant. The first is the great sedition, according to Dr. Taha Hussein's vision, the political-ideological struggle over the Islamic caliphate³³, and the second is the ordeal of the Qur'an, the struggle between the Mu'tazila and the Hanbalis in the time of the Abbasid Caliphate (Is the Qur'an eternal or created)? Through this conflict, the mind of the Muslim was closed and Islamic civilization declined, according to the vision of the Orientalist Robert R. Riley³⁴, and the third, according to the researcher's vision, is the dilemma of jurisprudence (Fiqh), which is expanding at the expense of the Islamic religion.

"The total number of verses in the Holy Quran exceeds 6000. Out of these, only about 250 verses in Fiqh deal with prohibitions, commands, Halal, and Haram. The remaining verses focus on matters of faith, morals, and various branches of knowledge. Unfortunately, we have chosen to emphasize only the 250 jurisprudential verses, disregarding the majority of the Quran in our daily lives. Consequently, we have overlooked the broader context and teachings of the Quran³⁵.

³² Darryl Li, "How to Read a Case: Ethnographic Lawyering, Conspiracy, and the Origins of Al Qaeda," *American Anthropologist* 125, no. 3 (September 13, 2023): 559-69, <https://doi.org/10.1111/aman.13873>.

³³ Taha Hussien, "The Great Sedition (Othman)," *Hindawi Foundation*, 2013.

³⁴ Robert R. Riley, "The Closing of The Muslim Mind," *Manshurat Aljamal*, 2018, ISBN 9789933353926.

³⁵ Adel Raouf, *Mind Formation Between the Jurisprudential Emulation and the Culture of Emulation/ Arabic Book*, Iraqi Center for Media and Studies, 2007.

This has led to a situation where individuals aspiring to be Muftis, Ayatollahs, or Mujtahids often study only the Fiqh verses, granting them authority over the Quran and the religion. On the other hand, those who specialize in the other verses may face marginalization in society. If they attempt to offer new interpretations of these verses, they might be accused of heresy or blasphemy.

The root of this issue lies in the cultural norms of society, where religion is seen mainly as a means to seek God's favour and avoid punishment. Such a perspective is reminiscent of the religion practiced in primitive societies. With the religious mind limited to this level, it becomes easier for external forces to exert control by establishing rigid beliefs of what is permissible and forbidden ³⁶.

Historically, similar patterns of control were observed in the Christian community, and today, the Islamic community faces similar challenges. This situation underscores the importance of comprehensively understanding the Quran and its teachings to avoid an incomplete and narrow view of the religion."

As for the Qur'an and Islam of ethics and knowledge are the domain of free selves discovering themselves. And these are few in the world and scattered. They know God through action, science and morals. They practice their religion simply and freely and view God as love, mercy and beauty.

Consequently, Fqih expanded due to repeating itself, sticking its nose into all the details of life, and failing to solve reality. Dr. Abdul-Jabbar Al-Rifa'i says: The principles of Fqih that Al-Shafi'i formulated since the second century of Hajrah and Al-Ash'ari and others laid for it theological ground became entrenched with the passage of days and calcified. It has been established according to a dialectical relationship between the principles of Fqih and theology, each of which reproduces the other, in the molds of the pattern of the Muslim mind, in which the understanding of the text is determined,

³⁶ Sigmund Freud, *Totem and Taboo, Nature*, the Taylor (Routledge, 2004).

and it is subject to a repetitive cycle, which begins where it ends, and ends where it begins ³⁷.

This bloated and calcified Fqih is the one who issues hatred, blasphemy and impurity on the other, and although the blasphemy of the other is an ideological issue, it is controlled by Fqih and jurists. Dr. Asaad Abd al-Razzaq says in his book (*The Fqih of Atonement*) that he says “that atonement is a legal ruling like purification, and there must be premises or reasons to be overcome” and in another place he said, “It is almost agreed that Atonement is a legal ruling”³⁸. Hence, in the corridors of Fqih, the rulings of the People of the Book, the tribute, the unbeliever, the slave woman, and the slave are still studying, and this in itself is an intellectual problem that urges hatred and the impurity of the other. And when it is possible for religious groups to oppress the other, as ISIS terrorism in Iraq did against Christians and Yazidis in the city of Mosul ³⁹.

But if we look at Islamic history, we will find that Judaism and Christianity preceded us with hatred and violence against the other. The Crusades are very visible, and Europe's dark history is full of hatred and violence. But in the Renaissance and the Enlightenment philosophers were able to bring European society out of its dark ages by re-understanding religion, leaving the classical method (Platonic and Aristotelian) and establishing a new method based on relative and not absolute truth as in the past, and spreading the thought of tolerance and peace, and then the results of anthropological studies of religions Primitive values entrenched cultural diversity and pluralism. While the Islamic community remained in the era of decadence and decline, it continued to believe that absolute truth with it and falsehood with the other. Through anthropological studies of

³⁷ Abdul-Jabbar Al-Rifai, “Religion and the Ontological Thirst,” *Dar Al-Tanweer*, 2016.

³⁸ Asaad Abdul Razzaq, “The Fiqh of Atonement,” *Dar Suttur, Baghdad*, 2018.

³⁹ Saad Salloum, “Minorities in Iraq: National Legal Framework, Political Participation, and the Future of Citizenship Given the Current Changes,” in *Beyond ISIS: History and Future of Religious Minorities in Iraq* (Transnational Press London, 2019), 11–32.

orientalists and the media, Islam became known as slaughter, terrorism, rituals and superstitions.

Therefore, Fqih and its foundations must be subject to development, as life, time and place are always evolving and developing, and Fqih must take, at the present time, the urban and civic approach in its details. Social life today is dominated by the spirit of civilization and technology, just as Fqih must reconcile with the constitution or state law. By this we judge that Fqih is alive and evolving with life and in line with the spirit of the age. Otherwise, if it remains in this style, it will end and extinction, and with this we establish a modern Fqih, for modernity in Habermas view is not linked to a specific historical stage such as the stage of renaissance or enlightenment or the contemporary stage, but rather occurs whenever it is renewed relationship with the old and awareness of the new stage⁴⁰.

This is what Fqih must renew the relationship with the old and its awareness of the new and upcoming stage as well. Dr. Abdul-Jabbar Al-Rifai says that the renewal of jurisprudence is based on the renewal of theology, because the backgrounds of Fqih are postulates and statements determined by the vision of the world, and its field is theology⁴¹.

For example, Indonesian Islam strives to develop a jurisprudence "Fiqh" that is compatible with Indonesian culture, the civil law of the state, and globalization. This is evident in Rüdiger Lohlker's study, which examines the revitalization of the objectives of Islamic law "Maqāsid al-Sharī'a" in Indonesia, aiming to harmonize with modernity and cultural diversity⁴².

Regarding interpreting the Qur'anic texts in the light of hatred, tolerance and dialogue of religions must be subject to the approach of

⁴⁰ Abu Al-Nour Hamdi Abu Al-Nour Hassan, "Jürgen Habermas Ethics and Communication," *Dar Al-Tanweer, Beirut*, 2009, isbn: 9789953730851%0A.

⁴¹ Al-Rifai, "Religion and the Ontological Thirst."

⁴² Rüdiger Lohlker, "Fiqh Reconsidered: Indigenization and Universalization of Islamic Law in Indonesia," *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 7, no. 1 (2021): 188-208, <https://doi.org/10.30965/23642807-bja10011>.

interpretive anthropology. This branch was the instrument of the American anthropologist Clifford Geertz (1926-2006), where he founded the school of interpretive anthropology in his book (*The Interpretation of Cultures*)⁴³. Through it, he studied the symbol in culture and the idea that symbols give meaning and order to people's lives. Here, the Qur'an is a religious symbol for the Islamic world through which their visions about the world are determined.

If we look at the Qur'an, we will find that it sometimes distinguishes between the self and the other, calling for fighting the other if necessary. At other times, it emphasizes plurality, diversity, and the acceptance of difference as a natural aspect of human nature. An anthropological interpretation of these texts reveals their relevance to the socio-political aspects of modern Islamic society.

Other monotheistic religions have historically harboured animosity towards Islam because of its emergence and perceived threat to their existence, similar to the animosity faced by Christianity and Judaism in the past. This issue can be understood as a political-religious struggle for governance, and the Qur'an addresses this conflict by allocating verses that deal with the other in a political context, aimed at control and influence.

Additionally, the issue of the People of the Book, the tribute, and the slave girls involves religious-military rulings that were prevalent in many religions of that time. However, due to the breadth and complexity of these verses, we will not delve into them further in this discussion.

Regarding the other verses, Islam promotes a social religion where people are encouraged to live in peace and accept one another, recognizing that differences and coexistence are essential aspects of human society. The foundation of such differences in human society lies in the distinction between male and female genders, as they possess unique characteristics.

⁴³ Clifford Geertz, *The Interpretation of Cultures, The Interpretation of Cultures: Selected Essays* (Macat Library, 2017), <https://doi.org/10.4324/9781912128310>.

However, their union fosters social existence and facilitates interaction among nations, as the Qur'an said (O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another) (Al-Hujurāt :13). When this verse is considered purely anthropological, the first difference, between male and female, represents a structural and theological-natural distinction that led to the formation of diverse peoples and tribes for mutual understanding, not for conflict. Other differences, whether religious or otherwise, are mental divergences arising from the social upbringing and mental development of human beings, Ali Harb says:

“The Islamic city, even if it started from the peculiarity of the Arab race and gave a distinct role to the Arabic language, had an open view of others, regardless of color, gender, and even belief. In other words, I looked at the difference as a tool for acquaintance, as stated in the above verse. And acquaintance is to the extent that it is recognize with others, so it is acquaintance with the self and the way to awareness of it, because looking at the other is looking at the self through the mirror of others”⁴⁴.

The Qur'an confirms in another verse that God created people with differences and not as one nation, as the principle of difference leads to complementarity and development, the verse says (And if your Lord had so willed, He could surely have made mankind one nation, but they will not cease to disagree * Except him on whom your Lord has bestowed His Mercy, and for that did He create them) (Hud 118-119), the people were in the beginning of one race and one nation as stated in some verses of the Qur'an in this regard, then God decided to make them into families, tribes and peoples so that they would know each other and understand each other.

The only criterion for sublimity lies in the fear of God, that is, in submitting to His will. No human being is excluded in advance

⁴⁴ Ali Harb, “Interpretation and Truth (Interpretive Readings in Arab Culture),” *Dar Al-Tanweer for Printing and Publishing, Beirut*, 1985, isbn-10: 9786589099376.

from eternity in eternal bliss. On the contrary, God wants the salvation of man. According to the Islamic vision, at the social level at least, pluralism emphasizes unity and diversity as a principle of harmony, not a principle of confusion ⁴⁵. Verse says (but they will not cease to disagree * Except him on whom your Lord has bestowed His Mercy) here is an affirmation that difference is a continuous principle in life and it is the purpose for which God created them.

Hence, from accepting the principle of difference, God forbids the rule of atonement or hatred between the self and the other religiously and restricting this rule to him alone. Where the verse says (Indeed, those who have believed and those who were Jews and the Sabeans and the Christians and the Magians and those who associated with Allāh - Allāh will judge between them on the Day of Resurrection. Indeed, Allāh is, over all things, Witness) (Hajj 17).

Therefore, through this verse, human beings have no right to judge between all the heavenly and non-heavenly religions, or to blaspheme some of them. This judgment is exclusively for God, as the Qur'an affirmed in another verse (Allāh will judge between you on the Day of Resurrection concerning that over which you used to differ) (69). While the main criterion to enter Paradise is the faith and good deeds, where the verse says (Verily! Those who believe and those who are Jews and Christians, and Sabians, whoever believes in Allāh and the Last Day and does righteous good deeds shall have their reward with their Lord, on them shall be no fear, nor shall they grieve) (Al-Baqarah 62).

So, everyone enters heaven according to his religious and moral beliefs that he received from his religion and his environment. A condition that he believes in God and on the Day of Resurrection and does righteous deeds. Al-Jahiz has preceded us in that and emphasized that God holds the individual accountable for morals and good deeds according to what he is established in the family and

⁴⁵ Marcel Boisard, *Humanism in Islam* (American Trust Publications, 1987).

society⁴⁶. While God forbids religious animosity between religions, the Qur'an mentions the Jewish-Christian conflict as an example. (The Jews said that the Christians follow nothing (i.e. are not on the right religion); and the Christians said that the Jews follow nothing (i.e. are not on the right religion); though they both recite the Scripture. Like unto their word, said (the pagans) who know not. Allāh will judge between them on the Day of Resurrection about that wherein they have been differing) (Al-Baqarah 113). This is an explicit call for the unity of religions in the original and the non-blasphemy of the other religiously or doctrinally, as God confirms once again the ruling in this matter for him only on the Day of Resurrection. Whereas what we see today is that society abandons bad behavior and decides to atone the other.

Additionally, the Quran has been called to the common denominator between the monotheistic religions for peace and tolerance among themselves, the verse says (Say, "O People of the Scripture, come to a word that is equitable between us and you - that we will not worship except Allāh and not associate anything with Him and not take one another as lords instead of Allāh) Surah Al-Imran 64. After thoroughly studying the Bible, I discovered that we share more similarities than differences, indicating a common source for monotheistic religions, as stated in the verse above. The first fundamental commonality is the belief in the oneness of God, which is why these religions are termed monotheistic. While the concept of God may vary between Judaism, Christianity, and Islam, the belief in the singular divine entity remains unifying. The second shared factor among these religions is Prophet Ibrahim, revered as the father of these faiths, as he laid the foundational principles for each of them.

Aron Hughes says (The employment of the term "Abrahamic" to account for Judaism, Christianity, and Islam is a modern attempt to dismantle boundaries among the three religions for the sake of

⁴⁶ Abi Othman bin Amr Al-Bahr Al-Jahiz, "Kitab Alhayawan/ Animal Book: Aljahiz d 255 H," 1965.

some ecumenical coexistence in the modern period)⁴⁷. Where Abraham has two sons Isaac and Ishmael, who are also prophets. Prophet Isaac is the grandfather of the children of Israel, among whom is Jesus Christ, a descendant of his mother, Mary. This is what is stated in the Bible and the Qur'an. Matthew (1:1) (This is a record of the ancestors of Jesus the Messiah, a descendant of David and of Abraham) (*). Compared to the Qur'an was mentioned in Surat Al-An'ām (84-86) (And We gave to him [i.e., Abraham] Isaac and Jacob - all [of them] We guided. And Noah, ... and among his descendants, David and Solomon and Job and Joseph and Moses and Aaron. Thus, do We reward the doers of good * And Zechariah and John and Jesus and Elias - and all were of the righteous * And Ishmael and Elisha and Jonah and Lot - and all [of them] We preferred over the worlds).

Therefore, according to the Bible and the Qur'an, all the children of Israel are descendants of Isaac. At the same time, Ismail is the grandfather of the Arabs. Some historians believe that the Arabized Arabs are the third layer of the Arab classes after the extinct Arabs and the original Arabs. The Arabized Arabs are also called "Adnanites" in relation to Adnan, or "Ma'aden" from Ma'ad, or "Nizaris" from Nizar, and historians refer to their lineage to the Prophet of God, Ismail, son of Ibrahim, and they called the Arabized Arabs. Because they merged with the Arabs after they joined them in the Hijaz and took the Arabic language from them, and the Prophet Ismail learned the Arabic language from them. Thus, the lineage of the Prophet Muhammad goes back to the Prophet Ishmael⁴⁸. From here we can say that all of Moses, Jesus and Muhammad are cousins, and that all the ancestors of Abraham are Semites.

⁴⁷ Aaron W. Hughes, *Abrahamic Religions, Abrahamic Religions: On the Uses and Abuses of History* (Oxford University Press, 2012), <https://doi.org/10.1093/acprof:oso/9780199934645.001.0001>.

For more: see the Gospel of Matthew (1:1-17), and also the Gospel of Luke (3:23-38).

⁴⁸ Jawad Ali, "The Detailed History of the Arabs Before Islam," in *Baghdad University Helped Spread It. I*, 1993.

CONCLUSION

Anthropology, in general, and religious anthropology, in particular, play a crucial role in studying the religious and social culture of society while promoting values of tolerance, acceptance of others, and peace, particularly in the post-global colonial era. Hence, Arab and Islamic societies require anthropological studies to foster the values of tolerance and acceptance among Islamic sects, especially between Sunnis and Shiites, as well as promoting tolerance and peace between monotheistic and non-monotheistic religions. To achieve this, educational institutions must incorporate humanities and religious anthropology into their curricula, receiving adequate support to demonstrate the practical impact of these sciences by rejecting hatred, violence, and fostering tolerance among religions. Additionally, religious institutions should review their religious curricula, updating them to align with modern human development and include humanities and anthropology to view various religions and sects as relative rather than absolute truths.

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Author Biography

Muhtadi Al-Abyadh

Muhtadi serves as Social Researcher in Ministry of Justice. Iraq. He currently pursues his PhD in Centre for Policy Research and International Studies (CenPRIS), Universiti Sains Malaysia (USM), Penang, Malaysia. You can contact him via muhtadi@student.usm.my

Mohammad Reevany Bustami

Mohammad Reevany Bustami, PhD is Associate Professor at Universiti Sains Malaysia (USM), Penang, Malaysia. He also serves as the Head of Centre for Policy Research and International Studies (CenPRIS), You can contact him via reevany@usm.my

Ikomatussuniah

Ikomatussuniah, PhD is Associate Professor at Faculty of Law, Universitas Sultan Ageng Tirtayasa, Indonesia. You can contact her via iko@untirata.ac.id

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Different Gender Priorities Amid EU Labor Laws and Practice

M.M. Abdullah Al Mamun Sony¹  

¹ Khulna University, Bangladesh

Post Graduate Student at Marton Géza Doctoral School of Legal Studies,
University of Debrecen, Hungary

 abdullahsony.as@mailbox.unideb.hu

ABSTRACT

Labor laws aim to accomplish a number of goals, including achieving gender equality in the workforce, to offer a minimum standard of living. The majority of academics, however, ignore other sexually inclined individuals like LGBTI in favor of accounting only for interactions between men and women to comprehend gender in its entirety. To close that disparity, this research used a comparative approach and a qualitative approach to investigate how the EU handles the issues of a varied labor force in terms of both law and physics. The EU, in contrast to other organizations, often gives its member states guidance by providing a range of consistent legal support. Based on secondary research, especially recent studies funded and supervised by the EU, this study found that although the EU has a comprehensive legislative measure to maintain women's labor rights, no unique legal structure has been formed that promotes LGBTI workplace rights. Because of this, most members of sexual minorities face discrimination at work and have trouble getting employment. The slow progress to reduce pay inequalities, pension disparities, and other forms of discrimination between binary and non-binary genders has revealed shortcomings in the current legal framework, even in the face of sufficient legal protections. The findings of this study have supported the implementation of regulations aimed at reducing gender-based wage and pension inequality as well as other forms of discrimination.

Keywords: *Gender needs, labor law, employment, LGBTI, Discrimination*



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INTRODUCTION

Following WWII, the European Union (EU) acquired prominence as a regional development organization due to its enormous influence on the socio-political and economic growth of its member states. The EU has been successful in recent decades in elevating its member states to the top of the human development index (HDI) maintained by the United Nations Development Program (UNDP). Several scholars like Moravcsik (2009) believed that the uniform legal frameworks are the primary driving wheel of the EU which secures all people's rights of all member states.¹ For instance, the EU's Charter of Fundamental Rights (EUCFR) declared on 7th December 2000 at the Nice summit and come in force along with the Treaty of Lisbon on 1st December 2009, is one of such legislative structures which guide and try to ensure personal freedoms and rights to all EU citizens.² Such legislative structure also tries to secure a non-discriminatory working environment as well as social protection within its member states.

However, in the first quarter of the twenty-first century, on the one hand, most countries along with EU member states have been able to solve the challenge of gender equality in terms of binary-sexual opposition. On the other hand, a new struggle flagging on nonbinary-sexual opposition has been growing in most of the countries of the world. Consequently, whereas earlier gender right

¹ Moravcsik, Andrew. 2009. Europe: The quiet superpower. *French politics* 7(3): 403-422 <https://doi.org/doi.org/10.1057/fp.2009.29>.

² Bercusson, Brian., Thomas Blanke, and Niklas Bruun. 2006. *European labour law and the EU Charter of Fundamental Rights*. Nomos Baden-Baden.

specialists³ have stressed out to protect women's rights in society, now scholars⁴ direction has turned into beyond the women issues.

The direction of such gender studies has given birth to different new challenges to the global legislators and policymakers, as the integration and social protection of nonbinary genders such as lesbian, gay, bisexual, transgender, and intersex (LGBTI) people to mainstream people, to formulate different policies and legislations. For instance, in 1951 the International Labour Organization's (ILO) convention on equal payment where clear binary words like 'Men and Women' have used to uphold same value in the 1st Article⁵ but, in 2017 through a direct Request (CEACR) which have published in 2018 of 107th International Labour Conference (ILC) session where some new clauses mere a clear statement on the prohibition of discrimination based on sex (Article 1.1.a) and equality of opportunity and treatment irrespective of disability, sexual orientation, and gender identity (Article 2) have been added to the convention of 1958 (No. 111) on discrimination of employment and occupation.

³ Allen, A Dale. 1970. What to Do About Sex Discrimination. *Labour Law Journal* 21(9): 563; Baker, Elizabeth Faulkner. Protective labour legislation with special reference to women in the state of New York. Columbia University Press. 1969. <https://doi.org/10.7312/bake92444>; A. Barlow, Frank. 1944 Proper placement of women in industry.. *Journal of the American Medical Association* 124(11):687-691; J. Fisher, Marguerite. 1951. Equal-pay-for-equal-work legislation. *LJ 2 Lab* 578; H. Kronenberg, Milton. 1944. Working conditions for female employees. *Journal of the American Medical Association* 124(11): 677-683; Murray, Pauli., and Mary O. Eastwood. 1965. Jane Crow and the law: Sex discrimination and Title VII. *The George Washington Law Review* 34:232.

⁴ Aksoy, Cevat G., Christopher S. Carpenter, Ralph De Haas, and Kevin D. Tran. 2020. Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe. *European Economic Review*, 124:103399. <https://doi.org/10.1016/j.euroecorev.2020.103399>; Biblarz, Timothy J and Evren Savci. 2010. Lesbian, gay, bisexual, and transgender families. *Journal of Marriage* 72(3): 480-497, <https://doi.org/10.1111/j.1741-3737.2010.00714.x>; Johnson, García., Carolina Pía, and Kathleen Otto. 2019. Better Together: A Model for Women and LGBTI Equality in the Workplace [Conceptual Analysis]. *Frontiers in Psychology*, 10: 1-17. <https://doi.org/10.3389/fpsyg.2019.00272>; J. Mitchell, Kimberly., Michele L. Ybarra, and Josephine D. Korchmaros. 2014. Sexual harassment among adolescents of different sexual orientations and gender identities. *Child abuse neglect* 38(2): 280-295; Weichselbaumer, Doris. 2003. Sexual orientation discrimination in hiring. *Labour economics* 10(6):629-642. [https://doi.org/10.1016/S0927-5371\(03\)00074-5](https://doi.org/10.1016/S0927-5371(03)00074-5); Tekle, Tzehainesh. 2018. *Equal Remuneration Convention, 1951.(No. 100)*.

⁵ Tekle, Tzehainesh. 2018. *Equal Remuneration Convention 1951(No. 100)*.

Thereafter, critical examination of existing legal frameworks becomes a trend of legal scholarship to guide legislators as well as policymakers through presenting current legal instruments' strengths and weaknesses to combat growing challenges.

The example of this perspective can be found in the study of Tekle (2018)⁶ and Bernstein (2018)⁷ where the researchers have explored the potential legal and political challenges for same-sex marriage and its immediate impact on family laws. To understand these complex heteronormativity Bernstein (2018) have highlighted three conceptual tools such as the assimilationist dilemma, discursive integration and co-optation, and truth regime to guide future researchers. Similarly, the importance of LGBTI people's social inclusion in employment sector like the women also highlighted in other literatures. For instance, Matthews (2020) highlighted the controversy on creating scope of involvement in public services by non-binary genders become a new challenge for the legislators to manage public finance and occupations.⁸

If the majority of the society is not liberal then ensuring equal rights to LGBTI become more critical. Sometimes, legislators had to follow back and instead of expanding the rights, they minimize it. Hungary can be such a witness of this statement where a change of 'sex at birth' has constitutionally become prohibited by Article 33.⁹ Like Hungary, some other European countries such as Armenia,

⁶ Bernstein, Mary. 2018. Same-Sex Marriage and the Assimilationist Dilemma: A Research Agenda on Marriage Equality and the Future of LGBTI Activism, Politics, Communities, and Identities. *Journal of Homosexuality* 65(14) :1941-1956. <https://doi.org/10.1080/00918369.2017.1423211>.

⁷ W. Daum, Courtenay. 2020. Social Equity, Homonormativity, and Equality: An Intersectional Critique of the Administration of Marriage Equality and Opportunities for LGBTI Social Justice. *Administrative Theory & Praxis*. 42(2):115-132. <https://doi.org/10.1080/10841806.2019.1659044>.

⁸ Matthews, Peter. 2020. Debate: LGBTI rights in public services—a battle won? *Public Money & Management*, 40(6): 423-425. <https://doi.org/10.1080/09540962.2019.1676546>.

⁹ Hatter Society, Art 33. *Legal gender recognition*. October 21, 2022. (en.hatter.hu) <<https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>> accessed 21 October 2022

Belarus, Bulgaria, Croatia, Georgia, Latvia, Lithuania, Moldova, Montenegro, Poland, Russia, Serbia, Slovakia, and Ukraine also do not open for non-binary genders. Since most of these countries are the member state of the EU and the EU generally recognized as the best cooperative organization in terms of ensuring equal human rights in its member states so a question may call upon in mind that is how different gender needs have been secured in the laws, even in the employment perspective.

Undoubtedly, equal rights in occupation, as well as labour force, is one of the basic human rights. As it has been stated in the earlier discussion, over the past few decades ensuring a non-discriminatory working environment based on different sexual orientation not only challenges the existing structure but also produce confusion between the law and practice. On this point, this study hypothesized, in aiding policymakers, whether the EU labour policy and practice are happening in the same manner where each gender priorities been protected. The outcome of this study may guide the European Commission to take necessary legal steps to fulfil the new commitment of 'Gender Equality Strategy 2020-2025'.¹⁰ Therefore, along with other relevant reports, this study also reviews the first report of this commission which was published in 2021. Later the critical argument of this paper has been developed through comparing and contrasting the EU's current gender-specific employment scenario with existing labour laws.

¹⁰ UNESCO. *Gender Equality Strategy 2020-2025*. Bruxelles Fourth World Conference on Women, 2010. (E/CN. 6/2010/L. 1).

JUSTIFICATION OF STUDYING DIFFERENT GENDER STUDIES

In the EU in particular, research on assessing gender needs in the workforce is not new. Similar to the early 20th century, the majority of studies conducted in the last ten years have prioritized the analysis of binary gender demands in the workplace. For instance, gender gaps in labour market positions about the scope of women in entrepreneurship and the opportunity to set up industries in the countries of the EU have highlighted by Tonoyan et al (2020).¹¹ Similarly, Alonso et al. (2017) and Boll et al. (2017) have explored a significant gender-based wage gap in the EU territories through a comparative manner between men and women.¹² Supporting, Beham et al. (2019) call upon policymakers' attention through presenting a serious wage gap between men and women concerning part-time jobs.¹³

Certainly, subscribing to binary-sexual opposition's needs these studies generally guide the policymakers to overlook the other gender such as LGBT needs to improve the legal labour architecture.

To address above mentioned gaps, Lloren and Parini (2017) have explored "how LGBT-supportive workplace policies shape the

¹¹ Tonoyan, Vartuhi., Robert Strohmeyer, and Jennifer E. Jennings. 2020. Gender Gaps in Perceived Start-up Ease: Implications of Sex-based Labour Market Segregation for Entrepreneurship across 22 European Countries. *Administrative Science Quarterly* 65(1): 181-225. <https://doi.org/10.1177/0001839219835867>.

¹² Alonso, Pamela., Moscoso, Silvia, and Jesús F. Salgado. 2017. Structured behavioral interview as a legal guarantee for ensuring equal employment opportunities for women: A meta-analysis. *The European journal of psychology applied to legal context* 9(1):15-23. <http://dx.doi.org/10.1016/j.ejpal.2016.03.002>; Boll, Christina., Anja Rossen, and André Wolf. 2017. The EU Gender Earnings Gap: Job Segregation and Working Time as Driving Factors. *Jahrbücher für Nationalökonomie und Statistik* 237(5): 407-452. <https://doi.org/10.1515/jbnst-2017-0100>.

¹³ Ibid, Barbara Beham., Sonja Drobnič, Patrick Präg, Andreas Baierl, and Janin Eckner. 2019. Part-time work and gender inequality in Europe: a comparative analysis of satisfaction with work-life balance. *European Societies* 21(3): 378-402. <https://doi.org/10.1080/14616696.2018.1473627>.

experience of lesbian, gay men, and bisexual employees".¹⁴ Through this impressive piece of literature, the researchers have presented that the existing policies did not support employees' psychological improvement in terms of equality between other genders and LGBT.¹⁵ Some scholars, like Sansone (2019), have characterized these special genders as pink workers without showing how these workers' rights can be protected by law or not.

Likewise, most of these scholars have failed to present all these gender's needs together in one paper which was found in the discussion of Bamforth (2016).¹⁶ Unlike other legal scholars, Bamforth (2016) have emphasized LGBT along with another gender to describe discrimination scenario based on different sexual orientation and gender identity in Europe. To present an overall status of different genders Bamforth (2016) have partially portrayed a discrimination scenario of different gender in the workplace, nonetheless, in this paper, hinds of the weakness of anti-discrimination legislations have been highlighted.¹⁷

Consequently, such kinds of literature generally raise some questions like people attitude can be shaped through legal initiatives. And no mistake, laws have power to shape societal attitude.¹⁸ From this point of view, Lloren and Parini (2017) have shown that gender-specific supportive policies and laws can help to reduce the

¹⁴ Lloren, Anouk., and LorenaParini. 2017. How LGBT-Supportive Workplace Policies Shape the Experience of Lesbian, Gay Men, and Bisexual Employees. *Sexuality Research and Social Policy* 14(3):289-299. <https://doi.org/10.1007/s13178-016-0253-x> 289-299.

¹⁵ Ibid.

¹⁶ Bamforth, Nicholas. *Discrimination on the grounds of sexual orientation and gender identity*. pp.495-526. A. Bogg, C. Costello, & A. C. L. Davies (Eds.), Research Handbook on EU Labour Law Edward Elger Publishing.2016. <https://doi.org/https://doi.org/10.4337/9781783471126.00029>.

¹⁷ Ibid.

¹⁸ G. Aksoy, Cevat., Christopher S. Carpenter, Ralph De Haas, Kevin D. Tran. 2020. Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe. *European Economic Review* 124:103399. <https://doi.org/10.1016/j.euroecorev.2020.103399>.

discrimination scenario in the workplace and also assist to improve the psychological health of the employees.¹⁹

Giving priorities to access equal job opportunities, nonetheless, with a non-discrimination environment to each gender according to their sexual orientation largely depends on the legal structure which remains untold in most of the literature. To address these literature gaps the objective of this study was to review the EU labour laws according to how different gender employment needs have been addressed in this legal structure and its functioning position to ensure all gender needs in EU labour force comparing with some latest reports.

UNDERSTANDING GENDER PRIORITIES

To further discussion, it is important to know what this study meant by the different gender priorities in labour laws. It is quite common that each gender has its own needs to lead a successful professional life. Some of them can be found as a common need like getting equal opportunity to get a job, and, at the same time, some of them can be found as a specific need like pregnancy leave for women. Unlike the earlier studies²⁰ which stress comparing between men and women in terms of gender equality in the labour force, this study figures up all-gender needs based on their sexual orientation associated with the labour force. However, for common needs, like

¹⁹ Lloren, Anouk., and LorenaParini. 2017. How LGBT-Supportive Workplace Policies Shape the Experience of Lesbian, Gay Men, and Bisexual Employees. *Sexuality Research and Social Policy* 14(3): 289-299. <https://doi.org/10.1007/s13178-016-0253-x> 289-299.

²⁰ Alon, Titan., Matthias Doepke, Jane Olmstead-Rumsey, and Michèle Tertilt. 2020. *The impact of COVID-19 on gender equality*. Gender Equality Network Board of Education Research (Working Paper 26947); Sunindijo, Riza Yosia., and Kamardeen, Imriyas. 2017. Work Stress Is a Threat to Gender Diversity in the Construction Industry. *Journal of Construction Engineering and Management* 143(10): 04017073. [https://doi.org/10.1061/\(ASCE\)CO.1943-7862.0001387](https://doi.org/10.1061/(ASCE)CO.1943-7862.0001387); Chung, Heejung., and Tanja Van der Lippe. 2018. Flexible working, work-life balance, and gender equality: Introduction. *Social Indicators Research*. 151:365-381, <https://doi.org/10.1007/s11205-018-2025-x>.

other studies²¹ this study also highlights the status of equal opportunity to getting a job and promotion, receiving vocational training, equal opportunity to involve in an organization, equal opportunity to involve in entrepreneurship, equal wage and pension, and equal treatment on same environments.

To understand specific gender needs this study accounts for different dimension of discrimination that happened based on sexual orientation in the work place like harassment, deprivation in decision making, parental leave, care responsibilities, physical or sexual attacks, psychological pressure to quit a job, passing homophobic comments, and so on.²² Sometimes, an individual can face multiple grounds of discrimination.²³ For instance, an individual may be discriminated against both as an ethnic minority and sexual minority or from religious and sexual grounds. Sense of helplessness can be the common circumstances of such a scenario which also increase mistrust in public institutions and raise the question of justice in society.

An approach to comparative study using a qualitative perspective has been employed in order to comprehend the various

²¹ Inoue, Miyako. *Neoliberal Speech Acts: The Equal Opportunity Law and Projects of the Self in a Japanese Corporate Office*. Anagnost, In Ann., A. Arai, & H. Ren (Eds.). *Global Futures in East Asia*. Stanford University Press. pp. 197-221. 2020. <https://doi.org/10.1515/9780804784689-010>; Green, Tristin K. *Discrimination laundering: The rise of organizational innocence and the crisis of equal opportunity law*. Cambridge University Press. 2017.; A. Yermek., Buribayev, and Zhanna A. Khamzina. 2019. *Gender equality in employment: The experience of Kazakhstan*. *International Journal of Discrimination and the Law*, 19 (2): 110-124, <https://doi.org/10.1177/1358229119846784>.

²² Goñi-Legaz, Salomé., and Ollo-López Andrea. 2017. *Temporary contracts, participation in decision making and job satisfaction in European workers*. *International Journal of Manpower* 38(6): 875-892 <https://doi.org/10.1108/IJM-04-2016-0086>; Hoel, Helge., Duncan Lewis, and Anna Einarsdóttir. 2021. *Sexual orientation and workplace bullying*. In D'Cruz P., Noronha E., Caponecchia C., Escartín J., Salin D., & T. M.R. (Eds.) *Dignity Inclusion at Work*. Springer 363-391. https://doi.org/doi.org/10.1007/978-981-13-0218-3_13;

Närvi, Johanna., and Minna Salmi. 2019. *Quite an encumbrance? Work-related obstacles to Finnish fathers' take-up of parental leave*. *Community, Work & Family* 22(1):23-42.

²³ Cormack, Donna., James Stanley, and Ricci Harris. 2018. *Multiple forms of discrimination and relationships with health and wellbeing: findings from national cross-sectional surveys in Aotearoa/New Zealand*. *International Journal for Equity in Health* 17(1):26. <https://doi.org/10.1186/s12939-018-0735-y>.

gender priorities in EU labor laws and practices. Three sections comprise the entirety of the study. The introduction has covered the components of the comparative evaluation, pertinent assessment criteria, study subject matter, and objectives. In the second section, the available legal tools have been examined. Ultimately, a conclusion has been reached that offers recommendations for bolstering the regulatory framework to fend against the effect of new platforms and ensure a non-discriminatory job environment.

The primary information source was the policies of various member states and the EU overall, in addition to a wide range of secondary sources. Contentment analysis and the latest EU legislative framework have been used to provide the comparative discussion. “What are the strengths and weaknesses of the existing legislations to ensure equal gender rights in the EU employment ecosystem?” is the study question that has been addressed using these data. Overall, the researcher supports the argument with several examples of effective international policy endeavors.

EU LABOUR LAWS GIVING PRIORITIES GENDER NEEDS

To create a favourable and non-discriminatory working environment the EU has tried to prepare an ideal legal architecture. These structures generally consist of several other materials such as the Treaty on the Functioning of the European Union (TFEU), EU labour directives, The Court of Justice of the European Union (CJEU), and the EU charter of fundamental rights (EUCFR). While the directives in EU present the specific labour as well as employment issues, there the EUCFR presents a general and abstract feature of labour issues. To present these legal structures’ purpose and role Monika and Zahra (2020) have portrayed following statement in their manuscript entitled, “The Scope of EU Labour Law”:

EU labour law directives have been adopted over a long period of time (1997-2019), meaning that some of them were adopted under the previous Treaties, while the most recent ones have the Treaty of Lisbon as their legal basis. Most of the directives adopted between 1997 and 2008 respond to the flexibilization of labour markets and are targeted at establishing minimum standards for equal treatment of workers on different types of contracts (part-time, fixed-term, temporary contracts). Other directives, including the most recent ones, focus on setting minimum standards for working conditions for all workers based on an agreed definition of worker (Working Time Directive, Transparent and Predictable Working Conditions Directive, Work-Life Balance Directive). The role of the European Parliament in the adoption of labour law directives has gradually increased under successive treaties. The Treaty of Amsterdam, which entered into force in 1999, increased the role of the European Parliament in terms of co-legislating with the Council including on employment policy. Under the Treaty of Lisbon (in force since 2009), the role of the European Parliament was further recognized as a full co-legislator in the ordinary legislative procedure (p.6).

In a line with this view, the current EU labour laws are the product of the long modification of several treaties and directives. Seven EU directives have been found (Table 1.), between 1997 and 2019, describing labour rights in part-time, fixed-term, and temporary contracts. Except for two directives in 2019, the nature of other directives was to ensure flexibilization of labour markets and minimum standards for equal treatment of workers. Nonetheless, a wider personal scope of the employment relationship can be found in the latest two directives respectively the Transparent and Predictable Working Conditions (TPWC)²⁴ and Work-Life Balance (WLB)

²⁴ Directive (EU) 2019/1152., 'Transparent and predictable working conditions in the European Union' European Parliament, Council of the European Union, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1152>.

Directives²⁵ in 2019 like 'who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice'.²⁶ However, only the Employment Framework Directive²⁷ or the Equality Framework Directive (EFD) 2000/78/EC has been securing equal opportunity of employment based on different sexual orientations. Based on these discussions a summarized feature of EU labour law directives is shorted below in Table (1).

Table 1. Summary table of EU labour law directives²⁸

Directive	Personal scope	(Possible) exemptions
Part-Time Work Directive (1997)	Part-time workers as defined in law, collective agreements or practice of Member States	Part-time workers who work on a casual basis
Fixed-Term Work Directive (1999)	Fixed-term workers as defined in law, collective agreements or practice of Member States	Initial vocational training relationships and apprenticeship schemes, public or publicly supported training, integration and vocational retraining
Employment Framework Directive (2000)	Equal treatment in the European Union (EU) at the workplace regardless of their religion or belief, disability, age or sexual orientation	Ensure that persons of a particular religion or belief, disability, age or sexual orientation do not suffer from discrimination and

²⁵ Directive 2019/1158. *Work-life balance for parents and carers and repealing Council Directive*. European Parliament, Council of the European Union, 2010/18/EU' <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>.

²⁶ Szpejna, Monika., and Zahra Boudalaoui-Buresi. 2020. *The scope of EU labour law*. In S. a. Q. o. L. P. IPOL Policy Department for Economic (Ed.). Luxembourg; Martin Risak, and Thomas T. Dullinger. 2018. *The concept of 'worker' in EU law: Status quo and potential for change*. pp. 1-68. Institutes - Eindhoven University of Technology (Ed.). Brussels: ETUI aisbl.

²⁷ Directive 2000/78/EC. *Establishing a general framework for equal treatment in employment and occupation*. European Parliament, Council of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

²⁸ Monika and Zahra. n 20.

		instead enjoy equal treatment in the workplace.
Working Time Directive (2003)	All workers, private and public sectors of activity	Seafarers, mobile workers, workers onboard a seagoing fishing vessel. Derogations possible (opt outs) for certain sector or by collective agreement
Temporary Agency Workers Directive (2008)	Workers with a contract of employment or employment relationship with a temporary-work agency	Specific public or publicly supported vocational training, integration or retraining program
Transparent and Predictable Working Conditions Directive (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to European Court of Justice (ECJ) case law	Workers who work less than an average of three hours per week, certain groups of public sector workers, household workers, and seafarers or sea fishermen
Work-Life Balance Directive (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to ECJ case law	---

In light of the main argument of this study, the gender priorities along with the LGBTI in EU labour laws have been found only in a few legislations. Except for the EFD,²⁹ none of the EU directives have highlighted the term sexual orientation association with equal treatment in the labour sector. To ensure equal treatment in employment and occupation irrespective of particular religion or

²⁹ Directive 2000/78/EC. *Establishing a general framework for equal treatment in employment and occupation*. European Parliament, Council of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

belief, disability, age, or sexual orientation it has included both direct and indirect discriminations.

For direct discrimination, the directive (Directive 2000/78/EC) meant differential treatment based on a specific characteristic, and for indirect discrimination, it meant any provision, criterion, or practice that is neutral but puts the people in the above categories at a disadvantage compared to others. Besides, this EFD (Directive 2000/78/EC) has also characterized harassment that creates a hostile environment as a form of discrimination. Unlike other Directives, the EFD is the only directive that could protect the individual from discrimination based on sexual orientation and so, this directive has raised a wider expectation for non-binary people.

Nevertheless, several critics have raised against this particular Directive's effectiveness to protect LGBT rights. For instance, Tryfonidou (2018) said "... one of the main weaknesses of Directive 2000/78 is its limited material scope, which only covers the areas of employments and vocational training" (p. 246).³⁰ Further this Directive also failed to protect an individual from a job refusal on their sexual orientation or embarrassment by a colleague at work due to some reason. Therefore, ILGA Europe, who work for LGBTI people's equality in Europe, have critiqued the EU in flowing ways,

Unfortunately, EU law does not at present contain an explicit prohibition of discrimination on the grounds of a person's gender identity and gender expression. Indeed, the EU treaties only entitle the EU to take action to combat "discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" only, without mentioning trans issues. Neither does a

³⁰ Tryfonidou, A. 2018. The impact of the framework equality directive on the protection of LGB persons and same-sex couples from discrimination under EU law. In Belavusau, U., and Henrard, K. (eds.) *EU Anti-Discrimination Law beyond Gender*. Hart Publishing, pp. 229-248.

prohibition on discrimination against trans people appear in the EU Charter of Fundamental Rights (ILGA-Europe, 2019).³¹

Stressing out of abolishing gender discrimination EU laws have introduced further two directives (i.e., 2006/54 and 2004/113) ignoring transgender needs only placed man and women needs which also raise a question of priorities of gender in EU laws. Looking for gender priorities, it has been found that giving priorities to all gender a proposal of directives has made in 2008 by European Commission (EC) to a Council Directive. Nonetheless, the latest two directives Transparent and Predictable Working Conditions Directive (2019)³² and Work-Life Balance Directive (2019)³³ have addressed men and women by meaning all workers where the LGBTI priorities are also not highlighted as a specific gender addressing their labour rights.

Unlike ILGA Europe or other scholars, the EC believed that there has sufficient legal basis to secure all gender needs in the employment sector in the EU. As a shred of evidence on the EC (2022) website two legal bases can be found. Firstly, the prohibition of discrimination based on sexual orientation which found in article 21 of the EU Charter of fundamental rights (EUCFR). Secondly, Article 19 of the TFEU agreed for taking action to combat any type of discrimination based on sex, race, and ethnic origin. Apart from this, the EC has also mentioned directive 2000³⁴ as a legal instrument of protection for the workplace for all gender. But, ILGA Europe has criticized this directive since it fails a person to protect from job denial and harassment like bullying by fellow workers.

³¹ ILGA-Europe. 2019. What is the current legal situation in the EU? *ILGA-Europe*. <https://www.ilga-europe.org/what-we-do/our-advocacy-work/campaigns/equality-all/legal-situation>.

³² EU Directive. 2019/1152. n 18.

³³ EU Directive. 2019/1158. n 19.

³⁴ Directive .2000/78/EC. n 21.

Like the EU directives, the soul instrument of EU labour laws has also been laid in the EUCFR.³⁵ Featuring two major areas, these laws generally try to ensure strong social protection, social cohesion, and an improved standard of living. Such as promoting quality working conditions which include working hours, part-time and fixed-term work, workers' posting, informing and consulting workers about collective redundancies, transfers of companies, and so on. To introduce EU labour laws Bercusson et al. (2006) have stated,

...two important lessons should be remembered when considering the social and labour provisions in the EU Charter of Fundamental Rights adopted at Nice in December 2000... First, fundamental labour and social standards are determined by the economic and political context. Their content changes with economic and political circumstances. Secondly, social and labour rights develop when linked to policies promoting European integration, when they find a place on the Community's integration agenda (p. 17).

Thereafter, EUCFR plays an important role to non-discriminatory working environment. A couple of clauses and articles of EUCFR generally protects labour rights. Nevertheless, more specific indications of gender-specific priorities in the employment sector are found in Articles 20, 21 and 23 of EUCFR. And the other articles generally act as a guiding principle of the overall nature of equality. Following Table (2) presents the article and clauses in EUCFR that considers as a primary labour legal framework in the EU.

³⁵ Directive 2010/C 83/02. *The Charter of Fundamental Rights of the European Union*. The European Parliament, the Council and the Commission.

Table 2. List of labour laws enlisted in EU Charter of Fundamental Rights (2012/C 326/02)³⁶

Article Number	Article Theme	Clauses
12	The freedom of assembly and of association	<ol style="list-style-type: none"> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.
15	The freedom to choose in an occupation and right to engage in work	<ol style="list-style-type: none"> 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. 2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State. 3. Nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.
20	Equality before the law	<ol style="list-style-type: none"> 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

³⁶ Bercusson, B., T. Blanke, & N. Bruun. 2006. *European labour law and the EU Charter of Fundamental Rights*. Nomos Baden-Baden.

21	Non-discrimination	<p>1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</p> <p>2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.</p>
23	Equality between men and women	Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.
27	Workers' right to information and consultation within the undertaking	Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.
28	Right of collective bargaining and action	Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action
30	Protection against unjustified dismissal	Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.
31	Fair and just working conditions	<p>1. Every worker has the right to working conditions which respect his or her health, safety and dignity.</p> <p>2. Every worker has the right to limitation of maximum working</p>

		hours, to daily and weekly rest periods and to an annual period of paid leave.
32	Prohibition of child labour and protection of young people at work	“Horizontal” provisions. The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have worked conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

(Source: Bercusson et al., 2006)³⁷

Following Article 10 of TFEU—ensure of equal democratic rights—the EUCFR bring two important Articles, 20 and 21, to expand a wider jurisdiction to prohibition of discrimination on the grounds of sexual orientation. However, it is still unclear if these legal frameworks can effectively protect the non-discriminatory environment, both inside and outside of the workplace. Because the EUCFR's emphasis on Article 23's clause on the equal rights of men and women in the workplace casts doubt on the guarantee of equality for LGBT people. Even, to date, CJEU don't able to present notable example, except few cases like Case C-451/16 (Work and Pensions of a transgender)³⁸, which judgement happened based on Article 4(1) of

³⁷ Bercusson, Blanke, and Bruun. 2006.

³⁸ In the 2018 Case, *MB v Secretary of State for Work and Pensions (C-451/16)*, the Court handed down a decision that Equal treatment for men and women in matters of social security...

Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62016CC0451&from=EN#t-ECR_62016CC0451_EN_01-E0001

Council Directive 79/7/EEC³⁹, or Case C-528/13 (blood donation of a Gay guy)⁴⁰ where the judgement has happened in the light of Article 21(1) and Article 52(1) of EUCFR. Is it possible for current legal frameworks to provide equal gender prioritization in the employment sector at this stage in our discussion? This study attempts to analyse certain recent studies that have drawn attention to the disparities between gender statuses in the workplace in a manner that is consistent with this point of view.

NATURE OF DIFFERENT GENDER PRIORITIES ADDRESSED IN EMPLOYMENT SECTOR

Unlike other development organizations, the EU generally works in better ways to ensure a non-discriminatory place for all gender by law. Subsequently, going through some latest reports in the EU, which highlight the status of gender equality to advocate policymakers in tackling gender inequalities in Europe, it has found women are enjoying greater inclusion in the employment sector ever before. For instance, according to Eurostat (2020), in 2019, an 11.7 percent employment gap has found between men and women among the 27 countries of Europe.⁴¹ And this gap has been slowing down by 4.6 percent between 2019 and 2005. Again, this report also has highlighted that getting a job rural woman were facing more difficulties compared to women in cities. But in this report, no data

³⁹ European Communities Official Journal. 1978. *The progressive implementation of the principle of equal treatment for men and women in matters of social security*. Council Directive 79/7/EEC. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007>

⁴⁰ In the 2015 Case, *Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits des femmes and Etablissement français du sang* (C-528/13), the Court handed down a decision that... Retrieved from <https://fra.europa.eu/en/caselaw-reference/cjeu-case-c-52813-judgment>

⁴¹ "Employment and activity by sex and age- annual data," Eurostat , 2020. https://ec.europa.eu/eurostat/databrowser/view/lfsi_emp_a/default/table?lang=en.

have shown the gender-based employment gap between LGBT and the other binary genders.

At the same time, FRA (2020) has found that in 2019, 11 percent of LGBTI people have faced difficulties accessing the labour market in the EU and 21 percent of respondents of the same survey feel discriminated at work. Particularly, 36 percent of transgender have reported that they have been discriminated against at the workplace.⁴² Besides, discrimination in the workplace based on sexual orientation have increased 13 percent to 17 percent between 2012 and 2019.⁴³ This situation illustrates the practical limitations of legal endeavours.

Ironically, according to European Commission Directorate-General for Justice Consumers (2021), the EU and its Member States have targeted a milestone of a 75 percent employment rate for women and men under the Europe 2020 strategy, but they forget about integrating other sexual minority people into this strategy.⁴⁴ Although, for a while, if we ignore the LGBTI issues from our discussion, it seems that the EU has a higher standard of legal basis to uphold women's employment scenario, the score of the Gender Equality Index published by the European Institute for Gender Equality (2020) shows a slow improvement of women's situation in the labour market since the score has increased from 70 in 2005 to 72.2 in 2020.⁴⁵

Parenting can be an essential determinant to understand gender priorities in labour law. Regarding this EC found 14.3 percent of women's employment reduced who have a child under 6 years of age and advantage of such situation increases men's employment rate about 9.6.⁴⁶ In a line with this view, one of a recent Directive named

⁴² FRA. 2020. *A long way to go for LGBTI equality*. EU-LGBTI. Vol. II. Issue. European Union Agency for Fundamental Rights.

⁴³ FRA. n 30.

⁴⁴ European Commission Directorate-General for Justice Consumers. 2021. *2021 report on gender equality in the EU*.

⁴⁵ European Institute for Gender Equality. 2020. *Work in the European Union for 2020*. <https://eige.europa.eu/gender-equality-index/2020/domain/work>.

⁴⁶ European Commission. 2020. *Proposal for a Joint Employment Report 2021 from the Commission to the Council*.

“Work-Life Balance for Parents and Carers” (Directive (EU) 2019/1158) also found in the EU with a legal basis for the directive is Article 153(2) TFEU, in conjunction with point (i) of Article 153(1) TFEU. Apart from that, the annual report on gender equality in the EU found highest the gender gap between married men and women with children and the lowest between men and women who are unmarried and have no children in the household.⁴⁷ At the same time, European Commission (2020) report also found a higher gender gap in young aged people whose age was below 30 compared to the childbearing age group 30-40 (p. 48).⁴⁸

During the epidemic, surveys revealed that 29 percent of working women with young children found it difficult to focus on their jobs due to family obligations, compared to 16 percent of working males in the same position.⁴⁹ During the COVID-19 epidemic, women are more likely to pare corners on their job hours or quit entirely to care for their children.⁵⁰ To tackle such gender needs there is no such legal structure have found in the EU.

In a similar vein, following the Proposal for a Joint Employment Report 2021 from the Commission to the Council by EC it has clear that existing laws and regulations of the EU cannot minimize the gender gaps in employment of women with disabilities, women from migrant communities or other minority groups, women with children

<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes>.

⁴⁷ Boskovic, Sara Grubanov-, Guido Tintori, and Federico Biagi. 2020. Gaps in the EU Labour Market Participation Rates: an intersectional assessment of the role of gender and migrant status. *Publications Office of the European Union*. <https://publications.jrc.ec.europa.eu/repository/handle/JRC121425>.

⁴⁸ European Commission. 2020. Proposal for a Joint Employment Report 2021. From the Commission to the Council. <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes>.

⁴⁹ “Women and the labour market: has COVID rolled back recent gains,” *Eurofound*, 2020. <https://www.eurofound.europa.eu/publications/policy-brief/2020/women-and-labour-market-equality-has-covid-19-rolled-back-recent-gains>.

⁵⁰ Alon, Titan., Matthias Doepke, Jane Olmstead-Rumsey, and Michèle Tertilt. 2020. *This Time It's Different: The Role of Women's Employment in a Pandemic Recession*. National Bureau of Economic Research.

or mother with dependent children, women in vulnerable situations or disadvantaged like young and older women. Like a shred of evidence, according to Gender Equality Index by European Institute for Gender Equality (2020), in the EU women with disability generally have a low probability to get full-time equivalent employment and in terms of the gender gap, the rate is 21 percent compared to 29 percent for men with disability.

Again, coming to non-binary sexually-oriented individuals' needs in the labour market. The EC believes that the prohibition of discrimination based on sexual orientation and ensuring equal job opportunity can possible under the existing legal framework. Despite that, reports, showing the status of LGBTI in Europe, presenting a different scenario. For instance, in 2019 a comprehensive report shows that 58 percent of LGBTI people have been suffered in the workplace.⁵¹ Besides, 46 percent transgender people, 60 percent intersexual people, 29 percent lesbian, and 46 percent bisexual people have been reported as harassed because of their specific sexual orientation. One-fourth of LGBTI people usually hide their identity in the workplace. Presenting bitter experience, FRA highlighted the following statement of lesbians in Poland,

When my boss found out that I was gay, she didn't fire me (of course, she couldn't), but she just started to do everything so I would quit myself. She needed a month to break me - I did actually quit and she reached her goal. (p. 31)

Similarly, 35 percent of transgender people and 32 percent of intersex people used to face harassment in the workplace.⁵² Homophobic comments were one of the common natures of harassment in the workplace. Nevertheless, there is specific law as well as regulation in EU that can prohibit the spreading of the homophobic waves under the same roof. Supporting this view, the FRA highlights another statement of a Swedish young gay man,

⁵¹ FRA. n 30.

⁵² *ibid.*

I hear homophobic comments almost every day at work, if not every day it is definitely every other day. It gets so hard sometimes you feel very ostracized that you are not normal according to them. (p. 32)

Focusing on multiple grounds of discrimination reviewing the FRA report has also found that the people of the LGBTI community like women or men face also multiple grounds of discrimination and there have no such laws that can protect them. For example, 36 percent of LGBTI people have not only faced discrimination as a member of the LGBTI community but also have disabilities. Similarly, being ethnic minorities 40 percent have faced another ground of unfair treatment.⁵³ Even fear of being misjudged 41 percent of respondents would not like to report these unfair treatments.⁵⁴

However, coming to the discussion of economic activity status, this study further found an unequal treatment as well as the participation of different gender in different sectors. In Europe, the percentage of self-employment women and women start-up entrepreneurs can be found as 34.4 percent, according to the report of WEgate (2020), despite having more than half of the European population as women.⁵⁵

No official record has been found associating with female entrepreneurship and participation in innovation. However, to accelerate it the EC has adopted a new strategy under the platform of WEgate (2020) were emphasizes digital skills the women will be encouraged to be an entrepreneur and take part in innovation.⁵⁶ No such quality improvement program or policy for LGBTI people has been found in the EU. Similarly, understanding the unadjusted gender pay gap, only 2018 data have been found in Eurostat.⁵⁷

⁵³ FRA. n 30.

⁵⁴ *ibid.*

⁵⁵ "Women entrepreneurship: facts and figures," *WEgate*, 2020. <https://wegate.eu/women-entrepreneurship-facts-and-figures>.

⁵⁶ *Ibid.*

⁵⁷ "Gender pay gap in unadjusted form," *Eurostat*, 2020. https://ec.europa.eu/eurostat/databrowser/view/sdg_05_20/default/table?lang=en.

According to Eurostat (2020), women in the EU earn an average of 86 cents for every euro a man earns. Likewise, by 2018 the pension gap between men and women found 29.5 percent throughout the EU.⁵⁸

There appears to be a lack of awareness among legislators as there is no official record of the pension or pay gap for LGBTI individuals in the EU. Nevertheless, through the report of FRA (2020), it can be found that, in 2019, 41 percent respondents were involved in paid work, 7 percent of survey participants were self-employed, 1 percent respondents were engaged in unemployed as well as volunteer works, and the percentage of unemployed LGBTI people were 5.

Besides, only 1 percent of intersex respondents have found involved in civilian service in the survey of FRA (2020) Unlike this scenario, the unemployment ratio in 2020 among women has increased from 6.9 percent in April to 7.9 percent in September whereas male unemployment increased from 6.5 percent to 7.1 percent in the same period.⁵⁹ In this circumstance, two perspectives may emerge: either existing legal frameworks failed to define all gender demands, or existing legal frameworks are not functioning well in practice. However, to draw a single conclusion lack of comprehensive material have limited this study. Instead of drawing a single conclusion this study has open the ground which may guide the legislators and researchers to take conduct a comprehensive survey on this framework.

⁵⁸ "Gender pension gap by age group - EU-SILC survey," *Eurostat*, 2020. [ilc_pnp13].

https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_pnp13&lang=en.

⁵⁹ "Unemployment by sex and age - monthly data," *Eurostat*, 2020. https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_m&lang=en.

CONCLUSION

Elimination of discriminating working environment for all gender is a common goal of all national and international organizations. Consequently, several legislative initiatives in the form of different policy and legal measures are generally found in every organization which tries to ensure a healthy labour market through protecting labour's rights. The effectiveness of these legal initiatives, howsoever, also remains a matter of assessment. From this point of view, this study aimed to understand how different genders' needs have been given priority in the EU labour laws and practice.

Unlike most of the existing literature, to assess the existing labour laws this study has tried to address gender needs based on their sexual orientation. Serious wage gaps between males and females regarding parental leave, getting jobs, and promotions have been found through reviewing some latest EU-funded reports. At the same time, it has also been seen that none of the comprehensive surveys presenting LGBTI people's employment status have found supporting the existing directives to call attention to LGBTI labour right in the EU. Subsequently, more than half of the respondents of the latest survey reports of FRA have faced discrimination and harassment both to get a job and in the workplace. Increasing homophobic attitudes in the workplace was also another consequence of the weakness of the existing system.

There were no integrated and complete survey results that emphasized labour status based on diverse sexual orientations, this study was limited in its ability to give a thorough comparison between legislation and practice. Hence, it is recommended to the EU to adopt a comprehensive legislative manifesto by integrating men and women along with LGBTI. In addition, by examining existing ones, this study proposes that necessary legislative steps be taken to protect women's and LGBTI workers' labour rights in terms of minimize pay inequalities and pension discrepancies. To be here,

further measures need to be taken to enhance the participation of women and LGBTI persons in entrepreneurship and creative professions. More research on the multi-faceted and diverse grounds of labour discrimination is required.

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Author Biography

M.M. Abdullah Al Mamun Sony

Sony is an alumna of Khulna University, Bangladesh
He currently enrolled as PhD candidate at Marton Géza Doctoral School of Legal Studies, University of Debrecen, Hungary. You can read his full bio here

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Navigating Legal Boundaries: Academic Freedom and Content Restrictions in Turkish Publication

Siska Katalin¹  

¹Department of European and International Law Faculty of Law,
University of Debrecen, Hungary

 siska.katalin@law.unideb.hu

ABSTRACT

In a MetroPOLL survey conducted in July 2020, 62 percent of Turkish respondents asserted that the media in Turkey lacks freedom, while 50 percent felt inhibited in freely expressing their thoughts on social media due to perceived monitoring and the potential ramifications of their actions. In response to criticism, the government often resorts to accusing critics of terrorist affiliations, posing a threat to the state, or engaging in activities jeopardizing national security. Publicly criticizing the state or government in Turkey carries inherent risks, including facing civil lawsuits, criminal charges, or investigations. Individuals who opt to publish or speak on sensitive subjects or criticize the government may undergo scrutiny, punishment, and legal prosecution, with potential consequences such as job loss and imprisonment. Legal proceedings against those expressing critical opinions have multifaceted negative implications for society, influencing perceptions of freedom of expression and serving as a means to intimidate civil society and stifle dissent. This study focuses on elucidating the primary reasons behind these restrictions and examining prevalent instances of legal action. Moreover, precision in language, avoidance of redundancy, cohesive transitions, quantifying information with specific examples, and the use of neutral language have been employed to enhance the academic tone and clarity of the paragraph.

Keywords: *Freedom of Expression, Content Restrictions, Publication*



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INTRODUCTION

In Turkey, the government and political leaders exercise both direct and indirect control over media outlets and book publications through various forms of censorship. In the year 2020, a number of individuals involved in the field of writing and publishing were subject to legal action by the governing bodies on charges related to defamation, obscenity, separatism, terrorism, subversion, fundamentalism, or infringement upon religious principles.¹

A measure to amend Law Number 5651 on "Regulating Internet Publication and Combating Crimes Committed by Means of Such Publication" was passed by the Turkish Parliament on July 29, 2020. Comparing the law to some legislation in Germany and France aimed at countering fake news, the major goal of the bill is to battle phony accounts, fake news, and misinformation on social networks.² But this law allows government sanctions regime for noncompliance, which sees as a restriction on freedom of expression. This paper's purpose is to see how the government's action on censorship toward media and book publishing.

The writer using the type of research used is legal doctrinal. Furthermore, the legal doctrinal methodology is a legal research method that examines laws and regulations that have several consequences. Moreover, the data sources used come from library materials or secondary data.

¹ 2020 Country Report on Human Rights Practice: Turkey <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/turkey/> assess August 5, 2023

² Cantekin, Kayahan. *Turkey: Parliament Passes Law Imposing New Obligations on Social Media Companies*. 2020. Web Page. <https://www.loc.gov/item/global-legal-monitor/2020-08-06/turkey-parliament-passes-law-imposing-new-obligations-on-social-media-companies/> access in August 7, 2023

DIRECT AND INDIRECT CENSORSHIP OF THE TURKISH MEDIA

In Turkey, the media and book publishing are subject to both direct and indirect censorship by the government and political figures. A number of authors and publishers were charged by the authorities in 2020 with defamation, obscenity, separatism, terrorism, subversion, fundamentalism, or violating religious principles. Human rights organizations have expressed grave concern that the social media law (Law No.5651), which went into effect on October 1, 2020, will result in increased censorship of social media and indiscriminate execution of content removal requests ordered by authorities, courts, or social media companies.

The new rule jeopardizes Twitter and Facebook's presence in the country if they do not cooperate with requests to remove problematic information. More than one million content producers must have a representative in Turkey, according to the regulation. Furthermore, platforms must comply with Turkish court decisions and remove objectionable content considered offensive by people or the government within 48 hours. Failure to execute may result in fines of up to €4.3 million or bandwidth limitations that preclude platform access.³

Publishers are required by law to send books and periodicals to the appropriate prosecutor's office at the time of publication. According to the Turkish Publishers Association, retailers do not stock books by some opposition figures due to intimidation and the fear of criminal and civil processes - as part of self-censorship.⁴

³ Turkish law tightening rules on social media comes into effect Euronews.com 2020.01.10. <https://www.euronews.com/my-europe/2020/10/01/turkish-law-tightening-rules-on-social-media-comes-into-effect> (Access: March 10, 2022.)

⁴ Ahmet Külsoy: Censorship spreads to Turkey's publishing houses. January 25, 2019. <https://ahvalnews.com/censorship/censorship-spreads-turkeys-publishing-houses> (Access: March 10, 2022)

The Friedrich Naumann Foundation for Freedom⁵ also reports that publishers frequently self-censor and avoid publishing works containing potentially illegal content (such as criticism of the government or pornographic or pro-Kurdish content). According to the group, publishers that fail to comply with court-ordered revisions of the illegal content might face publication bans and severe fines. The authorities also imposed restrictions on book promotion on publishers. Prosecutors deemed the ownership of some books in Kurdish, pro-Kurdish, or related to the Gülen movement to be solid proof of affiliation with and membership in the terrorist group in some cases. In other situations, officials declined to print books due to inappropriate material.⁶

An Istanbul court barred access to articles and claims by major publications and broadcasters that claimed a large public procurement concession had been granted to a friend of the president's son in August 2020. In line with the previous prohibition on access, an Istanbul court issued an additional ban on access to the news in September. In October 2020, police searched the offices of the Mezopotamya Ajansi Van news agency as well as the homes of some

⁵ The Friedrich Naumann Foundation for Freedom is the Foundation of liberal politics in the Federal Republic of Germany. It aims to promote the principle of freedom and dignity for all people in all areas of society, both in Germany and abroad. The Friedrich Naumann Foundation contributes to the liberal shaping of the future with civic education and dialogue programs, sponsorship of talents, research and political consultation, and archival work. In Germany, the Foundation offers a variety of forums, especially for young people, to exchange information and experience and to discuss current and future political and social developments. Its main purpose is to promote a better understanding of politics and encourage citizens to participate in the political process. Abroad, the support of human rights, the rule of law, and democracy form the core of their work in more than 60 countries. The Foundation supports the sustainable development of democratic and constitutional structures by supporting liberal parties and groups. A strong network of alliances of democratic parties, human rights organizations, and academic institutions offers a solid foundation for their activities abroad. The Foundation's central idea is to promote freedom and responsibility both in Germany and abroad.

<https://liberalforum.eu/member/friedrich-naumann-foundation-for-freedom-fnf/> (Access: May 07, 2023.)

⁶ Friedrich Neumann Foundation. Censorship and Self-Censorship in Turkey, May 12, 2020. <https://www.freiheit.org/censorship-and-self-censorship-turkey> (Access: March 10, 2022.)

of the news organization's journalists. During the raid, four journalists were seized and their cameras and technical equipment were confiscated.⁷

Cemil Ugur, one of the journalists, originally reported in September on two Turkish citizens who were allegedly detained, tortured, and then thrown from a helicopter by military in Van in connection with the case. Courts have issued a non-disclosure order requested by the Attorney General's Office regarding news of the incident. On October 01, a criminal judge in Ankara ordered blocking access to Mezopotamya Ajansi's online content at the request of the Information and Communication Technology Authority.⁸

Ugur was held in custody for three days. He was accused of reporting social incidents in order to undermine the state. Refer to Article 314/2 of the Turkish Penal Code in the 14-page indictment. The journalists were charged with "membership in a terrorist organization" based on their reporting and conversations with their sources. According to the indictment, the journalists worked for news organizations and periodicals that broadcast anti-state information. The indictment was accepted by Van's 5th Criminal Court of Appeal.

On January 6, 2022, the procedure's fourth and last hearing was held. The prosecutor delivered his final opinion, in which he asked for the acquittal of all five journalists on the charge of membership in a terrorist organization, but demanded the conviction of one of them, Nazan Sala, on the charge of terrorist propaganda, which he spread in his social media posts. At the conclusion of the trial, the court found all five journalists not guilty of "membership in a terrorist organization." Sala, on the other hand, was sentenced to one year and

⁷ Turkish police arrest Mezopotamya News Agency journalist Mehmet Aslan. January 05, 2021. <https://cpj.org/2021/01/turkish-police-arrest-mezopotamya-news-agency-journalist-mehmet-aslan/> (Access: March 10, 2022.)

⁸ Turkey: Freedom on the Net. 2019.06.01. <https://freedomhouse.org/country/turkey/freedom-net/2020> (Access: March 10, 2022.)

three months in prison for "terrorist propaganda," which he reportedly spread on social media.⁹

Some journalists have reported being ordered to modify their reporting if it appears unfavorable of the government, or being fired if they refuse. The government also charged Cumhuriyet journalists Alican Uludag and Duygu Guvenc with "publicly humiliating the judiciary" and "insulting the Turkish nation" over their coverage of Andrew Brunson's imprisonment in 2018. The court concluded on October 22 that the defendants would be acquitted because "the act in question is not defined as a crime by law".

Some journalists have reported being ordered to modify their reporting if it appears unfavorable of the government, or being fired if they refuse. Alican Uludag, a Cumhuriyet journalist, was also charged by the government¹⁰ and Duygu Guvenc¹¹ For allegedly openly humiliating the courts and insulting the Turkish people in connection with their report and coverage of Andrew Brunson's imprisonment in 2018.¹² On October 22, the court ruled that the

⁹ Cemil Uğur. Who is on Trial? Expression Interrupted! <https://www.expressioninterrupted.com/cemil-ugur/> (Access: May 07, 2023.)

¹⁰ Alican Uludag. Who is on Trial? Expression Interrupted! <https://www.expressioninterrupted.com/alican-uludag/> (Access: May 07, 2023.)

¹¹ Turkey: Duygu Güvenç Trial For "Public Defamation Of Judicial Organs" Adjourned To October.2020.07.02. <https://www.womeninjournalism.org/threats-all/turkey-duygu-guvenc-trial-for-public-defamation-of-judicial-organs-adjourned-to-october> (Access: May 10, 2023.)

¹² Andrew Brunson (1968) is an American Presbyterian minister. The pastor from North Carolina settled in Turkey with his family in the mid-nineties and was the leader of the Resurrection church in Izmir for twenty years. He was detained by the Turkish authorities in October 2016 and formally charged in December - accused of being a member of the banned Gülen movement, suspected of being behind the 2016 military coup attempt, and of being associated with the also banned Kurdish separatist organization Kurdistan Workers' Party. He spent nearly two years in prison and was released under pressure from the Trump administration.

In: Aki miatt Trump megbüntette Törökországot. Andrew Brunson a Mandinernek. December 05, 2019. https://mandiner.hu/cikk/20191205_aki_miatt_trump_megbuntette_torokorszagot_andrew_brunson_a_mandinernek (Access: May 07, 2023.)

defendants would be acquitted since the act is not defined as a crime by law.¹³

Radio and television stations did not allow equitable access to the campaigns of the country's major political parties. The mainstream media has been accused by critics of mainly favoring the ruling AKP (Justice and Development Party). The owner of the private media channel Olay TV declared in December that it will close the channel after only one month of operation because its editorial team favored content supporting the HDP (People's Democratic Party) while simultaneously being excessively critical of the government. The Editor-in-Chief of Olay TV said in his farewell broadcast that the government had persuaded the channel's executives to shut down the channel because it had come under government control, particularly owing to its content on suspected corruption and human rights violations by government officials.¹⁴

According to Ilhan Tasci, a member of the Supreme Council of Radio and Television (Radyo ve Televizyon Üst Kurulu, RTÜK), who represents the CHP (Republican People's Party), RTÜK punished or suspended independent broadcasters in 54 cases up until December. During this time, government-affiliated broadcasters received only two warnings and one fine. Independent broadcasters were fined 25 times as much as government-affiliated broadcasters.¹⁵

RTÜK has continued to fine broadcasters whose content appears to be harmful to Turkey's national and moral values. Providers of online streaming services must obtain a license or risk having their content withdrawn. The RTÜK has the authority to reject

¹³ The Reporter from Cumhuriyet Daily, Duygu Güvenc, is being tried for Art 301 of the Turkish Criminal Code. 2020.04.16. <https://mediamonitoringdatabase.org/the-reporter-from-cumhuriyet-daily-duygu-guvenc-is-being-tried-for-publicly-degrading-the-government/> (Access: March 10, 2022.)

¹⁴ Critical Olay TV Shut Down Due to the Gov't Pressure After 26 Days. September 16, 2020. <https://ahvalnews.com/turkey-press-freedom/critical-olay-tv-shut-down-due-govt-pressure-after-26-days> (Access: March 10, 2022.)

¹⁵ Opinion: Unprecedented Media Censorship. Press Freedom in Turkey. July 13, 2020. <https://www.empowordjournalism.com/all-articles/opinion-unprecedented-media-censorship-press-freedom-in-turkey/> (Access: March 10, 2022.)

applications for national security concerns and subject the content to prior censorship. In July 2020, RTÜK declared that it would suspend pro-opposition Halk TV and TELE1 for five days, threatening that the two networks' broadcasting licenses would be revoked outright if they got another punishment.

TELE1 incited animosity foment two news programs criticizing the country's Directorate of Religious Affairs (Diyanet) and President Erdogan, according to RTÜK, while Halk TV questioned Turkey's foreign policy. The NGO that protects journalists cautioned that the two channels were the final opposition channels in a primarily pro-government media environment, and that their presence was critical for the country's media plurality. Following the rejection of the broadcasters' court appeals, RTÜK banned TELE1 and Halk TV broadcasting for five days in September 2020.¹⁶

RTÜK also met in February 2023 to decide on imposing fines on 4 TV stations for broadcasting the earthquake.¹⁷ The Tele 1, Halk TV, FOX TV, and Habertürk networks have been investigated for their coverage of the Government's poor disaster response. A 7.8-magnitude earthquake struck Southern Turkey on February 06, followed by dozens of aftershocks, including a 7.5-magnitude quake that shook the region, killing more than 45,000 people, according to the latest official figures in the area and some parts of Syria.

Following the earthquakes, Turkish President Recep Tayyip Erdoğan and the ruling Justice and Development Party (AKP) were accused of performing poorly in coordinating search and rescue efforts, mainly failing to mobilize enough people, lack of proper coordination between troops, and civilians involved in the rescue, in some regions the residents themselves tried to pull their loved ones

¹⁶ International Public Service Broadcasters Face Potential Ban in Turkey. Public Media Alliance.2022.03.04. <https://www.publicmediaalliance.org/international-public-service-broadcasters-face-potential-ban-in-turkey/> (Access: March 10, 2022.)

¹⁷ Stockholm Center for Freedom. Turkey's broadcasting watchdog imposes fines on 3 TV stations due to earthquake coverage. February 22, 2023. <https://stockholmcf.org/turkeys-broadcasting-watchdog-imposes-fines-on-3-tv-stations-due-to-earthquake-coverage/> (Access: May 07, 2023.)

out from under the ruins. According to the media authority, the TV broadcasters face fines because they reported on the "incompetence and negligence" shown by the authorities during the disaster response, which, according to the RTÜK, reaches the limit of criminality.

However, there was no consensus among RTÜK members regarding the case either. "However, the death of tens of thousands of our citizens was caused not only by the earthquake but also by incompetence and arrogance. Furthermore, they think that with possible fines, they can hide the truth for which they are responsible," wrote Okan Konuralp, an RTÜK member, on Twitter. "No punishment can forget the despair of those waiting for rescue or their relatives. No amount of punishment can hide the truth of our citizens who lost their lives, the destroyed cities, the children left without parents, the millions who became homeless," he added.¹⁸

RTÜK has been accused of contributing to the country's increased censorship by unfairly punishing independent television and radio stations who criticize the Turkish government. According to Reporters Without Borders (RSF), 90 percent of Turkey's national media, which ranks 149th out of 180 nations in RSF's 2022 World Press Freedom Index, is controlled by the Turkish government¹⁹, is controlled by government supporters and represents official government support.

During the state of emergency implemented following the failed coup in July 2016, the AKP government shutdown 60 TV and radio stations by decree. Since 2007, the government has also taken an active role in ensuring that enterprises owned by sympathetic entrepreneurs receive extensive media prominence. The media altered their profile and approach under new ownership to avoid

¹⁸ Arzu Geybullyeva: In Turkey, the State Resorts to Censorship Majeure. 2023.02.13. globalvoices.org, <https://globalvoices.org/2023/02/13/in-turkey-the-state-resorts-to-censorship-majeure/> (Access: May 07, 2023.)

¹⁹ RSF's 2022 World Press Freedom Index: A New Era of Polarisation. <https://rsf.org/en/rsf-s-2022-world-press-freedom-index-new-era-polarisation> (Access: May 07, 2023)

criticism of the government and, in certain circumstances, to operate as a direct mouthpiece of the presidency.²⁰

ACADEMIC FREEDOM AND CULTURAL EVENTS

In the 2020s, the Government has imposed several restrictions on academic freedom and freedom of expression in academic institutions and censored cultural events. Because the appointment of the rector of both public and foundation universities is a presidential obligation, system critics believe that these appointments jeopardize the institutions' academic and political independence. Some professors have also been charged for publicly criticizing government policy. Academics and other public figures have openly expressed their dissatisfaction with the situation at public universities²¹, stating that the removal of over 7,000 instructors during the state of emergency from 2016 to 2018 has limited the pool of skilled

²⁰ RTÜK will Convene to Decide on Fines for 4 TV Stations Over their Earthquake Coverage. Turkish Minute. 2023.02.21. <https://www.turkishminute.com/2023/02/21/rtuk-will-convene-decide-on-fines-for-4-tv-stations-over-their-earthquake-coverage/> (Access: April 08, 2023.)

²¹ In Turkey, the state of emergency was first ordered for three months after the military coup attempt on July 15, 2016, but it was extended for another three months every time until July 19, 2018 - a total of 7 times. Ankara blames the international network of Fethullah Gülen, a Muslim preacher of Turkish origin who lives in America, for the incident and is particularly retaliatory against members of the movement. The lifting of the measure took place shortly after the executive presidential system came into effect in the Asia Minor country on July 09 this year.

In the last two years, the leadership in Ankara dismissed about 125,800 state employees from their jobs. About 6,750 of those fired were later reinstated. There are currently 33,308 people in prison because of so-called Gülenism, including soldiers, teachers, police officers, judges and prosecutors, doctors, lawyers, journalists, and even two members of the Constitutional Court. In: *Elfogadta a terrorizmus elleni harcot szabályozó új törvénycsomagot a török parlament.* 2023.04.10. Magyar Hírlap online, https://www.magyarhirlap.hu/kulfold/Elfogadta_a_terrorizmus_elleni_harcot_s_zabalyozo_uj_torvenycsomagot_a_torok_parlament (A letöltés ideje: 2023. 04. 09.)

professionals in numerous departments and institutions at the price of educational quality.²²

In July 2019, the Constitutional Court decided that the prosecution of over 2,000 academics known as "Academics for Peace" violated fundamental freedoms. The academics were charged with terrorist propaganda after signing a petition decrying state violence in the country's south-east in 2016. By September, 622 of the Academics for Peace group's 822 cases had resulted in acquittals. The majority of academics who were fired in 2019 were not reinstated.²³

Turkey, as a member of the Council of Europe and a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, must safeguard academic freedom, which is founded on freedom of thought, expression, and assembly. Turkey is also a signatory to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the OSCE Final Act, all of which protect the right to free expression, which is essential to academic freedom. Articles 25-27 of the Turkish Constitution give these rights. Also documented in his papers. We request that the government no longer employ the guise of terrorist propaganda to penalize academics' legitimate and protected activity."²⁴

Academics and university event organizers have indicated that their work is continually scrutinized, and they suffer criticism from their employers if they talk or write about themes that academic leadership or the government do not approve of. Many people

²² Inan Özdemir Taştan-Aydın Ordek A Report on Academic Freedoms in Turkey in the Period of the State of Emergency. [www.ohcr.org https://www.ohchr.org/Documents/Issues/Opinion/Submissions/Academics/INSAN_HAKLARI_OKULU1.pdf](https://www.ohchr.org/Documents/Issues/Opinion/Submissions/Academics/INSAN_HAKLARI_OKULU1.pdf) (Access: March 10, 2022.)

²³ Academics for Peace. [www.frontlinedefenders.org. https://www.frontlinedefenders.org/en/profile/academics-peace](https://www.frontlinedefenders.org/en/profile/academics-peace) (Access: March 10, 2022), Three Years of Rights Violations Faced by Academics for Peace. June 01, 2020 <https://afp.hypotheses.org/1482> (Access: May 23, 2023)

²⁴ Committee on Academic Freedom. Recent Amendments made to Turkey's Higher Education Law. 2020. 06.08. <https://mesana.org/advocacy/committee-on-academic-freedom/2020/06/08/recent-amendments-made-to-turkeys-higher-education-law> (Access: March 10, 2022)

reported using self-censorship to keep their employment. Human rights organizations and student organizations have protested the restrictions established by the courts and the Council of Higher Education, which limit universities' autonomy in personnel, teaching, and research policies.²⁵ The Higher Education Council terminated the operational license of Istanbul Şehir University, founded by former Prime Minister Ahmet Davutoglu, in December 2019. The Council seized the assets of the Science and Arts Foundation, which operates the institution, and appointed trustees in January 2020, citing mismanagement and a lack of cash as justifications for the involvement. Academic freedom campaigners said the actions were in revenge for Davutoglu's new opposition party's formation. On June 30, 2020, the university officially closed its doors.²⁶

Anti-terrorist efforts have an impact on art and culture as well. More than 200 Turkish and Kurdish songs have been prohibited by the government because their content promotes smoking or drinking or conveys terrorist propaganda. In 2016, police arrested members of Grup Yorum, a prominent folk band collective, on terrorism charges and barred them from performing, claiming the group was affiliated to the terrorist group Revolutionary People's Liberation Party-Front. Two group members, Helin Bolek and Ibrahim Gokcek, died as a result of hunger strikes protesting the group's treatment in April and May 2020. Two other members stayed incarcerated. Ten people were detained and two were arrested in August for attending the group's unlawful concert in Istanbul without a permission.²⁷

²⁵ Davutoğlu-linked Şehir University shut down by presidential decree. 2020.07.01. <https://www.duvarenglish.com/politics/2020/07/01/davutoglu-linked-sehir-university-shut-down-by-presidential-decree> (Access: May 10, 2023)

²⁶ Protecting Scholars and the Freedom to Think, Question and Share Ideas. Scholars at Risk. <https://www.scholarsatrisk.org/about/> (Access: March 10, 2022.)

²⁷ Grup Yorum: the Jailed Band Turkey cannot Silence. April 04, 2018. <https://www.theguardian.com/music/2018/apr/04/grup-yorum-the-jailed-band-turkey-cant-silence> (Access: March 10, 2023)

CONCLUSION

The regulatory body in Turkey responsible for censorship exercises substantial influence over the nation's political landscape. This paper expounds that persistent instances of freedom of expression violations are discernible. This is evident in the presented case, where journalists encounter impediments in articulating their perspectives on the state of affairs in Turkey. Some face accusations of engaging in propagandistic activities. Furthermore, within the Turkish context, journalists confront various forms of mistreatment, including harassment, threats, surveillance, and violations of their rights to freedom of expression, association, and assembly. Judicial harassment, in the form of criminal prosecution, is also prevalent. Additionally, they endure physical assaults, prolonged periods of arbitrary imprisonment, and instances of ill-treatment. Quantifiable data underpins these claims, emphasizing the severity of the challenges faced by journalists in Turkey.

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Author Biography

Siska Katalin

Siska Katalin, PhD is an Associate Professor on Department of European and International Law, Faculty of Law, University of Debrecen. You can read her full bio here

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Editorial Team,
Nurani Hukum
e-mail: jurnalnuranihk@untirta.ac.id

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