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National Space Authorisation and the Operationalisation Deficit of Article VI of the Outer Space Treaty

Moritz Hieronymi

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Abstract

Article VI of the Outer Space Treaty requires states to authorise and continuously supervise national activities in outer space. Through the duty to prevent genocide and the standard of due diligence, the exercise of these licensing powers becomes relevant conduct under the law of state responsibility, yet national authorisation regimes lack the procedure needed to show how the powers were used. A comparison of two statutory strands locates the gap. New Zealand and the United Kingdom make consistency with international obligations a condition of grant, Luxembourg addresses the obligations to the operator, and the proposed EU Space Act omits the condition. None of these regimes specifies an object of inquiry, requires reasons, grants standing to affected third parties or defines a trigger for reconsideration. Germany, the United States and France regulate the dissemination of satellite data through a specified object of inquiry, defined occasions of review and documentation duties, but as security and export law. The foreign-policy risk of commercial space activity falls between the two strands. Drawing on arms transfer control and on English and Dutch case law on export licensing, the article proposes six design elements that national legislation can enact without treaty amendment, and argues that legislation rather than judicial review must close the gap.

Keywords: outer space treaty, licensing, state responsibility, due diligence, administrative accountability

Introduction

On 12 August 2026, three residents of New Zealand filed a statement of claim for judicial review in the High Court at Wellington (*Abdulaal, Nazzal & Te Moke v Minister for Space*, 2026). The claim challenges two ministerial payload permits. In December 2023 the Minister for Space permitted the launch from the Mahia Peninsula of four satellites operated by BlackSky Global LLC, a United States geospatial intelligence company (New Zealand Space Agency, 2023). In April 2026 her successor approved a further twenty-six (New Zealand Space Agency, 2026).

The applicants contend that neither Minister considered whether the resulting capability was likely to be used inconsistently with New Zealand's obligations in respect of genocide (Genocide Convention, 1948). The proceedings are pending, and nothing below depends on the outcome. The filing exposes a structural feature of the statutory scheme. A decision with foreign-policy consequences is taken through a process that supplies no benchmark against which the adequacy of the international-law assessment can be reviewed.

The pattern is not peculiar to New Zealand. Article VI of the Outer Space Treaty requires states to authorise and continuously supervise national activities in outer space (Outer Space Treaty, 1967, art. VI). Every state that has legislated for that purpose relies on an administrative permission granted by a minister or regulator responsible for economic development, innovation or civil aviation. The criteria are launch safety, insurance cover, corporate solvency and debris mitigation, and most statutes add a clause about international obligations.

That clause sits at the intersection of three literatures. Space law scholarship has mapped the authorisation requirement as a question of treaty interpretation (Gerhard, 2009; Lyall & Larsen, 2018; Masson-Zwaan & Hofmann, 2019; von der Dunk, 2011) and has noted the growing role of commercial operators in military and intelligence functions (Ferreira-Snyman, 2015; Moltz, 2019; Tronchetti, 2015) and the human-rights responsibility Article VI generates for private activity (Ferreira-Snyman, 2026). International law scholarship has reconstructed due diligence as a standard of conduct but left the institutional realisation of that standard to the state (Besson, 2020; Krieger et al., 2020; Kulesza, 2016; Ollino, 2022; Peters et al., 2020). Administrative law scholarship has shown how procedure generates accountability (Kingsbury et al., 2005) but has not examined a regime in which the procedure is missing. This article brings the three together.

This article asks how national administrative systems must be designed if authorisation and continuing supervision are to be reviewable in practice. The international-law condition in the authorisation statutes, however drafted, lacks the procedural specification that would make the condition operative. Authorisation regimes contain a substantive condition but no procedure for applying the condition, whereas data-control regimes contain such procedure but serve security and export policy rather than Article VI. The foreign-policy risk of commercial space activity falls between the two. The law of state responsibility measures how a state used the regulatory means the state assumed, and that measurement requires a documented record.

Article VI as a Regulatory Interface

Authorisation and Continuing Supervision as Legal Control

Article VI performs two operations. The provision attaches international responsibility to the state for national activities in outer space, whether carried on by governmental or non-governmental entities, and requires that non-governmental activities receive authorisation and continuing supervision by the appropriate state party (Outer Space Treaty, 1967, art. VI). Most of the literature concerns the first operation and the relation of this special responsibility to the general rules of attribution (Gerhard, 2009; von der Dunk, 2011). The second operation matters here and does not depend on resolving that debate.

Authorisation and continuing supervision are the legally mandated interface through which the state exercises control before and after launch. Before launch the state may impose conditions, demand information and refuse. After launch most statutes allow the authority to vary, suspend or revoke (Lyall & Larsen, 2018, pp. 217–233). Where another primary obligation requires the state to employ reasonably available means of prevention, the design and exercise of these regulatory powers become relevant conduct in assessing compliance. Article VI thus supplies an interface at which conduct can be measured against whatever primary obligations the activity engages.

Commercial remote sensing and communications now perform functions once reserved to states, and the same spacecraft routinely serves civilian and military customers without any change in technical configuration (Moltz, 2019; Tronchetti, 2015). A routine licensing decision can therefore carry the weight of a foreign-policy commitment while retaining the form of an economic permission.

Article IX shows that the treaty is not indifferent to procedure. The provision requires consultation where a planned activity may cause potentially harmful interference with the activities of other states (Outer Space Treaty, 1967, art. IX), which yields a procedural duty even on the narrow reading confined to physical interference. Article VI prescribes no procedure, criteria or threshold, and that silence has usually been read as a grant of latitude (Gerhard, 2009). Latitude in design, however, does not extend to the question whether the resulting scheme can perform the function the treaty assigns.

Legal Control as a Basis of Responsibility

Article VI does not prescribe a standard of conduct. The standard derives from general international law, and two doctrines are candidates.

The first is complicity. Under Article 16 of the ILC Articles a state is responsible for aiding or assisting another state in an internationally wrongful act where the assisting state acts with knowledge of the circumstances and with a view to facilitating the act (International Law Commission, 2001, art. 16). The ICJ declined on that basis to find Serbia complicit in genocide despite material support, for want of proof that Serbia knew of the specific intent of the principal perpetrators (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007). The difficulty of applying the purpose requirement to indirect and commercial contributions is well documented (Aust, 2011; Jackson, 2015; Lanovoy, 2016). Because that requirement cannot be met in the licensing of commercial space activity, complicity does not supply the applicable standard.

The duty to prevent does. The duty derives from the undertaking to prevent genocide (Genocide Convention, 1948, art. I) and obliges the state to employ the means reasonably available once the state learns, or should have learned, of a serious risk that genocide will be committed. The ICJ has characterised the duty as an obligation of conduct rather than of result, binding each party according to the capacity of that party to influence the perpetrators (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, paras. 430–431; Schabas, 2009, pp. 520–522). The duty arises with knowledge of the serious risk, whereas a breach occurs only if genocide is in fact committed (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 431; International Law Commission, 2001, art. 14(3); Schabas, 2009, p. 521). A licensing decision taken against a documented risk therefore engages the duty whether or not the risk materialises. The Court followed this logic in *South Africa v. Israel* and indicated preventive measures on the basis of plausible rights and a real and

imminent risk, without any finding of breach (2024, paras. 54, 62, 74). The advisory opinion of 19 July 2024 addressed the duty of third states not to render aid or assistance in maintaining an unlawful situation (*Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, 2024, paras. 273–279).

Capacity to influence is not confined to diplomatic or military means. The Court measures that capacity also by legal criteria, according to the legal position of the state in relation to the persons and situations concerned (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430; Schabas, 2009, p. 522). A licensing power is regulatory capacity in that sense. The authorising state can impose conditions, require end-user undertakings, suspend a licence pending inquiry, or refuse.

Due diligence measures the exercise of that capacity. The ICJ has defined due diligence as a standard of conduct requiring the state to employ all means reasonably available to prevent a threatened harm (*Pulp Mills on the River Uruguay*, 2010, para. 197; *Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430; *Obligations of States in respect of Climate Change*, 2025, paras. 281–299). Where the threatened harm is grave the standard is stringent, and whether the standard has been met is determined objectively (*Obligations of States in respect of Climate Change*, 2025, paras. 281, 300). The standard entails not only appropriate rules but also vigilance in enforcement and the exercise of administrative control (*Pulp Mills on the River Uruguay*, 2010, para. 197). Licensing practice fails at this point. The state holds the licensing power but lacks a procedure to guide the exercise of that power, so the deficit lies in procedural design. Responsibility follows only if genocide occurs and then turns on whether the state had means available and manifestly refrained from using those means (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 438). A state that asked none of the relevant questions when granting the licence has no record with which to meet that charge.

The Addressee of the Obligation

Article VI leaves the identification of the appropriate state party to the circumstances. The launching state is the state that launches or procures the launching of a space object and the state from whose territory or facility the object is launched, and the state of registry is the launching state on whose registry the object is carried (Registration Convention, 1975, art. I(a), (c)). Each criterion may qualify (Gerhard, 2009; von der Dunk, 2011). This article focuses on the authorising state, which exercises the licensing power and whose conduct the diligence standard therefore measures. Where several states qualify, the argument applies to each.

Where the licensing state is also the state of registry, two sources of legal power coincide, since the state of registry retains jurisdiction and control over the space object (Outer Space Treaty, 1967, art. VIII). Most licensing states, New Zealand included, also register permitted objects, and no procedure guides the exercise of either power.

Two Statutory Strands

Case Selection

The sample maximises variation in drafting technique and institutional design rather than representativeness. The authorisation strand comprises five statutes in four jurisdictions. New Zealand and the United Kingdom use an explicit international-obligations clause, the United Kingdom in two statutes, because the Outer Space Act 1986 governs satellite operation and the Space Industry Act 2018 governs launch from British territory. Luxembourg has the most recent and most comprehensive legislation for commercial operators, and the proposed EU Space Act supplies the first supranational framework. The data-control strand comprises Germany, the United States and France, which regulate the dissemination of satellite data. Table 1 sets out six dimensions of comparison.

Table 1. The International-Law Condition in Five Authorisation Regimes

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
1. Form of the international-law condition	Satisfaction formula, s 17, paired with national-interest test, s 17(2). Precondition of grant.	Satisfaction formula, s 4(2)(b), paired with national security, s 4(2)(c). Precondition of grant.	Satisfaction formula, s 8(2)(b), paired with national security, s 8(2)(a), and national interest, s 8(2)(c). Precondition of grant.	Conduct duty of the operator, art 3, not a criterion of grant. Criteria of grant, art 5, are supervisory.	Absent. Legal basis art 114 TFEU. Conditions of authorisation, arts 6–8, concern safety, resilience and environmental performance.

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
2. Duty to inquire into end use	Description of payload capability and intended uses, sch 2. No duty to identify recipients or tasking arrangements.	None into end use.	None into end use. Detailed risk assessment for casualty risk, s 9.	None. Risk assessment is technical and financial.	None.
3. Reasons and publication	No duty to give reasons. Basis of decision surfaces only through freedom of information.	No duty to give reasons. Register of objects, s 7, not of grounds.	No duty to give reasons.	Register of authorisations published. Transparency as to whether, not why.	Union Register of Space Objects, arts 24–27. Technical parameters only.
4. Review and third-party standing	General administrative law only.	General administrative law.	Bespoke appeal, s 60 and sch 10, SI 2021/816, open to applicants and licensees only. Others may intervene with permission.	No third-party standing provided.	Open. Depends on national implementation.
5. Triggers of continuing supervision	s 21 power to vary, suspend or revoke. No defined trigger.	s 6 power to vary, suspend, revoke or transfer. s 8 directions. No defined trigger.	s 15(3)(c) revocation. s 26 monitoring without specified subject matter. s 29 directions. No defined trigger.	Continuing supervision with notification duties on change of control. Transfer requires authorisation. Triggers calibrated to corporate events.	Commission and Agency may suspend or withdraw for Union-owned assets, art 13. National authorities hold equivalent powers, art 30. No defined trigger.

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
6. Institutional location	Minister for Space, economic development portfolio. Mandatory consultation of security Ministers, s 55. Foreign ministry consulted in practice. No report to Parliament.	Secretary of State through the space agency. Spectrum expressly outside the licence.	Civil aviation regulator as licensing authority. Secretary of State holds direction powers, s 29.	Ministry of the Economy with the national space agency.	Commission and EUSPA alongside national authorities. Defence and national security excluded, art 2(3).

Note. Compiled by the author from the statutes and instruments listed in the references. OSHAA = Outer Space and High-altitude Activities Act, OSA = Outer Space Act, SIA = Space Industry Act, SI = Statutory Instrument.

What the Authorisation Strand Shows

In New Zealand, the Minister may grant a payload permit only if satisfied that the proposed activity is consistent with New Zealand's international obligations (Outer Space and High-altitude Activities Act 2017 [OSHAA], s 17). In the United Kingdom, the Secretary of State shall not grant a licence unless satisfied that the activity will be consistent with the international obligations of the United Kingdom (Outer Space Act 1986 [OSA], s 4(2)(b)), and the regulator must be satisfied that the grant is consistent with those obligations (Space Industry Act 2018 [SIA], s 8(2)(b)). In Luxembourg, the authorised operator must carry out space activities in accordance with the authorisation and the international obligations of the Grand Duchy (Loi du 15 décembre 2020, art. 3). The proposed EU Space Act contains no corresponding condition, which follows from the choice of Article 114 TFEU as the legal basis (European Commission, 2025).

The New Zealand and United Kingdom statutes use a subjective satisfaction formula that makes consistency with international obligations a precondition of grant, paired in each case with a national-interest or national-security test (OSHAA, s 17(2); SIA, s 8(2)(c); OSA, s 4(2)(c)). Luxembourg addresses the international

obligations to the operator and not to the authority as a criterion of grant. The European proposal omits the condition altogether.

The three techniques lead to the same result, and dimensions two to five of Table 1 are almost uniform. Whatever the formula, the licensing authority receives no instruction about what to inquire into, owes no duty to give reasons, offers affected third parties no avenue of challenge and holds supervisory powers that no defined event brings into play.

Statutory strength and administrative density do not coincide. New Zealand has the most demanding condition in the sample and produced the litigation described in the introduction, while Luxembourg and the European Union operate the densest administrative machinery without any international-law criterion of grant. Neither arrangement produces a reviewable record.

The Space Industry Act 2018 comes closest to a supervisory mandate. Section 26 requires the regulator to monitor licensed activity, among other purposes to secure compliance with the international obligations of the United Kingdom, but gives the monitoring no substantive scope. The Act also creates a bespoke appeal restricted to applicants and licensees (SIA, s 60 and sch 10; Space Industry (Appeals) Regulations 2021, SI 2021/816). New Zealand requires consultation of the security Ministers before a payload permit is granted, varied or revoked (OSHAA, s 55), and consults the foreign ministry in practice under Cabinet-approved payload principles (Ministry of Business, Innovation and Employment, 2022). This consultation concerns national security rather than the international-law condition, and the outcome is neither documented nor reviewable.

The legislative process and soft law show the same gap. The European Economic and Social Committee has recommended interpreting the proposed Space Act in light of the international obligations of the member states in relation to space activities (European Economic and Social Committee, 2025). The file awaits decision in the Parliament's Committee on Industry, Research and Energy (European Parliament, 2026), and the Commission has declined the clause as outside the scope of the regulation (European Commission, 2026). Even such a clause would restore the condition without supplying a procedure. The COPUOS Long-Term Sustainability Guidelines likewise ask states to supervise national space activities but regulate neither the object nor the procedure of supervision (United Nations Committee on the Peaceful Uses of Outer Space, 2019).

The Data-Control Strand

Germany's Satellite Data Security Act of 2007 subjects every request for the dissemination of data from high-grade earth remote sensing systems to a standardised sensitivity check by the data provider, judged against the essential security interests and foreign relations of the Federal Republic and the peaceful coexistence of nations (SatDSiG, 2007, ss 17–19). The Act imposes documentation duties and a permit requirement for sensitive requests.

United States law obliges the licensee to observe the international obligations of the United States and to notify the government of any significant agreement with a foreign nation or entity (National and Commercial Space Programs Act, 2010, § 60122(b)(1), (6)). Conditions required by international obligations and foreign policy are settled with the Department of State, although the 2020 revision of the licensing rules relaxed collection conditions and abandoned shutter controls (Licensing of Private Remote Sensing Space Systems, 2020). France devotes a title of the 2008 Space Operations Act to space-based data and subjects dissemination to control in the interest of defence and foreign policy (Loi n° 2008-518 du 3 juin 2008, title VII).

In substance, this strand supplies the procedure that section 4 shows to be missing from the authorisation strand, namely a specified object of inquiry, defined occasions of review and documentation duties. The strand operates as security law, however, measured by the security and foreign policy of the regulating state. The operator in the New Zealand proceedings is licensed under the data-control strand in the United States and permitted under the authorisation strand in New Zealand, and the foreign-policy risk of the activity sits between the two.

Three Deficits of the Authorisation Strand

The three deficits arise at successive stages of the regulatory process. Before the decision, the authority has no object of inquiry. At the decision and on review, the authority owes no reasons, third parties have no access and a court has no standard. After the decision, no event triggers a legal duty to reconsider. Each deficit removes a precondition on which the due diligence standard depends.

No Specified Object of Inquiry

The subjective satisfaction formula requires the decision-maker to be satisfied that the activity is consistent with international obligations but does not specify the

object of that satisfaction. The duty of inquiry therefore lacks a point of attachment. An authority that must be satisfied of a matter has to investigate the matter, and English and New Zealand administrative law both require a decision-maker to take reasonable steps to acquire the information necessary for the decision (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council*, 1977; Craig, 2021, pp. 534–541; Joseph, 2021, pp. 806–812).

The application requirements do not fill the gap. The New Zealand regulations require a description of the payload, payload capability and intended uses (Outer Space and High-altitude Activities (Licences and Permits) Regulations 2017, sch 2), which discloses what the payload does but not who receives the data, under what tasking arrangements or with what end-user undertakings. Reasonableness of inquiry is judged against the purpose for which the power was conferred (Knight, 2018, pp. 105–144), and where the instrument says only that the activity must be consistent with international obligations, the duty has nothing to fasten on.

A licensing authority cannot assess consistency with international obligations without knowing who will receive the data, under what arrangements and for what purposes, and no authorisation regime in the sample requires the applicant to disclose this information. General and operator-specific knowledge must be distinguished. A serious risk of genocide can be a matter of public record. The ICJ's finding in January 2024 that the right of Palestinians in Gaza to protection from acts of genocide was plausible and exposed to a real and imminent risk of irreparable prejudice was available to every licensing authority (*South Africa v. Israel*, 2024, paras. 54, 74). Whether the state's own operator feeds data into that situation turns on facts only the operator holds. Disclosure duties are therefore the central element of any workable regime.

The Unreviewable Decision

None of the five authorisation regimes obliges the licensing authority to give reasons for a grant. The record becomes visible, if at all, through freedom of information requests by someone who already suspects what to look for. In the New Zealand case, the ministerial briefing of 20 December 2023 was released under the Official Information Act in October 2025 (Ministry of Business, Innovation and Employment, 2023), before the second grant of April 2026, which was made without any documented reassessment of the international-law condition. Reasons serve an evidentiary function, since the diligence standard requires the state to show that the means reasonably available were employed, and that showing requires a documented record (Kingsbury et al., 2005, pp. 37–42).

Third parties affected by a licensing decision have no specific route of challenge in any of the five regimes. The United Kingdom's bespoke space appeal is confined to applicants and licensees, and intervention by anyone else depends on the permission of the panel. Elsewhere, affected persons must rely on general judicial review, which offers broad standing in New Zealand and the United Kingdom but no standard of scrutiny specific to the decision.

A court can ask whether the Minister erred in law, failed to take mandatory relevant considerations into account or conducted an inadequate inquiry (*CREEDNZ Inc v Governor-General*, 1981). Each question presupposes a statutory standard, and the international-law condition specifies neither the object of inquiry nor the relevant considerations nor the scope of review. A reviewing court must therefore either defer to the executive on the assessment of foreign obligations or construct from general principle the content the legislature declined to supply. The absence of a statutory standard is a principal reason why courts defer, as section 6.3 shows for English law, and without such a standard a court cannot review whether the state has observed due diligence.

Supervision Without Triggers

Every regime confers continuing powers, and none identifies an event that requires the authority to consider exercising those powers. Section 21 of OSHAA allows the Minister to vary, suspend or revoke a permit where necessary for compliance with international obligations, and the United Kingdom statutes permit directions and revocation for the same purpose (OSA, s 8; SIA, ss 15, 29).

Without a defined trigger, no legal duty to reconsider arises. The powers are discretionary, the object is unspecified, and nobody must consider exercising the powers at a particular time or in response to a particular event. A failure to reconsider therefore cannot be challenged as a breach of duty in administrative law or under international law, and the supervision requirement in Article VI becomes non-justiciable. In practice, reconsideration follows only external attention through litigation, a parliamentary question or an investigative report, which presupposes that the case has already attracted such attention.

The Available Templates

Transfer Control as a Structural Analogy

The control of conventional arms transfers offers a reference framework. The relevance is structural rather than political, and no equivalence between satellite data and weapons is asserted. Both regimes govern a private transaction, authorised by one state, whose consequences materialise abroad in the hands of downstream users the authorising state does not control, against the background of the international obligations of that state and under conditions of information asymmetry and dual use.

Transfer control has answered that problem with procedure. The Arms Trade Treaty prohibits authorisation where the exporting state knows that the items would be used in the commission of genocide, crimes against humanity or war crimes, and otherwise requires an assessment of the risk that the items could be used to commit or facilitate a serious violation of international humanitarian law or human rights law (Arms Trade Treaty, 2013, arts. 6(3), 7; Clapham et al., 2016, pp. 203–291). European Union practice adds common criteria, denial notifications and consultation between member states (Council Common Position 2008/944/CFSP, 2008). End-use documentation, annual reports to parliament and a defined role for the foreign ministry are standard, and dual-use goods are covered through arrangements modelled on the Wassenaar Arrangement (1996). The application of these rules has been criticised as permissive (Clapham et al., 2016, pp. 285–291; da Silva & Wood, 2021), but the architecture makes each decision legible after the event, which the authorisation strand does not.

Nicaragua has sued Germany over arms export licences, contending that continued authorisation in the face of a serious risk of genocide breaches the duty of prevention (*Nicaragua v. Germany*, 2024). In April 2024 the ICJ declined to indicate provisional measures but kept the case on the list and reminded all states of the obligations relating to arms transfers (*Nicaragua v. Germany*, 2024, para. 24). Export licensing decisions are thus pleaded as conduct engaging state responsibility in live proceedings, and space authorisation regimes are likely to face the same argument with even less in the record to answer.

The Template Within Space Law

Existing space legislation already contains the necessary elements. The German sensitivity check models a specified object of inquiry, covering the identity of the

requester and of the persons who will come into contact with the data (SatDSiG, 2007, s 17(2)). The United States notification duty models the disclosure of foreign relationships (National and Commercial Space Programs Act, 2010, § 60122(b)(6)). Section 5.4 connects these elements, together with documentation duties, to the authorisation decision.

Three Limits of the Analogy

The analogy has three limits, each of which shapes the design. Arms transfers generally have a defined recipient, whereas satellite operators sell imagery or bandwidth to a shifting customer base that may include resellers, so disclosure must be framed by category of end user. Export is a single event, whereas space activity continues for the life of the spacecraft, which leaves the licensing state with leverage and calls for periodic supervision. Dual use is the normal condition in space, with the same optical imagery serving civilian and military reconnaissance (Ferreira-Snyman, 2015; Tronchetti, 2015), so the inquiry must attach to the circumstances of supply rather than to the character of the item.

Six Design Elements

Six design elements follow from the analysis. Each can be enacted through ordinary national legislation without amendment of the Outer Space Treaty.

First, the authorisation statute must specify a clearly determinable material scope of inquiry. The application must disclose the categories of intended end users, the states in which tasking or resale arrangements operate, and existing or foreseeable contracts with foreign security or defence institutions. The obligation is framed by category, not by named recipient, so a reseller or analytics platform through which data reach a security institution must be disclosed even where the institution is not a direct customer. The licensing authority must assess that material against the international obligations of the state and document the outcome.

Second, the statute must define the events that trigger reconsideration. These include the opening of proceedings before an international court against a disclosed end-user state, the imposition of restrictive measures, findings by a United Nations commission of inquiry and any material change in the disclosed end-user categories.

Third, reasons must be given on a tiered basis. A public statement records that the international-law condition was assessed and identifies the categories of material

considered. A restricted annex holds the commercially sensitive and classified detail and is available to a reviewing court and to a parliamentary committee.

Fourth, review must be both periodic and event-driven. The cycle must be short enough to matter, and the outcome must be documented.

Fifth, the process must be open beyond the applicant. The United Kingdom's bespoke appeal shows that a specialised procedure is feasible, and the restriction to applicants and licensees is the defect. Standing should extend to persons with a sufficiently direct interest, or the statute should create a public-interest route. An unqualified individual right would founder on the diffuse character of downstream effects.

Sixth, the statute must require the concurrence or formal consultation of a competent authority whenever a trigger is engaged, with a documented outcome and an annual report to the legislature on authorisations granted, conditioned, suspended and refused. New Zealand's mandatory consultation of the security Ministers shows the mechanism. The confinement of that consultation to national security, and the absence of any documented outcome, show why consultation that is not tied to the international-law condition cannot discharge the supervision requirement.

Objections

Three objections remain, concerning regulatory competition, information asymmetry and justiciability.

Commercial Availability and Regulatory Competition

The first objection is that if one state refuses authorisation, another will grant the licence, and the capability reaches the same customer under a different flag, so that national action cannot produce results. The ICJ rejected this argument for the duty to prevent. Whether the means at the disposal of a state would have sufficed to prevent genocide is irrelevant, because the combined efforts of several states, each complying with the obligation, might have achieved the result (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430). Nor does the duty to act depend on any likelihood that the action will succeed (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 461; Schabas, 2009, pp. 521, 523). A licensing state cannot excuse a grant by pointing to competitors willing to license the same capability.

The arms trade faced the same constellation and answered with legal coordination through denial notifications and prior consultation under the EU Common Position, the Wassenaar lists and the Arms Trade Treaty. The interpretive clause recommended for the Space Act would have been the space equivalent, and the Commission declined the clause (European Commission, 2026). The competitive objection is therefore an argument for harmonisation and not against national action.

Information Asymmetry

The second objection is that licensing authorities know less than operators about downstream use and cannot verify international-law conditions. Export control and the data-control regimes face the same asymmetry and manage the problem through disclosure duties, undertakings and verification. The content of the obligation scales with the capacity of the state, and what a state can reasonably be expected to know depends on what the statutes of that state require applicants to disclose (Kulesza, 2016; Peters et al., 2020). The asymmetry is therefore an argument for placing the burden of disclosure on the applicant, which is the premise of the first design element.

Justiciability

The third objection is that courts will not and should not adjudicate the foreign relations of the executive, so that judicial review of licensing decisions with foreign-policy consequences is unavailable. A court reviewing whether a statutory inquiry was conducted and whether disclosed material was considered does not pronounce on the international legality of the conduct of another state. The court examines the completeness of a domestic administrative process, which may touch foreign-policy interests without becoming foreign policy (Knight, 2018, pp. 1–20).

The Dutch litigation over parts for F-35 fighter aircraft illustrates the point. The Hague Court of Appeal ordered a halt to deliveries of components to Israel, applying the clear-risk standard of the EU Common Position. The Supreme Court set the judgment aside in October 2025 because the assessment belonged to the Minister, but ordered a reassessment within six weeks against the clear-risk criterion, and the government maintained the halt in November 2025 (*State of the Netherlands v. Oxfam Novib*, 2024, 2025; Castellanos-Jankiewicz, 2024; Pijnenburg & Tjepkema, 2025; Ministerie van Buitenlandse Zaken, 2025). The Supreme Court thus confined review to the assessment and the standard applied, and left the decision to the executive.

English courts draw the same line. The Court of Appeal held the grant of arms export licences to Saudi Arabia irrational because the Secretary of State had not assessed whether past incidents disclosed a pattern of violations of international humanitarian law, a question of process under the clear-risk criterion (*R (Campaign Against Arms Trade) v Secretary of State for International Trade*, 2019). Once that assessment had been made, a renewed challenge failed (*R (Campaign Against Arms Trade) v Secretary of State for International Trade*, 2023). Where the decision is taken outside any applicable criterion, review falls away. The exemption of F-35 components from the suspension of export licences to Israel was made without applying the Strategic Export Licensing Criteria, and the courts held that the balance between national security and compliance with international humanitarian law was for the government (*R (Al-Haq) v Secretary of State for Business and Trade*, 2025). Review therefore depends on a domestic standard, and an international-law condition without specified content does not supply one.

Specified objects of inquiry, defined triggers and recorded reasons give a reviewing court a standard drawn from the statute. Such a standard reduces the occasions on which a judge must reason from general principle about foreign affairs, and deference is easier to justify where the legislature has determined the object of review.

Conclusion

The international-law condition in national authorisation regimes remains inoperative because the statutes lack the procedure required to apply the condition. The data-control regimes of Germany, the United States and France show that the necessary procedural elements already exist in national law but are not connected to the authorisation decision. The three deficits are cumulative. Without a specified object of inquiry the authority cannot conduct the required examination, without reasons, standing and a standard of review the decision cannot be reviewed, and without defined triggers no duty of continuing supervision arises.

Legislation is the decisive route. Courts defer where no statutory standard exists, so judicial review of section 17 OSHAA in Wellington is unlikely to supply the missing procedure without legislative guidance. The EU Space Act offers the nearest legislative opportunity, and national legislators can enact the six design elements in the authorisation statutes already in force.

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The Invisible Ground of Equality: Physical Appearance, Body Size, and the Limits of Protected Characteristics in Comparative Anti-Discrimination Law

Giorgos Konstantakis

Abstract

Anti-discrimination law singles out protected personal characteristics, making disadvantages legally relevant when they fall under established grounds. Appearance exposes the limitations of this architecture. It may affect access to employment and social goods and intersect with sex, race, disability, age, religion, and socio-economic class. Yet neither physical appearance nor body size is an autonomous protected ground under the dominant European Union employment equality regime. This article compares the EU's ground-based architecture, France's explicit protection of physical appearance, and New York City's targeted protection of height and weight. It argues that the EU approach creates a derivative protection trap: appearance-related harm receives protection only when reframed through a recognised ground. France and New York City offer different alternatives. Drawing on comparative anti-discrimination theory, the article proposes an appearance-relevance test addressing disadvantage, stereotyping, functional relevance, and proportional justification. Its purpose is to distinguish private preferences from appearance-based exclusion from significant social opportunities.

Keywords: Lookism, physical appearance, body size, anti-discrimination law, comparative law.

Introduction

Appearance discrimination may result in denial of employment because someone is considered too fat, too small, unattractive, visibly tattooed, improperly dressed, or inconsistent with an employer's preferred image. It is common and immediate, yet difficult to articulate in law. Anti-discrimination discourse identifies disadvantages based on race, sex, religious beliefs, disability, age, and sexual orientation. However, not all manifestations of the human body fit these terms. Appearance may explain exclusion without supplying a recognised legal ground.

This is a substantive social issue. Employment studies identify attractiveness and weight penalties in hiring and earnings (Giel et al., 2010; Hamermesh & Biddle, 1994; Puhl & Brownell, 2001). Philosophical and legal scholarship therefore asks why lookism remains less regulated than other arbitrary discrimination (Mason, 2021, 2023; Minerva, 2017; Rhode, 2010; Widdows, 2026). The problem is structural as well as evidentiary: discrimination law determines which characteristics warrant protection and which distinctions remain matters of private preference, organisational choice, or convention.

This problem takes special significance from a comparative perspective. Physical appearance is explicitly enumerated in French law as a prohibited ground of discrimination in employment and criminal areas (*Code du travail*, art. L1132-1; *Code pénal*, art. 225-1). The Défenseur des droits has interpreted the concept in a very broad sense as comprising morphology, height, weight, facial features, clothing, hair, tattoos, piercings, and other attributes of appearance and stressing intersection with sex, origin, religion, disability, age, and economic vulnerability (Défenseur des droits, 2019). New York City has opted for a narrower but more direct approach by passing Local Law 61 of 2023, which included height and weight in the list of protected characteristics of the New York City Human Rights Law in employment, housing, and public accommodation cases (Local Law 61 of 2023, 2023). Meanwhile, the European Union's employment equality laws work by enumeration. In the *Kaltoft* case, the Court of Justice of the European Union stated that EU law does not provide a general prohibition of discrimination on grounds of obesity as such, but obesity may be considered a disability if all criteria are met (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014).

Thus, the following question arises: if appearance is the ground of adverse treatment, shall we require that the claimant prove that it is really something else? This article refers to that problem as the derivative protection trap. It defines situations

in which appearance discrimination receives legal recognition only through the process of translating the ground into a recognised category, such as disability, sex, race or ethnic origin, religion, or age. Translation may be important, as appearance can be considered a visible representation of these grounds. However, it is misleading. A person who is discriminated against on grounds of obesity has to prove disability, although the core of the problem is in the stereotype about body size. Also, a rule relating to hair, clothes, facial features or grooming is seen through another identity characteristic, although the appearance norm itself is discriminatory.

The paper uses functional and contextual comparative methodology. EU, French, and New York City law are institutionally different but address common problems of protected grounds, stereotyping, occupational relevance, and intersectionality. Employment provides the main field of comparison; wider New York City regulation is illustrative. The resulting appearance-relevance test asks whether appearance legitimately affects a decision, rather than whether the body or presentation triggering exclusion can be altered.

Protected Grounds and the Problem of Appearance

Why Anti-Discrimination Law Selects Grounds

Anti-discrimination legislation does not prohibit every irrational decision, insult, or preference. It connects disadvantage with characteristics of special social and normative significance. Protected grounds therefore determine which distinctions require justification beyond ordinary decision-making.

There exist several theoretical models explaining the selection of such characteristics. Formal equality requires consistency: similarly situated people need to be treated the same. Substantive equality goes further and asks whether the rules of law reproduce disadvantage, stereotypes, exclusion, or unequal participation (Deliyanni-Dimitrakou & Konsta, 2025; Fredman, 2011). Moreau (2020) defines wrongful discrimination as certain inequalities, including subordination and failure to treat people as equal. Khaitan (2015) stresses the disadvantage of groups and normative irrelevance, saying that, according to his approach, a protected ground will be one that describes a personal characteristic of groups that have a big advantage gap and are either immutable or related to a fundamental choice.

Comparative law reveals no universal criterion for selecting protected grounds. Deliyanni-Dimitrakou & Konsta (2025) identify immutability, political powerlessness,

dignity, and histories of oppression. Protection thus reflects normative evaluation rather than taxonomy. Religion involves belief and choice; disability may be episodic or socially constructed; age is continuous; sex and race have distinct histories. What unites these grounds is the normative assessment of their discriminatory use in particular fields.

Appearance illustrates this difficulty. Height, facial features, skin colour, scars, and morphology may be difficult or impossible to change. Hair, clothing, weight, tattoos, make-up, and grooming may be alterable at personal, economic, cultural, religious, or psychological cost. Calling them choices overlooks their social meaning and conformity pressures. Immutability alone would inadequately explain protection of religion or gender expression and could imply that discrimination should be remedied by changing oneself.

Normative irrelevance offers a stronger criterion. An accountant's qualifications, experience, and capacity relate to the job; preferred body types or facial features generally do not. The problem intensifies where stereotypes create cumulative disadvantage or compel conformity unrelated to occupational functions. The issue is whether irrelevant appearance restrictions on access to employment and social goods are permissible, rather than whether individuals have a right to be considered beautiful.

Appearance as an Autonomous and Transversal Ground

'Lookism' refers to discrimination based on appearance. Widdows (2026) includes weight, height, body shape, disfigurement, hair, wrinkles, scars, and skin colour. Mason (2023) distinguishes appearance discrimination from cases where appearance represents another protected characteristic. Although analytically useful, these categories often intertwine.

One needs to consider the concept of physical appearance in two senses. On the one hand, the term can be used autonomously to refer to the situation in which someone becomes a victim of discrimination due to body size, attractiveness, height, facial features, or style without requiring the existence of any other protected criterion. On the other hand, physical appearance can be transversal since race, sex, religion, age, disability, social class, or gender expression are perceived through visible markers. In this way, hair texture is racialised, dress reveals a person's religion or socio-economic background, and body weight interacts with gender stereotypes. Differences and scars may become disabilities. A demand for a certain image of a

corporation may be neutral at first glance, yet reward conforming to a certain pattern of gender, race, class, or ability.

This transversal nature of the phenomenon becomes particularly explicit in French equality law. As the Défenseur des droits (2019) defines it, physical appearance includes bodily traits as well as visible expression of personality and character. In addition, the ground is defined as intersectional in relation to sex, age, origin, religion, gender identity, disability, and economic vulnerability. This definition is crucial since it manages to avoid a false dichotomy between identifying physical appearance as a distinct ground and accepting that it may bear other identities at the same time. The two ideas may coexist.

Conceptual overextension remains a risk. Protecting every observable choice could turn equality law into an aesthetic code of civility. Appearance may be essential in casting, modelling, or artistic performance; safety, hygiene, uniforms, and identification can also justify requirements. Private intimacy and preferences differ from institutional control over employment and housing. Strong protection is warranted where access to significant goods depends on appearance unrelated to the relevant function.

The question for comparative purposes then is not about whether all appearance discrimination is illegal, but rather how the law must define appearance distinctions that require a justification. European Union, French, and New York City models offer different approaches to the problem.

European Union Law: Protection by Translation

The Structural Gap

Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of "any ground such as" an open-ended list including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, property, disability, age, and sexual orientation (*Charter of Fundamental Rights of the European Union, 2016*, Art. 21). However, the Charter itself does not represent an equality code covering all aspects of private life. It operates in the realm of EU law, and the system of protections in the area of employment relies on specific grounds of discrimination. For example, Directive 2000/78/EC provides a framework of measures to combat discrimination based on religion or belief, disability, age, and sexual orientation (Directive 2000/78/EC, Art. 1). Other directives

concern racial or ethnic origin and sex discrimination. Physical appearance and body size do not comprise autonomous EU employment grounds.

This distinction is important because the concept of direct discrimination is based on the specific ground that is asserted. A claimant has to connect less favourable treatment with a protected ground. The concept of indirect discrimination provides greater flexibility in assessing the structural effects of a provision, but it still focuses on protected groups. When an employer rejects job seekers based on body mass, tattoos, aesthetic fit, or height, EU equality law does not check if physical appearance is an irrelevant ground for employment decisions. First, it tries to establish whether there was any connection between appearance and a protected ground.

Existing grounds can provide effective protection. Unequal dress-code burdens may constitute sex discrimination; religious attire may engage religion or belief; hair, skin, or facial requirements may concern racial or ethnic origin. Disability discrimination and reasonable accommodation may also constrain appearance standards. These protections should not be underestimated.

The problem arises where translation is unavailable or alters the claim. A short applicant rejected because employers prefer tall men may lack a protected ground. Body-mass criteria may constitute sex discrimination where applied differently or where disparate impact is established. A scar deemed 'unprofessional' may fall outside disability protection. Pure lookism can therefore create equality harms without a corresponding doctrinal ground.

Kaltoft and the Disability Route

In this regard, *Kaltoft* stands out as an obvious example of the derivative protection trap in employment discrimination jurisprudence. The case involved a child minder who claimed that he was discriminated against for being obese. According to the CJEU ruling, European law does not recognise a general principle of non-discrimination based on obesity in matters of employment and occupation. However, the Court went further to state that obesity can be considered as a disability in relation to Directive 2000/78 if it results in a long-term impairment which impacts one's participation in the work environment on an equal basis with others (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014).

From the doctrinal perspective, the ruling is logically consistent with the architecture of Directive 2000/78. The CJEU did not introduce a new discrimination ground into the directive, and it correctly avoided classifying all people above a

certain weight as being disabled. Nevertheless, it demonstrates a clash between the classification of the claimant and the classification of the wrongdoing. Prejudice related to weight can exist even when it does not affect the functioning of a person's body. The employer might believe that a larger worker is lazy, undisciplined, unattractive, unhealthy, or unsuitable for dealing with customers. The empirical research has proved such stereotypes multiple times (Giel et al., 2010; Puhl & Heuer, 2010). Thus, in this case, the legal injury arises from the employer's perception of negative attributes connected to the body rather than from the worker's inability to participate in work.

Requiring disability can exclude weight-discrimination claims that fail its criteria and suggest that only medically or functionally pathologised body sizes deserve protection. Puhl and Brownell (2001) identified this difficulty in disability-based weight litigation before *Kaltoft*. An autonomous body-size ground would shift scrutiny from disability status to the legitimacy of weight-based differential treatment.

However, the problem is broader than the issue of body size. If appearance discrimination is protected through another category, the legislation acknowledges the claimant but incorrectly describes the process of social discrimination. The translational approach can provide a remedy but does not recognise the independent significance of appearance standards. In the intersectional context, the problem is exacerbated: a person may suffer discrimination not because of race, gender, and body size individually, but because of their perception together. A legal framework that requires separating the visible body in terms of pre-existing grounds may ignore the stereotype that was behind the decision.

It does not mean that the EU should introduce an unlimited appearance ground into every equality directive indiscriminately. Instead, it shows that the current structure suffers from an identifiable blind spot. The French and NYC examples show that the blind spot can be mitigated without losing justification and occupation relevance.

France: The Broad Appearance Model

Statutory Recognition

The French example represents a case in Europe in which appearance discrimination is explicitly prohibited. In accordance with Article L1132-1 of the *Code du travail*, discrimination in recruitment and employment is explicitly prohibited based

on various grounds, including physical appearance (*Code du travail*, art. L1132-1). At the same time, physical appearance is also included in the definition of discriminatory differences according to Article 225-1 of the *Code pénal* (*Code pénal*, art. 225-1). It has been stated by the Défenseur des droits that the explicit inclusion of appearance discrimination was a result of the 2001 anti-discrimination reform (Défenseur des droits, 2019).

The French model does more than add an item to a statutory list. A claimant need not prove that height, weight, hairstyle, dress, or tattoos matter because they express another protected identity. Appearance can constitute an independent ground while intersecting with other grounds.

In this case, an important role was played by the Défenseur des droits, which defined the ground in its 2019 framework decision. Physical appearance is defined as the set of corporeal features (morphology, height, weight, facial features, phenotype, bodily marks) and the self-presentation of an individual (clothing, hairstyle, beard, piercings, tattoos, make-up) (Défenseur des droits, 2019). Such a definition of the category rejects the opposition of the body one has and the appearance one creates. From the equality perspective, both may become grounds for the imposition of social conformity on employees.

In 2018, there was a dispute about the recruitment of hosts and hostesses in which the recruitment process demanded information about an applicant's height, weight, tattoos, piercings, clothing size, eye colour, hair colour, and hair length (Défenseur des droits, 2018). The Défenseur des droits has identified it as a possible case of appearance discrimination (Défenseur des droits, 2018). Some traits that are difficult to understand as identities become evident when appearance is defined as an independent legal ground.

From Formal Prohibition to Contextual Assessment

An appearance so broad appears incompatible with formal presentation standards for the workplace environment. However, French practice does not follow an absolutist position here. The 2019 framework decision recognises that limitations can be justified on hygienic, safety, occupational function, identification or neutrality grounds in the public service, or even, to some degree, image concerns of the employer. Key standards are legality, necessity, suitability, and proportionality (Défenseur des droits, 2019).

Proportionality requires an employer to explain how a visual criterion relates to the job. Invoking an organisational 'image' does not transform a stereotype into a qualification. The 2019 decision scrutinises gender stereotypes, sexualisation of female employees, Eurocentric hairstyle norms, and obesity policies. Scrutiny shifts from individual deviation to justification of conformity demands.

Second, this model recognises that norms of appearance change over time. Beards, tattoos, hairstyles, or fashion of a particular period are understood differently in terms of their professional appropriateness. Treatment of the inherited code as an obvious one leads to freezing of past social preferences in the employment regulations. While allowing for legitimate organisational interests, proportionality requires proving them rather than assuming them.

The model nevertheless requires discipline. A racialised hairstyle and a provocative slogan on clothing raise different normative questions. Justification provisions and cumulative analysis with other grounds help distinguish equality harms from legitimate presentation regulation. Breadth alone cannot resolve that distinction.

In this respect, the model provides a useful lesson for New York City rather than serves as its inspiration. Its advantage lies in its legal visibility, but the disadvantage is that the visibility itself does not guarantee that appearance must carry the same weight as traditionally protected characteristics. In contrast to this, New York City opts for a narrower approach.

New York City: Targeted Body-Size Protection

Local Law 61 of 2023

Local Law 61 of 2023 amended the New York City Human Rights Law to introduce the prohibition of discrimination on the ground of height and weight in employment, housing, and in public accommodations (*Local Law 61 of 2023*, 2023). The statutory provisions entered into force on 26 November 2023. The New York City Commission on Human Rights notes that body size means height or weight and can be used as a basis for invoking the protection provided by the relevant legislation (New York City Commission on Human Rights, n.d.).

In particular, it is significant that no characterisation of the physical parameter as a disability is required under the amendment. It is explicitly stated that neither height nor weight, per se, qualifies as a disability in terms of the relevant legislation, though it is possible for such discrimination to also constitute a violation of

disability-related rights in case the conditions allow so (New York City Commission on Human Rights, n.d.). Hence, the two legal grounds may be applicable in parallel.

Unlike France, the reform protects two specific features rather than appearance generally. This gives employers clearer notice and avoids treating every aesthetic preference as a protected ground. It also directly addresses discrimination traditionally pursued through disability doctrine (Cavico et al., 2013; Rhode, 2010).

At the same time, narrowing the scope has certain consequences. In particular, a claimant who is refused because of facial appearance, scarring, hair, teeth, or unattractiveness will not be protected against discrimination by virtue of the body size provision if the refusal would be equally invalid in the case of discrimination on the ground of weight. Thus, the model addresses an issue rather than the underlying problem.

The Anti-Stereotype Logic and Exceptions

Specific methodological value can be seen in the explicit distinction made by the New York City framework between legitimate functional criteria and stereotyping. According to the Commission, body-size criteria may be used only in certain limited situations: where required by law, where body size prevents the performance of core functions of the job, and there is no practicable alternative allowing the individual to perform those functions, or if the criterion is necessary to the normal operations (New York City Commission on Human Rights, n.d.).

The framework requires individual assessment of ability. Employers should identify essential functions and requirements rather than assume incapacity from body size. Height may matter for technical or safety reasons; preferring tall employees because they supposedly convey authority is stereotyping.

Explicit body-size protection thus coexists with legitimate decision-making. Once height or weight explains differential treatment, the decision-maker must identify a narrowly defined justification rather than rely on stereotypes about professionalism, health, discipline, beauty, or ability.

France subjects appearance generally to proportionality; New York City protects specific body-size grounds with limited exceptions. EU employment equality law ordinarily requires translation into an existing ground before justification is examined. The difference concerns whether appearance-based discrimination becomes legally cognisable in its own right.

Comparative Evaluation: The Derivative Protection Trap

Three Models of Recognition

Three models arise from the comparative analysis of EU, French, and NYC frameworks. The EU framework may be defined as derivative or translational in character. Appearance-related treatment is protected insofar as it is sufficiently linked to an existing ground. This model has the advantage of doctrinal continuity and precludes the unlimited extension of categories of protected treatment, but under-inclusion is a serious deficiency of the model because some appearance-related harms will go unprotected while others are only recognised via recategorisation.

The French model is autonomous and transversal. Appearance is recognised as an independent ground, and at the same time, it is possible to analyse interactions between appearance and race, sex, religion, disability, age, etc. Its strength is faithfulness to the rationale behind the treatment. Since the criterion is appearance, it is possible to analyse it directly. Its problem is breadth and the necessity to distinguish between serious equality harms and legitimate appearance regulation.

The model of New York City is targeted and additive. Height and weight are protected independently from disability or another status, but the model does not include appearance as a ground for protection. Its strength is precision, since it directly targets body size stigma. But it is limited by fragmentation: protection of weight while ignoring other socially consequential visible characteristics is questionable from a consistency perspective.

The derivative protection trap is clearly visible upon comparing these three models. If qualified applicants are rejected because of their excessive weight, unusual height, or facial differences due to a disability, then a ground-limited approach would protect them only if the visible characteristics could be translated into disability, sex, and any other grounds. But the decision-making process is the same: aesthetic criteria replace professional competence. In *Kaltoft*, only a disability path is provided for a chance to protect them if disability criteria are met (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014). Translation transforms the protection of appearance discrimination into protection dependent on secondary legal categorisation.

The derivative protection trap applies to intersectional cases as well. Intersectionality is not the mere addition of grounds; it is about the unique experiences created by the interaction of those grounds (Deliyanni-Dimitrakou & Konsta, 2025).

Often, appearance is a medium of such interactions. For example, the hairstyle of a Black woman, the clothing of a Muslim woman, the signs of ageing of an older employee, or the bodily differences of a disabled person may become reasons for treatment that of a disabled person may become reasons for treatment which cannot be comprehended in isolation from appearance. If the law approaches appearance as evidence of other grounds, it may ignore the institutional norm of what is considered professional, respectable, healthy, female, male, modern, or any other body.

An Appearance-Relevance Test

A useful approach should avoid two polar extremes. The first is legal invisibility, where appearance matters only if it can be reduced to another ground. The other is limitless aesthetic constitutionalisation, which makes all preferences regarding the manner of dressing, grooming, and presenting oneself unlawful. A more practical approach would emphasise the relevance of appearance within the decision-making process.

In this article, an appearance-relevance test based on four questions is proposed. First, was the decision made relying substantially on the visible bodily or presentation characteristic? There should be evidence both direct and inferential, indicating the presence of a link between the relevant appearance and the discriminatory treatment. Second, is the characteristic socially disadvantaged, stereotyped, used as an identity indicator, or creating barriers to access the opportunity? Such traits as obesity, racial hair, scars, religious appearance, ageing signs, or beauty standards of a certain sex may carry equality connotations, operating within the framework of a wider social symbolism. The inquiry is informed by the notion of substantive equality and group disadvantage and does not consider immutability necessary (Fredman, 2011; Khaitan, 2015; Moreau, 2020).

Third, is the characteristic of the appearance relevant to the legitimate function assigned? It should be the key inquiry in the test. When it comes to employment, the question is whether there is a demonstrable connection between the trait and the essential job function, safety, hygiene, some legal requirement, or other legitimate purpose. Preferences related to customer taste, aesthetics of the brand, or notions about health and professionalism should not be taken on trust. The French approach to proportionality and the position of New York City in relation to speculative body size stereotypes provide useful examples (Défenseur des droits, 2019; New York City Commission on Human Rights, n.d.).

Finally, if a legitimate purpose is present, is the restriction reasonable and proportionate, and is there a less exclusionary measure that can accomplish the purpose? A safety concern might be legitimate but could be solved without the necessity of adapting equipment or individual testing. Identification of the employees could serve as the reason for the introduction of uniforms, not the differentiated ones by sex or body size. Physical characteristics might be relevant to the performance of an artistic role but not to performance in an office. The principle of proportionality ensures that the authority to take appearance into account is restricted and its necessity should be justified.

The appearance-relevance test deliberately refrains from treating immutability as decisive. Many socially loaded appearance characteristics are theoretically mutable but practically expensive to change. Any equality regime should be careful not to make people lose their weight, straighten hair, cover scars, strip religious clothing, undergo plastic surgeries, or adopt stereotypical appearance standards of genders as the condition of access. The opportunity to make oneself look differently does not make discrimination normatively legitimate.

The test also refrains from making attractiveness a legal right. Anti-discrimination laws do not imply that employers or any institution have to guarantee universal beauty. They imply that in those areas protected by equality laws opportunities shall not be distributed on the basis of irrelevant appearance characteristics without proper justification. This distinction is crucial. The object of equality law is not aesthetic judgement itself but its transformation into social disadvantage.

Intersectionality Without Legal Disappearance

Considering appearance, a transversal issue improves intersectional examination. There is no intention to replace one protected characteristic with another, namely appearance instead of race, sex, disability, religion, or age, each having a unique history and legal role that should not be undermined. However, appearance is useful in examining how protected groups become identifiable and how institutional norms function concerning embodied people.

In particular, such an examination is necessary, as lookism is not a socially neutral form of discrimination. Weight discrimination has a gender dimension; appearance standards may contain racism; grooming policies impact religious freedom; disability status may be visually manifested; economic precariousness may affect adherence to costly appearance rules. It is beneficial that the Défenseur des droits examines appearance in isolation and in connection with other grounds of

discrimination (Défenseur des droits, 2019). Such an approach ensures that a person is not forced to choose between "appearance discrimination" and "race discrimination", as the treatment involves both.

At the same time, the legal regulation of lookism should not build a hierarchy of suffering depending on beauty. Widdows (2026) suggests that lookism is under-theorised to some extent, as it is regarded as inevitable, trivial, and humiliating to state. This consideration is legally significant since a person is less likely to complain about discrimination on grounds of unattractiveness since this kind of allegation appears vain or difficult to prove. However, discrimination law acknowledges that normal practices may produce significant inequities precisely because they seem natural. The visibility of the characteristic does not mean that no scrutiny of such exclusion is required.

Thus, the strongest argument for law reform is not in the recognition of appearance as a universal protected ground, but rather in equality law establishing the means of direct scrutiny if appearance works as an allocation mechanism for highly valued positions. The targeted EU initiative may start with employment and vocational access, where functional relevance can be assessed and where equality doctrine has established the notions of direct discrimination, indirect discrimination, occupational requirements, and proportionality. Alternatively, Member States may include appearance or certain body-size grounds into their national legislation, as France does, and develop the principles of dealing with intersectional appearance issues under EU law in equality directives.

However, comparative law shows that it would be misleading to assume that one model is fully transferable. France's wide ground appeared in the context of the national statutory system with a tradition of comprehensive enumeration of protected characteristics. Body-size discrimination reform in New York City is a part of its municipal human rights code. EU law has to address treaty competence, multiple equality directives, and the relationship between the Charter and secondary legislation. Still, legal forms need not be identical for the insight to travel: a stereotype should not get legal legitimacy if its appearance is irrelevant to the legitimate objective of the institutional decision.

Conclusion

Appearance is paradoxical in its nature when it comes to anti-discrimination legislation. On the one hand, it is easily recognisable in social life, but, on the other hand, it is frequently indirectly recognisable in terms of equality law. This contradiction

may serve as one of the explanations why lookism is common and difficult to claim at the same time. A comparison between the EU, French and NYC legal frameworks illustrates that this phenomenon is not inherent in equality law per se but stems from the way legal systems organise their protected grounds.

In EU law, appearance-related discrimination is well-covered by the existing protected grounds; that is an important protection on its own. Religious appearance, racially related appearance, gender appearance and disabilities are included in this category, while *Kaltoft* states that weight discrimination may be recognised as a disability case where obesity becomes a long-term condition of the claimant. However, even if the protection via translation has been effective for certain kinds of discrimination cases, it excludes pure appearance discrimination and may force a claimant to seek protection in terms of identity that does not describe the situation.

The French system exemplifies how protection through naming is beneficial for the case. It includes both physical features of the body and modes of personal presentation, which allows examining discrimination in terms of other grounds. NYC, in turn, is more focused on the problem of providing specific protection for height and weight while still having narrow functions-based exemptions. Nevertheless, despite these differences, both systems direct the legal inquiry not on the possibility of translating appearance into another ground but to the relevance of the appearance criterion to the decision-making.

The translation problem concerns both the availability of a claim and equality law's ability to characterise the wrong. When a qualified candidate is excluded because of body size, visible difference, or an institution's preferred image, the inquiry should not always depend on translating appearance into another protected ground. The proposed appearance-relevance test asks whether appearance affected the decision, implicated disadvantage or stereotyping, related to a legitimate function, and was restricted necessarily and proportionately. It preserves legitimate occupational and safety requirements while subjecting conventional aesthetic preferences to scrutiny.

Equality law has always had the task to define which differences should be the basis for social opportunities' distribution. Appearance shows the limitations of this process. The next step cannot consist in the unlimited consolidation of the new right to aesthetic neutrality but requires the new principle: in employment and other spheres, a visible difference should not become a legally unlawful disadvantage just because the law does not recognise it yet.

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Exploring the Implication of EU's Carbon Border Adjustment Mechanism on Nigeria

Taofeeq N. Alatise

Abstract

The EU's Carbon Border Adjustment Mechanism (CBAM) aims to address the problem of carbon leakage and enhance the competitiveness of EU local producers by imposing carbon tax on imports from non-EU nations. However, CBAM will have significant economic implications for developing countries, including Nigeria, who have not established carbon tax policy similar to the EU's Emission Trading System (ETS). Nigeria is one of the major exporters to the EU but does not currently have a carbon tax policy that is aligned with the EU's ETS. This potentially puts additional compliance costs on Nigerian Exporters, raising the price of their products in EU market and loss of competitiveness. This paper aims to explore the impacts of CBAM on Nigeria's exports. The article argues that given that Nigerian does not currently operate a compliance carbon pricing regime, CBAM could have significant effect on the country's exports to the EU. It proposes a stronger legal framework that promotes transparency and integrity of Nigeria's carbon market system and long-term policy alignment with the EU's carbon trading system.

Keywords: European Union, CBAM, Carbon Border Adjustment Mechanism, Nigeria, Carbon Trading Scheme

Introduction

Since 2005, the European Union (EU) has launched the world's first Emissions Trading System (ETS) to regulate emissions by setting a limit on the total greenhouse gases (GHG) that a sector can emit; creating allowances and a carbon trading system (Meadows et al., 2024). However, while the ETS framework is designed to bring the EU's overall GHG emissions down and generate revenue to finance its green transition, the long-term economic implications of the ETS on EU producers and industries have become major concerns (Erdogdu, 2025). One such concern is that stringent and ambitious climate policies such as the ETS are bound to endanger the competitiveness of the EU's local producers and create the risk of carbon leakage (Zhong & Pei, 2024).

To address this concern and protect its local producers, the EU introduced a carbon border policy known as 'Carbon Border Adjustment Mechanism (CBAM)' in 2023. CBAM was launched by the EU to primarily address the problem of 'carbon leakage,' a situation where strict climate policies in one region push its carbon-intensive producers to other regions with weak climate policies (Morone & Alfino, 2025; Babiker & Rutherford, 2005). By this policy, the EU is imposing a carbon levy on specific imports (fertilisers, aluminum, iron and steel, cement, etc.) from non-EU countries with weaker carbon pricing policies (Erdogdu, 2025). The ultimate objective is to level the field for EU and non-EU producers and also promotes the broader goal of reducing the EU's carbon emissions (Article 1, CBAM Regulation). While developed countries with stronger carbon tax systems like the ETS are to a large extent insulated from CBAM's impacts, developing countries like Nigeria that do not have a mandatory carbon tax policy will be significantly impacted by CBAM (Morone & Alfino, 2025; Erdogdu, 2025).

Despite the prospects of CBAM to the EU economy**,** there are concerns about its implications for developing countries like Nigeria**.** Reports show that the Global South and indeed African countries will bear the majority of the negative implications of the CBAM framework due to their carbon-intensive production processes and heavy reliance on the EU market (Corvino, 2026). Specifically, the EU is an influential and strategic trading partner to Nigeria, with 39% of Nigeria's total exports going to Europe (Nigeria Bureau of Statistics, 2025). The implication of this is that any additional tax on EU imports – like the CBAM – will have significant implications on Nigeria's exports to the region. This is especially so because Nigeria does not have a carbon tax policy that is aligned with the EU's Emissions Trading System. This makes Nigeria's exporters to the EU risk paying the full CBAM's levy

on the embedded carbon emissions in their products, thereby raising the cost of their products in the EU market and leading to a loss of competitiveness. Therefore, this paper explores the potential impacts of CBAM on Nigeria's exports in the light of the country's lack of a carbon tax policy.

Problem Statement

Countries lacking a carbon tax policy similar to the EU's ETS will be significantly affected by CBAM when their products enter the EU market. Nigeria is one of the major exporters to the EU but does not currently have a carbon tax policy similar to the ETS. This potentially places additional cost on Nigerian exports to the EU. This extra cost makes Nigerian products more expensive in the EU market, and therefore less competitive. If this is not addressed, Nigerian exports to the EU will significantly drop, affecting Nigeria's volume of trade.

Research Objective

This paper aims to explore the implications of the EU's Carbon Border Adjustment Mechanism on Nigeria's exports to the EU in the light of the country's lack of a carbon tax policy.

Methodology

This paper employs a doctrinal legal research approach and content analysis method for the examination of primary and secondary sources. It relies on the EU's Emission Trading System, Carbon Border Adjustment Mechanism, Nigeria's Climate Change Act, 2021, National Carbon Market Framework (NCMF). It also relies on journal articles, regulations, reports, policies, published books and materials.

Implementation and Function of Carbon Border Adjustment Mechanism (CBAM)

CBAM is a form of carbon tax mechanism put in place by the EU to achieve both its economic and environmental objectives (Article 1 (1), CBAM Regulation May 2023). It was established pursuant to Regulation of the European Parliament and the Council (Regulation 2023/956: May 2023). The mechanism was introduced as part of the EU's 'Fit for 55' agenda, to reduce the EU's carbon emissions by 55% by 2030 from 1990 levels (Morone & Alfino, 2025). CBAM is designed to complement the EU Emissions Trading System and address the 'carbon leakage' concerns (Article 1(2) CBAM Regulation). By this policy, the EU is imposing a carbon price

on specific imports from non-EU countries with weaker carbon pricing policies. The CBAM policy applies to goods from non-EU countries listed in Annex 1 of the CBAM Regulation, including fertilizers, cement, aluminum, iron and steel, hydrogen, and electricity (Article 2 CBAM Regulation). In reality, CBAM seeks to impose an additional carbon tax on imported goods from non-EU countries that lack a carbon tax framework based on their embedded emissions in the production processes. The policy requires EU importers to purchase CBAM certificates to cover the embedded carbon emissions in their goods and to annually surrender the certificates corresponding to the declared emissions associated with their goods (Article 6, 20, 21 CBAM Regulation).

However, CBAM will not apply to non-EU countries and territories listed in Annex III of the Regulation (Article 2 (4) CBAM Regulation). A country is only eligible to be listed in Annex III where the EU ETS is applicable in that country, and the carbon price is charged on GHG emissions embedded in the goods from the country, without any rebates beyond the ones applicable in the EU ETS (Article 2 (6) CBAM Regulation). The implication of this is that non-EU countries that fulfill the conditions in Article 2 (6) of the CBAM Regulation are exempted from its application. However, goods from countries not exempted may also be able to deduct the corresponding amount of the CBAM certificates if they can show that an equivalent carbon price has been effectively paid in the country of origin (Article 9(1) CBAM Regulation; Morone & Alfino, 2025). It has been observed that Article 9 of the Regulation will prevent a situation of double taxation on the CBAM Declarant (importers) (Morone & Alfino, 2025). However, where the country of origin has no carbon pricing system or if its actual carbon emissions cannot be adequately determined or verified, EU importers will be susceptible to the default CBAM charge, which is based on the average emission intensity of exporting countries for such kind of goods (The African Climate Foundation and LSE Firoz Lalji Institute, 2023).

The implementation of CBAM is now fully in force since January 2026 after the transitional period from 2023 to 2026. The gradual rollout and implementation of CBAM is to provide time for critical stakeholders to adapt to these changes (Erdogdu, 2025). However, while CBAM currently applies to limited goods from non-EU countries, the prospect of its expansion to other goods is real. According to the EU, 'the ultimate objective of the CBAM is broad product coverage (European Commission, 2023). Scholars believe that an expansion of the scope of CBAM over time could significantly impact the economy of developing and least developed countries, whose economies are largely dependent on carbon-intensive production

processes, while also lacking a carbon pricing system for monitoring and measuring embedded carbon content in their export products (The African Climate Foundation and LSE Firoz Lalji Institute, 2023; Erdogdu, 2025).

It has been observed that by addressing the challenge of carbon leakage, CBAM has reshaped the global response to climate change, while also opening opportunities for non-EU countries to be strategic in their efforts to tackle climate change (Verde and Borghesi, 2022). Also, CBAM has the potential to incentivise non-EU countries with carbon-intensive manufacturing processes to adopt innovative and clean technologies in order to gain a competitive advantage in the EU markets (Willner & Perino, 2022). Developing and least developed countries have the opportunity to receive financial support to finance green projects that could accelerate the shift to a low-carbon economy (Naegele & Zaklan, 2019; Mehling & Ritz, 2023).

Despite this, CBAM has significant economic implications for non-EU nations. While developed countries are expected to experience relatively low impacts due to their advanced industrial capacities and viable market alternatives for their goods, developing and least developed countries will face substantial economic impacts because of their heavy reliance on the EU market and carbon-intensive production processes (Morone & Alfino, 2025; Erdogdu, 2025). The desire to generate foreign exchange revenues and expand markets for their exports is already pushing many developing and least developed countries to access global markets, and the EU has become a strategic trading partner to many of these countries (Rumble & Gilder, 2024). Therefore, CBAM places higher compliance costs on developing nations, which could further exacerbate economic inequalities.

Implication of CBAM on Nigeria's Exports

Early analysis of the implications of CBAM on African exports indicates that it could have a considerable impact on Africa's economy, especially the least developed countries (The African Climate Foundation and LSE Firoz Lalji Institute, 2023). A recent report indicates that CBAM may reduce African exports to the EU from 6 billion EUR to 3.9 billion EUR in 2030 (The African Climate Foundation and LSE Firoz Lalji Institute, 2023). Also, CBAM may cause a reduction in African exports to the EU of about 3.1% for cement, 8.2% for iron and steel, 13.9% for aluminum, and 3.9% for fertilizer (The African Climate Foundation and LSE Firoz Lalji Institute, 2023). However, while emerging research suggests a modest impact given the limited coverage of CBAM to a few African exports, an expansion of the

scope of CBAM to other export goods – which is the broader goal of the EU - could significantly impact the export capabilities of many African countries, including Nigeria, to the EU market (Okoro, 2025). Nigeria is not listed in Annex III of the CBAM Regulation, and therefore not exempted from its application. Consequently, Nigeria's exporters of goods such as fertilizers, aluminum, iron and steel to the EU will be required to purchase CBAM certificates.

Nigeria has been described as a 'CBAM-vulnerable' country for so many reasons; however, the most significant of them are its heavy reliance on the EU market and its carbon-intensive industrial infrastructures (Corvino, 2026). This increases the economic cost on its exporters to comply with CBAM. This is all the more problematic because Nigeria has not established a carbon pricing policy that mandates carbon-intensive industries to pay carbon tax on a ton of CO2 embedded in their goods, like the EU's ETS. The figure below shows that the majority of Nigeria's exports go to Europe, representing 39% of Nigeria's total exports in 2025. This demonstrates just how significant the EU market is to Nigeria, and the impact CBAM could have on the country presently and in the future when the scope of CBAM is expanded to other Nigerian exports.

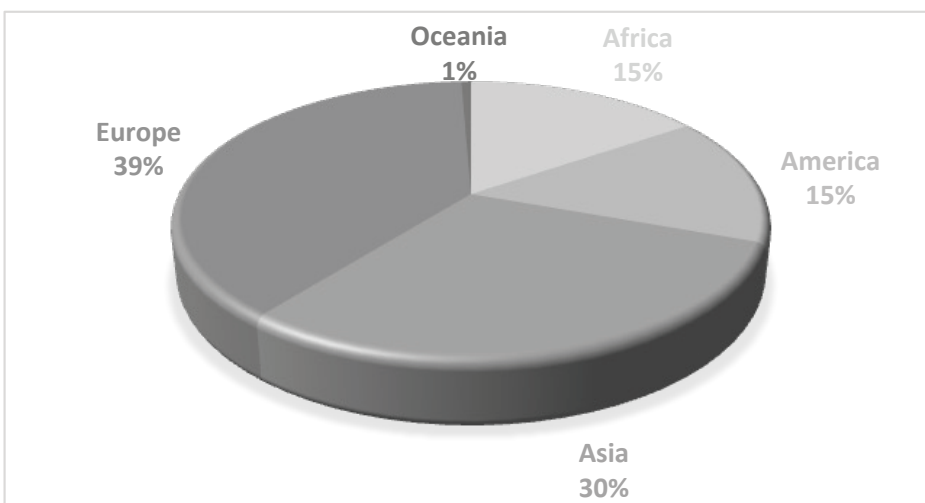


Figure 1. Nigeria's exports across regions in 2025

Source: Nigeria Bureau of Statistics (2025).

At present, the oil and gas sector constitutes 90% of Nigeria's exports to the EU, while only 10% of Nigeria's non-oil exports go to the EU (Nigeria Bureau of Statistics, 2025). It may be argued that since CBAM does not currently affect the oil and gas sector, which is the biggest chunk of Nigeria's exports to the EU, its impact on Nigeria's overall Nigeria's exports may be minimal. However, this argument ignores two crucial points: firstly, the EU has made it very clear that its long-term goal is to expand the scope of CBAM to other sectors, implying that there is the potential that other Nigerian exports could be affected in the near future.

Secondly, the current CBAM framework is targeting the very products that Nigeria is building its economic diversification around, to achieve competitive advantage and gain more access to the EU market (Rumble & Gilder, 2024). For instance, Nigeria exports significant fertilizer/urea ($91.43 worth in 2025) to the EU (UN Comtrade, 2025), and there are efforts by the government to also ramp up exportation in aluminum, iron, and steel to the EU market (BusinessDay, 2026). Fertilizer, aluminum, and iron and steel are currently covered by CBAM, implying that Nigeria's exporters of these goods will now begin to pay a CBAM levy to access the EU market. And the fact that Nigeria does not yet have an equivalent domestic carbon tax policy similar to the EU will make its exporters susceptible to paying the full default CBAM tax**.** This reality could make Nigeria's exports (fertilizer and aluminum) more expensive, compared to the EU local products, leading to loss of competitiveness and the eventual reduction in the country's exports to the EU.

It is important to recognise that Nigeria has recently put in place a Climate Change Act, 2021 and a carbon market framework. In 2025, the Nigerian government established the National Carbon Market Framework (NCMF), an initiative that operationalizes Nigeria's Climate Change Act, 2021, and aligns with the requirements of Article 6 of the Paris Agreement. The policy outlines the operational procedures for voluntary carbon markets in Nigeria, such as carbon credit registration, issuance, and verification. NCMF seeks to achieve a 124.7 MtCO2e reduction in carbon emissions and attract $2.5 billion in market value by 2030. However, it remains a non-binding framework, failing to create enforceable legal obligations on the stakeholders. The implementation of the framework largely relies on voluntary cooperation of the stakeholders rather than a legal obligation (Akinola & Oladipo, 2023; Ebohon & Alabi, 2021; Afeonkhai & Vandu, 2025). Experts have observed that the major weakness of the NCMF is its reliance on administrative Monitoring, Reporting and, Verification (MRV) of the carbon credit policy (Shasore, 2025). The absence of a statutory obligation in monitoring, reporting and verification makes

Nigeria's carbon credits system vulnerable to integrity risks, raising credibility issues about the system (Shasore, 2025). This limits the extent to which the Nigerian carbon market can be accepted as complying with best practices by its international trading partners like the EU. One key limitation of the framework is that it is a voluntary carbon market system, and not a compliance carbon pricing structure like the EU's ETS (Fwadwabea et al., 2025; Afeonkhai & Vandu, 2025).

The big question is to what extent Nigerian exporters can rely on the NCMF to avoid or cut the CBAM levy? Article 9 of CBAM allows foreign exporters to deduct the carbon price paid in the country of origin if it is mandatory, verifiable, and covers the same goods. However, Nigeria's NCMF is not a carbon pricing framework. NCMF is a voluntary market for project-based emission reduction that is largely self-regulated and relies on the voluntary cooperation of stakeholders (Shasore, 2025). The framework does not put a mandatory carbon price or tax on emissions from carbon-intensive goods such as fertilizers and aluminum. To that extent, Nigerian exporters of fertilizers and aluminum to the EU will not be able to rely on NCMF to avoid or cut the CBAM levy. Also, the monitoring, reporting and verification (MRV) of carbon credits is essentially administrative and self-regulated, without legal obligation to preserve the integrity of the system (Shasore, 2025; Fwadwabea et al., 2025), which is less likely to meet the condition for verification of embedded emissions in Article 8 of CBAM. Therefore, Nigeria's exporters may not be able to rely on the MRV framework to determine the actual emissions in their goods. In both cases, Nigerian exporters may pay the full CBAM default value, which could drive the price of Nigerian goods in the EU market and make them less competitive

Findings

Based on the thrust of this study, we find that the CBAM Regulation will have long-term implications for Nigeria's exports to the EU. The lack of a carbon tax policy, which ensures that carbon-intensive producers pay for the embedded emissions in their products, makes Nigeria's exports susceptible to the default CBAM levy. We also find that the current NCMF policy is a carbon credit policy which does not put a cap on GHG emissions of carbon-intensive sectors, and therefore cannot be used by exporters to seek reduction in the CBAM charges.

Recommendation

Aligning Nigeria's carbon market with the EU's Emission Trading System is the surest way the country can seek exemption from the application of CBAM. This will ensure compliance with Article 2 (6) of the CBAM regulation. To achieve this, Nigeria's carbon market must include a carbon pricing regime that puts a price on every tonne of carbon emission, allocate allowances, and a trading scheme similar to the ETS. However, while these changes may not be immediate, Nigeria can improve the integrity of the NCMF policy on monitoring, reporting, and verification (MRV) of actual carbon emissions of carbon-intensive industries in Nigeria. The MRV processes of NCMF should be strengthened and transparent in line with the requirements of CBAM. Nigeria's exporters can then be able to use this information to comply with Article 8 of CBAM and seek reduction under Article 9.

Conclusion

Nigeria is not only heavily reliant on the EU market; its industries rely on carbon-intensive infrastructure to manufacture their goods for domestic and foreign exports. The CBAM regulation is capable of causing a significant reduction in Nigeria's exports to the EU unless Nigeria aligns its carbon market framework with international best practices. Specifically, Nigeria needs to establish a carbon pricing regime targeting carbon-intensive industries producing goods currently covered by CBAM. The good news is that Nigeria is not starting from ground zero, given the existence of the Nigeria Carbon Market Framework (NCMF). All that the country needs to do is to include in the framework a carbon tax policy targeting goods covered by CBAM, and improve its monitoring, reporting and verification (MRV) process in line with the CBAM requirements. This will enable exporters to deduct the carbon tax already paid in Nigeria in line with Article 9 of the CBAM Regulation, and also avoid the risk of a default fee.

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Who Defines the Illegal? The Governance of Illegal Markets in Contested Territories: A Systematic Review

Nargiz Hajiyeva, Mahmud Nuriyev

Abstract

Illegal markets encompass a wide range of business activities carried out outside or against legal and regulatory institutions, including smuggling, resource extraction, counterfeiting, and trafficking in drugs, arms, and human beings. This paper attempts to provide a literature review of governance, normalization, and persistence of illegal markets in contested territories based on the recently produced scholarly literature. To achieve the stated purpose, a structured review of 75 scholarly articles retrieved from the Web of Science is undertaken, focusing on contested territories such as Transnistria, South Ossetia, Abkhazia, Donbas, and selected territories in the Horn and Great Lakes of Africa. Based on the structured literature review, it has been revealed how hybrid governance systems – which consist of de facto authorities, local elites, organized crime groups, and state accomplices – contribute towards legitimizing illegal markets in these territories. Not only have illegal market activities been tolerated by the local communities, but they become an integral part of local economies and survival techniques in the form of social adaptation, with their links to transnational illegal networks further reinforcing contested territories within global illegal market dynamics.

Keywords: Illegal markets, contested territories, hybrid governance, normalization of illegality, transnational crime

Introduction

Illegal market activities have always occupied a central stage across political science, law, economic sociology, and political economy, transcending disciplinary boundaries (Kubbe et al., 2026; Baker, 2026; Arias, 2026). The core aim of this study is to analyze how illegal markets are operated or regulated under contested territories, where the boundaries of legal authority and sovereignty are ambiguous (Pantaleão, 2025; Blume et al., 2022; Chevrillon-Guibert & Abdelrahman, 2026). While most scholarship focuses on the nature and definition of illegal markets in stable, recognized states (Ho et al., 2026), this issue also raises questions about the legitimized nature and normalization of such activities in contested zones, where they may serve the interests of local elites or powerful groups (Kubbe et al., 2026; Arias, 2026). This paper addresses the question: How does contested sovereignty shape the definition, governance, and persistence of illegal markets? By systematizing the latest scholarly research, the study shows why this topic matters for understanding hybrid governance, state capacity, and the political economy of conflict-affected, occupied, or unrecognized regions (Larratt-Smith, 2020; Schouten, 2026; Polemis & Likas, 2026). Illegal markets are heterogeneous: their operations cross borders and include counterfeit goods, smuggling, trademark falsification, and the confiscation of products and services. Empirical data collection is especially challenging in these regions because clandestine operations and fluid power relations obscure the boundaries between legality and illegality (Anwar, 2016; Blume et al., 2026). The legal concept of "contested" has been chosen to capture the vulnerability and complexity of these regions, providing a necessary lens for research on the governance, normalization, and adaptation of illegal markets.

Jens Beckert, the German sociologist, has made foundational contributions to the understanding of illegal markets by advancing the concept that illegality itself is socially constructed, context-dependent, and closely intertwined with broader market dynamics (Beckert & Dewey, 2017). Beckert's work emphasizes that illegal markets are not simply zones of absence or deviance, but rather are embedded in institutional structures and shaped by formal and informal rules, state responses, and the expectations of market actors. Through comparative and conceptual analysis, he demonstrates how the boundaries between legal and illegal markets are blurred, and how market participants employ strategies of normalization, adaptation, and organizational innovation to navigate legal uncertainty (Beckert & Wehinger, 2013). While his focus is primarily on the general nature and architecture of illegal markets including counterfeit goods, smuggling, and intellectual property

violations, Beckert's approach provides critical theoretical tools to analyze how these activities persist and adapt, even in highly regulated or contested contexts.

Illegal markets refer to economic exchanges and networks involving goods, services, or resources that are prohibited, unregulated, or conducted outside the scope of formal legal frameworks. These markets encompass activities such as drug trafficking, smuggling, counterfeit goods, illegal mining, and unauthorized resource extraction (Arias, 2026; Le Billon et al., 2026). In contested territories like South Ossetia, Abkhazia, Donbas, and Luhansk, illegal markets thrive due to fragmented sovereignty, weak or absent state authority, and porous borders that facilitate transnational flows (Blume et al., 2022; Schouten, 2026). These regions often become havens for illicit activities, with criminal organizations, local elites, and sometimes state actors collaborating or competing to control trade routes, taxation, and access to resources (Pantaleão, 2025; Kubbe et al., 2026). The operation of illegal markets is characterized by hybrid governance arrangements, where informal norms, violence, and corruption substitute or supplement formal regulation. Exploitation of natural resources, tolling operations, and the export or confiscation of goods by third countries are common, enabling networks to launder profits and sustain conflict economies (Santos et al., 2026; Polemis & Likas, 2026). This complexity makes empirical analysis difficult, but scholarship shows that illegal markets are deeply embedded in local power structures and often normalized within contested regions, shaping both the economy and the political order (Kubbe et al., 2026; Arias, 2026).

Systematic analysis on illegal markets

As per the Web of Science, the number of academic articles dedicated to the phenomenon of governance, regulation, and overall illegal markets in the past decade comes to 5,518. The articles cover a range of topics in the domain of illicit markets, such as trade, economy, shadow economies, smuggling, counterfeits, economic crime, etc. The papers cover several different scientific disciplines, such as political science, law, economics, sociology, geography, development studies, and others, which are either theoretical or empirical.

The aforementioned field includes 75 articles, focusing specifically on governance of illegal markets in contested territories. Among those are articles about de facto states, seceded territories, areas of conflict, regions of limited statehood, and unrecognized countries, with a special emphasis put on such regions as South

Ossetia, Abkhazia, Donbas, Luhansk, Transnistria, North Caucasus, Moskitia region (Honduras/Nicaragua), borderland regions in Colombia and Central Asia, and many others. The research analyzes the role played by the fragmentation of sovereignty, lack of institutional capacity, hybridity of governance, and presence of both state and non-state actors in the development of illegal markets in politically contested environments (Kubbe et al., 2026; Pantaleão, 2025; Blume et al., 2022).

The statistical overview provided above proves the existence of a substantial body of scholarly work dedicated to illegal markets, at the same time indicating the relatively low amount of research done on contested territories in specific locations like South Ossetia, Abkhazia, Donbas, Luhansk, and others. A similar pattern is evident by running a parallel search in the Scopus database. Over twenty peer-reviewed publications in the last decade have been published that specifically address the governance of illegal markets in contested areas. It needs to be emphasized that there is a considerable amount of duplication between Web of Science and Scopus databases. Therefore, even though the aggregate figures are indicative of an increased interest in the issues under discussion among scholars, the real number of research studies can be smaller because of duplication.

Table 1. Major topic list on illegal markets

Drug Trafficking and Narcotics Markets	**Production, trafficking, governance of illicit drugs; non-state armed actors; funding of conflict and patronage networks**	**(Arias, 2026; Blume et al., 2022)**
Smuggling and Contraband	Cross-border smuggling of fuel, arms, tobacco, electronics, luxury goods; manipulation of borders and checkpoints	(Schouten, 2026; Blume et al., 2026)
Resource Extraction and Environmental Crime	Illegal mining, logging, wildlife poaching, conflict minerals; environmental degradation and transnational resource flows	(Le Billon et al., 2026; Santos et al., 2026)
Counterfeit Goods and Intellectual Property Violations	Trade in counterfeit pharmaceuticals, consumer goods, pirated media, illicit branding, and parallel market exports	(Ho et al., 2026)
Human Trafficking and Irregular Migration	Smuggling and trafficking of people, exploitation of migrants, forced labor and sex trade in conflict-affected zones	(Blume et al., 2022)

Drug Trafficking and Narcotics Markets	**Production, trafficking, governance of illicit drugs; non-state armed actors; funding of conflict and patronage networks**	**(Arias, 2026; Blume et al., 2022)**
Tolling Operations and Transnational Laundering	Tolling schemes, third-country processing, re-export for laundering goods and profits; evasion of sanctions and tariffs	(Polemis & Likas, 2026)
Criminal Governance and Hybrid Authority	Rule by militias, warlords, gangs; taxation, dispute resolution, and provision of order by non-state actors	(Pantaleão, 2025; Kubbe et al., 2026)
Urban Informal Economies and Street Vending	Informal markets in cities, unregulated vending, formalization conflicts, role of patronage and corruption	(Zhou et al., 2025)
Borderland Economies and Trade Corridors	Blending of legal, illegal, and informal trade; contested checkpoints; transboundary networks and cross-border kinship ties	(Anwar, 2016; Ho et al., 2026)
Land Trafficking and Property Crime	Illegal occupation, speculative sales, land mafia, and property confiscations in unregulated territories	(Shanee & Shanee, 2016)
Maritime Smuggling and Shadow Fleets	Sanctions evasion, unregulated shipping, shadow fleets, flags of convenience, illicit maritime trade	(Polemis & Likas, 2026)
Political Elites and State Complicity	Involvement of local elites, de facto authorities, corruption, and collusion in illegal markets; rent-seeking by officials	(Kubbe et al., 2026; Pantaleão, 2025)
Normalization/ Legitimization of Illegality	Social/political acceptance of illegal markets; use as welfare or survival mechanisms in conflict zones	(Larratt-Smith, 2020; Pantaleão, 2025)
Arms Trafficking and Violent Economies	Small arms trade, proliferation, and links to organized violence and militia activity; fueling persistent insecurity	(Croci & Pérez, 2026)
Exploitation of Natural Resource Exports	Export and confiscation of oil, timber, minerals, and agricultural products by third countries or local actors	(Le Billon et al., 2026; Santos et al., 2026)
Organized Crime Networks	Transnational syndicates, mafia, and their integration into local power structures in contested zones	(Pantaleão, 2025; Kubbe et al., 2026)

Drug Trafficking and Narcotics Markets	Production, trafficking, governance of illicit drugs; non-state armed actors; funding of conflict and patronage networks	(Arias, 2026; Blume et al., 2022)
Toll Roads, Checkpoints, and Rent-Seeking Infrastructure	Extraction of rents at roadblocks, checkpoints, and transport nodes by armed groups and authorities	(Schouten, 2026; Blume et al., 2026)
Money Laundering and Financial Crime	Use of banks, informal networks, and digital currencies to clean proceeds of illegal activities in weakly regulated zones	(Polemis & Likas, 2026)
Informal Taxation and Protection Rackets	Protection payments, "taxes" imposed on traders and citizens by non-state actors; parallel fiscal systems	[Pantaleão, 2025]; [Blume et al., 2022]
State Capture and Institutional Fragmentation	Co-optation of state institutions by criminal networks or elites to enable and protect illegal markets	(Kubbe et al., 2026; Arias, 2026)
Cybercrime and Digital Illicit Economies	Use of digital platforms for illicit trade, fraud, and cryptocurrency laundering in contested/insecure regions	(Le Billon et al., 2026)
Social Networks and Kinship Ties	Role of extended families and local networks in facilitating, protecting, or legitimizing illegal commerce	(Anwar, 2016; Ho et al., 2026)
Exploitation of Humanitarian and Peacekeeping Channels	Diversion of aid supplies, use of humanitarian corridors for smuggling or illegal trade in conflict zones	(Blume et al., 2022)

Source: Scopus and Web of Science Core Collection. Search conducted between 15-30 August, 2026

In addition to the widely researched areas of drug trafficking, environmental crime, and transnational smuggling, recent literature emphasizes that the exploitation of natural resources such as illegal logging, mining, and wildlife extraction often extends beyond domestic boundaries to involve the export and confiscation of these resources in third countries (Le Billon et al., 2026; Santos et al., 2026). Tolling operations, in which raw or semi-processed materials are illicitly moved across borders for further processing or laundering, are also recognized as critical mechanisms within illegal markets. These practices facilitate the circumvention of regulatory oversight and enable criminal networks to profit from the transnational movement of high-value commodities, further entrenching the challenges

of enforcement and governance across multiple jurisdictions (Blume et al., 2022; Hajiyeva & Muradov, 2022; Muradov & Hajiyeva, 2020).

As seen in Tables 1 and 2, a systematic review was conducted in accordance with PRISMA 2020 guidelines and encompassed peer-reviewed papers published in Web of Science (WoS) and Scopus from 2016 to 2026. The broad WoS search regarding illegal markets and governance produced 5,518 papers. After inclusion of terms associated with contested sovereignty and territorial conflict, 75 papers were identified in WoS. Search in Scopus resulted in the identification of 20 papers. Overall, 95 papers were selected for screening before elimination of duplicates and application of inclusion and exclusion criteria. The Boolean search was conducted in two steps. The broad search involved terms associated with illegal markets and governance.

Table 2. PRISMA 2020 – Study Selection Flow.

PRISMA 2020 – Study Selection Flow					
Illegal Markets and Contested Territories | WoS + Scopus | 2016–2026					
Stage	**Source / Step**	**Records (n)**	**Status**	**PRISMA treatment**	**Notes**
Search context	Broad Web of Science search	5518	Context only	Not in final identification pool	Illegal markets + governance.
Identification	Web of Science refined search	75	Included	Records identified	Contested-territory refined search.
Identification	Scopus refined search	20	Included	Records identified	Corresponding refined search.
Identification	Total records identified	95	Calculated	Initial candidate pool	Before duplicate removal.
Deduplication	Duplicate records removed		TO COMPLETE	Removed before screening	Enter WoS–Scopus overlap.
Screening	Records screened (title/abstract)	95	Calculated	Records screened	After duplicate removal.
Screening	Records excluded		TO COMPLETE	Records excluded	After title/abstract screening.

PRISMA 2020 – Study Selection Flow					
Eligibility	Reports sought for retrieval	95	Calculated	Reports sought	After title/ abstract exclusions.
Eligibility	Reports not retrieved		TO COMPLETE	Reports not retrieved	Enter 0 if all obtained.
Eligibility	Reports assessed for eligibility	95	Calculated	Full-text assessment	After non-retrieval.
Eligibility	Full-text reports excluded		TO COMPLETE	Exclude with reasons	Record reasons separately.
Included	Studies included in systematic review	95	Calculated	Studies included	Final PRISMA 2020 sample.

Source: Scopus and Web of Science Core Collection. Search conducted between 15-30 August, 2026

Table 3. Search Strategy and Boolean Queries.

Search Strategy and Boolean Queries			
Database / search	**Boolean search**	**Period**	**Results**
Web of Science – broad	TS=("illegal market*" OR "illicit market*" OR "black market*" OR "informal economy" OR "shadow economy" OR "unregulated market*" OR smuggling OR contraband OR "illicit trade" OR "economic crime") AND TS=(governance OR regulation OR "political authority" OR "informal governance" OR "criminal governance" OR "state capacity")	2016–2026	5518
Web of Science – refined	TS=("illegal market*" OR "illicit market*" OR "black market*" OR "informal economy" OR "shadow economy" OR "unregulated market*" OR smuggling OR contraband OR "illicit trade" OR "economic crime") AND TS=("contested territor*" OR "unrecognized state*" OR "breakaway region*" OR "de facto state*" OR "frozen conflict*" OR "conflict zone*" OR "separatist region*" OR "ungoverned space*" OR "limited statehood" OR "conflict-affected") AND TS=(governance OR regulation OR "political authority" OR "informal governance" OR "criminal governance" OR "state capacity")	2016–2026	75

Search Strategy and Boolean Queries			
Database / search	**Boolean search**	**Period**	**Results**
Scopus – refined	TITLE-ABS-KEY((“illegal market*” OR “illicit market*” OR “black market*” OR “informal economy” OR “shadow economy” OR “unregulated market*” OR smuggling OR contraband OR “illicit trade” OR “economic crime”) AND (“contested territor*” OR “unrecognized state*” OR “breakaway region*” OR “de facto state*” OR “frozen conflict*” OR “conflict zone*” OR “separatist region*” OR “ungoverned space*” OR “limited statehood” OR “conflict-affected”) AND (governance OR regulation OR “political authority” OR “informal governance” OR “criminal governance” OR “state capacity”))	2016–2026	20

Source: Scopus and Web of Science Core Collection. Search conducted between 15-30 August, 2026

Note: PRISMA screening pool: 95 records (75 Web of Science + 20 Scopus), before duplicate removal. The broad WoS result (5,518) is reported as search context and is not added to the screening pool.

Discussion(s)

State and Non-State Actors in Contested Territories

Illegal markets in contested territories, like South Ossetia, Abkhazia, Donbas, Luhansk, and others, rely on a network of various state and non-state actors that benefit from limited regulatory frameworks, fragmented sovereignty, and weakly guarded borders (Pantaleão, 2025; Kubbe et al., 2026). State actors in such territories can be represented by de facto regimes, local administrative elites, as well as state officials from neighbouring or parent states that allow for or legitimize illegal trade by granting permits, ignoring smuggling channels, or imposing taxes on the movement of different commodities, such as fuel, tobacco, minerals, or counterfeits (Blume et al., 2022; Polemis & Likas, 2026).

Non-state actors play an equally important role in maintaining illegal markets. Organized crime gangs, warlords, and separatist militias tend to control key trafficking routes, protect illegal markets, and tax the trading of prohibited goods or directly participate in it. Such actors can create associations with local business

elites and smugglers to ensure the transit and laundering of the proceeds from contraband activities (Arias, 2026). In certain instances, transnational smuggling networks, possibly associated with third parties, implement tolling schemes and engage in the exporting, confiscating, and transformation of coal, timber, and metal resources.

Citizens and small entrepreneurs who find themselves suffering economically and having no legal means of earning money might participate as well. Such individuals are the victims and perpetrators of criminal activities, since the practice of criminality could cause poverty to become entrenched in addition to reducing the authority of the state and leading to violence (Blume et al., 2022; Kubbe et al., 2026). State and non-state actors alike contribute to the development of an illegal market in a contested area. Most recent scholarly literature on illegalities and practices in the illegal markets revolves around the following key issues.

Legitimization of illegality?

Another very important aspect that emerges from this analysis is the aspect of legitimization of illegality. It refers to the process by which illegal markets are normalized and even socially legitimized in contested spaces. In contested territories such as South Ossetia, Abkhazia, Donbas, Luhansk, and Transnistria, illegal operations including smuggling, extraction of resources, tolling business, and counterfeiting of goods are not only condoned but are often institutionalized within local governance and societies (Pantaleão, 2025; Kubbe et al., 2026). Such normalization can occur through the involvement of de facto governments, local elites, as well as other outside actors who condone, tax, and regulate illegal operations (Blume et al., 2022; Polemis & Likas, 2026).

A clear case in point is the situation involving the Armenian occupation of Karabakh and other regions of Azerbaijan for three decades (1992-2020). Over the course of three decades of occupation, both state and non-state actors of Armenia extensively extracted and sold natural resources, including gold, copper, timber, and many other valuable minerals, often using illegal means (Hajiyeva & Muradov, 2022). Moreover, products produced on Azerbaijani territories were rebranded with Armenian trademarks and exported under the guise of being Armenian products despite having been originally produced in the occupied territories of Azerbaijan. Such actions allowed the political elite of Armenia and the informal authorities of Nagorno-Karabakh during the 30 years of occupation, along with their business associates, to earn illicit profits and create an alternative economy operating outside of any laws and regulations (Hajiyeva & Muradov, 2022).

The legitimation of illegality is also reinforced by the fact that local communities are dependent on the markets for their very survival, the lack of economic opportunities, and the strategic exploitation of legal ambiguity on the part of both state and non-state actors (Arias, 2026). Illegal market practices become routinized, with social norms and institutions adjusting to legitimize or even glorify them (Larratt-Smith, 2020; Kubbe et al., 2026).

Table 4. General process of Illegal-Market Formation and Persistence in Contested Territories

General Process of Illegal-Market Formation and Persistence in Contested Territories		
1. CONTESTED SOVEREIGNTY Fragmented authority • weak/competing regulation • porous borders	→ 2. HYBRID GOVERNANCE De facto authorities • local elites • state officials • militias • criminal/business networks	→ 3. SELECTIVE AUTHORIZATION Permits • taxation • protection • tolerated smuggling • informal regulation
		↓
6. TRANSNATIONAL INTEGRATION Cross-border routes • third-country actors • relabeling • laundering • re-export	← 5. ILLEGAL-MARKET EXPANSION Smuggling • resource extraction • contraband • counterfeit trade • illicit value chains	← 4. LEGITIMIZATION & NORMALIZATION Illicit activity becomes routinized, socially tolerated, or institutionally embedded
↓		
7. ECONOMIC DEPENDENCE Citizens and entrepreneurs rely on illicit markets for income, goods, and survival	→ 8. CORRUPTION & VIOLENCE Rent extraction • protection networks • coercion • institutional fragility	→ 9. MARKET PERSISTENCE / RESILIENCE Illegal markets reproduce themselves despite formal prohibition

Source: Systematic review of the literature, drawing particularly on Beckert & Dewey (2017), Blume et al. (2022), Pantaleão (2025), Arias (2026), Kubbe et al. (2026), Polemis & Likas (2026), and Muradov & Hajiyeva (2022).

An important element contributing to the normalization of such activities is the proactive position of the authorities de facto in terms of instituting illegal practices. In Transnistria, for instance, the regulation of smuggling and counterfeiting

is systematically practiced through permitting, taxation, and other instruments used by the local administration to collect rents and create an illusion of control. In a similar vein, the regimes of South Ossetia and Abkhazia have institutionalized cross-border smuggling of fuel, tobacco, and agricultural produce as a means of earning revenues and providing services to the population (Blume et al., 2022). The shadow fiscal systems instituted by the separatists in Donbas and Luhansk have allowed them to tax the circulation of coal, metals, and other manufactured goods. Similar trends can be seen in the Horn of Africa region, where charcoal trafficking, cattle trade, and informal taxation by militias are legitimized through tales of clan legitimacy and survival in the absence of better alternatives (Le Billon et al., 2026). Transnational crime organizations and foreign states contribute even further to such a trend. The porous nature of border areas, kinship relations that cut across borders, and involvement in tolling and money laundering schemes result in the incorporation of such regions into global black-market chains, thus diluting the line between legal and illegal economies (Polemis & Likas, 2026).

To conclude, it is essential to understand that the normalization of illegal practices is not a mere economic feature but a process supported by adaptive social norms and institutional learning. Illegal activities become embedded in the ways communities survive, moral economies, and local institutions. While initially an answer to vulnerability or the failure of the state, they become routinized, socially accepted, and even praised in some situations as a way of survival and resistance (Larratt-Smith, 2020; Chevrillon-Guibert & Abdelrahman, 2026). Although this process seems stable on a short-term basis, it contributes to the reproduction of cycles of corruption, violence, and institutional weakness, which makes the challenge of rebuilding after conflict extremely complicated.

Limitation(s)

Limitations of this study correspond to the problems identified during the systematic review both on an empirical and conceptual level. First, as the analysis shows, there is a clear lack of empirical research that explores the issue of illegal markets in contested territories, which is caused not only by the problem of collecting reliable information in politically unstable and risky regions such as Transnistria, South Ossetia, Abkhazia, Donbas, Luhansk, and similar territories in Africa, but also by the tendency to research accessible and stable areas rather than zones of conflict and de facto statehood. Second, this study is hampered by the lack of

primary sources and the use of case studies, secondary information, and indirect observations. In turn, this may lead to a fragmented and sometimes anecdotal perception of mechanisms, networks, and actors who are involved in the activity of illegal markets. Third, comparative dimension may be limited by geographical gaps, because there are certain regions which are poorly researched, especially in Africa and the Caucasus. Finally, the process of normalizing and legitimating the process of illegality revealed in this paper needs further longitudinal, ethnographic, and multi-level research.

Conclusion

The present systematic review proves that illegal markets in contested territories are not isolated phenomena but a part and parcel of the fragmented governance in Transnistria, South Ossetia, Abkhazia, Donbas, and regions of the Horn and Great Lakes of Africa. Illicit markets flourish in the interaction of de facto regimes, local elites, criminal groups, and in some instances, corrupted representatives of states or third-party organizations. The existence of illegal activities, including resource extraction and smuggling, counterfeiting, and tolling, is often tolerated and encouraged by those whose incomes depend on revenues from these activities. The legitimacy of illegal markets is additionally provided by the adaptation of people to the current situation, their economic needs, and the engagement of local populations in these practices. In addition to social processes, international connections and weak border control further contribute to the resilience of illegal markets, involving them into regional and even global supply chains. Despite obvious implications for policy-making and security issues, there is a notable lack of systematic empirical studies in the literature. This is especially remarkable against the background of the growing literature on the issues of the political economy of illegal markets in contested territories. The scarcity of empirical research devoted specifically to these regions leaves room for improvement and development in the future. It seems appropriate to state that only an insignificant part of the available literature touches upon this topic.

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Artificial Intelligence & The Violation of Right to Privacy Under Article 17 of the ICCPR

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Abstract

Artificial Intelligence (AI) has driven innovation and also has posed greater threats to the privacy rights guaranteed by Article 17 of the International Covenant on Civil and Political Rights (ICCPR). AI systems allow for surveillance, profiling, data fusion and automated decision-making; many of them offer little transparency, consent or accountability. This study employs a doctrinal legal methodology to analyse Article 17's interpretive jurisprudence, while drawing comparative insights from frameworks like the GDPR. It examines how AI practices often involve unlawful inferences when lacking a clear legal basis and arbitrary interference that does not meet the requirements of proportionality, necessity and reasonable standards. Case studies show violations by facial recognition at protests, algorithmic profiling of behaviours and discrimination over health topics, highlighting intersections with the non-discrimination guarantees in Article 26. Findings illustrate that remedies are still insufficient, and States struggle to ensure oversight, effective redress and privacy-by-design protections. The paper ends by arguing that Article 17 must be broadly interpreted to cover informational, algorithmic and biometric privacy, which demands more sophisticated governance and independent regulation and protection of enforceable rights of access, correction and erasure to protect human dignity in the age of AI.

Keywords: Digital privacy, artificial intelligence (AI), GDPR, informational privacy, AI governance.

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Introduction

AI plays a crucial role in protecting privacy as it becomes increasingly omnipresent in how society manages sensitive data. Algorithms specifically designed with privacy as a fundamental principle, such as differential privacy, homomorphic encryption, and federated learning, are essential for safeguarding personal information (Rahulamathavan et al., 2024). Developing privacy-focused AI systems requires collaboration among technologists, ethicists, policymakers, and the broader community to establish standards and ensure compliance with legislation. Algorithms and techniques for securing data privacy in AI healthcare solutions (Jeelani et al., 2024). Also, global efforts are essential to regulate AI systems ethically while safeguarding individual privacy.

The development of AI raises serious concerns about the protection and privacy of individuals' personal data, particularly when states or other actors use personal data, directly or indirectly, for surveillance or mass data analysis. The European Union has implemented comprehensive regulations such as the General Data Protection Regulation (GDPR) to address these issues (Hoofnagle et al., 2019), but some provisions could hinder the progress of AI algorithms and machine learning and thus stifle innovation. This article will examine whether the development of AI can fully accommodate the obligations imposed by the GDPR without paralysing artistic and technical creativity, while focusing on the ways in which the human right relating to privacy protected under Article 17 of the ICCPR is being violated by the unregulated use of AI.

Legal Framework: Article 17 of the ICCPR And the Right to Privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is a cornerstone of privacy rights, dignity, and autonomy for humans, and modern AI systems pose a significant challenge to its guarantees. Article 17 prohibits arbitrary or illegal interference with a person's privacy, family, home, or correspondence. Fast-paced and widespread deployment of AI systems constitutes a rapid, systematic, and often unchallenged violation of this fundamental right of privacy, where AI facilitates an interference that is both illegal, due to a lack of legal frameworks and significant consent, and arbitrary, due to its disproportionate nature, impervious, and suspicious nature (Al-Dulaimi & Mohammed, 2026).

Privacy safeguards must apply to both personal data in fixed technologies and data captured during seamless, mobile interactions or from multiple data sources. Privacy involves the freedom to hold philosophical views without interference, as well as the right to look for, acquire, and transmit information and ideas through whatever means are available (ALibeigi et al., 2019). States have obligations to respect, guarantee, protect, and fulfil the right to privacy. Respect requires refraining from interference; obliges States to prevent interference by third parties; protection obliges States to take measures to safeguard privacy (Rona & Aarons, 2016); and also obliges States to take positive action and provide effective remedies. Interference occurs when the data collected can identify, locate, or profile an individual (Benoist, 2008). The permissible limitations include legal bases for interference, a legitimate aim, and a proportionality test, providing satisfactory evidence to justify each level. Relevant considerations include the exclusion of arbitrary or abusive features of surveillance; the balancing of the degree of interference against the aim; its appropriateness in light of democratic societies or the status of developing countries (Franks, 2017; Mohan, 2025); and the availability of effective remedies and redress. Privacy thus encompasses protection against the indiscriminate or unjustified collection of reliable data. The right to access, rectify, erase, and block personal data is directly relevant, provided it is not incompatible with the right to privacy (ALibeigi et al., 2019).

Any intrusion into a person's private life is unlawful only if the interference is not prescribed by law, and such law must be publicly accessible, precise, and predictable in its application. On the other hand, an interference that is not reasonable, proportionate, or necessary in the circumstances, even if it is technically 'lawful'. It must be based on justifiable grounds and include procedural safeguards. AI systems interfere with privacy in ways that are often unlawful (lacking a proper legal basis) and frequently arbitrary (disproportionate and lacking safeguards) (Gilani et al., 2023). This technological transformation goes further beyond the simple collection of data towards a paradigm of interference which is constant and automated. Interference is not just a potential future risk but a current reality (Osoba & Welser, 2017), which manifests itself in a frequently illegal way, lacking a clear and accessible legal basis and also deeply arbitrary, as it 'frequently does not pass the tests of necessity, proportionality and reasonableness' (Karliuk, 2023).

The Legal Standard: Deconstructing Article 17 of the ICCPR

To evaluate the impact of AI, first we must analyse the thresholds of legal specifics established by Article 17. The provision prohibits two different types of interference:

- **Unlawful Interference:** Any interference that is not prescribed by domestic law. This law must itself be accessible, accurate and predictable in its application (Anghel, 2023), providing the citizens with adequate and appropriate notice of the circumstances in which the authorities may intrude on their privacy.
- **Arbitrary Interference:** This goes further beyond the mere illegality. Even an interference which is technically "legal" should not be arbitrary. According to the United Nations Human Rights Committee, any interference must have procedural protections against abuse and be fair and proportional to a legitimate goal Office of the United Nations High Commissioner for Human Rights, 2018).

Any assessment of the impact of AI on privacy must, therefore, ask two questions: Does an appropriate law exist that authorises this interference? And is the interference, in its scope and application, reasonable and proportionate?

Conceptualisation of the Algorithmic Intruder

Data science is a global phenomenon in which individuals, states, and private actors actively participate to serve their own interests, which are nevertheless ultimately collective (Stephenson, 2015; Turrell, 2025). The terms "data processing", "profiling", and "inference" are therefore broadly defined. Conventional definitions of data collection, processing, and/or profiling each have their limitations; for example, there are various ways to extract knowledge from audio or text files. Processing encompasses all forms of organising, structuring, storing, preserving, acquiring, cataloguing, disseminating, combining, transforming, and any other way of making data accessible (Jambwa, 2003). It therefore includes all means by which data, from various sources and formats, are integrated into a digital system and/or remain there for further combination and exploration. Profiling and inference fall under an analytical dimension (Reeve, 2013), the distinction lying in the obviousness, permanence, or reversibility of the process or information sought. Included are all forms of exploration, analysis, manipulation and/or interpretation of data already selected, stored, retained or otherwise accessible via algorithms and code.

V. Data Collection, Processing and Profiling in AI Systems

All types of algorithmic systems require some information, commonly referred to as data. Data can typically be classified into five main categories: text, images, audio, video, and combinations of multiple data types (Grewal et al., 2021). The feasibility of data collection and user consent largely depends on the respective data processing laws governing the relevant field (Mazhar, 2021). For example, the professional conduct of the recording industry, student information databases, health records, and user behaviour analysis techniques all inherently describe and require certain types of transmissible data and specific content. The viability of acquiring aggregated information also depends on the repository and compatibility required for storage, exchange, and collaboration (Block, 2025). Any AI or non-AI system that collects, uses, or learns from one or more types of data typically requires applicable legislation. Should additional classifications or a macro-level combination be introduced, extensive regulations will apply according to the established operating methods and timeline for when the law is invoked, subsequently affecting initially permitted network or contractual arrangements. Security isolations and approaches that conventionally block selective modelling pathways also incentivise, enable, or restrict discretion, respectively (Kotulski et al., 2020).

The use of algorithmic systems to retrieve and integrate accepted sources places them under direct scrutiny and also requires prolific, specific operational knowledge (Yeung, 2018). Conversely, classification as INTRUSION accumulates the substance of collecting target deliverables; action as EXTRACTION scans for efficiency; modelling as CLASSIFICATION operates on status/features; and the implicit action of CUSTOMISING and MAINTAINING enhances an additional incentive (Belkacem et al., 2024). Information phobia charges a legitimate basis for determining legitimacy, opportunity, feasibility, etc. Preserving a thorough and transparent vision persists while awaiting interest in use and overall presentation. Openly processing systems, including 'NEURAL systems, follow an adaptive composition of PREVIOUS and CURRENT and exploit both coreference and the explicit tactic of reversible passive modeling acts demonstrating' (Lindemann, 2025). The output is indeed capable of directly targeting the desired 'INTRUSION RISK' Office of the Comptroller of the Currency [OCC], 2000) category and the 'RESILIENCE RISK' (Hodge & Gemmill, 2025) quality. Situations addressed with such an operational strategy remain open but well-founded.

Intrusion Into Privacy: Mechanisms And Case Studies

Personal privacy is compromised by a range of AI approaches, including surveillance (social media analytics, facial recognition), data fusion (combining facial and gait data from non-cooperative sources), behavioral targeting (online advertising), and algorithmic decision-making (hiring selection, access to credit, medical diagnoses). Four cases illustrate how privacy rights can be undermined when AI is used:

- **Surveillance.** An individual participating in a public demonstration is identified by a publicly accessible facial recognition system, geolocated, and targeted for unauthorised police identification (Gabrielli, 2025). Information about the event and the individual's emotions is aggregated on social media and combined with previously held facial/gait information. These records are retained for an extended period despite a low likelihood of re-contact, contravening Article 17(1) of the International Covenant on Civil and Political Rights (United Nations General Assembly, 1966).
- **Data fusion.** An individual's face is collected in a context that should have been free of gait data but which was correlated by the aggregation of common location traces. Detecting presence at the same social gathering allows the construction of a social graph (Xiao et al., 2024), thus facilitating inferences about lifestyle, preferences, and social networks, with additional scope enabled by crowdfunding from supplementary sources. Aggregated accessibility of such data can provide insights into preferences and habits (McNicoll, 2002).
- **Behavioral targeting.** A mother's health concerns in a messaging group are exploited to trigger unsolicited and inappropriate advertisements targeting family planning instruments via a video service platform.
- **Algorithmic decision-making.** Desires and preferences regarding intimate relationships are extracted from usage patterns on an adult content platform; this "intimate graph" (Hu & Ge, 2026) of preferences is compared to open data available from job search agencies to exclude certain profiles from job opportunities due to anticipated discrepancies with these desires.

Numerous academic studies and policy documents confirm that such activities conflict with the principles of proportionality, necessity, and legitimate aim (Anđelković, 2017); however, remedies for rights violations associated with these scenarios remain unclear.

Equality, Non-Discrimination and Privacy in AI Governance

The relationship between privacy and a range of criteria that 'inform equality and non-discrimination underpins the obligations arising from Article 26 of the ICCPR' (Australian Government Attorney-General's Department Home, 2025) and other international human rights standards. The monitoring of the right to privacy by AI systems can lead to violations that infringe upon the protections of Article 26. These systems can interfere with the provisions of Article 26 by collecting data targeting ethnic and national origin, race, sex, language, religion, and disability, as well as by engaging in profiling.

The harm to privacy caused by such intervention might include discrimination, prejudice, and unfair treatment of groups such as women, people with disabilities, and members of minorities. In light of the Sustainable Development Goals, the 2030 Agenda for Sustainable Development, and the Convention on the Rights of Persons with Disabilities, which stress the necessity of removing gender bias from AI systems and the significance of upholding the dignity of people with disabilities and preventing discrimination against them, addressing these harms is especially important. The intersection of privacy and equality, non-discrimination, and related rights is therefore a central concern in the design and implementation of sufficiently protective AI governance frameworks (Joseph & Anantharaman, 2024). Respect for the right to privacy thus coexists with and supports parallel obligations regarding equality and non-discrimination.

State Obligations and Extraterritorial Dimensions

At the national level, states are frequently required to enact, regulate, oversee, and enforce sufficient safeguards for privacy and associated rights. Under the ICCPR, states also remain responsible for the effects on these rights of their actions that have extraterritorial or cross-border aspects (Wenzel, 2008). States may need to fulfil obligations of international cooperation when private actors under their jurisdiction operate algorithmic systems that, without a legal basis, infringe on the privacy of individuals located outside their national jurisdiction (Office of the United Nations High Commissioner for Human Rights, 2018). Governments that conclude international treaties or arrangements also commit to respecting them in the relevant external jurisdictions. Trade agreements and other arrangements involving cross-border data flows also have implications for the scope of control over data processing and for the capacity to regulate algorithmic systems.

Recourse, Accountability and Reparation for Privacy Violations

AI systems' widespread data collecting, processing, inference, and profiling run the potential of infringing on the privacy rights guaranteed by Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Many unilateral actions, often carried out by private entities on behalf of states, constitute sufficient interference to trigger ICCPR protections. Such actions can lead to exposure, discrimination, and stigmatisation, posing disproportionate risks to vulnerable groups. Yet, available and feasible remedies remain limited, and significant barriers hinder accountability and redress.

States are obligated to implement effective legislative, regulatory, and policy measures to ensure protection against undue and unjustified invasions of data privacy. When these protections are inadequate or ineffective, individuals are left without access to effective remedies, whether at the national level or through civil society actors. Even when regulations appear robust in theory, a lack of effective implementation means that remedies are often unavailable in practice.

Following the deployment of AI, the burden of proof regarding attribution and harm often falls on affected individuals (Teo, 2025), and many are unaware of their right to redress. Furthermore, disproportionate protection processes are concentrated in the public sector (Maor, 2020), where regulatory activity is most significant, leaving private parties largely outside the scope of enforcement. Where standards exist, they are poorly calibrated to the specificities of algorithmic data processing and surveillance, and 'institutional mechanisms tend to be based on retrospective access monitoring rather than continuous control adapted to the algorithm's full lifecycle' (Janssen & Kuk, 2016). Such approaches offer no significant protection against control exercises carried out by the data controller on behalf of a public party and tend to focus on providing information as the primary accountability mechanism, rather than on the relevance and effectiveness of the measures considered or adopted.

Comparative Perspectives: International Standards and Best Practices

As previously explained, States are required under Article 17 of the ICCPR to respect, safeguard, and uphold the right to privacy. It is crucial to remember that these duties do not prohibit private actors from interfering; in fact, private actors'

involvement is covered by Article 17 as the State usually takes on a role of monitoring, enabling, and/or enforcing in such circumstances.

Article 17 prohibits any arbitrary or unlawful interference, regardless of the means or technologies employed. Algorithms challenge existing privacy protections, but they fall within the definition of privacy articulated by the treaty bodies like the Human Rights Committee (HRC), the Committee on the Rights of the Child (CRC Committee), etc. A clear understanding of the specific challenges imposed allows for an assessment of the compatibility of existing measures with international standards (Delgado Rodrigues & Grossi, 2007) and consequently, the identification of priority areas for reform. Comparisons with European and national frameworks reveal encouraging practices regarding transparency, broader definitions of data processing, additional safeguards concerning profiling, and the recognition of the right to privacy as a fundamental safeguard against algorithmic decision-making.

The increasing use of data-driven AI systems capable of profiling and making high-stakes decisions underscores the need to safeguard the right to privacy (Nkomalago, 2024). Such AI systems operate across a multitude of platforms, justifying the immediate establishment of governance mechanisms inspired by established privacy frameworks. Initial recommendations include conducting risk assessments and implementing regulatory and accountability architectures that prioritise privacy protection (Humerick, 2018).

Policy Implications and Recommendations

The rapid pace of technological innovation in AI and its increasing interconnectedness across industries are challenging global efforts to protect data and privacy. At the same time, privacy and data protection have become critical regulatory issues for businesses and governments. New legislative and regulatory frameworks are evolving to safeguard sensitive personal information, but growing concerns are also emerging about their potential negative impact on AI innovation and use, particularly the General Data Protection Regulation (GDPR) in the European Union (EU) and the California Consumer Privacy Act (CCPA).

AI technology governance requires addressing the conflicts and alignment between the risk assessment framework adopted from the 'Privacy-by-Design (PbD) approach' (Mishova, 2025) and the challenge posed by AI algorithms. Once focused on algorithmic transparency and disproportionate risk assessment, regulation has shifted towards a broader public approach that prioritises social acceptance,

human-centred innovation, and wider definitions of risk, despite the dramatic shift in timescale from minutes to nanoseconds. Decisions to invest in algorithmic controls are fundamentally driven not only by corporate ethical codes but also by the need for competitive advantage, trust, and collaboration (Atmaja, 2025); therefore, compliance alone does not guarantee the security of individual data.

Future Challenges: Technological Convergence and Evolving Privacy Standards

Governments must remain vigilant in the face of technological convergence. Four emerging areas could significantly alter thinking about privacy. Biometric modalities (e.g., fingerprints, facial images), edge computing (distributed computing acquisition processors and storage devices), federated learning (decentralized AI federation network inversion across data spaces), and quantum technology (new forms of cryptography) will soon transform AI privacy safeguards. "The pace of convergence is accelerating. Entire technologies, spaces, and infrastructures can be created and consumed in a matter of days in this increasingly globalised digital economy" (Hughes, 2025). In these circumstances, privacy itself is likely to evolve, which has always been the case where rights emerge, frame, and define affiliations. Consequently, existing data does not need to circulate for georeferencing, studying the receptiveness of AI probes, or controlling AI survey sets (Warch et al., 2024). Circumvention industries have emerged around sources of consumer consent. Auditing can abstract from agreed-upon rights or conscientious affliction. Polling effectively provides objective counterfactuals amidst professional contracts where polling almost always involves innovation, enabling higher-quality chaos. The transition to metaverse applications, where real and virtual everyday lives coalesce, suggests that the physical and digital spheres are converging under a single banner (Humerick, 2018).

Conclusion

AI developments have accelerated rapidly worldwide, with countries and regions contending for scientific and economic leadership. However, there are still serious issues with nations' capacity to support the advancement of AI technology while protecting civil and human rights, especially the right to privacy. In 2016, the European Commission proposed the General Data Protection Regulation (GDPR) to ensure comprehensive and effective data protection. However, fundamental

conflicts between the GDPR and the effective development of AI cast serious doubt on the EU's ability to strike an acceptable balance between privacy protection and the freedom necessary for AI growth. A similar disconnect exists in the global discussion on the protection of personal data in AI systems, where certain fundamental rights considerations remain either under-analysed or insufficiently articulated.

At the international level, the International Covenant on Civil and Political Rights (ICCPR) provides the most appropriate framework for analysing privacy protection in the context of AI. Article 17 of the ICCPR articulates the right to privacy, describes the permissible limitations on this right, and establishes the obligations of States to respect and ensure its protection. Applying the privacy protections of Article 17 to AI systems, as they are currently understood and deployed, reveals a substantial and pervasive gap in protection. The concept of the algorithmic intruder, defined in detail, serves as a useful heuristic for identifying and analysing the multiple complex ways in which AI technologies can interfere directly and indirectly with the right to privacy. Examining these modes of interference shows that AI systems, as currently developed and deployed, pose significant privacy risks that remain largely unresolved. The analysis demonstrates States' need to adopt quick and effective measures to fill these gaps and limit the scope of interference with the right to privacy caused by these emergent and fast-growing technologies. Yet one question remains unsolved: if algorithms themselves are becoming the new arbiters of privacy, who or what will ultimately arbitrate the algorithms? And the answer would be dynamic, where a comprehensive approach is needed with a multi-layered governance ecosystem comprising courts, regulators, technical bodies, civil society, and legal instruments.

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The Contribution of the Constitutional Court to the Consolidation of the Constitutional State of the Republic of Kosovo: Theoretical Aspects and Analysis of Jurisprudence in the First Decade

Julinda Elezi

Abstract

This scientific paper examines the contribution and significance of the Constitutional Court in the consolidation of the constitutional state of the Republic of Kosovo. The establishment of the Constitutional Court of the Republic of Kosovo marked an important step towards strengthening the rule of law and the effective protection of constitutional freedoms and rights. The protection of fundamental human rights and freedoms constitutes one of the main foundations upon which the constitutional order of the Republic of Kosovo is built. The Constitution of the Republic of Kosovo guarantees these rights and freedoms, while their protection represents an important element of the functioning of the constitutional state.

In this context, the paper deals with the jurisprudence of the Constitutional Court during the first decade of its operation, focusing on some of the most significant decisions that have influenced the development of constitutional practice in the Republic of Kosovo.

For the realization of this paper, the method of legal analysis has been employed, through the examination of relevant literature and the analysis of the decisions of the Constitutional Court. In particular, the analysis focuses on some of the most important cases addressed in the jurisprudence of the Constitutional Court during the first decade of its operation, which reflect its role in the interpretation of constitutional norms and in the protection of fundamental rights and freedoms.

Keywords: Constitutional court, constitutional review, constitutional state, constitutional jurisprudence, constitutional consolidation.

Introduction

The constitutional system constitutes one of the main foundations upon which the modern state is built and functions. Through the Constitution, the fundamental principles of state organization, the manner of exercising power, and the relations between public institutions are determined. In this framework, particular importance is attached to the principle of the rule of law, the separation and control of powers, as well as the guarantee of fundamental rights and freedoms of the individual. The Constitution, in addition to representing the fundamental legal act of the state, also plays an important role in the process of state formation and democratic development, by determining the principles and rules upon which the state is organized and functions. For this reason, the functioning of a constitutional system is not merely linked to the formal existence of the Constitution, but also to the implementation and respect of its principles in practice (Bajrami, 2014).

In this context, constitutional review represents an important mechanism for ensuring the supremacy of the Constitution and the respect of the principles upon which the constitutional order is based. Constitutional courts have a particular role in this process, as through the exercise of constitutional review they contribute to the protection of the Constitution, fundamental rights and freedoms, as well as to the maintenance of the balance between powers. In this way, constitutional review also serves as a mechanism to ensure that the decision-making of public bodies, particularly of the legislative power, is in accordance with constitutional requirements (Morina, 2017).

During the first decade of the operation of the Constitutional Court of the Republic of Kosovo, its jurisprudence has developed through decisions that have addressed various issues of constitutional significance. The Court's decisions reflect the manner of interpreting and applying constitutional norms in concrete cases, including issues related to the functioning of institutions and the exercise of their competences. In this regard, the analysis of the Court's decisions enables the examination of the development of constitutional practice and its role during this period. To this end, the paper focuses on four selected cases from the jurisprudence of the Constitutional Court during the first decade of its operation, namely the RTK Case, the Jahjaga Case, the AKP Case, and the VLAN Case, which constitute part of the main decisions of the Constitutional Court (Hasani & Brahimi, 2020).

The Constitutional System and Constitutional Review in The Republic of Kosovo

Historical Background of the Constitution of Kosovo

The constitutional history of Kosovo is closely linked to the political, legal, and territorial developments through which the country has passed. During the Ottoman Empire period, Kosovo presented itself as an administrative unit with particular characteristics. In 1864, the Vilayet of Kosovo was constituted, which had a specific administrative and legal organization. Until 1912, Albanians were divided into four main vilayets: the Vilayet of Kosovo, the Vilayet of Shkodra, the Vilayet of Manastir, and the Vilayet of Janina (Bajrami, 2014, pp. 31–32). The Constitution can be understood as an agreement between the people and the state, through which the fundamental rules for the organization of the state and its functioning on the basis of the rule of law are determined. Respect for these determinations is an obligation both for public authority and for individuals and social groups (Susuri, 2019, p. 246). After 1945, Kosovo was included in the constitutional system of Yugoslavia and passed through several stages in the development of its legal-political position. An important moment was the Constitution of 1974, which recognized Kosovo a more advanced constitutional position and broader competences. Within this system, Kosovo had its own institutions, including the Assembly, the Executive Council, and the Constitutional Court (Bajrami, 2014, pp. 40–41). The importance of the Constitution for the contemporary state and society is multifaceted. It can hardly be reflected in an abstract manner, but its importance can be observed through the historical account of its emergence and development, as well as through the role it plays in periods of transformation and development of the state, particularly of the modern legal state. The existence of the Constitution and its development reflect the directions of development and transformation of a society, of constitutional law, of the political system, and of the political views of a country (Salihu, 2002, pp. 45–46). A significant turning point in Kosovo's constitutional position occurred during the 1980s. The constitutional interventions of 1989 affected the exercise of competences and the status of Kosovo within the then constitutional system. During the 1990s, various political and institutional efforts were developed to determine Kosovo's status and to realize the demand for self-determination. In this period, constitutional acts were adopted and political processes were developed that aimed at strengthening Kosovo's political and legal position (Bajrami, 2014, pp. 48–49, 52–53). In 1990, a constitutional act was adopted that aimed to determine Kosovo's position and its further institutional

development. Subsequently, the political developments of the 1990s and the processes that followed created a new stage in the determination of Kosovo's status. The referendum and institutional processes of this period constituted part of the efforts to realize the demand for self-determination and independence (Bajrami, 2014, pp. 60–61). These historical and constitutional developments constitute an important part of Kosovo's journey towards the determination of its status and the creation of the foundation for building its constitutional system.

The Constitution of the Republic of Kosovo: Structure and Fundamental Principles

The Constitution constitutes the fundamental legal act of a state and holds the highest position in the hierarchy of legal norms. In the narrow sense, constitutional law relates to the legal norms that determine the limitation of state power and its mutual control, while in the broad sense it encompasses the entirety of constitutional principles, values, and norms that determine the relations between state authority and citizens. In this framework, constitutional law regulates issues related to the organization of state power, the functioning of institutions, and the protection of fundamental rights and freedoms of the individual (Morina, 2017, pp. 11–12). In the material sense, constitutional norms relate to their content and function, regardless of the form in which they have been adopted. They determine the manner of formation and organization of constitutional bodies, regulate the exercise of powers, and guarantee the freedoms and rights of citizens. In this sense, the Constitution does not represent merely a formal document, but a body of principles and rules that determine the manner of organization and functioning of the state, as well as the relations between power and the individual (Morina, 2017, pp. 12–13).

In the case of the Republic of Kosovo, the Constitution represents the fundamental legal-political act upon which the constitutional system of the country is built and functions. It is the result of an important political and legal process and reflects the aim of building an independent, sovereign, and democratic state, based on the separation and mutual control of powers and on the principle of the rule of law. In this framework, the Constitution of the Republic of Kosovo aims to establish the foundations of a constitutional democracy and to guarantee the functioning of state institutions in accordance with the fundamental constitutional principles (Bajrami, 2014). The content of the Constitution is thus related to the determination of the foundations of state organization, the relations between institutions,

and the guarantee of fundamental rights and freedoms. Through these determinations, a legal framework is created within which public power is exercised and citizens' rights are protected (Morina, 2017, pp. 11–12).

The Constitutional Court and Constitutional Review

Constitutional review constitutes one of the fundamental mechanisms for guaranteeing the supremacy of the Constitution and its respect by state bodies. Through this review, it is ensured that legal acts and the activities of public authorities are in accordance with the Constitution. In this sense, constitutional review is closely linked to the principle of the rule of law, as the Constitution determines the limits within which state power must be exercised (Omari, 2004, p. 185). Constitutional review of laws represents a particular form of legal review, through which the compatibility of a law with the Constitution is assessed. This review can be carried out by a specialized constitutional body, which has the duty to examine whether a legal norm is in accordance with the constitutional norm. In this way, constitutional review serves as a guarantee for the respect of the hierarchy of legal norms and the supremacy of the Constitution (Sadushi, 2004, p. 45). In the Republic of Kosovo, the Constitutional Court represents the central institution for exercising constitutional review. Its competences relate to examining the compatibility of laws and other legal acts with the Constitution, as well as other matters determined within the constitutional jurisdiction. Through these competences, the Constitutional Court contributes to guaranteeing the constitutional order and to respecting the Constitution as the highest legal act (Bajrami, 2014, pp. 336–337).

Constitutional review can be presented in various forms, while one of the main distinctions relates to the moment of its exercise. In this framework, a distinction is made between prior review and subsequent review, as well as between abstract review and concrete review. These forms of review aim at the same fundamental goal: ensuring the compatibility of legal norms with the Constitution and protecting the constitutional order (Sadushi, 2004, p. 45).

Consequently, constitutional review and the activity of the Constitutional Court have direct importance for the functioning of the constitutional state. Through this mechanism, the protection of the Constitution is ensured and the compatibility of legal acts with it is controlled. Thus, the Constitutional Court constitutes one of the main institutional guarantees of respect for the constitutional order and of the limitation of power within the framework determined by the Constitution (Bajrami, 2014, pp. 336–337).

The Constitutional Court as Guarantor of The Constitutional State in The Republic of Kosovo

Kosovo's constitutional judiciary prior to independence followed the path of Kosovo's development, initially as part of the former Yugoslavia and subsequently as an entity with a fully reduced constitutional subjectivity during the time of Milošević's regime in Serbia, starting from 1986 until 2000. In fact, the period under his rule represents the time when constitutional judiciary was discussed, as a consequence of the complete and violent intervention of Kosovo in the Serbian constitutional system.

In addition to this circumstance, there is another reason why the need to address constitutional judiciary arises within the treatment of Kosovo's general political and constitutional history: throughout most of its history, Kosovo has not had a constitutional and territorial identity, let alone a separate constitutional judiciary. Even at the Yugoslav level, there was no great tradition in constitutional judiciary. Even when constitutional judiciary was introduced into the Yugoslav constitutional system, Kosovo gained the right to be part of it only one year later, in 1972. In this year, the Constitutional Court of the SAP of Kosovo (CCSAPK) was established (Hasani & Brahimi, 2021, p. 301). The Constitutional Court is a state body that has specific responsibilities regarding the exercise of judicial function, compared to other types of courts. Its authorizations are determined by the Constitution of the Republic of Kosovo and the Law on the Constitutional Court of the Republic of Kosovo. The Constitutional Court, in accordance with paragraph 1 of Article 112 of the Constitution of the Republic of Kosovo, is the final authority in the Republic of Kosovo for the interpretation of the Constitution and the compatibility of laws with the Constitution. The Constitutional Court is also the state body that exercises control over the legislative and executive power of Kosovo.

In addition, the Constitutional Court of the Republic of Kosovo, always in accordance with established procedures, is the authority that decides on the compatibility of the President's decrees and the Prime Minister's decrees, Government regulations, and municipal statutes with the Constitution. Likewise, the Constitutional Court of the Republic of Kosovo is the authority that decides on the compatibility of proposed referendums, declarations of states of emergency and actions taken during states of emergency, and proposed constitutional amendments with the Constitution. Finally, the Constitutional Court of the Republic of Kosovo is the authority that decides on whether the Constitution has been violated during the

election of the Assembly, whether the responsibilities of municipalities have been violated through laws or Government acts, and whether the fundamental rights and freedoms of citizens guaranteed by the Constitution have been violated (Hajdari, 2013, p. 33).

Regarding the composition of the Court, it consists of nine (9) judges. They are required to be jurists and persons of high moral character, as well as to have no less than ten (10) years of relevant professional experience. Likewise, the Constitution of the Republic of Kosovo requires that the composition of the Constitutional Court respect the principles of gender equality and representation of minority communities. Regarding the appointment of new judges of the Constitutional Court, the Constitution of the Republic of Kosovo has clearly resolved the dilemma of their term of office (Hajdari, 2013, p. 37). The term of judges lasts nine (9) years, without the possibility of reappointment. The impossibility of reappointment constitutes a widespread standard in most European countries. This standard was first established in the traditional democracies of Europe, at the time of the construction of their constitutional courts after the Second World War. It was implemented through express constitutional provisions. This was subsequently transferred to other European countries (Hasani et al., 2023, p. 603).

Regarding status, three of the most important aspects that are essential determinants of the status of judges of the Constitutional Court of the Republic of Kosovo will be mentioned. They are: incompatibility, immunities, and dismissal. These aspects are essential for maintaining the objective independence and integrity of the constitutional judge (Hasani et al., 2023, p. 607).

Regarding the competences of the Constitutional Court, competence means the right and duty of the court to resolve a judicial matter or other matter. In the specific case, competence means the legal, respectively constitutional authorization of the Constitutional Court of the Republic of Kosovo to resolve a matter that is part of its responsibilities. The matters that the Constitutional Court is authorized to resolve are of two types:

1. Of judicial character; and
2. Of administrative character.

For the resolution of cases, depending on their type, the Constitutional Court holds judicial and administrative hearings (Hajdari, 2013, p. 49). The decisions of the Constitutional Court are binding on the judiciary and all persons and institutions

of the Republic of Kosovo. Likewise, the decisions of the Constitutional Court are unappealable before a national instance, meaning within the Republic of Kosovo (Bajrami & Muçaj, 2018, p. 474). Regarding the nature of the Constitutional Court's decisions, the procedures conducted in constitutional courts are concluded with decisions, the legal effect of which is determined by procedural acceptance and the examination of the merits of the referred request. The legal effects of the Constitutional Court's decisions considerably depend on several factors, which are the type or types of constitutional procedures, the nature of the constitutional dispute subject to examination before the Constitutional Court, the types of subjects participating in the constitutional review process, the nature of the legal norms challenged on constitutional grounds, as well as the content of the Constitutional Court's decision itself. Referring to the report of the Venice Commission (Council of Europe) on the legal effects of Constitutional Court decisions drawn up by German constitutionalist Helmut Steinberger, three types of constitutional decisions can be distinguished: constitutional decisions that produce the effect of res judicata, decisions with erga omnes legal effect, as well as constitutional decisions that have the force of a source of law (Morina, 2017, pp. 137–138). Thus, the final decision of the Constitutional Court is the result of all the procedural stages through which the constitutional process passes until the moment it takes effect and is capable of producing legal effects (Omari & Anastasi, 2017, p. 421).

It is worth noting that the Constitutional Court of the Republic of Kosovo has the broadest possible jurisdiction, compared to sister courts in the Balkans. It is very close to the German system of constitutional judiciary. This means, in a word, that it has jurisdiction over all actions of all public authorities in the country, including the judiciary (Hasani et al., 2023, p. 618).

The Jurisprudence of The Constitutional Court and Its Contribution to The Consolidation of The Constitutional State

As mentioned above, the Constitutional Court has an important role in protecting the constitutional order, and this role can be observed through its jurisprudence. In this chapter, four important cases of the Constitutional Court's jurisprudence will be analyzed: the RTK Case, the Jahjaga Case, the AKP Case, and the VLAN Case. This analysis aims to demonstrate the Court's contribution to the consolidation of the constitutional state.

The RTK Case

The RTK Case, known as Case KI 11/09 (Tomë Krasniqi v. RTK and others), constitutes the first decision issued by the Constitutional Court of the Republic of Kosovo, on 16 October 2009. The case concerned the request for the imposition of an interim measure relating to the payment of 3.5 euros per month, which was collected by the Kosovo Energy Corporation (KEK) on behalf of Radio Television of Kosovo (RTK). This amount was paid by electricity consumers together with their electricity bills, while the collection had been made from 2003 until 16 October 2009.

The request was submitted by Mr. Tomë Krasniqi, a citizen and pensioner of Kosovo, on 2 September 2009. The applicant requested the Court to impose an interim measure to stop the payment of 3.5 euros on behalf of RTK's service. The Court assessed that the request for an interim measure did not constitute actio popularis, but related to the protection of the public interest of the citizens of Kosovo. In this framework, the Court imposed the interim measure, which stopped the further collection of the 3.5 euro amount. The decision of 16 October 2009 did not address the merits of the case, but only the interim measure requested by the applicant. However, this decision had an impact on the further development of the case. The Court suspended the further implementation of Article 20.1 of Law No. 02/L-47 on Radiotelevision of Kosovo and recommended to the Assembly of Kosovo to review the nature of this provision by December 2009. Following this recommendation, the Assembly of Kosovo reviewed the provision during 2010. As a result of this development, the case became subject to review, and the Court ultimately removed the case from the list and closed it with final effect. The RTK Case thus represents one of the early decisions of the Constitutional Court, through which a matter with an impact on the public interest and on the implementation of a legal provision relating to the financing of RTK was addressed (Hasani & Brahimi, 2021, pp. 793–794).

The Constitutional Court, in Case KI 11/09, assessed that the request was not merely related to the personal interest of the applicant, but also to the public interest of the citizens of Kosovo. For this reason, the Court imposed an interim measure against the further implementation of Article 20.1 of the Law on RTK and recommended that the Assembly of the Republic of Kosovo review this provision (Constitutional Court of the Republic of Kosovo, 2009).

The Jahjaga Case

The position of President Atifete Jahjaga was contested again before the Constitutional Court, this time through the preventive review of the constitutionality of certain proposed constitutional amendments. Within the framework of a political agreement among the main political leaders in Kosovo, the formation of a Commission for the Reform of Presidential Elections was foreseen, which would draft constitutional amendments and relevant legislation with the aim that the President of Kosovo would in the future be directly elected by the people. The agreement also stipulated that direct presidential elections would be held no later than six months after the entry into force of these amendments.

From the content of the agreement, it appeared that through a political pact, it was intended to change the manner of electing the President and, consequently, to terminate early the constitutional term of President Atifete Jahjaga. However, her term did not derive from the political agreement of the leaders, but from the Constitution and the constitutional oath to respect the constitutional and legal order in Kosovo. For this reason, the case before the Constitutional Court related to the attempt to change through constitutional amendments the position and term of the head of state. In the framework of implementing the political agreement, on 15 April 2011, the heads of parliamentary groups in the Assembly of Kosovo submitted a proposal for the formation of two commissions: a commission for amending the Constitution and a commission for amending the Law on General Elections in Kosovo. This action constituted a concrete step towards realizing the political agreement for reforming the manner of electing the President of the Republic of Kosovo. On 22 April 2011, the Assembly of the Republic of Kosovo, with 76 votes in favor, 4 abstentions, and 6 votes against, approved Decision No. 04-V-12 for the formation of the Commission for amending the Constitution of the Republic of Kosovo. On 20 March 2012, the Chairman of the Commission submitted to the Assembly the proposed constitutional amendments, accompanied by the signatures of 31 deputies. On 23 March 2012, the President of the Assembly forwarded these amendments to the President of the Constitutional Court, requesting their assessment on whether they diminished any right or freedom set forth in Chapter II of the Constitution.

One of the proposed amendments was Amendment 10, titled "Announcement of the First Presidential Elections." This amendment provided for the holding of presidential elections within six months of the entry into force of the constitutional amendments and relevant laws, and stipulated that the term of the President elected by

the Assembly would continue until the election and swearing-in of the new President. It also provided for the right of former presidents to be elected and re-elected once more as President of the Republic of Kosovo. According to the Constitutional Court's assessment, the amendment presented constitutional problems, particularly because it would affect the term of the then President, Atifete Jahjaga, who had been elected and had taken the oath constitutionally. The Court made it clear that the mere transition from indirect election to direct election of the President by the people did not constitute a constitutional problem. On the contrary, such a change in the manner of electing the President would represent an expansion of the democratic rights of citizens. The constitutional problem lay in the consequences that the amendment would have on the existing term of the President. In its assessment, the Court emphasized that Atifete Jahjaga had been elected President of the Republic of Kosovo on 7 April 2011 and on that same day had taken the constitutional oath. With the commencement of her duties, she had assumed the role of representative of the Republic of Kosovo and guarantor of the democratic functioning of Kosovo's institutions, in accordance with the constitutional status of the President. According to the Court, shortening her term would deprive the citizen of Kosovo of having a legitimate representative and a guarantor of the democratic functioning of institutions for the period determined by the five-year constitutional term. The Court assessed that the essence of the constitutional term of the President consisted not only of the competences determined in the Constitution, but also of the President's status as a legitimate representative and guarantor of the democratic functioning of institutions, as well as of the five-year duration of the term. In this framework, the presidential term also had a political character and included the passive right to be elected, which belonged to citizens, including President Atifete Jahjaga. Another important element of the Court's assessment related to the right to effective legal remedies. The Court found that the shortening of the term through a constitutional amendment would deprive the President of the exercise of effective legal remedies, a right guaranteed by the Constitution. In addition, the Court took into account the violation of other rights related to legal security and the right to property. For these reasons, the Court declared Amendment 10 unconstitutional, together with seven other proposed amendments.

In conclusion, the Constitutional Court determined that the early termination of existing constitutional terms, through constitutional amendments or other means, was not in accordance with the Constitution. The termination of a constitutional term can only be done through the means determined by the Constitution.

The Court's decision in the Jahjaga Case thus represents an important intervention in the protection of the constitutional order, establishing limits on the use of constitutional amendment for the achievement of political goals and guaranteeing the continuation of the constitutional term of the President of the Republic of Kosovo (Hasani & Brahimi, 2021, pp. 800–802).

The AKP Case

The AKP Case concerned the constitutional review of Decision ASC-09-089 of the Special Chamber of the Supreme Court of Kosovo, of 4 February 2010. AKP claimed that this decision had violated several provisions of the Constitution and of the European Convention on Human Rights. The case related to the legal status of AKP and its right to represent the interests of workers in privatization matters before the Special Chamber.

The main constitutional problem related to the position of the Special Chamber that AKP did not have the status of a legal person and that the law establishing it was not a genuine law of the Assembly of Kosovo, but an internal regulation. These positions were in conflict with the new legal-constitutional order of Kosovo and with the authority of the institutions created after the declaration of independence. After the declaration of independence, the Assembly of Kosovo had adopted Law No. 03/L-067 on the Establishment of the Kosovo Privatization Agency, which also provided for the termination of the legal effects of UNMIK Regulation 2002/12. The Constitutional Court, examining Decision ASC-09-089, found that it was in contradiction with several constitutional norms and values.

The Court also emphasized that the Special Chamber, as an integral part of the Supreme Court of Kosovo, was an inseparable part of the legal-constitutional order of Kosovo and had the duty to ensure the uniform application of law in the territory of Kosovo. For this reason, it could not treat the laws adopted by the Assembly of Kosovo as internal regulations without legal value, nor AKP as a factual entity without legal status. In this sense, the AKP Case represents an important intervention of the Constitutional Court in the protection of the new constitutional order and of the authority of the institutions of the Republic of Kosovo (Hasani & Brahimi, 2021, pp. 802–804).

The VLAN Case

The VLAN Case relates to two judgments of the Constitutional Court issued in the context of the general elections of 8 June 2014 and the political stalemate that

followed these elections. The elections were assessed positively by foreign observers, while one of their features was the participation of local Serbs in the north of Kosovo for the first time since the end of the war. Kosovo had a proportional electoral system with open lists and, in this framework, the majority was considered to be the party or coalition that had won the largest number of seats in the Assembly.

After the elections, LVV, LDK, AAK, and NISMA formed a post-election coalition, known as VLAN, and claimed that they constituted the parliamentary majority and that they should lead the formation of new institutions. This led to the blocking of the formation of the Assembly and subsequently of the Government, creating a political stalemate that lasted more than five months. The opposition linked the right to form institutions with the number of deputies it controlled in the Assembly, while the Constitutional Court faced the question of whether the majority formed after the elections could change the result expressed by the citizens in the elections. The Court, in two judgments, determined that the right to propose the candidate for President of the Assembly and the mandate-holder for the formation of the Government belonged to the relative winner of the elections. According to this interpretation, coalitions formed after the elections could not overturn the electoral result at the stage of constituting new institutions. The Court made a distinction between the electoral result and the majority formed later in the Assembly, emphasizing that the latter constituted a political matter and could not be used to change the constitutional rules of the initial formation of institutions. The blocking of the formation of the Assembly began on 17 July 2014, when the opposition opposed the proposed manner of its constitution and claimed that it had a larger number of deputies. According to the interpretation presented in the material, this position did not take into account the constitutional and procedural rules that determined the manner of inauguration and initial constitution of the Assembly. The swearing-in of deputies represented the fundamental individual act for the activation of their mandates and for the creation of a functional representative body.

In this framework, the Court assessed that post-election coalitions and majorities formed later had no impact on the formal act of inaugurating the legislature. The right to propose the candidate for President of the Assembly and the mandate-holder for the formation of the Government related to the electoral result and to the relative winner, while securing the necessary votes for their election remained a matter of political relations in the Assembly. The political stalemate was resolved on 19 November 2014, when PDK, as the winner of the largest number of seats in the 8 June elections, entered into a coalition agreement with LDK. The

subsequent experience of the 2017 and 2019 elections showed that institutions were formed following the constitutional path determined by the Constitutional Court's judgments.

The VLAN Case thus represents an important intervention of the Constitutional Court in the protection of the electoral result and the will of the citizens, as well as in the determination of constitutional rules for the formation of institutions after elections. Through this case, the distinction between the electoral result and the political majorities formed after it was clarified, emphasizing the importance of respecting constitutional procedures in the formation of power bodies (Hasani & Brahimi, 2021, pp. 805–810).

The Constitutional Court, in Judgment KO119/14, examined the constitutionality of the Assembly's decision for the election of the President of the Assembly on 17 July 2014. The Court assessed that the procedure followed for the election of the President of the Assembly was not in accordance with the Constitution and required that the process of constituting the Assembly continue in accordance with constitutional requirements. This judgment constituted one of the Court's main decisions in resolving the institutional stalemate after the 2014 elections (Constitutional Court of the Republic of Kosovo, 2014).

Conclusion

The analysis developed in this paper shows that the Constitutional Court has played an important role in the development and consolidation of the constitutional state in the Republic of Kosovo. From the examination of the constitutional basis and the role of constitutional review, it follows that the Court constitutes an important mechanism for guaranteeing the supremacy of the Constitution and for respecting the constitutional limits of the exercise of public power.

This role becomes clearer through the analysis of the Court's jurisprudence. The cases examined in this paper show that the Court has faced various issues that have directly affected the functioning of constitutional institutions. In the RTK Case, the Court's intervention through an interim measure related to stopping the collection of the public broadcaster's fee and to obligating the Assembly to review the matter. In the Jahjaga Case, the Court established limits on constitutional changes that would affect the existing term of the President. In the AKP Case, it emphasized the importance of the new constitutional order and of the laws adopted after the declaration of independence. While in the VLAN Case, the Court clarified the constitutional rules related to the constitution of institutions after elections and to the respect of the

electoral result. These cases show that the Court's contribution does not lie merely in the formal review of the compatibility of acts with the Constitution. Through its decisions, it has influenced the clarification of constitutional rules and the determination of the limits of action of public institutions. In this sense, the Court's jurisprudence has served as an important element in the functioning of the constitutional order and in the consolidation of the principles of the constitutional state.

In conclusion, the analysis of the four selected cases supports the conclusion that the Constitutional Court has contributed to the consolidation of the constitutional state of the Republic of Kosovo through the interpretation and application of constitutional norms, the protection of the constitutional order, and the determination of constitutional limits of institutional action. Thus, its jurisprudence represents an important part of the development of constitutional practice in the first decade of the Court's operation.

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Data Safety Rights in Usage of Digital Platforms

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Abstract

This paper explores the intersection of user's rights and online activities in the context of everyday use of digital tools. It examines the role of digital platforms, their vulnerabilities, and the types of information processed in daily internet usage, and explores how personal information is shared online. Discussion focuses on the implications of users' knowledge of data privacy law, best practices for safeguarding information, protecting personal data, and understanding how data circulates within digital environments. Examples are drawn from popular social media platforms and online shopping websites, showing the users' experiences with data security. The paper explores how human rights can be integrated into cybersecurity frameworks and how laws can be implemented in the context of daily internet use, examined with a focus on individual persons as the center of cybersecurity laws. It addresses the needs and concerns of average internet users around their daily interactions and challenges they face in maintaining security and privacy online.

Keywords: Cybersecurity, personal data, online payments, privacy rights, digital rights

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Data Safety Rights in Usage of Digital Tools

Digital tools have significantly impacted daily life, including socializing, shopping, learning, and entertainment. They facilitate communication, financial activities, and personal data exchange across platforms like Facebook, Instagram, and TikTok, while also integrating personalized recommendations and cloud-based data storage (Barykin et al., 2020). This digital ecosystem also comes with significant risks related to privacy, data security, and the potential for exploitation of personal information.

This paper explores the relationship between human rights, data security, and digital platforms, focusing on user rights in Europe and the Western Balkans. It discusses current legislation and the need for global cooperation to enforce privacy laws and prevent digital rights abuses, and in that way reducing the risks of cyber threats.

The referenced literature provides a comprehensive foundation for understanding digital commerce, data protection, and cybersecurity governance. Economics of Digital Ecosystems examines the economic structures of digital ecosystems, highlighting their role in the contemporary digital market. The Electronic Commerce Law establishes the legal framework governing electronic transactions and online trade. Publications from the European Commission (2022, 2023) and the European Union (2019) outline key principles of digital regulation, consumer rights, and personal data protection within the European digital environment. Cybersecurity and Human Rights in the Western Balkans analyzes cybersecurity governance and its implications for human rights in the Western Balkans region. Finally, Protection of Personal Data in the Context of E-Commerce explores privacy challenges in e-commerce and the importance of personal data protection, compliance, and consumer trust when it comes to online business operations.

The paper presents types of personal data that users share on digital platforms, potentially leading to identity theft, unauthorized surveillance, and privacy breaches. Cybersecurity encompasses the tools, practices, and policies to ensure that digital platforms are safe for use because data protection is a basis for individual freedom. Data privacy is a technical issue as much as a fundamental human right in the digital age.

Vulnerabilities and Data Processing in Everyday Internet Usage

Digital platforms collect data which can be categorized into personal data and transactional data. Personal data refers to information related to an identified or identifiable individual, including de-identified, encrypted, or pseudonym-data. This data falls under the General Data Protection Regulation (GDPR), the EU's main data protection law, and can be used to re-identify a person. Personal data includes names, addresses, email addresses, IP addresses, identification card numbers, cookie IDs, phone advertising identifiers, and data held by hospitals or doctors (European Commission, 2023). Transactional data is a collection of records in a database that record individual transactions, such as customer purchases or flight bookings. It includes transaction identity numbers and lists of items involved. Every interaction a user has with a digital platform, whether it's a social media post, an online purchase, or simply browsing a website, leaves behind a trace of data (ScienceDirect, n.d.). In legal and regulatory terms, this passage explains that digital platforms process two principal categories of data: personal data and transactional data, each carrying distinct legal implications. Personal data encompasses any information that directly or indirectly identifies a natural person, even data that has been encrypted, or under a pseudonym, or partially anonymized, may remain subject to legal protection if an individual can potentially be re-identified. Consequently, organizations collecting or processing personal data must comply with principles of lawfulness, transparency, purpose limitation, and data security. In contrast, transactional data may not always constitute personal data, yet it can still be subject to data protection laws when linked to an identifiable individual.

From a legal perspective, every user interaction with a digital platform generates data that may create obligations regarding privacy, data governance, cybersecurity, and regulatory compliance. Therefore, digital platforms must ensure that both personal and transactional data are collected, stored, processed, and shared in accordance with applicable legal standards. For example, social media platforms allow users to share vast amounts of personal information, often without fully realizing how much of their data is exposed to advertisers, hackers, or even other users. E-commerce sites like Amazon and eBay store transactional data, including payment information and shipping addresses, making them prime targets for cybercriminals. Similarly, mobile apps, particularly those that use location tracking features, collect data on users' whereabouts, preferences, and interactions, creating significant privacy concerns. These platforms may expose users to numerous

privacy risks due to their data collection practices, security vulnerabilities, and the potential for misuse of the data they handle.

Digital platforms continue to face threats from cybercriminals, despite improvements in cybersecurity. There are concerns about how third parties misuse personal data, as companies collect data directly from users (first-party data) and from various sources (third-party data). First-party data is seen as more trustworthy, but poor handling of personal data can result in privacy violations and fraud. Third-party data also poses risks, such as overlapping information and doubts about how it was collected (Morić et al., 2024). This data can be manipulated to influence consumer behavior, shaping political views, purchasing decisions, and even affecting a person's social environment. The lack of transparency in how this data is used or shared contributes to users' vulnerability and the erosion of their privacy.

Platforms' Responsibilities in Data Protection

Service providers such as social media companies, e-commerce platforms, or app developers have a responsibility to protect users' data under international human rights frameworks. Under the United Nations' Universal Declaration of Human Rights (UDHR), Article 12, individuals have the right to privacy and protection from arbitrary interference in their personal affairs. This means platforms must secure personal data against unauthorized access, misuse, or theft, and provide transparency to users about the data they collect and obtain informed consent before collecting sensitive information (United Nations, 1948). However, current regulatory structures are often inadequate, with many countries lacking comprehensive data privacy laws, leaving users vulnerable to exploitation. Additionally, enforcement of existing regulations can be inconsistent, with some companies exploiting loopholes to avoid accountability. The global nature of the internet further complicates matters, with data protection laws varying significantly across jurisdictions, creating challenges in enforcing data protection standards.

The circulation of data can create a web of surveillance that users are often unaware of. Websites use cookies and tracking technologies to collect user behavior information, but these can also collect and share personal data without explicit consent, contributing to privacy erosion. Personal data is often shared with third parties, who aggregate and resell it, raising privacy concerns. Cookies are small text files stored on a user's computer or mobile device, used by websites to optimize efficiency, track browsing habits, create user profiles, and display targeted online

advertising based on user preferences. Websites must obtain consent before installing cookies on a device, explain how cookie information will be used, and allow users to withdraw consent. Cookies used for communication transmission, such as load balancing, do not require consent. Cookies necessary for providing an online service, such as filling in online forms or using shopping baskets, do not require consent (European Union, 2019).

Laws and Regulations for Safeguarding User Rights in Digital Spaces

The General Data Protection Regulation (GDPR), which is an EU-drafted privacy and security law, mandates organizations to collect and target EU-related data. Effective May 25, 2018, the regulation imposes severe fines for violating its standards, with penalties potentially reaching tens of millions of euros. The GDPR shows Europe's commitment to data privacy and security as more individuals share personal data with cloud services, amidst frequent data breaches. The regulation is extensive and lacks detailed guidelines, still making compliance challenging (Wolford, 2018). As the internet is more integrated into daily life, it is essential for individuals to have the same rights online as they do offline. Human rights principles like freedom of expression, privacy, and societal participation are important in the digital world. Strong cybersecurity policies are needed to protect digital privacy and maintain these rights. Without trust in data security, people may self-censor and withdraw from online activities, harming fundamental rights. The Digital Services Act (DSA) and the Digital Market Act (DMA) are rules for the entire EU. Their two main goals are to ensure a safe digital environment that protects users' rights and to create fair competition that encourages innovation, growth, and global competitiveness. The Digital Services Act (DSA) mainly addresses online intermediaries and platforms like marketplaces, social networks, and app stores. Very large platforms and search engines with over 45 million monthly users in the EU have the strictest rules. The Digital Markets Act outlines rules for gatekeeper platforms that connect businesses and consumers, which also overlap with some DSA regulations but serve different purposes (European Commission, 2022). There are still important gaps and legal challenges to tackle, as some big platforms have significant control over important parts of the digital economy. They act as gatekeepers in digital markets and can create their own rules, which can lead to unfair situations for businesses that use these platforms and limit choices for consumers.

Western Balkans Cases of Cyber Safety

Albania has several key laws that affect cybersecurity. Law No. 9880/2008 on Electronic Signature outlines the rules for using electronic signatures. Law No. 107/2015 on Electronic Identification and Trust Services details the guidelines for safe electronic identification, seals, transmission services, and website authentication. Law No. 10128/2009 on Electronic Commerce sets rules for e-commerce, consumer privacy, and penalties for violations, also applying to online media with subscription services for revenue. The Assembly of Kosovo passed two laws related to cybersecurity in 2012. The Law on Information Society Services, adopted on 15 March 2012, covers electronic services such as e-commerce, e-payment, e-banking, e-government, and e-procurement. It aims to prevent issues and abuses in electronic transactions while securing information systems. The Law on Electronic Communications, adopted on 4 October 2012, sets legal standards for electronic communications and protects personal data and privacy rights. Whereas the Ministry of Public Administration, Digital Society and Media in Montenegro handles the legal framework and cybersecurity policy, such as the Electronic Commerce Act that supports the modern approach to cybersecurity in the country (Electronic Commerce Law, n.d.). In Serbia, civil society representatives and the Cybersecurity Network Foundation highlight that digitalization and ICT security are not being integrated, with (cyber)security and human rights not viewed as important parts of the digital process. Conversely, the Ministry of Trade, Tourism and Telecommunications sees a connection between information security, digitalization, and e-commerce. Their approach involves sharing data protection responsibilities with citizens by improving their digital skills, allowing them to protect themselves and exercise their rights fully.

The Law on Personal Data Protection in North Macedonia was first created in 2005 to introduce the right to privacy and protect citizens' personal data. A new version of this law was adopted in February 2020 to align with the EU's General Data Protection Regulation (GDPR). Legal entities were given 18 months to adapt to the new law, which fully took effect on 24 August 2021.

Bosnia and Herzegovina aims to enhance the security of its digital networks and information systems as part of its EU accession efforts. It plans to change its national laws to comply with the 2008 Stabilization and Association Agreement with the European Commission, which includes following the Council of Europe Convention on Cybercrime and the EU's General Data Protection Regulation.

Digitalization and EU integration are key factors driving cybersecurity policymaking, but this presents challenges. The six economies involved need to work on their commitments to human rights in their cybersecurity policies, focusing mainly on protecting networks and systems. This leads to cybersecurity resources being directed mainly at technical systems rather than user rights, which means that today time and investments have to be made for a more human-centric approach to cybersecurity (Klopfer et al., n.d.).

User Knowledge and Awareness and Best Practices for Safeguarding Personal Information

Users' low awareness increases their risk of identity theft, scams, and manipulation. A major barrier to better online data privacy is low digital literacy. Many users do not know about privacy settings, the meaning of terms of service, or the importance of secure communication tools. Closing this gap is key to helping users manage their online privacy effectively. User can ask for their personal data to be erased if it is not needed or is being misused; this is called "the right to be forgotten". For example, users should be aware that they can ask a company for access to their personal data, and have the right to receive a copy for free in a usable format. General Data Protection Regulation obligates that the company must respond within one month and provide data along with details on its use. When a company wants user's consent, they must clearly agree, such as by signing a form or choosing 'yes' on a webpage. Just opting out is not enough; user must actively agree to your data being stored or reused. Before user agrees, they should receive details about the company processing your data, why they use it, how long, who else received it, the user's rights, the company's contact info, and the Data Protection Officer's contact if applicable. The user can withdraw their consent for a company or organization by contacting the data controller. If an organization data based on their legitimate interest or public tasks, user might have the right to object, but in some cases, their public interest might allow them to continue using user's data, such as for scientific research. For direct marketing emails, a company needs user's consent to send them. For a current customer, they can send emails about similar products, users can object to these marketing emails at any time, and they must stop using user's data right away. Companies must inform user of their right to object during their first contact with user. If a company has shared user's data online and user request its deletion, the company must inform other sites where the data was shared. However, some data may not be deleted due to the need to protect rights

like freedom of expression, especially if it serves public interest. When it comes to children's rights, children usually need a guardian's approval to use online services that require personal data, like social media or downloading music and games. They won't need consent anymore once they are over 16 years old, or as low as 13 in some EU countries. Parental consent checks must be effective, such as through verification emails (European Union, 2019). Low digital literacy significantly increases users' vulnerability to identity theft, scams, and manipulation, as many individuals lack awareness of privacy settings, secure communication tools, and their rights regarding personal data protection. Under the General Data Protection Regulation, users are granted crucial rights such as access to their personal data, the right to be forgotten, informed consent, the ability to object to their data processing, and additional protections for children. This aims to strengthen individual control over personal information online.

Conclusion

Digital platforms offer convenience but collect personal data, including basic details and sensitive information about users' behavior, online activity footprints, and health information. This data is often shared with third parties, like advertisers, without users' clear consent, and it can be exploited for profit. This emphasizes the need for strong cybersecurity measures as part of human rights, as human rights cover both physical and digital spaces, where personal information is often collected and shared. Threats like surveillance and cybercrimes endanger individuals' freedoms, making it crucial to protect privacy to allow safe navigation of the digital world. Digital platforms must be clear about how they collect data and get users' consent before using their information. Strong security measures are also needed to prevent unauthorized access and data breaches. Platforms may not always meet these standards, so governments and international organizations need to ensure they are held accountable and enforce better regulations. Laws like the General Data Protection Regulation in Europe help protect privacy and give individuals control over their data. Global cooperation is essential to tackle challenges related to international data processing.

Future research could explore the creation of stronger international agreements that ensure a consistent level of data protection across borders, making it more difficult for malicious actors to exploit differences in national laws. Action should focus on improving cybersecurity laws to protect individual rights. Some countries

have advanced data protection regulations, like the GDPR, but many regions still lack strong privacy laws. Governments need to research and develop legal frameworks to tackle new cybersecurity threats, including surveillance and complex cyberattacks, while safeguarding sensitive personal data. Additionally, there is a need to investigate the ethical implications of cybersecurity technologies and their potential to infringe upon individual freedoms. Legal systems should integrate human rights principles into the development of cybersecurity laws, ensuring that the balance between security and privacy is maintained. Equal importance holds the investing in public education about data privacy and digital security. Therefore, education campaigns for vulnerable groups can help them manage their digital identities, the dangers of sharing personal information online, and the effects of data breaches. Research can explore the effectiveness of privacy tools like end-to-end encryption and how to make them accessible, helping people to protect their data and improve digital security.

Digital literacy programs should be included in school curricula globally to teach students about privacy, data protection, and cybersecurity, promoting a culture of responsibility and awareness in the digital world.

International understanding of regulations could encourage platforms to create systems that prioritize user consent, allowing people to easily opt in or out of data collection. This can reduce data misuse and protect digital rights.

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Marital Rape: Social Reality Vs. Legal Recognition

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Abstract

Any form of violence perpetrated within the family is considered particularly severe, precisely because it occurs in an environment that is presumed to provide warmth, safety, and emotional support. Such acts are committed by individuals who are expected to ensure protection and trust, yet these very settings are often transformed into spaces of fear, coercion, and psychological suffering. When addressing sexual violence within marriage, the issue becomes even more critical, as marital rape represents one of the gravest forms of domestic violence, frequently accompanied by psychological, emotional, social, and physical abuse.

Rape, particularly within the context of marriage, has been recognized relatively late in both international and domestic legal frameworks. This delayed recognition reflects deeply rooted historical, cultural, and legal perceptions of marriage as implying irrevocable consent. Accordingly, this research paper aims to analyze the factors that have contributed to the late legal acknowledgment of marital rape, the persistent underreporting of this criminal offense, and the manner in which it continues to be perceived and treated within society.

In order to provide a comprehensive and nuanced understanding of this phenomenon, the paper employs a comparative legal method to examine the relationship between international and national legal frameworks, alongside a statistical approach that illustrates the current situation in North Macedonia, particularly in relation to reporting patterns documented by the Ministry of Interior. Through this analysis, the study seeks to highlight the gap between formal legal recognition and the social reality of marital rape.

Keywords: Marital rape, victims, intimate partner.

Introduction

Marital rape represents one of the darkest forms of crime. The darkness of this crime extends in two dimensions; initially, this crime falls into the group of crimes with a high level of non-reporting, but also marital rape, because it is committed by the intimate partner, the consequences are much more severe and traumatic than any other type of crime. Just like marital rape itself, its notion is also very new to humanity, which for thousands of years has been faced with various crimes. Diana Russell (1990) defines marital rape as "any unwanted sexual intercourse or penetration obtained by force, threat of force, or when the wife is unable to consent, within a marital relationship." Bergen defines marital rape as non-consensual sexual acts committed by a spouse, embedded in patterns of power, control, and domestic abuse (Bergen, 1996). Estrich conceptualizes marital rape as rape indistinguishable from non-marital rape, where lack of consent is the central element, regardless of the relationship between victim and perpetrator (Estrich, 1987). MacKinnon does not give a short dictionary-style definition, but she frames marital rape as a manifestation of systemic gender inequality, where sexual access is socially constructed as a male entitlement within marriage (MacKinnon, 1989). Besides different authors, international organizations also provide their definitions of marital rape. Thus, the World Health Organization defines marital rape under intimate partner sexual violence, defined as "any sexual act performed against a person's will by a partner, including within marriage" (García-Moreno et al., 2013). Marital rape by UN Women is recognized as a form of gender-based violence involving non-consensual sexual acts within marriage, violating bodily integrity and equality (United Nations, Division for the Advancement of Women, 2010). But also, marital rape is considered to be the coercion of a partner (current or former) to perform sexual acts without her or his free will. A similar definition is given by the European Institute for Gender Equality, according to which any type of non-consensual penetration, with body parts or with any object, carried out either by a (former) marital partner or (former) intimate partner, is considered marital rape (European Institute for Gender Equality (EIGE), n.d.).

The recognition of bodily autonomy, human dignity and sexual self-determination as fundamental human rights has led to a gradual transformation of international and domestic legal frameworks. By criminalizing marital rape and by working in the direction of raising awareness on reporting but also the treatment of victims, states work in the direction of reducing the number of marital rapes. But victims continue to face concepts such as: the woman must fulfill the needs of the husband,

and this is an obligation, sexual relations with the husband; women face double victimization especially from institutions, society continues not to recognize marital rape and includes the same within the framework of the obligation that women have towards men.

Historical Development of Marital Rape

The first legal document which specifically speaks about marital rape is recorded in 1736 by Sir Matthew Hale. In fact, Hale, regarding his views on marital rape, writes in the work History of the Pleas of the Crown (1680). In fact, this is Hale's most important work, but it also occupies an important place in terms of the common law of crimes. In the first volume of *The History of the Pleas of the Crown*, he emphasizes: "[T]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract" (Hale, 1736, Vol. 1, p. 629).

Through this position, Hale simply gave voice to a deeply rooted social ideology that the woman existed in a state of permanent sexual availability, a semi-sexual object, supporting the doctrine of common law that a woman may have been the property of her husband, since under coverture, a married woman was considered civilly dead (General Assembly. Joint Subcommittee, 1986). Hale's doctrine not only invented the marital rape immunity but also codified the social belief that normative heterosexual relations determine ownership. By declaring rape inconceivable within marriage, the law transformed not only marital dynamics, but also the common understanding of heterosexual sex (Evans, 2025). In fact, support for the marital rape exemption continued further into the mid-18th century, when Blackstone presented the theory of unity; this theory embraces the woman as a separate subject and unites her with the subject of the man, thus eliminating her legal independence. It thus enables a submissive position for the woman who has historically been placed under the authority of the husband and consequently under his control (Green, 1988; Small & Tetreault, 1990). In Blackstone's *Commentaries on the Laws of England* (1765), he wrote: "The husband and wife are one person. The legal existence of the woman is suspended during marriage, incorporated into that of the husband. ...If a woman is injured, she cannot act without the consent of her husband."

Only during the 20th century did this doctrine begin to be seriously challenged, mainly as a result of developments in the field of human rights and feminist movements. A key moment in this direction was the decision in the case *People v. Liberta*, where the New York Court of Appeals declared the marital rape exemption unconstitutional, arguing that such an exemption violates the principle of equality before the law and the protection of women's bodily integrity (*People v. Liberta,* 64 N.Y.2d 152 (1984)). Another very important moment in this direction is also the case *R v R* (1992) 1 AC 599, where we see a court verdict that sees spouses as unequal in marriage and determines that rape is a criminal offense regardless of who commits it and what legal relationship the perpetrator and the victim are in. The importance of this court decision is also expressed in the fact that it leaves in the past and declares invalid the customary norms according to which the concept was reinforced that the woman, by the very marriage bond, gives irrevocable consent and the same cannot be contested even in the case of rape.

Despite these developments, the decriminalization of the marital rape exemption has not been uniform in all jurisdictions. In many countries, including some legal systems in transition, the legal recognition of marital rape has come with delay or remains partial. Even where it has been criminalized, challenges in implementation continue, due to cultural norms, stigmatization of victims, and difficulties in proving the criminal offense.

In this sense, the historical development of marital rape reflects a broader transformation from a legal concept that supported patriarchal control over the woman's body, toward a modern understanding that places at the center autonomy, dignity, and the fundamental rights of the individual.

International Legal Framework

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly of the United Nations. The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979). This Convention establishes the foundations of equality between the two sexes. This

is achieved through equal opportunities in every sphere of life that the Convention provides for (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979).

This Convention in its first article defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, art. 1).

In General Recommendation No. 19 (1992), in Article 16, paragraph 23, it foresees family violence by also including rape and other forms of sexual assault. Thus, this article establishes that regardless of age and social and economic status, any girl or woman can be a victim of various forms of domestic violence, explicitly mentioning rape and other forms of sexual acts. This Convention emphasizes that economic dependence is one of the main reasons why women are not spared from the cycle of violence (Committee on the Elimination of Discrimination against Women (CEDAW Committee), 1992, para. 23).

International Covenant on Civil and Political Rights (ICCPR)

This Pact was adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force on 23 March 1976. Until May 2012, the Pact had been ratified by 167 states. Although marital rape is not specifically provided for, the Pact, in its article 7, prohibits torture, inhuman or degrading punishment, and within these prohibitions is also included the prohibition of committing marital rape since the same is degrading and inhuman treatment of the victim (International Covenant on Civil and Political Rights, 1966, art. 7). We see sexual autonomy present in this pact in article 17. It emphasizes private life, and prohibits arbitrary interference with it, including attacks that violate the honor and reputation of the person (International Covenant on Civil and Political Rights, 1966, art. 17). Honor and reputation are elements that are directly violated by marital rape; therefore, although not directly, victims of marital rape are protected through this article.

Declaration on the Elimination of Violence Against Women (DEVAW)

The United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women (DEVAW) in 1993. This document represents the

efforts of many actors to address violence against women. DEVAW clearly includes "sexual harassment and intimidation at work, in educational institutions or elsewhere." To combat sexual harassment and other acts of violence against women, states must work to prevent and investigate such acts (United Nations General Assembly, 1993).

Through Article 2(a), the Declaration also recognizes marital rape as a form of domestic violence. It therefore stipulates that violence against women should be interpreted broadly to include marital rape and other forms of sexual violence that may occur within the family (United Nations General Assembly, 1993, art. 2(a)).

Beijing Declaration and Platform for Action

The Beijing Declaration and Platform for Action was adopted in 1995 at the Fourth World Conference on Women. This declaration covers issues ranging from the workplace to violence against women.

Marital rape, when committed by a current or former intimate partner, automatically falls into the category of sexual violence committed in the family, as the Declaration of Rights does. In its paragraph 113, it defines the term "violence against women" which it defines, among other things, as sexual suffering or harm that can be committed both in the closed spaces of the family but also in public life by unknown perpetrators and even by the state itself when the same tolerates sexual violence or even commits it itself (United Nations, 1995, para. 113).

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, was adopted on 7 April 2011 by the Committee of Ministers of the Council of Europe. This convention, despite being adopted more than 15 years ago, continues to be the most important contemporary document regarding violence against women. In fact, this Convention for the first time emphasizes the distinction between sex and gender. The first as a biological determinant and the second as a social construct which, for centuries, has played an important role in the subordination of women in society (Issue Based Coalition on Gender, 2020).

Since the Convention specifically addresses violence against women, in some articles we see the presence of sexual violence and, consequently, marital rape. Thus,

in Article 3, the Convention includes in the group of violence against women any acts that cause physical, sexual, psychological or economic suffering. (Council of Europe, 2011, art. 3(a)). In Article 36, on the other hand, the Convention obliges states to criminalize, among other things, anal, vaginal and oral penetration that is carried out with parts of the body or with the penis of another person and which is not voluntary (Council of Europe, 2011, art. 36(1)(a)).

According to this Recommendation, rape must be criminalized, and it also foresees marital rape as a form of sexual violence that violates the physical, sexual and psychological integrity of the victim. Similarly, General Recommendation No. 35 emphasizes consent and its receipt in coercive circumstances where the same has not been freely expressed. (Committee on the Elimination of Discrimination against Women (CEDAW), 2017, art. 29(e)).

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention)

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women was adopted in Belém do Pará, Brazil, in 1994. This convention is the first to develop mechanisms for the protection of women's rights, thus enabling the fight against physical, sexual and psychological violence in two dimensions, both in the private and in the public dimension (Organization of American States (OAS), 1994).

In Article 2 of this Convention, violence against women is provided for, including sexual violence which is committed within the family; when sexual violence is committed in the family, in most cases it is committed by the partner. According to this article, the violence experienced by women can be physical, sexual, and psychological and can be committed by a person with whom the victim has had or is in a relationship, but also when these forms of violence, as well as specific types of sexual crimes such as rape, sexual abuse, torture, trafficking, and forced prostitution, are committed outside the home, anywhere, including when committed by the state itself (Organization of American States (OAS), 1994, art. 2).

Marital Rape in North Macedonia

Sexual violence committed by an intimate partner is one of the most contemporary terms when we speak about sexual violence. Unfortunately, the same was not recognized for a very long time, and here is also included the Republic of North

Macedonia with its history. Before North Macedonia became an independent and sovereign state, it was part of Yugoslavia. If we analyze the Criminal Codes of that time, we see that marital rape did not exist; moreover, it was excluded from the incrimination of rape. Thus, in the Criminal Code of the Federal People's Republic of Yugoslavia.

Since 1951, we see the presence of sexual crimes in the Criminal Code of the Federal People's Republic of Yugoslavia. This Code, numbered 332, was adopted on 27 February 1951 in Belgrade, while it entered into force on 1 June 1951. In this Code, sexual crimes are incriminated in the chapter Criminal offenses against human dignity and morality, which consists of 10 articles. Marital rape, as stated above, is not incriminated in this Code, but as a criminal offense, rape is incriminated in Article 179: Rape according to this Code is defined as: (1) Whoever, by the use of force or intimidation that will immediately attack life or body, will force a female person into a sexual act with whom he does not live in a marital union, shall be punished with strict imprisonment up to eight years. (2) If, as a result of the criminal offense from paragraph 1 of this article, serious bodily injury or the death of the woman has occurred, the perpetrator shall be punished with strict imprisonment of at least two years. Thus, as we can see, rape can be committed only against someone with whom one is not in a marital union; consequently, sexual violence between spouses was not recognized as a form of violence (Criminal Code of the Federative People's Republic of Yugoslavia, 1951, art. 179).

In 1977, the Criminal Code No. 06-1599 of the Socialist Republic of Macedonia also entered into force, which was adopted on 16 June of that same year. Unlike the previous codes, this Criminal Code focuses on criminal law only within the territory of Socialist Macedonia. Sexual crimes in this Code are included within Chapter XI – Criminal offenses against dignity, which consists of 9 articles. Rape is incriminated in Article 94: (1) Whoever, against a female person with whom he does not live in a marital union, by the use of force or threat that he will immediately attack her life or body or the life or body of a close person, will force her into a sexual act, shall be punished with imprisonment from one to 10 years. (2) If, as a result of the criminal offense from paragraph 1 of this article, serious bodily injury or death has been caused to the woman, or the act has been committed by several persons, or in a particularly cruel or degrading manner or in another particularly severe case, the perpetrator shall be punished with at least three years of imprisonment (Criminal Law of the Socialist Republic of Macedonia, 1977). As we can see, this article inherits many parts of the 1951 Article on rape. Thus, here as well we

see that this criminal offense can be committed only against a female person and that sexual violence between spouses is excluded as a form of rape. The sanction for this offense has increased significantly; thus, in 1951 rape was punished up to 8 years of imprisonment, whereas with the Criminal Code of 1977 the sanction is from 1–10 years of imprisonment.

As an independent state, on 23 July 1996 Macedonia adopted the new Criminal Code, while the same began to be applied on 1 November 1996 and continues to be applied even today with many changes that have been made over the years (including the changes of 2023). From Criminal offenses against dignity (as the chapters were called in the Criminal Codes of 1951 and 1977), the chapter is named Criminal offenses against sexual freedom and sexual morality and from 1996 until today holds the same title. Rape is incriminated in Article 186 and is defined as: (1) Whoever, by the use of force or threat that he will immediately attack the life or body of another or the life or body of a close person, will force another into a sexual act, shall be punished with imprisonment from one to ten years. (2) If, as a result of the act from paragraph 1, serious bodily injury, death or other consequences have been caused or the act has been committed by more persons or in a particularly cruel or degrading manner, the perpetrator shall be punished with imprisonment of at least three years. (3) Whoever forces another into a sexual act by serious threat that he will disclose something that will harm the honour and reputation of that person or a close person or will cause other harm, shall be punished with imprisonment from six months to five years. (4) Whoever, in the cases from paragraphs 1, 2 and 3, commits only another sexual act, shall be punished for the act from paragraph 1 with imprisonment from six months to five years, for the act from paragraph 2 with imprisonment from one to ten years, whereas for the act from paragraph 3 with imprisonment from three months to three years. (5) If the act from paragraphs 1, 3 and 4 is committed against a person with whom the perpetrator lives in a marital union or a long-term extramarital union, criminal prosecution shall be undertaken upon a private complaint (Criminal Code of the Republic of Macedonia, 1996, art. 186). As we see, for the first time marital rape is not excluded from a marital or extramarital partner. However, the legislator does not provide ex officio prosecution, consequently victims only in the case of reporting to the authorities of the state can achieve justice for this crime committed against them; otherwise, the prosecutor does not have the obligation to prosecute the case.

From 1996 until today, the Criminal Code has undergone numerous changes over the years, attempting to adapt to social trends as well as international standards.

North Macedonia signed the Istanbul Convention on 8 July 2011, ratified it on 23 March 2018, while the same entered into force on 1 July 2018 (Council of Europe, n.d.). As a result of this ratification, the legal system in RNM underwent several changes. Within these changes are also included the amendments that the Criminal Code experienced in 2023, which are the most important changes carried out in the last 30 years when it comes to gender-based violence and domestic violence. Through these changes, Chapter XIX of the Criminal Code underwent fundamental changes both in the naming of criminal offenses, criminal sanctions, the legal definition, and the positioning of state authorities in the fight against gender-based violence and domestic violence.

Article 186 has undergone numerous changes, but before the 2023 amendments came into force, this article criminalized rape as an act of a sexual nature committed through force and threat, as well as threats against persons close to the victim. When the victim is a child but has reached the age of 14, this article provides for a much more severe punishment, namely the perpetrator is sentenced to a minimum of 10 years in prison. Severe sanctions are also provided when the victim suffers serious physical harm. In addition, the provision extended to situations involving coercion through threats of reputational harm (Osmani, 2015, p. 165).

Whereas with the amendments adopted in mid-2023, Article 186 was renamed as Sexual assault and rape and provides. With the entry into force of the amendments of 2023, Article 186 underwent drastic and very important changes. Thus, it initially shifted from a focus on force-based elements to the absence of consent as the central component of the offence. Also, through these amendments, it is defined what we call a sexual act, namely "vaginal, anal, or oral penetration with any part of the body or object or will force another person without his consent to perform sexual intercourse". When this act is committed against a child who has reached the age of 15 or is carried out through force or threat to the life and body of the victim or any close person, the perpetrator is punished with a more severe penalty. A more severe punishment is also imposed on the perpetrator who has committed these acts by threatening to reveal something that will damage the reputation of the victim or a close person, or even when the victim has suffered sexual or physical injuries or even the death of the victim, but also when the act is committed by more than one person. Paragraph 8 of this article specifically defines marital rape. When the penetration is committed by a current or former intimate partner, the Criminal Code provides for a prison sentence of at least 3 years, while when the (former) intimate partner has used force and threatened to attack the life and body of the

victim or another person, then the perpetrator will be sentenced to at least 5 years in prison (Law Amending and Supplementing the Criminal Code, 2023).

In the previous article, the act was only named as a sexual act without providing explanations, and this has led to the need for interpretations to determine what, in fact, is considered a sexual act, or which parts of the sexual act are incriminated, or whether the sexual act is carried out only through penetration or can be of different forms and ways. Therefore, the need arose that even in the Criminal Code, not only through interpretations of legal science, but the sexual act should also be defined. Now, in the article Sexual assault and rape, it is defined as: "sexual intercourse or something else equal to a sexual act, which consists of vaginal, anal, or oral penetration with any part of the body or object." Thus, we have a concretization of which actions will be considered as sexual crimes. This change is very important also for marital rape, since now the criminal procedure will be conducted only in the absence of the woman's will. Another very important change is also the incorporation of paragraph 8, which explicitly provides for marital rape and, above all, provides for a minimum punishment of 3 years, but the perpetrator may also be punished with life imprisonment when the judge assesses that the committed crime corresponds to lifelong deprivation of liberty.

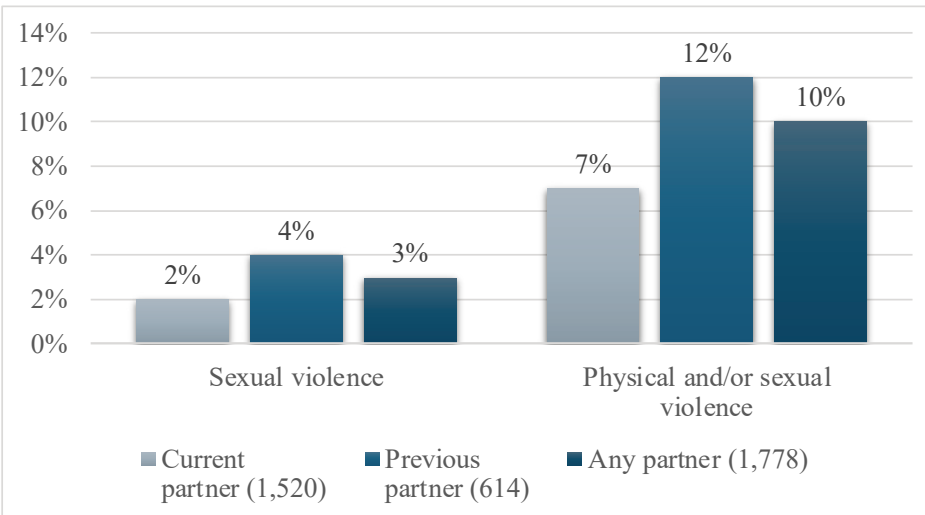
Statistical Evidence and Social Reality

The social reality of marital rape can best be observed through statistics provided both by international organizations and by national authorities. In fact, the numbers emerging from statistics on one hand show the number of reports, but on the other hand reflect how much this form of crime is not reported and how many cases remain untreated by institutions, while also remaining in the darkness of documentation of these cases. One of the international organizations that has conducted and constantly conducts research in this direction is the World Health Organization. The data of this organization show that one-third of girls and women globally have experienced physical and/or sexual violence by a (former) intimate partner, although violence by other perpetrators is also reported. Furthermore, this research shows that more than a quarter of girls and women between the ages of 15 and 49 have experienced such forms of violence at least once in their lifetime by their intimate partner. According to the WHO: "Estimates of the prevalence of intimate partner violence during the lifetime range from 20% in the Western Pacific, 22% in high-income countries and Europe, and 25% in the WHO Region of

the Americas, to 33% in the WHO African region, 31% in the WHO Eastern Mediterranean Region, and 33% in the WHO South-East Asia region." (World Health Organization, 2026).

The Organization for Security and Co-operation in Europe (OSCE, 2019) - led survey on violence against women: North Macedonia. This research was conducted with girls and women aged 18 to 74, and results show that one in ten girls/women have experienced physical and/or sexual violence within intimate relationships. Regarding North Macedonia, approximately half of the girls/women included in the research reported having experienced psychological, physical, or sexual violence from their intimate partner. Regarding exclusively sexual violence, only 3% have reported the same. Also, according to this research, when women fall into the category of women who experience difficulties in economic terms, they are likely to experience 15%-21% more physical and/or sexual violence from an intimate partner. The following table shows the reporting of girls and women aged 18–74 who have experienced sexual violence by partners.

Table 1. Sexual Violence in North Macedonia (2018)



Source. (OSCE, 2019)

UN Women also provides data on sexual violence by a partner. According to UN Women research, which refers to the year 201, it results that 4.2% of girls and women (from 15 to 49 years old) have experienced physical violence or sexual violence, either from a current intimate partner or a previous partner (UN Women, n.d.).

The above-mentioned statistics refer to research conducted by international organizations and, in fact, are among the few statistics that we can easily access, but in reality, these statistics do not provide us with information on how many of these reports have also been made to state institutions, respectively to the police. In this regard, from the data obtained from the Ministry of Internal Affairs, it is seen that, in fact, reporting is very low. From the data secured from the Ministry of Internal Affairs, reports under Article 186 paragraph 8 (which provides for marital rape) are:

- in 2023, one crime was registered for which one perpetrator was reported,
- in 2024, three crimes were registered for which three perpetrators were reported,
- in 2025, no such crimes were registered (Ministry of Internal Affairs, 2026)

These data were obtained from the Ministry of Internal Affairs, which refers to reporting at the national level; in fact, they present the real situation in which society in the Republic of North Macedonia is found. Reporting is minimal, and even in the year 2025, nothing was recorded, although anonymous surveys and field research indicate a much more concerning situation regarding marital rape (Ministry of Internal Affairs. 2026). There exists a large gap between reported victims and the real number of victims. This situation indicates that society in the Republic of North Macedonia continues to suffer from prejudice, stereotypes, as well as deeply rooted patriarchal concepts regarding the position of women and men.

Conclusion

History has shown that girls and women, for a long period of time, were initially considered the property of the father and later the property of the husband. As a result, any crime committed against them was treated as a violation of male authority rather than a direct infringement of the integrity and dignity of the woman. This concept continued into the 18th century through the positions of Hale, who reinforced the idea that by entering into marriage, a woman gives permanent consent to sexual relations, thereby excluding the possibility of rape within marriage. Unfortunately, elements of this approach continue to be present even today, transformed into more sophisticated forms, where the woman is still perceived as the “honor” of the man.

Marital rape continues to constitute a serious challenge both for victims and for society as a whole. Although most states today recognize this criminal offense, not all guarantee fair, effective, and victim-oriented procedures. The Republic of North Macedonia, in an effort to harmonize its legislation with international and European standards, has undertaken significant changes to the Criminal Code, including provisions that clearly address marital rape. However, despite this normative progress, the practical implementation of the law remains challenging.

The lack of effective implementation of legal provisions, together with factors such as social stigmatization, lack of trust in institutions, and procedural difficulties, contributes to the underreporting of cases and to the insecurity of victims in seeking justice. In this regard, it is essential not only to strengthen law enforcement mechanisms, but also to develop policies and awareness-raising campaigns aimed at changing societal perceptions of this phenomenon.

In conclusion, addressing marital rape requires an integrated approach, where, in addition to the legal framework, particular importance is also given to the transformation of social norms and the guarantee of full support for victims. Only in this way can real protection of women's rights be ensured and a justice system that functions equally and effectively for all.

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BALKAN JOURNALS

Harmonisation via Socialisation: The Role of EU Agencies' Staff in Stimulating Convergence of EU Internal Security Practices

Aida Halilovic

Abstract

European Union (EU) agencies like Frontex (the European Border and Coast Guard Agency), Europol (the European Union Agency for Law Enforcement Cooperation) and the EUAA (the European Agency for Asylum) developed a substantial policy-influencing, operational, regulatory, and implementation-influencing capacity.

By developing standards and benchmarks, by training security staff all across the Union, as well as by overseeing that common rules and policies are implemented correctly, EU security agencies are more and more included in pinpointing political priorities, shaping security cultures, and developing foundational concepts (like those of risk and threat) upon which common interior policies are based. This Article explores the potential of EU agencies' staff to socialise practitioners and decision-makers to certain security standards and practices and their perceptions of what public good they pursue (e.g., security vs. liberty).

The Article argues that socialisation should be understood not simply as the transmission of EU norms to national officials, but as a mechanism through which administrative practices, professional expectations and understandings of appropriate conduct can become increasingly shared across jurisdictions. In the Area of Freedom, Security and Justice (AFSJ), where political sensitivity and national responsibility constrain the scope for uniform legislation, interaction between agency staff and national practitioners can therefore constitute an alternative pathway towards administrative convergence. At the same time, its effects depend on the incentives and political priorities of national practitioners.

Keywords: EU agencies, socialisation, AFSJ, administrative convergence, harmonisation.

Introduction

The European Union faces a myriad of internal security challenges, ranging from terrorism and organised crime to irregular migration and cyber threats. Given the transnational nature of these issues, individual Member States' efforts to address them are often insufficient. Harmonisation of security practices is thus critical for an effective and unified response.

The EU has faced significant challenges in harmonising security practices through legislation due to the high sovereign sensitivity and politicisation surrounding issues of national security and migration. EU governance hence focused on harmonising administrative practices, increasing trust, and boosting cooperation on a practical level playing field (Halilovic, 2024). EU agencies play pivotal roles in this process.

Research on agencies has demonstrated that they can acquire influence through expertise, networks, agenda setting and interactions with national administrations (Majone, 1997; Egeberg & Trondal, 2011; Wood, 2018; Guaschino, 2022; Ruffing, 2022). As regards this latter dimension, the literature on socialisation contributes to understanding these less evident channels through which EU agencies exercise influence, especially as regards the interactions and informal exchanges with national administrations. Studying socialisation dynamics sheds light on how repeated interaction may alter the practical repertoire through which national officials understand and perform their tasks, rather than asking only whether an agency possesses formal powers or influence over a national authority. The interactions between EU agencies and national bureaucracies are particularly significant in policy areas where implementation depends heavily on professional judgement and operational coordination, like the AFSJ.

While harmonisation conventionally entails the approximation of laws or formally prescribed standards, socialisation is a process through which actors acquire, reproduce or modify understandings of appropriate behaviour through interaction. Prolonged socialisation may also contribute to harmonisation. Checkel (2005) identifies strategic calculation, role-playing and normative suasion as distinct mechanisms through which international institutions may socialise (national) actors. A national official may participate in an agency's training because doing so provides useful expertise or improves operational capacity; subsequently, repeated interaction may make particular European practices appear professionally appropriate; over time, those practices may become routine even without a formal obligation to reproduce every aspect of the agency's approach.

This perspective also avoids treating national practitioners as passive recipients of Europeanisation. Socialisation is potentially reciprocal. National officials bring existing professional knowledge into agency networks, participate in the development of common curricula and operational practices, and can transmit national experiences back into European administrative settings. EU agencies can consequently operate as sites in which professional practices are negotiated as well as transmitted. The resulting process is closer to mutual adjustment than unilateral top-down harmonisation. This is consistent with research showing that European administrative integration can produce "compound" rather than purely national or European patterns of administrative behaviour (Trondal et al., 2021).

Socialisation Theory and its Application

Socialisation theory explains how individuals and groups internalise norms, values, and practices through interactions and experiences within their social environment (Bandura & Walters, 1977; Berger & Luckmann, 1979; Giddens, 1984; Parsons, 1951). In the context of EU security agencies, socialisation theory helps to understand how staff from different Member States come to adopt common security standards and practices. This Article brings empirical insights to the existing literature on socialisation processes within EU security agencies: the scholarship has so far discussed how EU agencies influence national practices and norms (Egeberg & Trondal, 2011; Mitsilegas, 2016), usually socialising national security actors to security-informed (rather than liberty-informed) standards—hence also securitising national practices and norms (Balzacq, 2008; Bossong, 2013; Léonard, 2010; Wolff et al., 2009).

The literature on socialisation suggests, however, that the concept should not be reduced to the simple "internalisation" of a European norm. Checkel (2005) stresses that socialisation can proceed through different mechanisms and that actors do not necessarily abandon existing identities or preferences. In the context of EU agencies, this means that convergence can arise through repeated exposure, professional incentives and role adaptation without requiring national practitioners to develop an exclusively European identity. Indeed, the institutional setting of EU agencies may encourage officials to operate according to several overlapping logics simultaneously: national administrative obligations, professional standards, organisational expectations and EU objectives.

This observation is particularly relevant for the AFSJ. Security and migration officials are not simply policy recipients. They are professionals whose work is often governed by highly specialised knowledge, operational routines and professional communities. Where an agency supplies training, analytical methodologies or operational coordination, it can therefore affect what officials perceive as competent or appropriate professional behaviour. National officials themselves also participate in professional and administrative networks –and often under the aegis of EU agencies- in which norms, standards and understandings of appropriate practice are developed and circulated. The significance of agencies lies precisely in their ability to occupy the intermediary space between an EU-level organisation and national professional communities.

For this study, data were gathered through semi-structured, anonymised interviews conducted in 2023 with Frontex, Europol, and EUAA staff, who are referred to in text by alphanumerical codes (e.g., Interview 1, Europol, Interview 2, Frontex).

Socialisation Through Training and Operational Coordination

The potential of EU agencies' staff to socialise practitioners and decision-makers to certain security standards and practices is significant. Through training programs and operational coordination, agencies influence the perceptions and actions of security personnel and policymakers across the EU.

For instance, assistance to Member States through training is a long-established function of Frontex, the EUAA and Europol, welcomed by the Member States in the early mandates of the agencies. By pooling expert resources from the Member States and developing their own expertise, these agencies help redistributing know-how across the EU especially to the benefit of smaller or less resourceful Member States.

Europol's legal framework expressly provides for specialised training and assistance to Member States in organising training, while its mandate includes the development, sharing and promotion of specialist knowledge on crime prevention, investigative procedures and technical and forensic methods (Regulation (EU) 2016/794, Art. 4(1)(g), (i)). The agency therefore occupies not merely an informational position but a professionalising one: it participates in shaping the knowledge and techniques through which national law enforcement authorities perform their tasks. Within Europol, one interviewee highlights that:

> Europol has been very instrumental in setting analytical standards across the EU Member States and many analysts in EU Member States have been trained by Europol. […] We also always run analytical courses and they are always much in demand, they are more in demand than the ability to service them it is a quality of training that is rarely available at national level. Italy, Germany, France have training capabilities that include training analysts, but a lot of the smaller countries, they do not have the breadth of expertise… if you go to Europol you would get very good analysts from very many Member States who will speak about the process of analysis and how it works and how they work together on agreed common standards, common phrases, so that people understand what their task is in relation to analysis (Interview 3, Europol).

Next to efficiency gains, training by the agencies also contributes to fostering a common administrative style of managing asylum, migration and policing across the Union (Kassim, 2003). By promoting common practices and standards, it makes national systems more alike and interoperable, smoothing differences in staff capabilities, working techniques and procedures. National administrations are thus apt to become increasingly Europeanised.

In the case of Frontex and the EUAA, the formal legal architecture supports this interpretation. The Frontex Regulation requires Member States to integrate the Frontex common core curricula into national training for border guards and staff involved in return-related tasks, while also expressly linking training to the development of a common European culture (Regulation (EU) 2019/1896, Art. 62, paras. (3), (6)). The Frontex case illustrates especially well how training can operate as a mechanism of professional socialisation. Horii (2012) argues that Frontex training has had an integrative effect through socialisation and professionalization, contributing to shared views among border guards and the development of a European professional community. This finding is important because it shifts attention away from the formal status of the training materials and towards their effects on professional practice. A common curriculum matters not only because it establishes common content, but also because it places officials from different national systems within a shared professional vocabulary.

The EUAA Regulation similarly requires Member States to base appropriate national training on the European asylum curriculum and states that agency training should promote greater convergence of administrative methods, decisions and legal practices (Regulation (EU) 2021/2303, Arts. 8(3)–(4)). The EUAA provides an even clearer illustration of the link between professionalization and administrative

convergence. Its European asylum curriculum covers not only substantive asylum law but also interview techniques, evidence assessment, country-of-origin information, reception conditions and the treatment of vulnerable applicants. The curriculum therefore reaches into the practical techniques through which asylum administration is performed. The importance of this is not that the EUAA can dictate the outcome of individual national asylum decisions; the regulation expressly preserves the independence of national courts and tribunals. Rather, the agency can influence the professional environment within which national officials make and justify those decisions.

These provisions demonstrate that training is not merely an ancillary capacity-building activity: it is institutionally designed as an instrument through which administrative practices can converge. The common curricula by the EUAA and Frontex provide a concrete institutional mechanism for this process of socialisation. The curricula travel through national institutions; their effect is consequently mediated by national training systems, instructors and professional practices. This makes the process neither pure centralisation nor conventional legal harmonisation. It is a form of administrative convergence produced through the coupling of EU standards with national implementation structures.

It is interesting to note that the capacity, skills and training of staff in the Member States is one of the elements that is monitored by the EUAA under its monitoring mechanism, and by Frontex in its Vulnerability Assessment. The fact that training is included in monitoring procedures that might escalate into forcing Member States to live up to set standards signifies that these agencies not only promote a common European asylum and border management culture, but can also enforce training practices and standards.

In the case of Frontex, there is an additional mechanism through which EU practices and standards exert influence in the Member States. As part of the integrated planning process for border management and return, Member States adopt national capability development plans outlining, *inter alia*, their policies for the recruitment and training of border guards and return specialists. Frontex establishes the methodology and procedure for such plans after consultation with the Member States and assesses them yearly as regards the capacity to perform border control, under the Vulnerability Assessment. While the plans remain formally national, they are deeply connected to Frontex' own resource planning and integrated in the larger EU planning of the IBM policy, requiring extensive consultations between the national administrations and the agency for their respective plans to be in line with one

another. Hence, the procedure for their drafting interjects national border guards' recruitment and training planning—of high potential of affecting national autonomy.

The significance of this arrangement is that EU influence does not depend upon replacing or openly directing national training institutions. Instead, Frontex can affect the premises according to which national institutions organise training while leaving the formal organisation of those institutions intact. This is an important distinction for understanding Europeanisation in sensitive policy fields. National administrations can remain institutionally autonomous while becoming increasingly embedded in a European professional and administrative environment.

In addition to training, the operational deployment of staff and the conducting of joint operations might help socialising national practitioners to EU standards and practices. An interviewee from Frontex brings an example:

> If you have law enforcement, like any area, but maybe law enforcement in particular, if you want to introduce change - you can train, you can incentivise, but it's typically a slow process because you have seniority, you have the younger people being trained by the older, and you very often have a slow change because the senior people are still in the decision making process and it's difficult to introduce big changes. Cultures in particular are difficult to change in that sense. What a manager of border guards with a long experience told me […] is: I try to make Frontex staff work with my youngest officers, because that way they get exposed to new ways of thinking. If we think about the EU not only as providing a service, but to speed up reform and improve professionalization of the law enforcement, in this case border management, it's really revolutionary. We skip generations, completely (Interview 2, Frontex).

Moreover:

> You have teams of border guards coming from several countries, which are not at all connected to the society, to the politics. Even if you have, if I stereotype, if we have a Bulgarian and a Romanian border guard in the Netherlands, at a harbour in Rotterdam, they might not be better than the Dutch… these are stereotypes, right? But just the fact that they are there from two other countries, there are no interests in Dutch politics, they are not involved in the societal pressure that could be there, so by the mere fact that they come from different countries than the Netherlands, helps to raise to objectivity. Maybe a more plausible scenario would be if I turn that around and I say Swedish and Dutch border guards in Greece, but I think you get the message, the external perspective is very healthy and ensures I think objectivity and what I see in the

> two good years that I have been here, is that this actually is the case. They are better, they come with this objectivity, but also by the mere fact that they are competing in a way with different countries, they want to show their best, you know. So, in Bulgaria we do it like this, in Romania we do it like that, in Germany we do it like that, in the Netherlands… and this is a healthy and helpful way of improving border management (Interview 2, Frontex).

These accounts illustrate a further mechanism that is less visible in formal descriptions of agency mandates: socialisation through professional interaction. The point is not simply that an officer receives information about a European standard. Rather, officials encounter colleagues trained in different administrative systems and are required to perform together. Joint operations can therefore expose practitioners to alternative understandings of how a task can be performed. This mechanism corresponds to the role-playing dimension of socialisation identified by Checkel (2005): actors learn appropriate behaviour partly through occupying roles within an institutional environment. In this setting, the role is not necessarily "EU official" but that of a border guard or security practitioner participating in a European operational environment.

This also helps explain why agency staff can be consequential even where agencies lack extensive coercive powers. The authority of an agency can emerge through its capacity to convene practitioners, circulate expertise and establish standards that become useful to national professionals. Wood (2018) describes this broader phenomenon as political entrepreneurship: agencies can build authority through the dissemination of information and ideas and through engagement with their political environments. Agency influence is consequently not exhausted by formally delegated powers. It can develop through repeated interactions that make agency-produced knowledge and practices useful, credible or professionally desirable to national actors.

From Socialisation to Administrative Convergence

Taken together, these examples suggest that socialisation can be understood as one mechanism of administrative integration. The process operates through at least three connected stages. First, agencies generate or codify professional knowledge in the form of curricula, analytical methodologies, guidelines or operational standards. Second, agency staff circulate this knowledge through training, networks, deployments and repeated interaction with national officials. Third, national practitioners adapt, reproduce or contest these practices within their domestic administrations.

Socialisation should consequently be understood as relational rather than unidirectional. National practitioners can upload knowledge and preferences into agency processes just as agencies can transmit standards to national administrations (Suvarierol et al., 2013**)**. This is particularly visible where common curricula are developed through consultation or where operational practices are constructed through participation by experts from several Member States. The resulting standards may therefore reflect a negotiated professional consensus rather than an exclusively supranational preference.

The resulting convergence is not equivalent to centralisation. EU agencies may contribute to integration precisely by connecting national administrations more closely to one another and to EU-level bodies. Research demonstrates that officials embedded in integrated administrative systems can simultaneously face multiple and sometimes competing organisational premises (Trondal et al., 2021). The consequence is not necessarily the disappearance of national administrative identities but the emergence of more complex patterns of administrative behaviour.

The recent literature on EU agencies also cautions against assuming that information provision, enforcement and socialisation are mutually exclusive strategies. Blauberger and Heindlmaier (2025), for example, show in the case of the European Labour Authority that agencies may pursue enforcement, information and socialisation simultaneously, while socialisation can be particularly important where direct enforcement capacity is limited. This observation is relevant to the AFSJ because the agencies considered here frequently operate in institutional environments in which national authorities retain substantial responsibility. Socialisation can therefore complement formal oversight rather than simply substitute for it.

The socialisation of security practitioners and convergence of administrative practices can improve coordination and information-sharing and provide national authorities with access to shared expertise, resources and intelligence (Barnett & Finnemore, 2004). This can facilitate more cohesive responses to transnational security threats, while also strengthening cooperation and trust among Member States (March & Olsen, 2004). At the same time, however, the diffusion of common standards introduces a degree of administrative standardisation across the EU, resulting in a *de facto* harmonisation of practices that affects the discretion and autonomy of national administrations. The greater the extent to which training, professional standards and operational practices converge around EU-level norms, the less scope national authorities may have to depart from established approaches or tailor their responses to specific domestic contexts. In this sense, agency-driven

standardisation may contribute to a degree of denationalisation of policy implementation (Zhelyazkova, 2024; Börzel & Risse, 2000).

The relationship between Europeanisation and national autonomy should nevertheless not be understood as a simple zero-sum relationship. Research on EU implementation demonstrates that the constraining effects of EU policies depend on domestic political salience and the institutional context in which implementation takes place (Börzel & Risse, 2018). Socialisation may similarly narrow some dimensions of administrative discretion while leaving others largely untouched. A national administration, for example, may adopt common training standards while retaining considerable discretion over institutional organisation, resource allocation and the practical prioritisation of competing policy objectives. The significance of agency influence therefore lies not necessarily in replacing national decision-making, but in reshaping the professional and administrative conditions within which such decisions are made.

This process also raises a more fundamental question concerning the formation of security priorities. When definitions of appropriate practice, risk and security are developed through cross-jurisdictional socialisation and administrative cooperation, they may emerge through the practical interactions of security professionals rather than through explicit political deliberation. Perceptions of security needs and the public good can consequently become embedded in professional standards, operational routines and shared forms of expertise before they are subject to political contestation. This is particularly significant in the AFSJ, where agency-led practical coordination can produce forms of *de facto* harmonisation in (constitutional) areas where formal legal harmonisation is explicitly ruled out and remains constrained by sovereign sensitivities and political complexity (Peers, 2011).

The legitimacy implications of this process require a differentiated assessment. The problem is not simply that agencies exercise influence without direct electoral accountability. EU agencies are also expected to provide specialised expertise precisely because national and EU political institutions may lack the technical capacity to perform certain tasks themselves. Yet expertise does not automatically confer legitimacy. Research on the public legitimation of EU agencies demonstrates that technical expertise is only one possible basis of legitimacy, while demands for political control become particularly salient for agencies operating in politically sensitive fields (Fjørtoft & Michailidou, 2022). This distinction is especially important for Frontex, Europol and the EUAA, whose activities directly affect migration, asylum and security.

The central concern, therefore, is not that socialisation necessarily produces illegitimate outcomes, but that practices with significant distributive and rights-sensitive consequences may acquire authority through professionalization rather than through explicit political contestation. When practitioners come to understand particular definitions of risk, threat, vulnerability or appropriate intervention as professionally self-evident, those categories can structure subsequent administrative choices without appearing as political choices. Indeed, the more successful socialisation becomes, the less visible the process through which the underlying assumptions were established may become.

This also complicates the idea of depoliticization. Agencification may remove some decisions from direct political bargaining while simultaneously relocating political choices into professional practices, standards and processes of knowledge production. The relevant question is therefore not simply whether agencies are political or administrative actors, but how political preferences become embedded in apparently technical administrative practices and how those practices subsequently circulate between EU and national administrations.

Conclusion

The TFEU's restrictions on the harmonisation of national laws in the AFSJ highlight the political and legal complexities of achieving uniformity in sensitive areas of national sovereignty. However, *de facto* harmonisation can be achieved via soft, operational mechanisms of practical coordination.

Socialisation is one of the mechanisms through which this *de facto* harmonisation takes place. This Article has shown that the staff of Frontex, the EUAA and Europol connect European standards to national professional communities through training, operational interaction, expertise and repeated cooperation. Over time, national administrations are socialised to the standards transmitted by the EU agencies, resulting in practice in an effective alignment of national practices. EU agencies can thus contribute to a gradual convergence of administrative practices even where Member States retain formal responsibility for the organisation and implementation of security, border and asylum policies.

While socialisation can generate convergence, national officials retain agency and may selectively adapt, reinterpret or resist EU practices. Future research should therefore examine more systematically when socialisation produces durable changes in administrative behaviour at the national level.

It should also be noted that the norms, standards and practices transmitted by EU agencies are not always politically neutral. AFSJ agencies operate under mandates that must balance competing public goods and interests, e.g., balancing security and liberty. This balance is reflected in their operational priorities, risk assessments, and strategic goals, which effectively shape the broader discourse on EU internal security and can have significant implications for the autonomy of Member States in implementing security and border policies.

The analysis above shows how EU administrative influence can operate through agency networks and interactions with national practitioners. Staff become carriers of standards, professional practices and understandings of appropriate conduct. Through them, administrative convergence can occur over time without legal harmonisation or formal centralisation. The importance of harmonisation via socialisation lies precisely in this capacity to operate below the threshold of formal legal uniformity.

The sensitivity of migration, asylum and internal security does not prevent harmonisation; it changes the form through which it occurs. Where political agreement on common rules is difficult, EU actors may instead build convergence through professional networks, shared expertise, common training and operational interdependence. The resulting form of Europeanisation is less visible than legislative harmonisation, but it may be equally consequential for how EU policies are ultimately implemented.

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Legal Obligations Governing Starvation and Humanitarian Access in International Armed Conflicts

Gursimar Kaur Sudan

Abstract

Starvation in armed conflict is a lack of food and other essentials required for civilian survival, due to food destruction or to restrictions in being able to access it. In international armed conflicts, the denial of such necessaries may be more pronounced when humanitarian assistance is denied, delayed or prevented to affected civilian populations. Even countries that have signed international documents banning starvation and have responsibilities and duties regarding humanitarian relief, show a wide gap between the protection and implementation in the context of contemporary conflicts. In this context, the research explores the links between humanitarian access constraints, food system disruption, displacement, insecurity and civilian hunger and deprivation due to restrictions on humanitarian access, disruption of food systems, displacement, insecurity and administrative and political barriers. International legal and institutional documents are qualitatively analyzed with the help of selected contemporary conflict situations, in order to explore the relationship between legal duties, humanitarian action and the realities of people affected by conflict. The analysis shows that starvation is not just a result of the lack of food availability but can also be a result of the breakdown of the social, economic and humanitarian conditions needed for civilian life in conflict situations. Existing protections are further undermined and humanitarian responses limited by significant implementation, monitoring and accountability gaps. The analysis also places the issue in the context of Sustainable Development Goal 2 (Zero Hunger) to recognize the need to link immediate humanitarian response to medium-term food security and resilience building in conflict-affected communities. Effective response necessitates greater synergies between civilian protection, humanitarian assistance, accountability mechanisms and longer-term food-security strategies in conflict-affected contexts.

Keywords: Starvation, humanitarian aid, international armed conflict, SDG 2 (zero hunger), civilian protection.

Introduction

One of the worst forms of civilian victimization during armed conflict is starvation, which often occurs when people lack food, water and other resources required for life. Armed conflict can generate food insecurity through the destruction of agricultural resources and essential infrastructure, displacement, disruption of markets and loss of livelihoods (Shemyakina, 2022). But starvation has a legal dimension when it is due to actions which are intended or foreseeable to prevent civilians from having a means of survival. International humanitarian law thus does not just cover starvation as a humanitarian effect of war, but also as a topic of civilian protection (Schmitt, 2011). Conflicts can become a life-threatening obstacle to local food systems, and humanitarian assistance can be crucial to civilians' survival; however, civilian insecurity, movement restrictions, administrative difficulties, and interference in humanitarian operations can keep the humanitarian aid from reaching affected populations (Canton, 2021). This is challenging for the legal line of separation between legitimate regulation of humanitarian activities and limitations that could be considered an unlawful obstruction or that may help in the prohibition of starvation. Where deprivation is caused by multiple factors, such as restrictions on food, water, infrastructure and humanitarian assistance, the problem is compounded. Deciding whether such action is legal thus involves an examination of the obligations involved, the context and purpose of the restrictions, how they impact civilians, and who bears responsibility (Clapham, 2006). Meanwhile, the long-term consequences of food insecurity may extend beyond the war itself, as they can damage livelihoods and food systems (Cohen & Pinstrup-Andersen, 1999). This links civilian protection against starvation with Sustainable Development Goal 2 (Zero hunger), which offers an additional tool for addressing food security and resilience, but not a binding legal standard for the actions of parties to an armed conflict.

Research Objectives

- To discuss the legal obligations in international armed conflicts, in matters of starvation, civilian survival and humanitarian assistance.
- To examine cases of restrictions or obstruction of humanitarian assistance that could involve illegal acts and render the act liable for legal liability.

- To evaluate the implementation of these obligations in selected contemporary situations of armed conflict with a particular focus on access to humanitarian assistance and accountability.
- To discuss the implications of conflict for food insecurity and what can be done to enhance humanitarian protection and long-term food system resilience.

Research Questions

- What are the legal obligations about starvation and humanitarian access?
- When can restrictions or obstruction of humanitarian operations be considered unlawful conduct and lead to legal responsibility?
- How well are these obligations observed in today's armed conflicts, especially in terms of humanitarian access and accountability?
- What can be done about conflict-induced food insecurity to serve SDG 2 and promote food system resilience more broadly?

Research Methodology

The research uses qualitative doctrinal and socio-legal approaches. The doctrinal part focuses on the treaties, customary international humanitarian law, international human rights law, international criminal law, judicial cases, and United Nations resolutions and institutional practices related to the scope of obligations regarding starvation and humanitarian access. The socio-legal aspect considers the way these obligations are implemented in real humanitarian situations and in institutional frameworks in selected contemporary situations of armed conflicts. Authoritative sources from the International Committee of the Red Cross (ICRC), United Nations, and other recognized organizations are also examined and included in the analysis alongside the scholarly literature. The findings are based on the applicable legal standards, documented civilian conditions, and institutional responses.

Research Gap

The prohibition of starvation, humanitarian relief, and civilian protection under international law have been the subject of existing scholarship, which has made

significant contributions. There are also separate studies on conflict-related food insecurity, humanitarian operations, and sustainable food systems. These lines of inquiry, however, have not always been brought together in one analysis of the legal framework of obligations regarding hunger and access to humanitarian assistance in international armed conflicts. Special focus should be paid to the nexus between the legal dimension of humanitarian access and the institutional and socio-economic factors that are a prerequisite for civilians to access essential resources. Restrictions on relief, the protection of food systems, humanitarian monitoring and accountability are also questions that need to be examined in depth in relation to the applicable legal standards. This research explores this nexus by combining a legal perspective and a socio-legal perspective, with SDG 2 as a complementary lens for food security and food resilience in the longer term.

Scope and Limitations

Even though the prohibition of starvation is also applicable in the context of non-international armed conflicts, the study is restricted to international armed conflicts. The limitation allows a more detailed analysis of the obligations that can be applied in the context of the IAC. The research primarily engages international humanitarian law, with relevant principles of international human rights law considered where they contribute to the protection of food, life, health and human dignity. SDG 2 is not considered an avenue for parties to armed conflict to impose binding obligations, but rather a complementary sustainable-development framework. The sources for the analysis are legal and institutional sources that are authoritative, and selected contemporary case studies. Assessment of conflict situations is always subject to various limits imposed by limited access, incomplete information, conflicting factual accounts, and the inability to independently verify events in the midst of conflict. The research therefore differentiates the impact of general conflict-induced food insecurity as well as the deprivation caused by specific action and the action that can meet the legal threshold of 'impermissible starving' and of 'illegal restriction of humanitarian assistance'.

Legal Framework for Starvation and Humanitarian Relief

An interrelated system of international humanitarian law, consisting of treaty law, customary international law and, when dealing with individual criminal responsibility, international criminal law, governs starvation and humanitarian relief

(Akande & Gillard, 2019). The framework does not consider starvation only as being out of food. It shields civilians from starvation as a weapon of war, as well as from the destruction of objects essential for civilian life, and sets limits on humanitarian action when civilians are lacking in these supplies (Fornari, 2022). It can be seen that these obligations are of special importance in armed conflict situations where protection is provided under the Geneva Conventions and Additional Protocol I.

Prohibition of Starvation

Article 54(1) of Additional Protocol I (1977) bans starvation of the civilian population as a means of warfare (Allen, 1989). The prohibition is also considered to be customary international humanitarian law. Its scope should, however, be differentiated from widespread food insecurity, triggered by conflict. Where starvation or famine are present, this itself does not constitute a violation; rather, the legality of the deprivation is a question that must be addressed: whether civilians have been deprived of objects indispensable for their survival by an action that is prohibited by IHL and, in particular, where starvation is used as a method of warfare (Conley & de Waal, 2019). The prohibition is closely related to Article 8(2)(b)(xxv) of the Rome Statute, which criminalizes the "intentionally starving" of civilians by using starvation as a method of aggression in an international armed conflict, such as by wilfully impeding relief supplies (Rome Statute of the International Criminal Court (Rome Statute), 1998, art. 8(2)(b)(xxv)). Therefore, the prohibition is at the conduct-of-hostilities and at the individual criminal-responsibility levels.

Protection of Objects Essential to Civilian Survival

The protection of objects essential to civilian survival is protection of property. There is a clear ban on causing starvation under Additional Protocol I, Article 54(2), which bans the attack, destruction, removal, or rendering useless of objects indispensable to the survival of the civilian population for the specific purpose of denying its sustenance value (Additional Protocol I, 1977). The conservation area has been designated to safeguard foodstuffs, agricultural land, crops, livestock, drinking water facilities and supplies, and irrigation systems. The protection is important as it is not just a matter of having enough food on hand, but the systems of food and water production and procurement that are in place that allow civilians to survive (Allouche, 2011). It thus adds the preventive aspect to the ban on starvation. The rule is in addition to the general protections of civilian objects provided

in Article 52 of Additional Protocol I; the customary provisions of IHL also identify the protection of objects essential to civilian life.

Humanitarian Relief & Access

Humanitarian relief becomes an important tool of civilian protection where civilians do not have access to sufficient supplies using available resources. Articles 23 and 59 of the Fourth Geneva Convention and Articles 69–70 of Additional Protocol I contain the main provisions of the treaties (Additional Protocol I, 1977). The Fourth Geneva Convention is of special importance in occupied territory: in the case of inadequate supply, the Occupying Power agrees to and facilitates relief schemes. To the extent of the means at its disposal (Article 55 later), the Occupying Power assumes responsibility for the population's supply of food and medical supplies, in addition to bringing in supplies as necessary if they are not available locally. For international armed conflict, Additional Protocol I sets out the "humanitarian relief actions" where the civilian population is not receiving adequate supplies, and makes the parties to the conflict responsible for allowing and facilitating the prompt and unhindered transport of relief consignments, equipment and personnel under the conditions set out in the provision (Kurtzer, 2019). That does not mean that the parties can deprive each other of any regulatory or security action, but that such powers must not be regarded as an unlimited authority to prevent relief. The customary rules complement these obligations as follows: Rules 55 and 56 of the ICRC Customary IHL Study on access for humanitarian relief and the freedom of movement of authorised humanitarian relief personnel reinforce these obligations (Dinstein, 2000).

Protection of Humanitarian Personnel

Safe and unhindered access to humanitarian operations is directly dependent on the safety and mobility of humanitarian actors. According to Article 71 of Additional Protocol I to the Geneva Conventions, humanitarian relief personnel are subject to respect and protection and their operations should only be restricted in accordance with the principles of imperative military necessity and in terms of the conditions set (Meyer, 1984). Customary IHL also affords protection to humanitarian relief workers and their movement. This protection is legally related to the prohibition of starvation, as humanitarian assistance cannot be as effective a safeguard against civilian deprivation if those who have to provide it are attacked, prevented from moving or otherwise obstructed (Rottensteiner, 1999).

Consolidated Legal Standard

These rules combined create a three-part legal regime that applies to this research, i.e., civilians are not to be starved as an act of war, objects indispensable for civilian life are given special protection, and humanitarian aid must be allowed and assisted when civilians are inadequately supplied, but within the framework of those limitations recognised by IHL (Martin, 2001). These obligations are in addition to the overarching rules of distinction, proportionality and precautions in attack. The framework is thus not limited to the issue of access to food but is about whether food is actually available. It also sets standards for behaviour which could impact on resources, infrastructure, and humanitarian mechanisms by which civilians are able to access essentials (Leaning & Arie, 2000). This sets the legal framework for the next section where restrictions on humanitarian access are considered, and whether they constitute an unlawful deprivation.

Humanitarian Access

Humanitarian access is the link between the legal protection of civilians and the provision of the essentials of relief (Barber, 2009). International humanitarian law allows parties to control relief operations, provided that they are for legitimate security reasons; but this is not all that is allowed. According to Article 70 of Additional Protocol I, there is a need to provide humanitarian relief to inadequately supplied civilian populations in the form of the rapid and unimpeded passage of such relief (Schwendimann, 2011). The key legal issue, then, is whether a specific limitation can be considered to be a "legitimate restriction" or "obstruction" that "undermines" the humanitarian purpose.

Legal Framework for Humanitarian Assistance

Security arrangements, inspections and identifications may be in place, and security routes and distribution control may be designated depending on the relief operations. Additional Protocol I Article 70 and Article 71 give parties to the conflict the power and obligation to regulate, and grant protection to relief personnel, and a limited right to restrict in cases of 'imperative military necessity' (Spieker, 2011). As a result of that, it is not illegal to conduct inspections, checkpoints or temporary delays. The legality will depend on the purpose, necessity, duration and impact on the delivery of relief. However, the use of security regulations should

not be allowed to make legitimate humanitarian operations ineffective (Akande & Gillard, 2017).

The Human Rights Role and Starvation as An Issue of Humanitarian Access

Humanitarian access becomes more important where civilians are reliant on external sources for food as their local food systems and commercial supplies have been disrupted. Additional Protocol I, Article 54(1) bans starvation as a means of warfare, and Article 54(2) and Article 70 ensure that material conditions and relief measures are available to prevent starvation. No denial of an individual relief consignment means anything by itself is not evidence of starvation (Cifra, 2026). But systematic denial of relief, however, especially when other sources of vital supplies are not available, can add to the conduct prohibited by the law of the armed conflict. The two issues must therefore be separated: the humanitarian one, i.e., deprivation, and the legal one, i.e., starvation as a weapon of war (Hutter, 2020).

Cumulative Deprivation

Deprivation can be caused by a combination of factors such as the loss of farm assets, the lack of water and markets, displacement, limitation of movement, and hindrance to relief (Cernea, 2000). When added together, they can have a significant impact on depriving civilians of basic needs even if each measure on its own does not account for these deprivations. It doesn't relieve anyone of the legal requirements for starvation, such as the intent if it's necessary. Instead, the pattern of action and its effects could be used to assess if any separate actions were part of a wider pattern of actions to achieve the deprivation of civilians (Fornari, 2022).

The dividing line between legal regulation and illegal hindrance is then drawn between legitimate security considerations, humanitarian need and the actual impact of prohibition. Restrictions are more likely to be "unlawful" if there is insufficient justification for them, they are arbitrary or excessive, they lead to unnecessary delay, they hinder the passage of essential relief to civilians, or they are implemented without alternative supplies. When this behaviour is a part of a deliberate or deliberate attack on civilians to deprive civilians of objects necessary for their survival, it may also involve the prohibition of starvation. In the individual criminal responsibility level, Article 8(2)(b)(xxv) of the Rome Statute outlaws "intentionally using starvation of civilians as a method of warfare, including wilfully hindering the relief of civilians" (Akande & Gillard, 2019). The legal assessment should hence

prioritize circumstances, purpose, cumulative effects and consequences of the restriction, rather than consider any restriction on humanitarian access to be illegal.

Civilian Protection under International Human Rights Law

International human rights law fills in the gaps for severe deprivation in situations where international humanitarian law applies (Spieker, 2011). The right to adequate food and the fundamental freedom from hunger are recognised in Article 11 of the ICESCR, and the right to life in Article 6 of the ICCPR is particularly relevant where deprivation of food, water or essential services threatens to impact on life. Protection against conditions which threaten basic human existence is further reinforced by the right to health, as well as by the general principles of human dignity (Rottensteiner, 1999).

During armed conflict, the applicability of human rights law was acknowledged by the International Court of Justice in the Wall Advisory Opinion, but the Court also noted that international humanitarian law might apply as the more specific law in regard to actions taking place during hostilities (Kretzmer, 2005). Both regimes are thus to be considered complementary. IHL specifically covers starvation and humanitarian relief and the conduct of hostilities, while IHRL enhances the protection of life, food, health and dignity (Thomas & Tow, 2002). This interaction is especially relevant to the issue of chronic deprivation as it has implications that go beyond nutrition when deprivation is prolonged, to the enjoyment of fundamental rights as well.

Starvation and Food Security and SDG 2: Zero Hunger

The dimension of the research related to starvation, food security and Sustainable Development Goal 2 (SDG 2: Zero Hunger) gives the sustainable-development perspective (Sporchia et al., 2024). Armed conflict can impact agriculture, markets, livelihoods, transport and access to essential resources, leaving food insecurity as a longer-term impact of conflict as opposed to a humanitarian emergency. In 2025, 266 million people suffered from acute food insecurity in 47 countries and territories, with conflict and insecurity being a leading cause of severe food crises, according to the 2026 Global Report on Food Crises (Valin et al., 2021). SDG 2 aims to end hunger, achieve food security and improve nutrition, and promote sustainable agriculture and forestry. Beyond its importance for the provision of

emergency food, its significance for conflict-affected populations is also felt in the protection and recovery of the mechanisms by which communities produce, access and maintain food access.

Findings

The analysis shows that the international law relating to starvation and humanitarian aid is relatively solid but that, for it to be effective, its implementation needs to be done in conflict situations. The main problem uncovered by the research is not having any legal protection, but the lack of cultivating existing obligations into effective civilian protection, as access to food, water and other necessities is increasingly being denied. The study highlights, firstly, the distinction between starvation as a legitimate and prohibited means of warfare and conflict-induced food insecurity. Additional Protocol I, Article 54 and customary law cover starvation and deprivation of things essential for the civilian population's survival. But hunger, famine or extreme food shortage alone are not a violation (Schwendimann, 2011). Secondly, humanitarian access is a critical aspect of civilian protection. Reliance on the legal right to provide relief is of minimal benefit when insecurity, damage to infrastructure, limited movement and administrative constraints make it difficult to get the aid to the affected populations (Leaning & Arie, 2000). It is not just a matter of the restrictions being in place but also their justification and impact on civilians, especially if there are no other avenues to access essential supplies.

Thirdly, there is an implementation and accountability gap identified. The practical implementation of existing legal safeguards may be undermined due to problems with access to conflict zones, the inability to document conduct, restrictions on access and monitoring, and failure to secure compliance (Tadjbakhsh & Chenoy, 2007). This suggests that the current structure is only effective to a degree when institutional capabilities and monitoring and accountability mechanisms exist. Fourth, social legal theory shows the socio-legal dimension of the control over the material conditions of survival as a determinant of civilian food insecurity (Barber, 2009). Combined displacement, destruction of agricultural resources and infrastructure, loss of livelihoods, disruption of markets, and limited humanitarian access can lead to a decrease in civilians' access to food. Thus, the legal analysis of starvation needs to consider the general circumstances under which deprivation takes place.

Lastly, the research proves that SDG 2 is not a substitute for but complementary to relevance. IHL does not only cover the short-term aspects of food insecurity, such as starvation, but also contains binding rules on humanitarian relief (Thomas & Tow, 2002). SDG 2 covers the longer-term aspects of food insecurity through food-system resilience, sustainable agriculture, livelihoods and recovery. In this sense, it must take the analysis one step further than giving immediate relief, to the level of sustainable civilian food security.

Suggestions and Recommendations

The procedures for humanitarian access to parties to an armed conflict should be established and made efficient with a view to ensuring the prompt movement of humanitarian personnel and essential materials. Security measures must be based on a substantial and valid legal ground and should not involve unnecessary delays or obstruct civilians' need for humanitarian assistance.

Early-warning and monitoring systems by international organisations should be integrated with indicators of food insecurity, malnutrition, displacement, damage to infrastructure and humanitarian access. These systems should be backed by a separate documentation and evidence-preservation system to enable prompt action and responsibility for any violations.

Parties shall enhance the protection of agricultural land, plants, animals, water installations, food storage facilities and other facilities necessary for civilian food production. Saving these resources is important not only to avoid hunger in the here and now, but also to ensure the ability of affected people to obtain food.

Where possible, humanitarian programmes should integrate emergency relief with livelihood and food system recovery, including rebuilding agricultural production, markets and key infrastructure. This can help to lessen long-term reliance on outside aid and increase community resilience.

Lastly, SDG 2 needs to be embedded in longer-term food-security and recovery plans and programmes in conflict-affected settings, and in the implementation of sustainable agriculture, nutrition and resilient food systems. These should be in addition to, not in place of, the binding obligations imposed by international humanitarian and human rights law.

Conclusion

This study explored whether there is an adequate international legal framework in place that can adequately contribute to the protection of civilians in the context of an international armed conflict (IAC) and the provision of humanitarian aid. The analysis shows that the main challenge is not the lack of rules that apply to the situation, but the ability to apply these rules to effectively protect civilians during conflict. International humanitarian law provides important safeguards in banning the use of hunger as a weapon of war, protecting objects essential to civilian existence, and setting down rules for humanitarian assistance and obligations towards occupying powers (Rottensteiner, 1999). However, the efficacy of such protection will rely partly on humanitarian responses being delivered to impacted populations, and partly on the safeguarding of food, water, infrastructure and livelihoods that are key to civilian survival. Food security is also a clear indicator that there cannot be an equal exchange between food insecurity and legally forbidden starvation. The determination of a violation depends on the facts of the situation, the elements of the legal rule and the relevant conduct (Fornari, 2022). Humanitarian access is especially important when there are no other ways for civilians to get the things they need, and it needs to be evaluated in the context of the overall situation of the conflict. Thus, a multi-dimensional approach, encompassing IHL compliance, meaningful humanitarian access, accountability, and protection of civilian food systems, is needed for effective protection (Cernea, 2000). SDG 2 supports this by tackling the issue of sustainable food security and recovery. International protection is thus more than legal protection; it means providing civilians in the midst of armed conflict with safe, adequate, and sustainable access to the things they need in order to survive.

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BALKAN JOURNALS

Implementing Turkish Arbitration in North Macedonia: Statutory Convergence, Institutional Design, and an Incremental Reform Roadmap

Muratcan Işıldak

Abstract

The globalization of commerce has increased the importance of effective, predictable, and internationally respected mechanisms for resolving disputes. Arbitration, particularly international arbitration, has become a pivotal and attractive feature of transnational business regulation, given its flexibility, neutrality, and the ability, under widely adopted international treaties, such as the New York Convention of 1958, to gain quick and effective enforcement of arbitral awards. While many countries, including North Macedonia and Türkiye, have modernized their arbitration laws by adopting provisions from the UNCITRAL Model Law on International Commercial Arbitration, differing levels of institutional development and variations in legal traditions tend to produce significant disparities in arbitration performance and capacity in emerging legal systems (International Arbitration Law No. 4686, 2001, Art. 4). This article considers the potential benefits, as well as possible pitfalls, of selectively borrowing elements of the Turkish arbitration system for application in North Macedonia, suggesting that a progressive process of legal harmonization and gradual institutional development is preferable to wholesale transplantation (New York Convention, 1958, Art. V). The Turkish experience is worthy of close examination, given Türkiye's unique history of legal development, civil law tradition, and position as a gateway between Europe and Asia, all of which offer promising parallels for the fast-changing market-oriented legal system of North Macedonia. Drawing on comparative law methodology, theories of institutional development, and concepts of policy sequencing, this paper assesses how improvements in arbitration practice and law may contribute to greater court efficiency, foreign direct investment, and regional economic integration in the Western Balkans, ultimately proposing a comprehensive reform strategy based on legal harmonization, institutional education, and professional community building (Law on International Commercial Arbitration, 2006, art. 10).

Keywords: Modern Law, international arbitration, Turkish Arbitration Law, North Macedonia.

Introduction

The globalization of economic relations has also accelerated the process of economic dispute resolution in different jurisdictions. With growing global trade and capital flows, states are now evaluated not only on their macroeconomic indices, but also on the credibility of their enforcement mechanisms. Arbitration has become an important aspect of transnational business, for it offers a distinct combination of flexibility, party autonomy, neutrality, confidentiality, and enforceability under the 1958 New York Convention. For small and open economies, arbitration is not only a useful dispute resolution mechanism; it is also a vital institutional signal of the credibility of a country's legal system as it seeks deeper regional and global economic integration. North Macedonia, located on the path of the Western Balkans and its European integration prospects, is under pressure to improve efficiency and increase investor confidence (New York Convention, 1958, Art. V). While arbitration is recognized and the country is a party to major international conventions on the enforcement of arbitral awards, arbitration in North Macedonia remains a small and relatively inactive institution. Even though it is recognized at law, it is not actively utilized. How can arbitration reform gain credibility beyond a mere symbolic harmonization? Türkiye presents a useful comparison. Similar to North Macedonia, it shares the civil law tradition and has experienced significant law reform during its economic liberalization (Law on International Commercial Arbitration, 2006, Art. 10). Türkiye's adoption of an International Arbitration Law in 2001, based broadly on the UNCITRAL Model Law on International Commercial Arbitration, shows a successful effort at harmonizing international arbitration practice with domestic standards without sacrificing internal harmony (Acar, 2006). More notably, it exemplifies the need for coordinated institutional development, expertise development, and regional strategic thinking to accompany legislative reform in arbitration. In this regard, the creation of the Istanbul Arbitration Centre in 2015 represents a successful follow-up to legislative reform.

With the growing importance of global trade, dispute resolution has become crucial. As court litigation in many countries is ill- equipped to deal competently and expeditiously with complex disputes arising from international trade, arbitration has emerged as the preferred method of dispute resolution. The credibility of dispute resolution mechanisms has great significance for the economic competitiveness of small and open economies, such as North Macedonia. Apart from taxation and the cost of labor, foreign investors also scrutinize the credibility of domestic enforcement regimes. Arbitration practice can send a strong signal in this regard.

Despite the positive reforms of the judiciary in the processes of European Union (EU) integration, North Macedonia's arbitration system is still underdeveloped compared to similar countries. Although arbitration is domestically regulated, there is little practice, and it has a low profile (Law on International Commercial Arbitration, 2006, Art. 10/1). This article argues that drawing upon the example of Türkiye could help substantially modernize the system without the need for drastic changes.

Theoretical Foundations of International Commercial Arbitration

There has been written in comparative law about the prospects of borrowing institutions, specifically rules of law, from other systems. Early advocates of this practice asserted the relative independence of rules of law from their social environment. Detractors of this view stressed the embeddedness of law in culture, politics, and other structures, within which rules of law cannot be simply imported. More recently, the discourse has moved beyond these extremes, observing that there is an organic process of selective convergence, impacting legal reform more than wholesale borrowing. Arbitration law is a prominent case of transnational convergence, given its inherently commercial context, which demands predictability and interoperability. The UNCITRAL Model Law on International Commercial Arbitration has been a central harmonizing source. But despite the fact that the Model Law helps various states harmonize fundamental attributes of arbitration, such as party autonomy, the power of the arbitral tribunal to rule on its own jurisdiction, limited court review, and the recognition and enforcement of arbitral awards, it provides room for variation. Studies show that mere transplantation of the Model Law has not led automatically to vigorous arbitration (United Nations Commission on International Trade Law [UNCITRAL], 1985). Some emerging markets in Central and Eastern Europe reflect a gap between formal harmony and actual practice. Negative court attitudes toward private dispute resolution, inexperience, and the lack of promotion of arbitration centers limit the use of arbitration even when the law is harmonized.

Sequencing is illustrated by Türkiye's experience in reforming arbitration. Arbitration in Türkiye, before 2001, was governed by a hodgepodge of procedural provisions, and arbitration there had no credibility with foreign parties. The enactment of the International Arbitration Law was a great step forward, articulating well-regarded principles and specifying the scope of court support and supervision. But

the subsequent creation of the Istanbul Arbitration Centre was crucial for cementing those reforms in the institution required to attract disputes from the region. Indeed, scholars of Türkiye's experience highlight issues of institutional credibility, training, and positioning as much as legal reform (Acar, 2006). Arbitration reform in the Western Balkans has primarily revolved around bringing the national laws in line with European and international standards. But arbitration centres in the region are dwarfed by arbitration centers such as Vienna, Paris, or London, as the parties will opt for these cities to resolve their disputes due to their neutrality and well-established procedures. This implies a lack of trust and legal gaps in the local centres. Therefore, North Macedonia faces a challenge not only to improve its law, but also to create a credible arbitration environment that would enable it to keep domestic disputes and attract disputes from the region (International Arbitration Law No. 4686, 2001, Art. 4).

The Structural Context of Arbitration Law in North Macedonia

North Macedonia has a formal structure for arbitration, complying with international standards. It has adopted arbitration law based on UNCITRAL Arbitration Rules and is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, providing enforcement procedures for awards across jurisdictions. Party autonomy, the validity of arbitration agreements, and courts' assistance are also provided by its legislation. From a textual standpoint, the law seems adequate (New York Convention, 1958, Art. V). On the other hand, practices within the institutions show limitations. Arbitration is still relatively small compared to litigation, and the domestic arbitration institutions have limited international exposure. Companies still resort to foreign arbitration seats for substantial cases, indicating a confidence issue. Courts are paying better attention to arbitration-related issues, although there is some inconsistency in the courts' understanding of the limits of their intervention. The number of experienced arbitration practitioners and arbitrators is still limited, creating a lack of market vibrancy. Rather than reflecting a lack of legitimacy, these problems appear to be symptoms of infancy. A potential legal framework is present and awaits activation by institutional development (United Nations Commission on International Trade Law [UNCITRAL], 1985). The upcoming European Union membership processes also represent a source of further reform pressure, as judicial efficiency and rule-of-law indicators directly correspond to the modernization of arbitration practice. Developing the arbitration system can decrease burdens on the courts,

increase the predictability of enforcement, and enhance the country's attractiveness in global investment indices.

Compatibility between Turkish and North Macedonian arbitration regimes is informed by common civil law heritage, analogous patterns of economic development, and similar dynamics of European integration. Both countries have undergone transitional reforms as part of integrating with wider economic systems. The development of arbitration in Türkiye exemplifies how a medium-sized country can improve its arbitration environment without needing to emulate major established centres. Selective convergence would encompass improvements in such areas as scope of judicial intervention, method of appointment of arbitrators, enforcement of interim measures, and a more active role for the national arbitration organisation. It would also have to accommodate the need for domestic constitutional harmony. Convergence is not mimicry but harmonious adaptation for better functionality (Acar, 2006). The rest of the study will proceed with the comparative analysis of the arbitration legislation, focusing on the similarities and differences between Turkish and North Macedonian arbitration laws, and will attempt to devise a roadmap of institutional change based on gradual implementation and consultation with relevant stakeholders. Thus, arbitration reform will be examined not only from a purely legal perspective but also as an instrument of economic governance and regional development.

Comparative Statutory Analysis: Turkish and North Macedonian Arbitration Frameworks

Meaningful convergence can only be achieved through a detailed comparison rather than a wholesale affirmation of convergence into national law. For instance, both Türkiye and North Macedonia base their arbitration frameworks on the UNCITRAL Model Law on International Commercial Arbitration; yet, differences exist in the approach to drafting, the role of courts, and the use of arbitral institutions. Such differences, whether they are compatible or not, define the order and extent of potential convergence. Türkiye enacted the International Arbitration Law No. 4686 in 2001 as a stand-alone and specialized law for international arbitration with a foreign element where the seat of arbitration is in Türkiye. Domestic arbitration is still governed by the provisions of the Turkish Code of Civil Procedure. The differences between those two arbitration types clearly mark the distinction that Türkiye tries to draw between purely domestic disputes and international commercial disputes. International law includes the UNCITRAL principles of party autonomy,

kompetenz-kompetenz, separability of the arbitration agreement, limited court intervention, and enforceability subject to annulment under limited grounds. On the contrary, North Macedonia follows a more abbreviated structure for the regulation of arbitration in one single set of rules derived from the UNCITRAL Model Law on International Commercial Arbitration without any difference between domestic and international arbitration. This may lead to a simplification and potentially less latitude for differentiation as regards cross-border dispute resolution. The lack of a specific law for international arbitration leaves a potential for overlap between the country's civil procedure and international arbitration, especially as it relates to court involvement and procedural autonomy.

The most significant point of comparison is the principle of kompetenz, or the authority of the arbitral tribunal to rule on its own jurisdiction. Turkish law explicitly recognizes this principle and empowers arbitral tribunals to rule, as a preliminary matter, on any objections to the existence or validity of the arbitration agreement. This preliminary decision is subject to judicial review only at the award stage, barring exceptional circumstances. This well-established deference to the arbitral tribunal minimizes dilatory tactics and bolsters arbitral autonomy. North Macedonian law also empowers arbitral tribunals to assess their own jurisdiction, but the courts sometimes display a willingness to entertain jurisdictional disputes at earlier stages in the arbitral process. While these occurrences are not the rule, the perception of potential judicial interference may undermine confidence among foreign parties. Harmonization in this respect would not require wholesale legislative reform but may simply require clarifications to emphasize minimal court interference and provisions to reinforce the timing of jurisdictional challenges. Parties' appointments of arbitrators is another aspect that can be developed further. Turkish law also provides wide freedom to the parties to agree on the method of appointment, and, if the parties fail to come to an agreement, the civil court "competent for in rem jurisdiction over the place where the seat of arbitration is located" shall appoint the arbitrators. The law contains definite time limits and procedural rules with respect to this court appointment, thus eliminating that risk of uncertainty. Also, where the arbitration is administered by the Istanbul Arbitration Centre, the IAC's administration can assist with the appointment of arbitrators, further reducing the role of the courts (Saidov, 2019). North Macedonia similarly provides equal freedom to the parties to agree on the appointment of arbitrators, and again the courts can assist if the parties fail to agree, but here, due to the absence of a well-established national arbitration institution, the IAC option almost does not exist at all, and courts must more regularly intervene to appoint arbitrators. The difference

in practice, then, between both countries is not in the laws, but in the support provided by the arbitral institutions. The Turkish experience helps show how such frameworks help to reduce frictions and increase certainty when appointing arbitrators in multi-party or more complex disputes.

Interim measures are a sensitive and important part of the arbitration law, because they require interaction between arbitral tribunals and state courts. Turkish International Arbitration Law allows arbitral tribunals to order interim measures and also allows the parties to apply to state courts for interim measures before or during the arbitration without harm to the arbitration agreement. The law strikes a balance between arbitral autonomy and the enforcement power of courts, and provides that tribunals cannot exercise coercive power on their own, but need the assistance of the courts. Turkish courts seem to have developed a jurisprudence that is increasingly friendly towards arbitration in this respect. In North Macedonia, the law provides for interim measures, but, in practice, challenges arise in their enforcement due to procedural formalities prescribed under the domestic civil enforcement law. As a result, the interface between arbitral interim measures and the judiciary's enforcement machinery is not optimal. Aligning these would not require any fundamental overhaul of the existing laws but, rather, a harmonization of the enforcement procedures. Greater clarity regarding the enforceability of interim measures issued by the tribunal, and a more direct process of recognition, would greatly contribute to the attractiveness of arbitration without entailing any fundamental change in the legal regime (Heywood, 2013). Annulment and judicial review Another basis for consideration is the standards of annulment and judicial review of foreign awards.

In Türkiye, annulment is limited to the grounds enumerated in the UNCITRAL Model Law on International Commercial Arbitration, including invalid arbitration agreement, deprivation of due process, excess of authority, irregular composition of the tribunal, and violations of public policy. Courts hearing annulment applications do not conduct a merits-based reexamination of the case. Several decisions evince a trend of narrowly construing exceptions to public policy, thus ensuring greater finality of awards. In North Macedonia, the restricted grounds for annulment are similarly codified, but larger transitional system judicial cultures may sometimes include a tendency to expand the narrow public policy exceptions. Even a few instances of broad interpretation may be cause for concern among investors. This area of reform would not require changes to the law, but instead could be addressed through judicial training, the publication of relevant precedent, and

guidance advocating restrictive annulment review. Recognition and enforcement of foreign arbitral awards under the New York Convention are governed by the relevant provisions in each country and are recognized as binding in both Türkiye and North Macedonia, which are parties to the Convention. Turkish courts have developed a strong pro-enforcement reputation, at least in commercial cases involving foreign investors (Acar, 2006). North Macedonia has a compliant track record for enforcement, though with less international exposure, which is partly due to a relatively low volume of cases. Increased visibility into enforcement rulings and the publication of anonymized awards could increase confidence without a need for any change in the laws. A further structural difference concerns the presence of an institutional arbitration infrastructure. The Istanbul Arbitration Centre has a dedicated statute, provides administrative support, procedural rules, a fee schedule, and an international list of arbitrators. It represented a serious commitment to institutionalising arbitration in addition to modernising the relevant law. North Macedonia has arbitration institutions affiliated with chambers of commerce, but they lack the branding, scope of cases, and regional ambition. Convergence of laws cannot make up for a lack of institutional visibility. The roadmap for reform also needs to consider strengthening these institutions alongside the laws.

Institutional Design and Ecosystem Development

The creation of a working arbitration center requires more than legislative tuning. According to institutional design literature, there is a complementary relationship between formal rules and the capacity of an institution. In Türkiye, the establishment of a vibrant arbitration practice followed not only the legal reform but also the branding of the arbitration center and the establishment of a professional community. The specialized arbitration center offered not only administrative support services but also a signal to investors that the country can be trusted. In contrast, the overall scale of institutions in North Macedonia is smaller. Arbitration institutions affiliated with chambers of commerce are also limited in their geographic and sectoral scope. The heavy caseload in certain industries limits diversification and international exposure. It is a move beyond symbolic harmonization; it is necessary to attune three domains of institutional structure to the said reform: administrative capacity, professional specialization, and international standing and outreach. Building administrative capacity, such as setting up a central and professionally staffed arbitration centre with the capability to administer complex cases, ensure transparent processes, and provide modern online filing systems;

Developing professional expertise, such as training arbitrators, judges, and counsel in specialized areas of arbitration practice, such as multi-party arbitration, construction arbitration, or investor-state arbitration; and enhancing international profile, such as outreach to regional businesses and integration into international arbitration networks (Pekcanıtez, 2010). The more gradual approach to implementing reform through institutional innovation might involve building upon the existing arbitration institutions in the country, instead of attempting to establish a completely new one. Effective rebranding, the introduction of new arbitration rules based on best practices, transparency through the publication of procedures, and cooperation with established ADR centers in the region could promote prestige-building initiatives with relatively limited costs when compared to judicial reform. Arbitration reforms could thus be presented as part of a broader package of judicial reforms (Born, 2021). Embedding the reforms for arbitration within the ongoing judicial reform process may help avoid opposition and ensure consistency. Indeed, research on foreign investors in Central and Eastern Europe indicates that the reliability of dispute resolution is as important as taxation stability and regulation clarity for investment determinations. Improving arbitration infrastructure can be used as an economic instrument.

Foreign direct investment, export-oriented manufacturing and services, and supply-chain linkages with the rest of Europe are the backbone of North Macedonia's economy. These activities inevitably give rise to complex contractual obligations that frequently have cross-border dimensions. Inefficient or unreliable dispute resolution mechanisms increase the transaction costs of doing business. Higher risk is reflected in the cost of contracts or in the stipulation of foreign seats of arbitration, both of which divert the benefits of dispute resolution outside the country. Localizing arbitration and other forms of alternative dispute resolution would curtail these costs and affirm, to some degree, the country's jurisdiction over commercial relations. Türkiye exemplifies the signaling effect of arbitration modernization. The UNCITRAL-based statute adopted in 2001 was part of a wider sweeping move towards economic liberalization and EU accession negotiations. While the arbitration reforms were not the sole cause of investment growth, they did contribute to a sense of broad institutional upgrading. The establishment of the Istanbul Arbitration Centre later on contributed to this image, signaling administrative capacity and professional expertise. For North Macedonia, this signaling could complement ongoing reforms to commercial legislation, digital governance, and judicial efficiency (Lew et al., 2003). Arbitration takes a load off the court system itself. Transitional countries' courts are often swamped with cases awaiting timely

resolution. Removing complex commercial disputes from the courts' dockets will relieve congestion and permit courts to address matters in the public sphere more thoroughly. This benefit requires that arbitration awards are enforceable and receive the courts' unwavering support. Therefore, reform efforts must also enhance the interaction between courts and arbitration to prevent possible conflicts between the two jurisdictions.

North Macedonia's aspiration to accede to the EU offers a unique window of opportunity. The process of accession includes various requirements related to strengthening the rule of law, independence of the judiciary, and enforcement efficiency. Although arbitration is not explicitly addressed in the acquis communautaire chapters, it touches upon several areas of reform, including judicial efficiency, harmonisation of commercial law, and standards of investment protection. Enhancing arbitration can be envisioned as complementary to the accession goals, rather than tangential. A comparative study of arbitration-related metrics across EU member states shows that the vitality of arbitration is significantly connected to the predictability and discipline of court enforcement. Although arbitration is a private law process, it requires public law enforcement confidence in upholding arbitration agreements and awards free from unwarranted court intervention. The European Court of Justice (ECJ) has consistently ruled that arbitration is compatible with EU law, provided public policy safeguards are respected**.** Harmonizing national laws with internationally accepted arbitration principles aligns with EU legal and economic integration. Türkiye's arbitration system has not been developed in the context of its EU membership, but it nevertheless conforms to European standards due to the harmonization process (Acar, 2006). North Macedonia could learn from this similar modernization experience. Including arbitration reform in the country's accession-related policy documents would allow policymakers to use external pressure to improve law and practice as a means to maintain domestic commitment. Gradual alignment would be consistent with both economic and geopolitical goals. Institutional change is not afoot in a vacuum. Political economy realities determine the feasibility and viability of changes. In a transitional context, it is predicted that court lawyers used to resolving disputes through litigation may see the development of arbitration as a challenge to their entrenched interests. (Born, 2021) Judges may be reluctant to forego their jurisdictional monopoly over disputes, particularly when they consider arbitration merely as private litigation with diminished transparency. Overcoming such resistance requires a messaging campaign that emphasises substitutability.

Secondly, a lack of demand for arbitration could pose serious limitations. If local businesses are not aware of the benefits of arbitration or are sceptical about local institutions, case growth may be limited even if there is reform in the law. Thus, part of the reform process must involve increasing awareness and local buy-in. Efforts should be made to contact relevant professional organisations, chambers of commerce and law schools to educate them on the benefits of arbitration and the protections in place. Another risk relates to the interpretation of the public policy. In emerging legal cultures, it is possible that courts may sometimes interpret the exceptions of public policy on a broad scale when conducting the review of arbitral awards, which may jeopardize the finality and discourage the use of arbitration. This risk can be addressed through proper training for judges, and the accumulation of consistent jurisprudence emphasizing the courts' narrow scope of review in line with international practice. Finally, there are geopolitical considerations to consider (Saidov, 2019). Arbitration reform may tie into a larger strategy of regional positioning. If North Macedonia wants to establish itself as a hub for resolving commercial disputes originating in the Balkans, it will need to set itself apart through efficiency, neutrality, and low costs. Strategic clarity in positioning will have a bearing on the design of the reforms. Hereby, International Balkan University has the potential to establish the "Balkan Arbitration Center".

Incremental Reform Roadmap

The credible roadmap for reform must consider the sequencing of key elements such as legislative refinement, institutional strengthening, and ecosystem development. Sudden and wholesale overhaul could engender strong resistance and create instability. Incrementalism would provide scope for feedback and adaptation by stakeholders. Clarification and resolution of all these aspects should be the first step, via amendments to the legislation that should include provisions on limited court interference, the binding nature of interim measures issued by the arbitral tribunal, and the annulment procedure, without further altering the rest of the arbitration law and thus requiring a complete overhaul of the current arbitration regime (Lew et al., 2003). The explanatory notes for the amendments must specify a very limited scope for variance from the international standards. The second phase will be devoted to institutional consolidation, which means that the existing arbitration institutions in chambers of commerce may be organized into a centralized and well-staffed institution with new arbitration rules based on the best international practices. Case management technologies will be implemented to ensure

transparency and efficiency (Born, 2021). Advisory boards with international arbitration experts can be established to enhance credibility and to help the transfer of knowledge. The third step should be directed towards professional capacity building. Training of judges on arbitration-friendly jurisprudence with emphasis on minimal intervention and the narrow scope of public policy review, and the incorporation of advanced arbitration courses into the curricula of the faculties of law, as well as certification of practicing lawyers on arbitration specialization through continuing legal education programmes, can be promoted. Structured exchange programmes with Turkish institutions such as the Istanbul Arbitration Centre may also be envisioned (Acar, 2006). The fourth phase could involve international positioning. Marketing to regional companies in key areas, such as construction, energy and logistics, could attract disputes with cross-border elements. The Centre could elevate its profile by taking part in regional arbitration associations and conferences. Publishing anonymized case studies and statistics would increase transparency and attract the interest of investors (Gaillard, 2010). The Evaluation mechanisms must accompany each phase. Performance indicators such as caseload growth, enforcement timeframes, and user satisfaction surveys should guide iterative refinement. Incremental sequencing does not imply passivity; it requires active monitoring and adaptive adjustment.

Constitutional Compatibility, Sovereignty, and the Legitimacy of Arbitration Expansion

The increased presence of arbitration in domestic legal orders may give rise to constitutional and theoretical issues regarding sovereignty, the powers of the courts, and the privatization of dispute resolution. While arbitration is widely accepted as a legitimate method of adjudicating commercial disputes, transitional legal orders may face normative issues arising from private courts exercising dispute resolution powers hitherto exercised by state courts. So, any proposition for arbitration reform in North Macedonia will need to consider constitutional compliance not only in formal terms but in wider jurisprudential understandings of the public powers. Modern legal theory should view arbitration as a paradox. Although arbitral tribunals have no delegated sovereign authority and derive their power from private agreement between the parties, the execution of arbitral awards depends on the state's coercive powers. Arbitration is situated between private autonomy and the public legal order (Acar, 2006). This is why constitutional systems usually allow

arbitration only when judicial supervision is available to protect against procedural injustice or other violations of public policy.

Civil law countries such as Türkiye and North Macedonia also recognize a constitutional right to access the courts. Some critics of arbitration agreements contend that such agreements violate this right by removing disputes from the public judicial system. But comparative constitutional case law finds that arbitration is a facet of freedom of contract, not a diminishment of the right to access courts. The parties consent to forgoing the right to litigate in exchange for various benefits, and the courts still play a supervisory role, ensuring that the process is lawful and equitable. The growth of arbitration does not reduce the courts' power; it simply changes their role from being the primary decider of disputes to ensuring the legitimacy of the process (Fouchard et al., 1999). For North Macedonia, the constitution does not stand in the way of arbitration development either. The constitution provides for judicial protection of rights but does not provide for exclusively entrusting state courts with adjudicating disputes concerning rights arising out of commerce. As long as arbitration is voluntary, under the supervision of the courts, and protected by the public policy provisions in place, its development will not conflict with the constitution (Born, 2021). The challenge lies in establishing a clear understanding and recognition that arbitration is compatible with fundamental principles in the constitution, not in changing the constitution. Another source of sovereignty concern is the perception that arbitration places authority over disputes in the hands of transnational actors. This is especially worrisome for relatively small states whose legal sovereignty is a key component of national institutional identity. But arbitration does not divest the sovereign of its authority; instead, it internationalizes commercial dispute resolution under regimes that states have autonomously adopted, like the New York Convention. (New York Convention, 1958, Art. V) Participation in such regimes is an act of sovereign cooperation, not an abdication of sovereignty. Indeed, arbitration may further the cause of sovereignty by facilitating greater participation of domestic legal orders in global trade (Carbonneau, 2017). If disputes involving domestic firms are always resolved abroad, all the legal knowledge, procedural use, and prestige accrue to those foreign legal orders. Building domestic arbitration capacity enables states to maintain some measure of normative control over dispute resolution while remaining internationally compatible.

As drafting an Incremental Reform Plan for the Development of Arbitration in North Macedonia, the task of designing appropriate and effective policies for

implementing the reform of arbitration requires converting comparative research and doctrinal compatibility into a dynamic and actionable plan of policy and practice that will produce tangible results (Saidov, 2019). Failure to implement reform projects usually does not occur due to inappropriate or poorly thought-out legal concepts, but instead due to a lack of proper sequencing, coordination of involved parties, and achievable timeframes. An incremental plan for reform must bring together the improvement of legislation, the creation of new institutions, the formation and education of professional practitioners, and international relations and cooperation into a workable and practical multi-step plan (Fouchard et al., 1999). The goal should not be swift change but well-planned and lasting progress. An arbitration ecosystem is not built overnight by passing new laws, but through building credibility over time. As has been seen in Türkiye, even modern legislation does not automatically lead to tangible results unless it is supported by robust institutions and an active community of arbitrators and users. North Macedonia, therefore, should not be pressured to embark on a total reform of its arbitration law but should seek to identify areas where the current law could be improved to unleash its potential. Such a gradual approach would cause less disruption and allow adaptations to be made based on experience.

Conclusion

The foregoing analysis has demonstrated that, even though only through gradual legal convergence, it may be possible to import features of the Turkish arbitration model into the legal and institutional framework governing arbitration in North Macedonia. This article has sought to provide a realistic assessment of the potential and desirability of such improvement measures rather than advocating a radical transplantation of Turkish law and practice. The overall conclusion is that the reform of arbitration law in North Macedonia is not merely a matter of procedural fine-tuning but a comprehensive strategy related to economic policy, judicial reform, and regional integration. In conducting this research, started with the observation that efforts to reform arbitration laws and practices in transitional countries such as North Macedonia often run into problems. Such countries often enact modern laws that conform in form to the standards of international arbitration, but actual arbitration practice, especially international arbitration practice, remains minimal. North Macedonia is a classic case. The legal system already embodies many fundamental principles of the UNCITRAL Model Law on International Commercial Arbitration and the international system of enforcement of foreign arbitral awards

under the New York Convention. But the underdeveloped arbitration institutions, lack of specialized practitioners, and a conservative approach to arbitration by the judiciary have prevented arbitration from acquiring any significant role. (New York Convention, 1958, Art. V) The persistent tension between formal legal provisions and practical realities is the main subject of these reform efforts. Türkiye's parallel evolution in arbitration was likewise worthy of comparison. It demonstrated how a civil law country with a rapidly changing economy and changing institutions could modernize its arbitration. Türkiye did not grow arbitration only because it introduced new laws. On the contrary, it grew through stages of interaction between clarification of laws, creation of institutions, development of a legal community, and international recognition. The ordering of these stages forms the basis for the incremental convergence model proposed in this Article. The constitutional analysis also indicated that the expansion of arbitration is not necessarily in conflict with the protection of judicial authority or even with respect to sovereignty. Arbitration does not undermine state authority; it modifies the relationship between individual freedom and public enforcement. Courts continue to play an indispensable role in safeguarding due process and enforcing arbitral awards. In this regard, arbitration can be viewed as a projection of the sovereign capacity in legal matters within the sphere of transnational commerce and not as a transference of justice to the private sector. For the smaller states seeking greater integration into world markets, building up their domestic arbitration capacity may serve to reinforce their sovereignty by keeping at home the legal knowledge and influence over dispute resolution that could otherwise be lost to foreign entities. To recapitulate, this article maintains that statutory convergence and incremental reform with reference to Türkiye may provide a realistic and well-grounded path toward effective improvement and strengthening of arbitration in Macedonia. It respects domestic legal culture and provides a reliable framework for bringing the arbitration institutions into line with international best practice. The modernization of arbitration is not the imitation of a foreign model but the endogenous development of domestic institutions under the influence of comparative law. Indeed, there is much more to learn from this experience. There is no need for a transitional legal system to pursue a radical reform or leap of transplantation in order to modernize its legal system. Gradual and well-considered convergence based on habitual compatibility and institutional pragmatism may deliver robust legal reform. Arbitration, given its unique combination of private and public elements, is an ideal area for such measured initiative. Through a focus on incremental convergence and thoughtful institutional design, North Macedonia has the potential to develop a dispute

resolution system commensurate with its developmental ambitions, as well as shape the larger evolution of international commercial justice.

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Religion and Its Presence in The Global Digital Space: Approaching Big Data Technology Through the Lens of International Studies

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Abstract

This article aims to explain the relationship and significance of religion in modern social sciences, especially the study of globalization, which is an essential marker in international relations. With a textual approach, this research has a background in explaining how the international sociological perspective is used to read the new social reality between world religions and their da'wah when absorbed into the world of data. How is the conceptual and theoretical response to it, and how are contemporary critical social theory reading tools alongside the sophistication of extensive data study analysis, which is suspected of being the maximization and expansion of modern capitalism? It is approached with a study of literature studies commonly used in qualitative research to read such a reality. Ultimately, it resulted in the conclusion that adaptation is the key to moderation in the mechanism of modern religious da'wah in the era of big data, which is so expansive while still maintaining the spirit of intellectual criticism of stakeholders.

Keywords: Data, information, globalization, technology, religion.

Introduction

Before continuing with a more in-depth discussion, it would be best for us to begin by reflecting on the following short sentence as an opener and the discourse that will be studied that in the sacred life, one lives by consuming the life of other people or the like to obtain the objects of life. Nothing, such as birth, death, art, and personal life, is unrelated. Everything interrelates (Attali, 1997, p. 23) and eventually intertwines global interaction in all human life formations.

The use of global terminology develops and commonly captures all levels of discourse in the modern age. Thus, it is finally regarded as the functioning movement called globalization. This article captures the understanding that global movements in all walks of life that have elements of interest and become globalization are seen as an understanding for all people under the auspices of the nation-state to be more open and creative without releasing their original cultural identity. This understanding has given rise to various influences; some consider it open, and some face it hesitantly.

Here, the leading personage with a mass base should determine globalization through positive reflections. However, with globalization, poor countries that still need to technologically develop enjoy the benefit since it does not burden them with research and development budgets up to new product development. In terms of social, economic, and political, globalization will create an atmosphere of openness because, through the moment, collective control is produced globally by the possibility of diminishing boundaries of the nation-state or the end of the nation-state (Ohmae, 1995). Such a diminishing can create community integration in one shadow ideology, namely globalization itself or the so-called "rapid developments in communications technology, transport and information which bring the remotest parts of the world within easy reach" (Akbar & Donnan, 1994, pp. 1-20). However, it can be compared with the impact of the Industrial Revolution on religion (Zainal Adnan et al., 2019).

However, developing countries, including Indonesia, deliberate the moment so that anti-globalization could emerge about specific social, political, economic, and religious considerations. Regarding the actual conditions, we perceive globalization differently, depending on how nation-state actors dispose of the moment. Therefore, it brings about history in world development as it is abruptly popular in society and seems to be a new symptom of history (Nugroho, 2001, p. 7). In the same way, the terminology is a keyword employed daily by politicians, bureaucrats, researchers, and ordinary people (Nugroho, 2001, p. 7).

After all, what some futurologists predicted would come true, among other things, is that there would be a *future shock* (Toffler, 1987a) because the future is not regarded as a historical process that will pass. However, a new alienated thing in this life, so when it comes later, new oddities will require tactics. However, it is, consciously or not, that human life is made in a new direction because of its construction. It is also (Rees, 2018) interpreted that the future construction of humanity is bound to the future of science and hinges on how successfully we harness technological advances to address our challenges. If we use science to solve our problems while avoiding its dystopian risks, we must reason globally, collectively, and optimistically about the long term. If pursued and applied wisely, advances in biotechnology, cyber technology, robotics, and artificial intelligence could empower us to boost the developing and developed world and overcome the threats humanity faces on Earth, from climate change to nuclear war. Further advances in space science will allow humans to explore the solar system and beyond with robots and AI. However, there is no "Plan B" for Earth's viable alternative within reach if we do not care for our home planet.

The constructions designed by human beings as the primary instrument to change the world cause new unpredictable uncertainties that require strategy, openness, and dialogue (Madjid, 1998) to deal with the uncertainties constructively. In this respect, an analysis pointed out that today's world is chaotic and completely unpredictable. The collapse of communism in Eastern Europe, the end of the Cold War, the Gulf War, the gradual decline of the influence of the United States, and the emergence of Europe, Japan, and the New Industrial countries (NICs) have produced uncertainty in this world (Nugroho, 2000, pp. 84-85).

Religious Society and World View

One can conclude that the changes and shifts cover some essential elements pointed out in the writings above. Because of globalization, the world is small and easily accessible or interpreted as a single place (Robertson, 1992, as cited in Nugroho, 2001, p. 8).

Globalization has influenced the pattern of thought structures among religious communities. It has incredible implications for the structure of traditional religious values, including the local identity of everyone's life that is further away from the founders of the nation-state struggling. Therefore, critical responses and reflections should exist to get a dialogic form, not in a political trend but in a broad

sense. The constructive dialogue should bring together interfaith activists, including local and global actors. This constructive dialogue is increasingly important, especially in the internet era and the emergence of media such as Facebook and YouTube. However, Theobald (2009) states that the success of Web 2.0 is not in line with the quality of interfaith relations online. The destructive atmosphere is more pronounced than the constructive one. Efforts to find similarities between religions are less pronounced. Content containing degrading arguments, causing polemics, including with the aim of religious conversion, is easy to find. Despite the frenzy of chatter in Web 2.0, fortunately, in the Indonesian context, religious organizations are still aware of the importance of building interfaith harmony in inter-religious dialogue. Kim, Banawiratma, and Sofjan (2020) examine this in the context of religious pluralism discourse in Indonesia's post-reformation era. Although there are differences in perspectives between the pros and cons of religious pluralism at the practical level, this effort is still commendable, considering that religion still has the potential power to influence the thoughts and behavior of Indonesian people.

With the advent of globalization and the resulting increase in data flow, the role of religion has become more significant. This global phenomenon has redefined the essence of religion and sparked religious discussions since the 1980s. The resulting revitalization has already reshaped the perception of social-political life, particularly in the United States. This shift has underscored the growing collective recognition of the role of religion in a nation's social, cultural, economic, and political spheres. While not explicitly focusing on Catholicism or Protestantism, Bellah viewed this from the perspective of *Civil Religion* (Bellah, 2000, pp. 237-270).

Thus, the current religion ideally should be able to take a strategic position in the globalization influx; in addition, it must strengthen the bargaining position of religion in the recent context, like social, cultural, political, scientific, and technological. Religion should not always be closed-selfish with its traditional "simplicity" because of the social changes ahead. In thinking about the relationship between religion and change, Franz Magnis-Suseno assumed that social change is an ongoing fact brought about by forces largely beyond our control, and there is no possibility of breaking it (Magnis-Suseno, 1999, p. 80). Social change during the COVID-19 pandemic can be an excellent example of change arguably beyond our control. Social distancing, staying at home, implementing strict health protocols, a significant increase in the number of deaths, and negative news have significantly increased stress, including depression, in the general and specific population (Necho et al.,

2020; Restauri & Sheridan, 2020; Brown et al., 2020; Varma et al., 2021). Here, although it requires further study on specific cases related to the COVID-19 pandemic, religion may serve as one of the ideal solutions to relieve stress, depression, and anxiety and provide comfort regarding suffering as well as death (Kelley & Chan, 2012; Sabry & Vohra, 2013; Meier et al., 2016; Pramesona & Taneepanichskul, 2018; Aftab et al., 2018).

More on the specified ideals, religion theologically or sociologically can be regarded as an element for understanding the world (Bellah, 2000, p. 203). There is hardly a complex problem for any religion to get the premise here. From the theological point of view, like Islam, it is caused by the omnipresent nature of religion, namely both through its symbols and values; the religion contains (appears) everywhere, influences even shape the social, cultural, political, and economic structures in public policy. Because of these characteristics, it is presumed that religion is expected to provide a guide for values of a discourse of human action everywhere, be it in socio-cultural, economic, or political spheres (Effendi, 2001, p. 7). Meanwhile, sociologically, religion is more or less a critical factor in the process of transformation and modernization (Ahmed & Hart, as cited in Effendi, 2001, p. 7).

Despite the religious features, we should note that religion always has "two faces"; on one hand, it inherently has an exclusive, particularistic, and primordial identity, and on the other hand, it has such a rich identity as inclusive and transcending one. Having understood the religion's locus and putting it in a more tangible context based on both illustrations and explanations, it relates directly to social conditions and therefore frequently creates tension between the interests of social and religious issues. Islamophobia can be an example of the tension that occurs in society. The Organization of Islamic Cooperation (OIC) has made observations on Islamophobia for thirteen years and produced 13 reports. Actions associated with certain Muslim actors or groups can sometimes influence public perceptions and societal attitudes regarding Islam (OIC Islamophobia Observatory, 2020).

Societies and Religion in the Data Order

Some thinkers and socio-political activists attempted to construct an applicable discourse to make the relationship between society and religion more tangible. However, the construction of thought issues must be able to adopt theological and sociological origins of religious social reality. Because the excesses of religious values on social problems could not be realized in mechanical-holistic and institutional design, it is complicated to find obvious facts on what makes both unrelated.

Therefore, the relationship between the two domains will always bring about different forms and intensities that will permanently alter not according to a particular doctrine but under the real problem in a flexible shape.

Based on the arguments, we can take an experience from the United States as a comparison, as written by Benton Johnson:

> In the early 1960s, there was a widespread belief among social scientists that religion had become irrelevant to the major social processes of modern societies. The prevailing opinion was that religion no longer exerted an independent influence on public affairs. Twenty years later, this widespread belief in the retreating influence of religion in American life is seriously distorted. There have been too many surprising developments and too much empirical research providing contradictory data for any responsible social scientist to claim that religion has no influence on public affairs in the United States or that it has retired quietly to the sidelines of social life (Johnson, as cited in Hammond, 1999, p. 301).

In its simplest form, the classification suffices to illustrate the realities concerned. Although they recognize the existence of two different structures or bipolar in more comprehensive public affairs, whether the relationship between the problems of society and religion is mechanically inseparable—non-secular/theocratic—or both must indeed be separated secularly (Cox, as cited in Effendi, 2001, p. 10).

Apart from the reality that this wide-ranging dual view developed, society has inadvertently been trapped into reductionism, as if the social problems deal only with secular and religious issues. The problems the religious community must resolve are still more to come, for example, improving social welfare and overcoming people's misery. The authorities of classical interpretations, such as Muslim scholars *(ulama)*, priests, monks, and others, are only preoccupied with vertical matters with the Creator. They should be able to combine spiritual and physical (worldly), demanding real humanity's touches.

We cannot separate social life from religion. Bellah argues that a phrase contains several intended ambiguities in the relationship between social science and religion. It implies that social science has implications for religion and religious aspects (Bellah, 2000, pp. 339-340).

Following Bellah's argument, if religious people get and achieve education proportionately, they will be wise in understanding social realities and changes and

preventing them from being disagreeable only. Because of adequate knowledge and education, religious texts can be read critically and carefully so that anything is constantly regarded as secular. Here, as religion is defended fanatically or by "blind imitation," it tends to be repressive and anarchist, so the religious people commonly spend energy fighting against "pseudo-enemies." Consequently, they are trapped in a narrow primordialism, leading to anarchism (Sofyan, 1999, p. 23). The true enemy of religious communities is not people who embrace other religions but contemporary challenges in blurring the future orientation of civilization, the vanishing of values, and all other destructive developments.

Research Methods

Literature research using qualitative methods is a research approach that focuses on collecting, analyzing, and interpreting data originating from literary sources that are relevant to the research topic. Literature research in the context of qualitative methods is usually used to understand, describe, or interpret certain phenomena, concepts, or issues that have been expressed or debated in various written works, articles, books, or other literary sources. Literature research using qualitative methods can be an essential first step in the research process, helping researchers understand the existing theoretical foundation before continuing with field research or more in-depth research. It can also help identify knowledge gaps in the literature that can be the focus of further research.

They are used to start and guide discussion from the beginning to the end of this article. A narrative style and descriptive discussion that applies a sequence of ideas is an essential guide when reading the reviews, starting from the following continuing statement.

Results and Discussions

The Impact of Global Capitalism on Religion

Because of skepticism in religious thought and development, we can analyze the arguments about global inequality in religion during the past few centuries using the theory of imperialism and the Wallerstein (1974) theory of modern world systems, where international systems theory is a framework for understanding how states and non-state actors interact globally. On the other hand, the internet and data have changed how the world communicates and makes decisions, influencing

international relations' political, economic, and social aspects. International systems theory focuses on interactions between states that include political, financial, and military elements. Some fundamental notes in this theory include state sovereignty, international anarchy, and power distribution. The international system is a structure where states interact based on specific rules and norms. Then states, international organizations (such as the UN), multinational corporations, and other non-state actors can relate to power in the international system, which is often determined by military and economic capabilities and the influence of diplomatic sophistication. It is understood that the internet and data technology have increased, affecting almost all aspects of human life, including international relations. Big data has revolutionized understanding and analyzing political, economic, and security strategies. Therefore, the internet and big data are essential in international systems theory, influencing state strategies and international interactions.

First, it will discuss how imperialism engenders a global inequality that eventually affects religions. This theory was first put forward by the British historian J. A. Hobson (Therik, 2000, p. 40). From Hobson's perspective, colonialism stems from efforts to find new commercial areas (new markets). The rapid progress of the industry resulted in overproduction. The local market can no longer accept the supply of products. People can only buy a small amount of the many goods produced. This overproduction forced the big producers to expand the market to get a new area for their profits. During this expansion, they used the concepts of conquest or subjugation accompanied by violence. Hobson refers to this condition as imperialism. Thus, the West and other large countries have indirectly started development and tend to impoverish small countries.

The *second* approach examines how world system theory can uncover religious inequality globally. This theory is like the theory of dependency; in this category, the theorem unites the two. Immanuel Wallerstein promotes this theory in interpreting the reality of global inequality. He thought a capitalist economic system governed the world, dividing it into core states and external fields. As written by Peter Beyer (1994, p. 16), a particular region and the nation-states within it are part of the core, semi-periphery, or periphery, depending on what position their economies have in the world system division of labor. Core areas dominate the system. Here is where capital is concentrated. According to Wallerstein (1974), the capitalist world system is divided into the core, the semi-periphery, and the periphery—the world- and then developed into the modern world system. The essence of this theoretical approach is:

1. Economic superiority and class struggle in the political field;

2. Group conflict as a determinant of human behavior;

3. The world economic system has been created with a hierarchy of countries that are class-dominated based on economic power and cause underdevelopment in all peripheral countries;

4. Inherent contradictions mark the world economy and then experience an unavoidable crisis and gradual decline.

The core of world development has relied on the capital-based development model. Consequently, the religious community must be critical in interpreting the core. The interpretation is vital to understanding the positive aspects of capitalism, which, honestly, if you want to be recognized, has helped a lot in developing religion. We may give an anti-capitalist opinion here, but we must not be anti-discourse against the system they have been building. How can we have a strategy to compete with capitalists while we do not know the ins and outs of the forest of capitalism? As a critical and modern religious society, the central theme that must be addressed is how to view religion on its substance ethically and with universal values rather than looking at it dogmatically and too formally. Thus, religion will develop well. In the following points, the discussion of this article will try to present an analysis of the growth of technology designed by capitalists and super-capitalists, which can contribute to and have a positive role in religion. This exploration of technology's role in religion is a fascinating area we will explore.

Theoretical Approaches in International Relations

As we delve into this section, it is essential to note that it is not a conclusion or a result of a hypothesis. Instead, it serves as a bridge, connecting the ideas presented in this writing. This connection will help us construct a narrative that links the review points discussed earlier to this section. The influence and connection between religion and the global social space in the context of big data technology can be explained through several relevant theories in the study of international relations. Meanwhile, other theoretical approaches, such as liberalism in international relations, emphasize international cooperation and free trade. In big data technology, data collected from various sources can be used to understand the preferences and interests of non-state actors, such as large technology companies. This data can also support diplomacy and interfaith dialogue efforts promoted by international

organizations. Moreover, constructivism theory can also be used when emphasizing the importance of identity, norms, and ideas in international relations. In this case, big data technology can be used to understand how religions worldwide influence identity and social norms. Big data can help identify trends in religious thinking and shifts in social norms that may affect foreign policy and international relations.

The theory of human security is no less critical and the fulcrum of the main study, which strongly emphasizes individual protection and the fulfillment of basic human needs (Tsai, 2009). In big data technology, data can be used to monitor the impact of religious-based conflicts on civilian populations and efforts to meet their basic needs. This data can be used to design more effective humanitarian aid programs and peace efforts. It is important to remember that using big data technologies in international relations can also raise questions of ethics, privacy, and data security. Therefore, apart from using these theories, it is also necessary to consider these aspects in analyzing the influence and connection between religion in the global social space in big data technology.

The core of human security theory is an approach that prioritizes individuals and human communities in understanding and protecting security. This theory shifts attention from conventional approaches that primarily focus on state or military security toward a broader understanding of the daily threats and challenges individuals, groups, and communities face. Human Security recognizes that a person's security relates to physical threats such as war, armed conflict, crime, and other aspects that affect human well-being.

Physical security includes protecting individuals from direct threats to their lives and bodily integrity, including armed conflict, crime, terrorism, and natural disasters. More than that, there are also security principles that ensure that individuals and communities have sufficient access to healthy and nutritious food, as well as the sustainability of food resources. After being food-safe, individuals are also safe and must be healthy, including access to adequate health care, vaccinations, and disease prevention to live healthily. Health involves overcoming poverty, unemployment, and economic inequality and increasing individual and community access to financial resources.

Environmental security is also vital because it involves protecting natural resources and the environment to prevent the negative impacts of climate change, ecosystem damage, and drought. Apart from the social security environment, it is

also fundamental because of human rights, social inclusion, justice, and efforts to overcome social inequality and discrimination. In human security theory, security is not only measured by the absence of physical threats but also by the extent to which individuals and societies can overcome these challenges and achieve higher levels of well-being. This approach has important implications for policymaking, emphasizing the need to consider broader humanitarian dimensions to maintain and improve global security. The rise of the power of big data driven by the power of global capitalism, which is diluting ethical principles whose sources come from religion and belief, makes it essential to study their position and influence as well as what the solutions will be in the future apart from just reflecting on them.

Religion and Internet: A Current Reality

Some new technologies seem threatening, but others are the contrary—they support the ability of individuals to face the state (Toffler, 1987b, p. 147). The speediness in the fields of science and technology of the late 20th century gave birth to instant modern civilization. Lifestyle performance reaches all corners of the globe at the speed of light. Thus, information has become an essential element of the development of contemporary society.

The community is now definitely moving toward the information society; the community is indirectly designed to be highly dependent on information flow. Likewise, in our societies, people who, on average, do not care about technology are today the active consumers of all technological outputs. The so-called "global village" is now underway. In his book Guttenberg Galaxy (1962), McLuhan explains that electronic interdependence, which has never happened before, has recreated the world in the imagination of a global village. This view is based on one of his views that the development of technology in electronic mass media widely in the 1950s, such as radio and television, has made it easier for information to flow to all corners of the world across national borders and international relations schemes. One of the impacts of media development, especially in Western countries at that time, was the emergence of an oral society, a society in which the interdependence between the elements that form it is the result of the debate between the causes and effects of the dynamics within the structure of society that interact with each other. These characteristics are considered the essential nature of a village society, which is also the fundamental nature of a global village society (McLuhan, 1962, p. 26).

The community of inter-societal relations is one of the elements of society that is most aware of the dimensions of this global dependency. These dimensions include the speed and reach of information dissemination, homogenization of cultural norms, and blurring of national boundaries in the digital age. In another part, McLuhan (1962, p. 36) explains another impact of the development of media technology: that today, human society lives and lives under the scope of the global village. The following is a metaphor McLuhan (1962, p. 36) used to explain the global village concept: "We live in a single constructed space resonance with tribal drums." The metaphor is based on the discoveries of electromagnetic technology and now the internet with data, which has created new sectors or fields in the overall problems faced by humans, which are related. Consequently, we all live in a single room where the spaces of social life overlap. McLuhan wants to convey that technological developments have affected the entire society where they live in the imagination of a shared space, which is likened to a global village. It is a global village in the new order of a new society through computer network technology between countries, known as the Internet, and various applications that support it.

Critical reactions to technology, as characteristic of modern society, are not a recent phenomenon. Throughout its history, human beings have been constantly warned that they have created forces they cannot control, that the machines they created would take over the planet and demand total human subjugation, and that giving trust to natural science and technology is tantamount to agreeing with Satan (Nasikun, 1997). The latest technology, like the internet, offers virtual concepts that in religion can also be called supernatural. With the hope of fair distribution of science and technology, because of the ease of obtaining information in the internet community, people will no longer know the geographical distance, race, religion, ethnicity, and gender. All have the same right to get information. We can carry out activities without leaving home, for example, looking for schools, negotiating in business, political mediation of a country, and preaching a possible religion.

Thus, the internet also seems to be the mind or the outer brain of all humans on Earth. Several pioneers of the internet thought that the means of communication and information created would bring sped-up processes of celebration of the Earth. As a result, humanity will be pushed into a significant organic unity, which is expected to be the ultimate terminal of spirituality as predicted in the 1930s by a paleontologist, who is also a pastor of the French Jesuit Order, named Teilhard de Chardin, the Omega point, the endpoint of the evolutionary process of the universe (Teilhard de Chardin, 1965).

Based on this theory, Chardin tried to show that we could maintain the eternal values of religion after being united with a modern scientific view of cosmic evolution. Cosmic evolution, in principle, is the tendency of objects to come together to form more complex and unified systems, starting from atoms, molecules, cells, organ systems, and finally, the human body, which has a complex nerve system. The human brain, as the center of the nervous system, is quite complex and enables thinking abilities, self-awareness, and moral responsibility. Ultimately, all human consciousness will unite with the Omega point, which is none other than God itself (Zaleski, 1999, p. 12). Of course, Chardin's idea was so extraordinary that the Catholic Church banned it. However, the supremely confident idea of evolutionism is well known in the generation of flowers in the 1960s who tried to find a shortcut between mystical unification by fleeing technology, returning to nature, and then using psychotropic mushrooms to get a psychedelic experience, which they called similar to a mystical experience. History has documented the failure of these flower generations, but a small fraction became the internet's founders. De Chardin's insight into evolutionism is secularized. Valentin Turchin improved de Chardin's evolutionary ideas with cybernetic theory (Turchin, 1977). According to Turchin, several Meta-System Shifts marked the process of evolution. In the Meta-System Shift, a system that was initially an independent entity suddenly became part of a greater universalization.

We can also see human society as supernatural beings—*Übermensch,* according to Nietzsche—superhuman, in a meta-system comprising systems named humans as cells. The organ of this new type of creature is none other than the entire physical organ of man as the member, with all the technological systems. The physiology of this new creature is nothing but culture and civilization that binds community members into a dynamic unity. According to Turchin, the birth of human society is the most advanced Meta-system transition in the evolutionary process of life on Earth. Turchin also believes that many more meta-system transitions will confront the future historical development of human civilization. The concrete form is when communication and information technology, as a community organ, become faster, wiser, easier, and more comprehensive. With various applications and new media, the internet is a sign of a new meta-system transition.

If the new meta-system is realized, humans are already in a new grip, which inevitably has to be involved. The question is whether all people living in actual entities as nation-states are ready for the new meta-system. Several new paradoxes emerge when responding to and expecting the future of technology, among which

Nicholas Negroponte (1998) revealed three reasons for the paradox. *First*, digital media is not available to executives, politicians, parents, and those interested in understanding this radical and millennial new culture; even when computers—the internet—have appeared everywhere, interpersonal relationships are still considered primitive.

Second, the representation of the new technology era has received an extraordinary response and is consumed not only by the device or theory but also by alternative lifestyles and fashion. Therefore, it takes its style to study its origins. *Third*, it is more personal and ascetic. Internet media only gives a narrow space of imagination. Like the work of Hollywood films, the narrative character of the internet media provides a less imaginative picture. At the same time, writing can create images and evoke metaphors that contain many meanings for the imagination and experience of the reader. We could use some of these reasons as a reference in carrying out people's daily lives in the internet era (digital multimedia) so that not just someone or a particular community becomes a technological waste. The development of religious and social life today has advanced with the times. 20-21 century technology is very sophisticated and creates its image.

Along with the sophistication of technology, religion also needs to catch up in its role and at least use sophistication to maintain its religion. Almost all religions use the sophistication of internet technology in *da'wah* (preaching), the dissemination of religious "influence," and the promotion of its importance, namely tolerance. Even new religions, besides Abrahamic religions, have sprung up on internet media, which is called a sect. The emergence of these new religions is very easy because to be called a religion only requires the condition of a community and followers who believe in something sacred; as Ian Robertson argues, "Religion is a system of communally held beliefs and practices that are oriented toward some sacred, and supernatural realm" (Robertson, 1983, pp. 402-403). It cannot be called a religion if an individual believes in the supernatural without the members. We could base it on the opinion that internet fanatical users see it as a religion.

Conclusions and Recommendations

To understand the intersection of technology and religion, we must first look at techno-capitalism—the evolution of market capitalism driven by rapid, unprecedented technological innovation (Suarez-Villa, 2000). This shift birthed the information society, creating new organizational models to handle globalization and the rapid flow of knowledge.

Today, data is the new gold. The internet has infiltrated our private and religious spaces, turning information into easily monetized capital. As we traded heavy computers for lightweight smartphones and tablets, being connected to data became essential for everything from daily tasks to macro-level policymaking. This article explores how society perceives these technological shifts, particularly through the lens of religion and *da'wah* (preaching).

Online spaces inherently thrive on human interaction. As Rocamora (2013, p. 113) notes, blogs and social media are primarily driven by a desire for creative, personal expression and staying in touch, rather than purely political or institutional motives. We share our lives to get feedback. However, tech giants quickly capitalize on this fundamental need for connection, harvesting our interactions to build highly profitable big data empires.

Consequently, users unwittingly become targets of a risky new capitalization model. Big data enables unprecedented surveillance, rendering traditional privacy and anonymity obsolete. As Cukier and Mayer-Schönberger (2017, p. 170) warn, using predictive data to punish individuals for their *propensities* rather than their *actions* fundamentally "denies free will and erodes human dignity." Driven by profit, these online spaces are increasingly exploited to spread slander, fake news, and political incitement (Luckett & Casey, 2016).

The digital veil also makes deception effortless. People routinely hide their true identities and lie online (Stephen-Davidowitz, 2018). In Indonesia, for example, fabricated viral content has shown how digital manipulation can subvert and ultimately destroy democracy. We cannot rely solely on digital algorithms to guard our freedom and human values; human intervention must remain dominant (Levitsky & Ziblatt, 2018). Left unchecked, digital data operates like a dictatorship (Mayer-Schönberger & Ramge, 2018), capable of causing profound social and economic ruin.

Ultimately, we must revitalize techno-capitalism. By infusing the digital sphere with "digital piety"—grounded in religious and ethical values—we can transform technology from a dictatorial predator into a meaningful, human-centered tool.

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