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COMPARATIVE CONSTITUTIONAL HAPPINESS IN THE LIGHT OF THE JURISPRUDENCE OF THE TURKISH CONSTITUTIONAL COURT

Bilkent University 2023

COMPARATIVE CONSTITUTIONAL HAPPINESS IN THE LIGHT OF THE JURISPRUDENCE OF THE TURKISH CONSTITUTIONAL COURT

A Master's Thesis

by

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Ankara
July 2023

To My Beloved Wife Kristina

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The Graduate School of Economics and Social Sciences of
İhsan Doğramacı Bilkent University

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In Partial Fulfillment of the Requirements for the Degree of
MASTER OF LAWS IN PUBLIC LAW

THE DEPARTMENT OF LAW
İHSAN DOĞRAMACI BİLKENT UNIVERSITY
ANKARA

July 2023

ABSTRACT

COMPARATIVE CONSTITUTIONAL HAPPINESS IN THE LIGHT OF THE JURISPRUDENCE OF THE TURKISH CONSTITUTIONAL COURT

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July 2023

The concept of happiness has been included in various constitutions in force today, as in the historical process. In this thesis, the notion of happiness is examined from the perspective of comparative constitutional law in accordance with the jurisprudence of the Turkish Constitutional Court. First, it shall be embarked on an inquiry concerning the term happiness in constitutional law, its development, and the process by which it spread in constitutional literature. In the light of recent advancements on the subject, comparative happiness performances of the countries are then reviewed considering happiness clauses in their constitutions with reference to the World Happiness Reports. Afterward, functions attained by the concept in current constitutions in force are reflected with examples.

In the last part of the thesis, the concept of happiness in Turkish constitutional law is elaborated around the relevant jurisprudence developed by the Turkish Constitutional Court. The Court takes happiness as an output of the social state governed by the rule of law. Fundamentally, the scientific legitimacy of the elements included in this jurisprudence has been brought up for discussion given the empirical data and doctrinal views collected from countries with happiness clauses in their constitutions. This thesis aims to clarify the normative framework of the happiness clauses in constitutions

based on examples in comparative law and to present factors, which are likely to affect the constitutional happiness of the countries around the jurisprudence of the Turkish Constitutional Court and crosscheck them with reference to social, economic, and legal indicators.

Keywords: Constitutional Happiness, Happiness Clauses in Constitutions, Rule of Law, Social (Welfare) State, Social and Economic Analysis of Constitutional Happiness.

ÖZET

TÜRK ANAYASA MAHKEMESİNİN İÇTİHATLARI IŞIĞINDA

KARŞILAŞTIRMALI ANAYASAL MUTLULUK

Berksun, Sami Uğur

Yüksek Lisans, Kamu Hukuku Programı

Tez Danışmanı: Asst. Prof. Dr. Zülfiye Yılmaz

Temmuz 2023

Tarihsel süreçte olduğu gibi günümüzde de yürürlükte olan pek çok anayasada mutluluk kavramına yer verilmiştir. Bu tezde mutluluk kavramı, Türk Anayasa Mahkemesi içtihatları doğrultusunda karşılaştırmalı anayasa hukuku açısından incelenmiştir. Öncelikle anayasa hukukunda mutluluk kavramı, gelişimi ve anayasal literatüre yayılma süreci ile ilgili bir incelemeye girişilecektir. Daha sonra bu konudaki güncel gelişmelerin ışığında, Dünya Mutluluk Raporları referansıyla ülkelerin anayasalarındaki mutluluk hükümleri dikkate alınarak karşılaştırmalı mutluluk performansları gözden geçirilmektedir. Bunları takiben, kavramın halen yürürlükte bulunan anayasalarda hangi işlevleri kazandığı örneklerle yansıtılmıştır.

Tezin son bölümünde ise Türk anayasa hukukunda mutluluk kavramı, Türkiye Cumhuriyeti Anayasa Mahkemesi'nin konuya ilişkin geliştirdiği içtihat ekseninde irdelenmiştir. Mahkeme, mutluluğu sosyal hukuk devletinin bir çıktısı olarak kabul etmektedir. Temelde bu içtihatta yer alan unsurların bilimsel meşruiyeti, anayasalarında mutluluk hükmü bulunan ülkelerden derlenen ampirik veriler ve öğretideki görüşler eşliğinde tartışmaya açılmıştır. Bu tezin amacı anayasalarda yer verilen mutluluk hükümlerinin karşılaştırmalı hukuktaki örneklerden hareketle normatif çerçevesinin netleştirilmesi ve Türk Anayasa Mahkemesi içtihadı etrafında

ülkelerin anayasal mutluluğuna etki etmesi muhtemel olan etmenlerin ortaya konularak bunların sosyal, ekonomik ve hukuki göstergelere referansla sağlamasının yapılmasıdır.

Anahtar Kelimeler: Anayasal Mutluluğun Sosyal ve Ekonomik Analizi, Anayasal Mutluluk, Anayasalarda Yer Alan Mutluluk Hükümleri, Hukuk Devleti, Sosyal (Refah) Devlet.

ACKNOWLEDGMENTS

I am deeply grateful to my supervisor Professor Zülfiye Yılmaz for encouraging me to decide on my thesis topic, which does not attract mainstream attention in Turkish constitutional law literature, and I am thankful for her support and patience throughout the journey. She always helps me organize my thoughts and nudges me to write the thesis in an orderly manner. Her timely and guiding suggestions and constructive criticism have assisted me with writing a much better thesis. I also owe a debt of gratitude to her understanding and humanistic side, which have made long distances shorter through our online meetings.

I would like to thank the members of my thesis examining committee, Professor Erdal Onar and Professor Cansu Muratoğlu, for their insightful comments, contributions, and time. I have been honored to present my thesis for their consideration.

I cannot thank enough Kristina Berksun for always warming my heart with her love and for sharing life with me. It is the greatest joy and privilege of my life to be her husband. She is the source of my happiness and my other half. Just like every other thing in my life, she made the thesis process easier, and thanks to her great support, I can finish my thesis. I am also thankful to her for discussing and listening to every step of the thesis and for sharing her opinions with me. As in the Carpenters' song,

"*I'm on the top of the world lookin' down on creation*

And the only explanation I can find

Is the love that I've found, ever since you've been around

Your love's put me at the top of the world"[1]

I am grateful to TÜBİTAK (The Scientific and Technological Research Council of Türkiye) BİDEB (TÜBİTAK Directorate of Science Fellowships and Grant Programmes) for their financial support within the scope of the 2210-A National Scholarship Programme for MSc Students.

I would like to extend my sincere gratitude to Professor Halil Baha Karabudak for arousing curiosity in me about economics and broadening my horizons with his lectures. I am also truly indebted to Professor Turgut Tan for adding an economic perspective to public law in his lectures and his books, he has inspired me very much.

I would like to thank my mother, father, grandmother, and late grandfather very much for their support, dedication, and endless love in my life and scientific journey since my childhood.

Finally, I am very indebted to my in-laws Giedrė, Antanas, Laura, and my good friend Boltas for making Lithuania home to me and for opening their warm hearts and accepting me as a member of their family.

[1] Carpenters, "Top Of The World" A Song For You, UMG Recordings, 1972, track 2, Spotify, available at: https://tinyurl.com/Spotify-Top-Of-The-World, (Last accessed: 10.02.2023)

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ABBREVIATION LIST

[GC] : the Grand Chamber of the Court

§ : paragraph

& : and

% : Percentage

∞ : the symbol for infinity

$: Dollar sign

A.D. : Anno Domini (in the year of the Lord)

Apr. : April

Art. : Article

Aug. : August

AÜHFD : Ankara Üniversitesi Hukuk Fakültesi Dergisi (Ankara Law Review)

AYM : Anayasa Mahkemesi (Constitutional Court)

B-VG : Bundes-Verfassungsgesetz (Federal Constitutional Law)

B. No : Başvuru Numarası (Application no.)

C. : Cilt (Volume)

CBR : Community-based rehabilitation

CESCR : The Committee on Economic, Social and Cultural Rights

COVID-19 : Coronavirus disease 2019

CRC : the United Nations Convention on the Rights of the Child

Dec. : December

DIW : Deutsches Institut für Wirtschaftsforschung (German Institute for Economic Research)

DPRK : the Democratic People's Republic of Korea

Dr. : Doctor

E. : Esas Sayısı (Register Number)

e.g. : exempli gratia (for example)

EC : Electoral Court

ECtHR : European Court of Human Rights

ed. : Editor

eds. : Editors

EHERO : The Erasmus Happiness Economics Research Organisation

ESSAEME : International Conference on Economics, Social Science, Arts, Education and Management Engineering

Et al. : et alia (and others)

etc. : et cetera (and other similar things)

EU : the European Union

FDR : Franklin Delano Roosevelt

GDP : Gross Domestic Product

GGE : General Government Expenditure

GGHE-D : Domestic General Government Health Expenditure

GNH : Gross National Happiness

GNP : Gross National Product

Hacettepe HFD : Hacettepe Hukuk Fakültesi Dergisi (Hacettepe Law Review)

HFSA : Hukuk Felsefesi ve Sosyolojisi Arkivi

I-CON : International Journal of Constitutional Law

i.e. : id est (that is)

ILO : International Labour Organization

ILOSTAT : ILO's central portal to labour statistics

IMF : International Monetary Fund

Iss. : Issue

İÜHFM : İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (Istanbul Law Review)

IZA : Forschungsinstitut zur Zukunft der Arbeit (Institute of Labor Economics)

JMR : Journal of Marketing Research

Jun. : June

K. : Karar Sayısı (Judgment Number)

LL.M. : Magister Legum (A Master of Laws)

Ltd. : Limited

M. : Madde (Article)

Mar. : March

Minn. : Minnesota

MPs : Members of Parliament

n. : noun

NAHCMD : High Court of Namibia, Main Division

NEC : the National Elections Commission of Liberia

no. : number

nos. : numbers

Nov. : November

NWLR : Nigerian Weekly Law Reports

Oct. : October

OECD : The Organisation for Economic Co-operation and Development

OED : Oxford English Dictionary

OHCHR : Office of the United Nations High Commissioner for Human Rights

OPO : OrdnungsPolitisches Portal

Özel S. : Özel Sayı (Special Edition)

p. : Page

para. : Paragraph

PNAS : Proceedings of the National Academy of Sciences of the United States of America

pp. : Pages

Prof. : Professor

RES. : Resolution

RG : Resmî Gazete (Official Gazette)

s. : sayfa (page)

S. : Sayı (Issue)

SBF : Siyasal Bilgiler Fakültesi (Faculty of Political Science)

Sep. : September

ss. : sayfalar (pages)

SWB : Subjective well-being

T. : Karar Tarihi (Date of Judgment)

T.C. : Türkiye Cumhuriyeti (Republic of Türkiye)

TBB : Türkiye Barolar Birliği (Union of Turkish Bar Associations)

TCC : Turkish Constitutional Court

TDV : Türkiye Diyanet Vakfı (Türkiye Diyanet Foundation)

TEPAV : Türkiye Ekonomi Politikaları Araştırma Vakfı (The Economic Policy Research Foundation of Turkey)

Trans. : Translated

TURKSTAT : Turkish Statistical Institute

U.S. : the United States

U.S.A. : the United States of America

UK : the United Kingdom

UN : United Nations

USD : United States dollar

v. : versus

viz. : videlicet (that is, namely, to wit)

Vol. : Volume

vs. : versus

W. Data : World Data

WHO : World Health Organization

WHR : World Happiness Report

WJP : World Justice Project

Yay. : Yayınevi (Publisher)

INTRODUCTION

Happiness is a controversial and highly debated topic in political, academic, and legal circles. The subject has always drawn public attention and has been discussed from various angles. The concept of happiness has formed one of the common interests of people from different disciplines throughout history, and extensive discussions on this subject have continued to this day. The multifaceted and multilayered nature of the concept has apparently attracted the interdisciplinary interest of researchers and thinkers. Studies conducted simultaneously in many fields including neuroscience[2], psychology, psychiatry, economics, philosophy, and legal science have succeeded to reveal the veil of the historical mystery of happiness to some extent by addressing the concept from different angles and expanding our knowledge on this subject.[3]New findings of happiness studies from these fields, therefore, expand humanity's understanding of happiness.

[2] Exempli gratia (**E.g.**), see Davidson R. J., Schuyler, B. S.: *Neuroscience of Happiness*, in Helliwell, J., Layard, R., Sachs, J. (edited by): World Happiness Report (**WHR**) 2015, New York: Sustainable Development Solutions Network, 2015, pages (**pp.**) 88-105, available at: https://tinyurl.com/WHR-2015, (Last accessed: 25.03.2023), see also Berridge, K. C., Kringelbach M. L.: *Towards a Neuroscience of Well-Being: Implications of Insights from Pleasure Research*, in Human Happiness and the Pursuit of Maximization: Is More Always Better?, Editors (**eds.**) H. Brockmann, J. Delhey, Bremen, 2013, pp. 81-100.

[3] For an extensive understanding, see all the WHRs between 2012-2023; Gilbert, D.: Stumbling on Happiness, New York 2006; Posner, E.A., Sunstein, C. R.: Law & Happiness, Chicago 2010; Conklin, C. N.: The Pursuit of Happiness in the Founding Era: An Intellectual History, Columbia, 2019; see also Daniel Kahneman's happiness studies, Richard Layard's happiness studies, Bruno S. Frey's academical works regarding happiness e.g., Frey, B. S.: Happiness: A Revolution in Economics: Munich Lectures in Economics, London, 2008. Regarding the connection between economics and happiness with respect to the '*capability approach*', see Sen, A.: The Idea of Justice, Harvard University Press, Cambridge Massachusetts, 2009 (especially see Chapter 13: *Happiness, Well-being and Capabilities*, pp. 269-290); Sen, A.: *The Standard of Living: Lecture I, Concepts and Critiques*, pp. 1-19 in Sen, A.: The Standard of Living: The Tanner Lectures, Cambridge University Press, Cambridge, 1987. For the connection of *rights* and *capabilities* in the context of well-being (namely happiness), see Nussbaum, M.C.: Women and Human Development: The Capabilities Approach, Cambridge University Press, Cambridge, 2000, pp. 96-101.

Happiness is determined by a number of variables, including *physical health*, *mental health*, *age*, *gender*, *education*, *family*, *work*, *income*, *governance*, *community*, *religion*, and *values*[4], and each is linked to the different fields of research.

While some psychologists and psychiatrists try to find the relationship between happiness and particular subject matters such as mental illnesses[5]or the mental health of children[6]; certain economists provide insights into how happiness associates with concepts such as the Easterlin Paradox[7], social capital[8], sustainable development[9], growth[10], or work[11]. Meanwhile, numerous legal scholars have studied the pursuit of happiness[12]. Therefore, the happiness debate is shaped around different academic

[4] Layard, R., Clark, A., Senik, C.: *The Causes of Happiness and Misery*, in WHR 2012, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2012, page (**p.**) 59, available at: https://tinyurl.com/WHR-2012, (Last accessed: 04.07.2022)

[5] E.g., see Layard, R., Chisholm, D., Patel, V., Saxena, S.: *Mental Illness and Unhappiness*, in WHR 2013, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2013, pp. 38-53, available at: https://tinyurl.com/WHR-2013, (Last accessed: 04.07.2022); see also, Koch M.: *From Treating Mental Dysfunction to Neuroenhancement*, in Human Happiness and Pursuit of Maximization: Is More Always Better?, Eds. H. Brockmann, J. Delhey, Bremen, 2013, pp. 101-113.

[6] See Layard, R., Hagell, A.: *Healthy Young Minds: Transforming the Mental Health of Children*, in WHR 2015, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, pp. 106-131, available at: https://tinyurl.com/WHR-2015, (Last accessed: 22.12.2022)

[7] See Sachs, J.D.: *America's Health Crisis and the Easterlin Paradox*, in WHR 2018, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2012, pp. 146-159, available at: https://tinyurl.com/WHR-2018, (Last accessed: 22.12.2022)

[8] See Sachs, J.D.: *Investing in Social Capital*, in WHR 2015, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, pp. 152-167, available at: https://tinyurl.com/WHR-2015, (Last accessed: 22.12.2022)

[9] See Sachs, J.D.: *Happiness and Sustainable Development: Concepts and Evidence*, in WHR 2016, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2016, pp. 56-65, available at: https://tinyurl.com/WHR-2016, (Last accessed: 22.12.2022); see also De Neve, J.E., Sachs, J.D.: *Sustainable Development and Human Well*-Being, in WHR 2020, Eds. J. Helliwell, R. Layard, J. Sachs, J.E. De Neve, New York: Sustainable Development Solutions Network, 2020, pp. 112-127, available at: https://tinyurl.com/WHR-2020, (Last accessed: 22.12.2022). For environmental sustainability see also, Welsch, H.: *Some Lessons from Happiness Economics for Environmental Sustainability*, in Human Happiness and Pursuit of Maximization: Is More Always Better?, Eds. H. Brockmann, J. Delhey, Bremen, 2013, pp. 149-162.

[10] See Easterlin, R.A., Wang, F., Wang, S.: *Growth and Happiness in China, 1990-2015*, in WHR 2017, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2017, pp. 48-83, available at: https://tinyurl.com/WHR-2017, (Last accessed: 22.12.2022)

[11] See Cotofan, M., De Neve, J.E., Golin, M., Kaats, M., Ward, G.: *Work and Well-being during COVID-19: Impact, Inequalities, Resilience, and the Future of* Work, in WHR 2021, Eds. J. Helliwell, R. Layard, J. Sachs, J.E. De Neve, L.B. Aknin, S. Wang, New York: Sustainable Development Solutions Network, 2021, pp. 153-190, available at: https://tinyurl.com/WHR-2021, (Last accessed: 22.12.2022)

[12] E.g., Lim, J.: *Pursuit of Happiness Clause in the Korean Constitution*, Journal of Korean Law, Volume (**Vol.**) 1, Number (**no.**) 2, 2001, pp. 71-103, available at: https://tinyurl.com/Lim-Article, (Last

circles under different terminologies and remains up to date interdisciplinary among scientists. Thus, such a popular topic among scholars from diverse backgrounds is appealing to be analyzed from a comparative constitutional law perspective to apply and transfer the knowledge accumulated in different disciplines to this sphere of law.

The concept of happiness is also vastly relevant to some ongoing discussions around the world that may have implications for constitutional law such as social justice[13], which has led to the question of whether the distribution of happiness between countries and households might be positively correlated with the distribution of wealth[14], or the rule of law with respect to its connection with happiness[15], or

accessed: 04.07.2022); Ford, J. C.: *Natural Law and the Pursuit of Happiness*, Notre Dame Law Review, Vol. 26, Issue (**Iss.**) 3, 1951, pp. 429-461, available at: https://tinyurl.com/Ford-Art, (Last accessed: 04.07.2022). See also Conklin, C.N.: *The Origins of the Pursuit of Happiness,* Washington University Jurisprudence Review, Vol. 7, Iss. 2, pp. 195-262, available at: https://tinyurl.com/Conklin-Article, (Last accessed: 05.12.2022); Claus, L. K., Morilas, L. R.: *The Right to the Pursuit of Happiness and the Right to Access Medical Treatment: Recent Developments in Brazilian Jurisprudence*, Peace Human Rights Governance, Vol. 2, Iss. 1, March (**Mar.**) 2018, pp. 119-133, available at: https://tinyurl.com/Claus-Morilas-Article, (Last accessed: 26.03.2023)

[13] For the relevance of the concept of social justice to constitutional law, see Wiseman, D.: *The Past and Future of Constitutional Law and Social Justice: Majestic or Substantive Equality?*, The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference Vol. 71, 2015, pp. 563-605, available at: https://tinyurl.com/Wiseman-Article, (Last accessed: 11.10.2022); Arango, R.: *Realizing Constitutional Social Rights Through Judicial Protection*, 2016, pp. 71-85, available at: https://tinyurl.com/Arango-Article, (Last accessed: 11.10.2022); Allen, T.: *Constitutional Law, Social Justice and the Redistribution of Land*, in Property and Human Rights in a Global Context, Oxford: Hart, pp. 63-92, Human Rights Law in Perspective, (20), available at: https://tinyurl.com/Allen-Article, (Last accessed: 11.10.2022); Gökpınar, M.: *Adalet Teorileri Perspektifinden 1982 Anayasamız*, Türkiye Barolar Birliği (**TBB**) Dergisi, Sayı (**S.**) 77, 2008, pp. 214-235, available at: https://tinyurl.com/TBB-Gok-Art; Karagülmez, A.: *Anayasa Mahkemesi ve Sosyal Şart*, available at: https://tinyurl.com/Karagulmez-Article, (Last accessed: 11.10.2022), Bağçeci Tacir, H.: *Sosyal Devlet Kapsamında Çalışma Özgürlüğü ve Çalışma Hakkının Değerlendirilmesi*, Terazi Hukuk Dergisi, Cilt (**C.**)14, S. 153, Mayıs 2019, sayfalar (**ss.**) 965-984, available at: https://tinyurl.com/Bagceci-Article, (Last accessed: 11.10.2022)

[14] "Self-reported happiness is likely to be higher in wealthier countries, however, it does not always increase while economies grow". Economic growth does not guarantee rising happiness: https://tinyurl.com/The-Economist-Growth-Happiness, (Last accessed: 04.07.2022). To observe the relationship between self-reported life satisfaction vs Gross Domestic Product (**GDP**) per capita, see https://tinyurl.com/Happiness-vs-GDP-Per-Capita, (Last accessed: 04.07.2022). For the relationship between income and happiness, e.g., https://tinyurl.com/Income-vs-Happiness, (Last accessed: 04.07.2022)

[15] E.g., Does the Rule of Law Make You Happy, available at: https://tinyurl.com/WJP-Rule-of-Law-Happiness, (Last accessed: 19.12.2022)

different arguments shaped around the social state debate[16]in terms of approaches that completely prioritize neo-liberal policies and lack the welfare programs as opposed to *welfare state generosity* of Nordic countries.[17][18]These types of inquiries serve as a foundation for discussions centered on the idea of constitutional happiness throughout the thesis.

Many other issues like public control over the health system or privatization of health, perception of the rule of law and corruption[19], increasing working hours of

[16] For more information about the social state, see Eds. Beland, D., Morgan, K.J., Obinger, H., Pierson, C.: The Oxford Handbook of the Welfare State, 2nd Edition, New York 2021; Garland, D.: The Welfare State: A Very Short Introduction, 1st Edition, New York 2016; Saez, E.: Understanding the Social State, Mar. 2022, https://tinyurl.com/Saez-Social-State-IMF, (Last accessed: 12.10.2022); Britannica, The Eds. of Encyclopedia: "*welfare state*", Encyclopedia Britannica, 28 November (**Nov.**) 2020, available at: https://tinyurl.com/Britannica-Welfare-State, (Last accessed: 12.10.2022), Gören, Z.: *Sosyal Devlet*, pp. 1-49, available at: https://tinyurl.com/Goren-Article, (Last accessed: 12.10.2022); Akıcı, A.O.: Türk Hukukunda Sosyal Devlet İlkesi, Türkiye Cumhuriyeti (**T.C.**) Maltepe Üniversitesi Sosyal Bilimler Enstitüsü Özel Hukuk Anabilim Dalı Yüksek Lisans Tezi, İstanbul, Eylül 2010, available at: https://tinyurl.com/Tez-Sosyal-Devlet, (Last accessed: 12.10.2022); Huber, E. R., Ansay, T.: *Modern Endüstri Toplumunda Hukuk Devleti ve Sosyal Devlet*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, 1970, C. 27, S. 3, ss. 27-51, available at: https://tinyurl.com/Huber-Ansay-Article, (Last accessed: 12.10.2022)

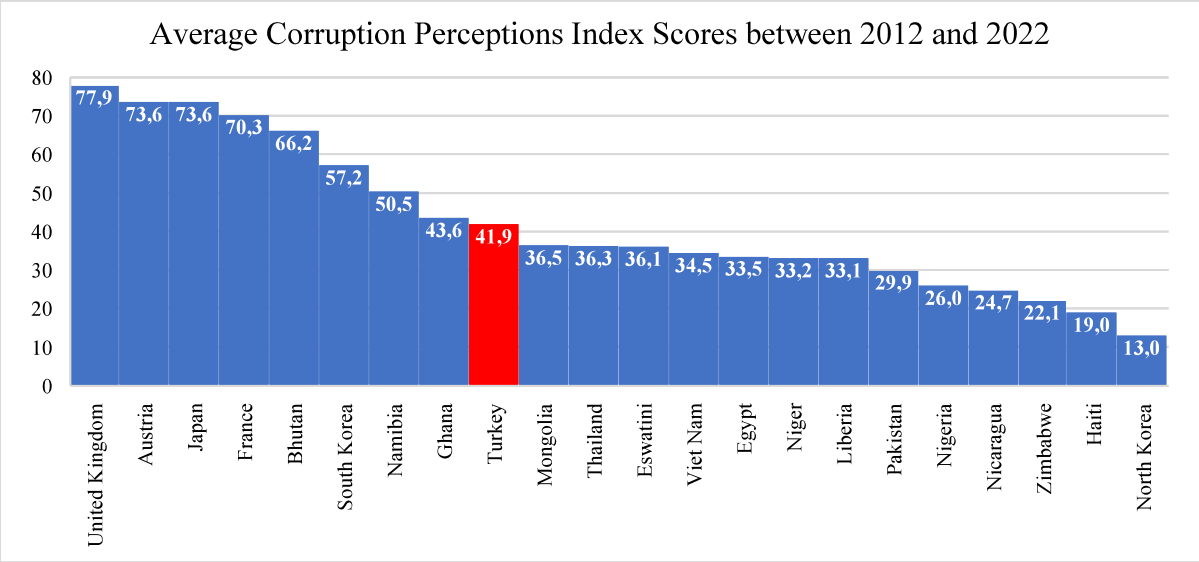
[17] Martela, F., Greve, B., Rothstein, B., Saari, J.: *The Nordic Exceptionalism: What Explains Why the Nordic Countries Are Constantly Among the Happiest in the World*, in WHR 2020, Eds. J. F. Helliwell, R. Layard, J. D. Sachs, J. E. De Neve, New York: Sustainable Development Solutions Network, 2020, pp. 132-133, available at: https://tinyurl.com/WHR-2020, (Last accessed: 04.07.2022). For neoliberalism, see Smith, N.: "*neoliberalism*" Encyclopedia Britannica, available at: https://tinyurl.com/Britannica-Neoliberalism, (Last accessed: 12.10.2022); see also Vallier, K.: "*Neoliberalism*", The Stanford Encyclopedia of Philosophy, (Summer 2021 Edition), Edward N. Zalta Editor (**ed.**), available at: https://tinyurl.com/Stanford-Neoliberalism, (Last accessed: 12.10.2022).)

[18] Problems arising from the conflicting nature of the functioning of the welfare state and taxation issues can also be associated with happiness and constitutional law. For the relationship between taxation and constitutional law, see Gerçek, A., Bakar, F., Mercimek, F., Çakır, E.U., Asa, S.: *Vergilemenin Anayasal Temellerinin Çeşitli Ülkeler Açısından Karşılaştırılması ve Türkiye İçin Çıkarımlar*, Ankara Üniversitesi Hukuk Fakültesi Dergisi (**AÜHFD**), 63 (1) 2014, pp. 81-130, available at: https://tinyurl.com/Gercek-Et-Al-Article, (Last accessed: 12.10.2022); Karakoç, Y.: *Anayasal Vergilendirme İlkeleri Üzerine Bir Değerlendirme*, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, C. 15, Özel Sayı (**Özel S.**), 2013, ss. 1259-1308 (Basım Yılı: 2014), available at: https://tinyurl.com/Karakoc-Article, (Last accessed: 12.10.2022); see also Edrey, Y.: *Constitutional Review and Tax Law: An Analytical Framework*, American University Law Review, Vol. 56, Iss. 5, June (**Jun.**) 2007, pp. 1187-1228, available at: https://tinyurl.com/Edrey-Article, (Last accessed: 12.10.2022). Under the title of the welfare state, happiness can be associated with social security as well. For more information on the relationship between social security and happiness, see *Chapter 3*.

[19] The Average Corruption Perceptions Index Scores of Happy Constitution Countries are as follows:

some specialists, *et cetera* (***etc.***) can have direct or indirect consequences on people's happiness.[20]The concept of happiness is, hence, very relevant to all these current debates and, therefore, deserves great consideration in many respects, including the constitutional aspects covered by this thesis.

After addressing the interdisciplinary dimension of the subject and its connection with some current debates that may be directly or indirectly related to constitutional law, it is necessary to introduce both its aspects of international law which emerges as soft law and its comparative constitutional law aspects. Thus, primarily, the concept of happiness has become quite actual and discussions on it have intensified, especially with Resolution (**RES.**) 65/309, "*Happiness: Towards a holistic approach to development*" adopted by the General Assembly of the United Nations (**UN**) under the sponsorship of Bhutan[21], and the WHRs that started to be published



'The findings are displayed as a number between 0 and 100, with 0 denoting *highly corrupt* and 100 indicating *very clean.*' See Corruption Perceptions Index: https://tinyurl.com/CPI-2022, (Last accessed: 25.03.2023). Compare this graph with Figure 15 to see if there is any similarity between average happiness and average corruption perceptions index scores of happy constitution countries. To comprehend what the concept of happy constitution countries refers to, see *Chapter 1*.

[20] See *Chapter 3* for more details.

[21] WHR 2022, p. 3, available at: https://tinyurl.com/World-Happiness-Report-2022, (Last accessed: 25.08.2022). For more details, see *Chapter 1*.

annually since 2012 following the Resolution. Besides, the European Court of Human Rights (**ECtHR**), which serves as the judicial organ[22]of the 46-member Council of Europe[23], including Turkey, also refers to international conventions in which the expression of happiness is mentioned, especially the UN Convention on the Rights of the Child (**CRC**), in its various judgments.[24]

Second, in addition to its place in international law, the concept of happiness also has an important role in comparative constitutional law with respect to national constitutions in happy constitution countries and law in general. Happiness clauses are currently present in the constitutions of 27 countries.[25]Specifically, happiness is not only a prevalent concept in a diverse range of constitutions around the world but also has an anciently rooted place in the history of philosophy and law. In such a manner, this concept, which has an important place in the foundation of modern constitutionalism, influenced the Enlightenment and was reflected in the United States Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789).

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[22] Merrills, J.G.: "*European Court of Human Rights*", Encyclopedia Britannica, 22 December (**Dec.**) 2021, available at: https://tinyurl.com/Britannica-ECHR, (Last accessed: 17.12.2022)

[23] https://tinyurl.com/COE-Member-States, (Last accessed: 17.12.2022)

[24] One of the international conventions that the ECtHR most refers to regarding happiness is the "CRC", signed in New York on 20 Nov. 1989. See *MAUMOUSSEAU AND WASHINGTON versus* (***v.***) *FRANCE,* no.39388/05*,* paragraph (**§**)**44**, ECtHR; *NEULINGER AND SHURUK v. SWITZERLAND* the Grand Chamber of the Court (**[GC]**), no.41615/07*,* **§48**, ECtHR; *BERISHA v. SWITZERLAND,* no.948/12*,* **§33**, ECtHR; *X v. LATVIA* [GC]*,* no. 27853/09*,* **§37**, ECtHR; *JEUNESSE v. THE* NETHERLANDS [GC], no.12738/10, **§73**, ECtHR; *G.S. v.* GEORGIA, no.2361/13, **§32**, ECtHR; *K.J. v. POLAND* no.30813/14, **§38**, ECtHR; *PARADISO AND CAMPANELLI v. ITALY* [GC], no.25358/12, **§76**, ECtHR; *VLADIMIR USHAKOV v.* RUSSIA, no.15122/17, **§45**, ECtHR. The word 'happiness' is mentioned in the ***Preamble*** of the Convention. For a similar approach in different legal documents, see also *A.H. AND OTHERS v. RUSSIA*, numbers (**nos.**) 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13, **§301** and **§322**, ECtHR. See also *HARROUDJ v. FRANCE*, no. 43631/09, **§19**, ECtHR.

[25] As of 01.07.2023, according to 'constitute project' web page (https://tinyurl.com/Constitute-Project), (Last accessed: 01.07.2023)

These are some of the reasons why the concept of happiness in constitutions deserves consideration. One of the ways to contribute to all these discussions and add a new dimension to the anciently enriched interdisciplinary literature on the concept of happiness is to uncover and address existing research gaps. Therefore, this thesis aims to fill some of these gaps by approaching the concept of happiness from the prospect of comparative constitutional law within the scope of the Turkish Constitutional Court's (**TCC**) jurisprudence. However, not only the TCC's case law but also the judgments of the Turkish Council of State, the United States (**U.S.**) Supreme Court, the ECtHR, and the Supreme Courts of many countries whose constitutions have a happiness clause are occasionally cited throughout the thesis.

In the thesis, the scope of the concept of constitutional happiness in the framework of comparative law and its impact on actual happiness in daily life will be examined. In addition to this examination, the TCC's legal premise regarding happiness will be evaluated for validity, accuracy, and convergence to reality using a variety of data, including indicators of the rule of law, the economy, and the social state. The following sequence will be followed to carry out this study and other related research on the topic:

In the first Chapter, the concept of constitutional happiness will be introduced with its theoretical background in constitutional law, considering the emergence of the concept in the historical process. The main reason for doing this is to outline the notion's framework in terms of constitutional history and to reveal the influences of its historical roots to the present. Moreover, a narrative presented without adding a temporal dimension will be incomplete in certain aspects. After that, recent developments in the field will be mentioned with a particular emphasis on the idea of

Gross National Happiness (**GNH**) originating from Bhutan, happiness as a soft law at the UN Level, and the comparative analysis of happiness levels in the countries with happiness clauses in their constitutions. In line with the individual happiness scores obtained from the surveys conducted on various dates, the happiness performances of the countries with the happiness clause in their constitutions and the countries without it will be compared. Furthermore, some country-specific cases will be taken to demonstrate how the real happiness of people in the country might be affected before and after the happiness clause in the constitution. The legal narrative about happiness will therefore attempt to be supported and monitored by empirical data in this part.

In the second Chapter, the places of the happiness clauses in the constitutions will be examined. In this context, it will be analyzed what are the various functions imposed by different constitutions on the happiness clauses. Thus, it will be emphasized that different constitutions regarding constitutional happiness may accept completely different legal assumptions from one another, and as a result, it can sometimes be seen as a right, sometimes as a directive principle assigned to various powers of the state or imposed on the state itself and can occasionally be used in a purely rhetorical sense especially in preambles without a genuine legal effect. Additionally, in this Chapter, whether the happiness clauses are justiciable will be reviewed particularly within the framework of the directive principles. Moreover, the interpretation of the concept of constitutional happiness in a particular country will be evaluated by referring to the country's court rulings examined from time to time.

In the third Chapter, initially, the place and use of the concept of happiness in the history of Turkish Constitutions and the 1982 Constitution, which is still in force, will be briefly discussed. In other words, the focus of the research will be directed

toward Turkish constitutional law for a while. After that, the jurisprudence of the TCC on happiness and its empirical analysis will be addressed from different angles. Additionally, in this Chapter, the decisions of the TCC shaped around its happiness jurisprudence will be considered as a whole, and various patterns emerging from this kind of consideration will be reflected. While analyzing the jurisprudence of the Court on happiness, the relationship of this concept with the rule of law and the social state principles will be highlighted via different statistical data, indicators, and interdisciplinary literature. At the end of this Chapter, Turkey's happiness status will be presented in a comparative summary based on years and other countries.

Consistent with the method that will be adopted in the thesis, the narrative will not only be restricted to the normative analysis of constitutional provisions and the case law regarding happiness but real-life counterparts of these legal assumptions will be checked as well through various socio-economic indicators. In this way, it is aimed to question the scientific legitimacy of various propositions put forward by the courts and legal texts in the light of data. Hence, the narrative will be clarified by referring to figures and statistics in the necessary parts of the thesis.[26]

There may not be any better introduction to a thesis aimed at exploring constitutional happiness than a few passages in the dialogue between the parish clerk and the squire over 200 years ago; thus, according to the squire, "There are no standards by which to assess the perfection of a constitution of government, other than

[26] See Kornhauser, L.: "*The Economic Analysis of Law*", The Stanford Encyclopedia of Philosophy (Spring 2022 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Eco-Analysis-of-Law, (Last accessed: 19.12.2022). See also Cooter, R., Ulen, T.: Law & Economics, 6th Edition, 2012, available at: https://tinyurl.com/Cooter-Ulen-Book, (Last accessed: 19.12.2022); Zenginer, H. O.: *Hukuk ve İktisat: Hukukun İktisadi Analizinin Teorisi, Gelişimi ve Uygulamaları*, Journal of Emerging Economies and Policy, 7(1), 2022, pp. 327-347, available at: https://tinyurl.com/Zenginer-Article, (Last accessed: 26.08.2022)

whether it is suitable for bringing its people *order* and ***happiness***. These are the principal purposes of government, and the experience of these *blessings* is the test of that suitability. The best government in the world can give its subjects: individual freedom and *safety*, *security in the enjoyment of property*, and the ***happiness*** which derives from good order in society, and from the confidence that it will last so long as people uphold respect for the constitution and demand it from others."[27]

[27] Principles of Order and Happiness under the British Constitution in a Dialogue between our Parish Clerk and the Squire, London: Printed for Public Good, Dec. 1792, p. 14, and p. 28, available at: https://tinyurl.com/Parish-Clerk-And-The-Squire, (Last accessed: 30.03.2023)

CHAPTER 1

THE CONCEPT OF HAPPINESS IN CONSTITUTIONS

The happiness clause is widespread among various constitutions around the world. 27 countries have the words "happy" and/or "happiness" in their constitutions.[28][29]These are Antigua and Barbuda, Austria, Belize, Bhutan, Egypt, Eswatini, France, Ghana, Guyana, Haiti, Japan, Liberia, Mongolia, Namibia, Nicaragua, Niger, Nigeria, Pakistan, Seychelles, Thailand, the Democratic People's Republic of Korea (**DPRK**), the Republic of Korea, Turkey, Tuvalu, the United Kingdom (**UK**) (The UK has a constitutional system rather than a written constitution.), Viet Nam, and Zimbabwe.

It has been included 44 times in 43 separate constitutional provisions, which are still in force.[30]According to the population of happy constitution countries by the proportion of the world population in 2023, approximately 16 percent of the world's population[31]lives under the constitutions, which include happiness wording[32], while the rest inhabits under the sovereigns without such a clause in their constitutions.[33]

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[28] A search had been made on the 'constitute project' web page search engine, https://tinyurl.com/Constitute-Project, and the words "happy" and "happiness" have been used as keywords. (Last accessed: 01.07.2023). The constitutional provisions quoted and/or mentioned in **the first two chapters** can be accessed from this page. To save space, only the name, date and relevant article of the constitution will occasionally be included from this point on. Unless it is quoted from another source and stated otherwise, it should be assumed that this page has been used in accessing the constitutions mentioned in these chapters.

[29] From this point on, these countries will occasionally be referred to as "happy constitution countries" throughout the thesis.

[30] Although it is used in 43 distinct articles, the reason why it is mentioned 44 times is that this concept was used twice in the Preamble of the 1986 Tuvalu Constitution. See the Constitution of Tuvalu, https://tinyurl.com/Tuvalu-Constitution-ILO, (Last accessed: 29.08.2022)

[31] It is calculated considering the data provided by the sources cited in Footnote 33.

[32] Happiness wording includes words "happy" and/or "happiness".

[33] This calculation was made by considering the world population projection data for 2023. According to this projection, the world population is accepted as 8,031,800,429. See https://tinyurl.com/World-

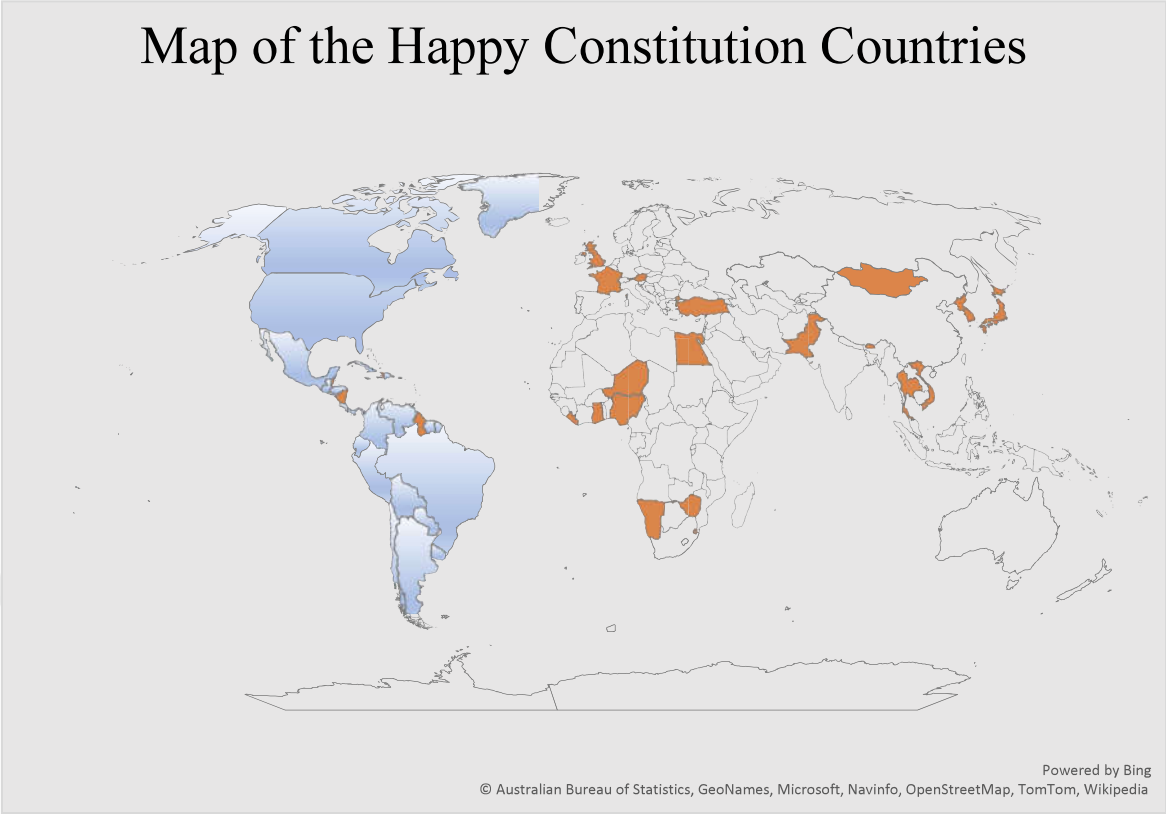


Figure 1: Countries with the 'Happiness Clause' in their Constitutions by July 2023

As far as targeting or expressing happiness in constitutions is concerned, it is possible to find an astonishingly diverse country profile. For example, Pakistan, which has the fifth largest population in the world with over 232 million inhabitants, and Tuvalu, which has the world's smallest population of around 10,000 after the Vatican, share the same goal in their constitutions, which is happiness. The same objective applies to these two island countries: Japan and Seychelles; while one has the world's

Population-Projections, (Last accessed: 01.07.2023). While making this calculation, the estimated population data of the happy constitution countries for 2023 are considered. Based on the data, the total population of these 27 countries whose constitutions include the words "happy" and/or "happiness" is accepted as 1,265,828,500. For the population of happy constitution countries in 2023, see Eds., World Data (**W. Data**): "*list of the populations of the world's countries, dependencies, and territories.*" Encyclopedia Britannica, Nov. 20, 2019, available at: https://tinyurl.com/Britannica-Country-Population, (Last accessed: 01.07.2023)

third-largest economy[34]with 4,23 trillion dollars, the other only has an economy worth about 1,59 billion dollars.[35]

Similar diversity exists in their government systems, such as the UK, which has one of the oldest, if not the oldest, parliamentary systems in the world; France, which has a textbook example of a semi-presidential system; and Turkey, which has a self-described[36]presidential system (See Figure 2). Moreover, there are republics on this list, such as the Republic of Korea or Nicaragua, and monarchies such as Belize or Thailand (See Figure 3). The Constitutions of the Islamic Republic of Pakistan and the Socialist Republic of Vietnam refer to the same concept when it comes to happiness.

Considering the world map, the Southern African country Namibia, the Caribbean country Belize, and the East Asian country Japan have all the happiness clauses in their constitutions. Therefore, it is a surprisingly common concept among countries that may differ from each other in many respects, and thus this constitutional phenomenon deserves to be studied to reveal what it corresponds to in a comparative sense.

[34] https://tinyurl.com/Investopedia-Top-25-Economies, (Last accessed: 29.08.2022)
[35] For a comparison of the GDP of Japan and Seychelles, see https://tinyurl.com/GDP-Japan-Vs-Seychelles, (Last accessed: 01.07.2023). In this calculation, data from 2022 are used. For the average GDP per capita of some happy constitution countries between 2010 and 2022, see below.
[36] It is called '*hyper-presidentialism*' in the current literature. See Yılmaz, Z.: "Personal Communication", 25.03.2023, Microsoft Word comment. See also Boyunsuz, Ş.Ö.: *The AKP'S proposal for a "Turkish type of presidentialism" in comparative context*, Turkish Studies, 17:1, 2016, pp. 68-90, available at: https://tinyurl.com/Boyunsuz-Article, (Last accessed: 02.07.2023)

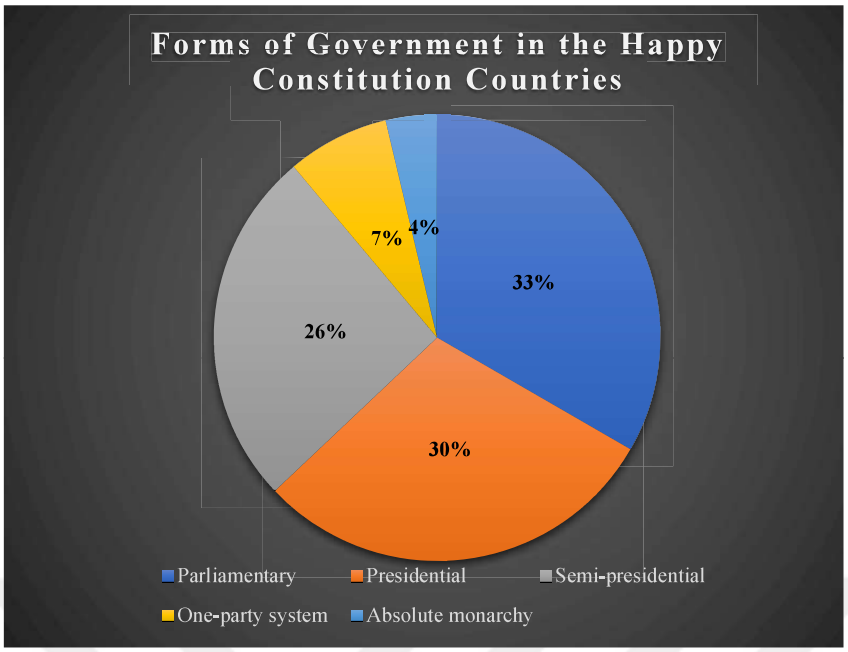


Figure 2: Distribution of Forms of Government in the Happy Constitution Countries by 2021[37]

As shown in Figure 2, the three main forms of government systems, parliamentary, semi-presidential, and presidential systems, are very closely favored by happy constitution countries. This may support the claim that, regardless of the differences in the choices of government systems among the happy constitution countries, they all elevate the concept of happiness in their legal systems to the constitutional level.

[37] Countries with a parliamentary system: the UK, Japan, Pakistan, Antigua and Barbuda, Belize, Tuvalu, Thailand, Austria (Because of the elected president, some scholars think that Austria has a semi-presidential system or a parliamentary system with a president.), and Bhutan (9 countries). Countries with a presidential system: Turkey, the Republic of Korea, Liberia, Nicaragua, Ghana, Seychelles, Nigeria, and Zimbabwe (8 countries). Countries with a semi-presidential system: France, Haiti, Namibia, Mongolia, Guyana* (https://tinyurl.com/Guyana-Semi-Presidential, Last accessed: 08.03.2023), Niger, and Egypt (7 countries). Countries with a one-party system: Vietnam, and the DPRK (2 countries). A country with an absolute monarchy: Eswatini (1 country). See https://tinyurl.com/Wikipedia-Government-Form-Map, (Last accessed: 08.03.2023)

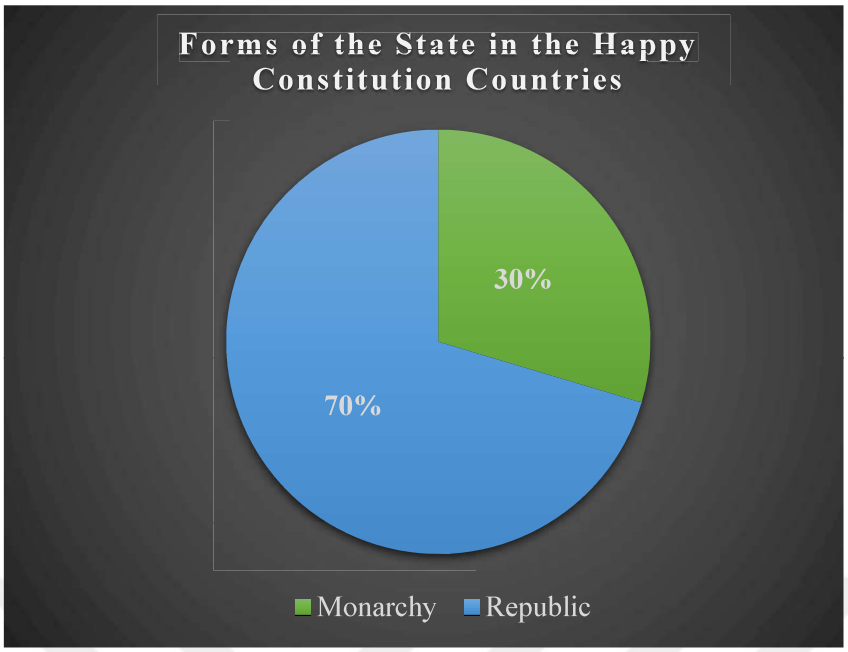


Figure 3: Proportion of Monarchies and Republics in the Happy Constitution Countries[38]

As seen in Figure 3, all the happy constitution countries place such a strong emphasis on happiness that it can be mentioned in the hierarchically highest document of their legal system, irrespective of whether the chief of state is elected or not.

Consequentially, happiness is such a prevalent phenomenon in a diverse range of constitutions around the world that it transcends and encompasses various government systems, forms of states, and numerous issues discussed in the doctrine of constitutional law (e.g., democratic regimes, authoritarian regimes, *etc.*); thus, it should be put in a theoretical framework on the axis of its connections with public law.[39]

[38] Countries that have chosen the republic as their regime: France, Turkey, the Republic of Korea, Pakistan, Liberia, Haiti, Nicaragua, Namibia, Mongolia, Ghana, Viet Nam, Seychelles, Nigeria, Guyana, Niger, Egypt, Austria, Zimbabwe, and the DPRK (19 countries). Countries that have chosen monarchy as their regime: the UK, Japan, Antigua and Barbuda, Belize, Tuvalu, Eswatini, Thailand, and Bhutan (8 countries). See https://tinyurl.com/Wikipedia-Government-Form-Map, (Last accessed: 08.03.2023). To learn more about the republic and monarchy, see Gözler, K.: *Hukuk Açısından Monarşi ve Cumhuriyet Kavramlarının Tanımı Sorunu*, Ankara Üniversitesi Siyasal Bilgiler Fakültesi (**SBF**) Dergisi, 1999, C. 54, S. 1, ss. 51-62, available at: https://tinyurl.com/Gozler-Monarsi-Article, (Last accessed: 25.03.2023)

[39] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.

I. Theoretical Background of the Concept of Happiness in Constitutions and its Historical Development

In this section, the idea of happiness and how it has evolved over time in connection to public law and the theory of constitutional law will be examined. In this direction, first of all, the concept's emergence in Ancient Greek philosophy and its evolution over the course of philosophical history will be briefly mentioned within the context of the meanings attributed to the concept by various authors, taking into account its place in the understanding of natural law. Afterward, the development of the happiness concept within the American constitutionalist framework, considering its close ties to liberalism and utilitarianism, will be discussed within the perception of the state's negative obligations to individuals, limited government, and the rule of law. Subsequently, the social dimensions of the notion, which arose as a consequence of political, economic, and legal developments in the historical process, will be explored from the angle of social justice and the positive obligations of the state to individuals.

The main reason for adopting such a narrative flow is that, as will be demonstrated in the subsequent sections of the thesis, today the concept, in a multi-layered way, still partially incorporates the debates and commentaries made about it during its evolutionary transformation. As the narrative progresses, it will become clear that the concept of constitutional happiness has developed and continued to evolve in sync with historical events. Therefore, the concept has been dealt with to the greatest extent within its historical continuity in accordance with the chronological flow and around the polysemy brought by the new individual and public dimensions imposed on it.

A. A Brief Introduction to the Early Roots of the Concept in a Legal and Philosophical Context

Happiness has an anciently rooted place in the narration of philosophy and law. In other words, the concept of happiness dates back to ancient times, both in the history of philosophy and in the history of law. While the former may be traced back to Ancient Greece[40], the latter existed even in the days before the Declaration of Independence.[41]

In terms of the history of philosophy, one of the early topics of discussion since the ancient philosophers has been none other than *eudaimonia*, which can be translated as happiness or well-being.[42]According to the Oxford Dictionary of Philosophy, "Eudaimonia is the fundamental target of all ancient ethical systems, and Aristotle characterized it as the '*best*, *most pleasant*, *and noblest thing* on the Earth'. It shares a number of identical connotations with the word '*success*', as it involves *doing well* besides *living well*. For instance, it might be reduced by things that occur after the subject passes away; moreover, children cannot have it. It is *complete* and *self-sufficient* and cannot be reached for any purpose other than itself; therefore, it incorporates all other objectives pursued for themselves. Hence, although it involves *pleasure*, it transcends it. Aristotle, in Book 10 of *the Nicomachean Ethics*, exalts the

[40] For the *modern conceptions of happiness* as *the product of Greek and Roman philosophy*, see McMahon, D.M.: Happiness: A History, Atlantic Monthly Press, New York, 2006, p. 12; and Preface XIV: for *happiness born in the ancient world of classical Greece*.

[41] See Conklin (The Origins), pp. 195-262

[42] See Blackburn, S.: The Oxford Dictionary of Philosophy, 2nd Edition, 2005, p. 122; https://tinyurl.com/Merriam-Webster-Eudaemonia, (Last accessed: 14.10.2022). See also https://tinyurl.com/Berkeley-WB-Eudaimonia, (Last accessed: 14.10.2022). For happiness, see https://tinyurl.com/Stanford-Ency-Happiness, (Last accessed: 14.10.2022). For criticism of this translation, see Duignan, B.: "*eudaimonia*" Encyclopedia Britannica, July 3, 2020, available at: https://tinyurl.com/Britannica-Eudaimonia, (Last accessed: 12.07.2022)

life of study as the fundamental fulfillment of *eudaimonia*."[43]Aristotle asserts that "*Happiness…is living well and doing well.*"[44]

According to Aristotelian ethics[45], eudaimonia is "*the condition of human flourishing or of living well*."[46]This terminology is still relevant today and is used by the Organisation for Economic Co-operation and Development (**OECD**) Guidelines[47]when it comes to measuring subjective well-being (**SWB**).[4849]Before Aristotle, happiness can be traced back to the Socrates dialogues written by Plato, such as *The Republic*.[50]Plato conceptualizes a virtue-based eudemonistic conception of ethics; this means that happiness or well-being (eudaimonia) is the highest goal of moral thinking.[51]Epicureanism, on the other hand, considers pleasure the end of life[52]; Epicurus thinks that happiness (eudaimonia) is a form of pleasure that arises from the

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[43] Blackburn, p. 122.
[44] Aristotle: The Nicomachean Ethics of Aristotle, Translated (**Trans.**) by Peters, F.H., 5th Edition, London 1893, p. 19, available at: https://tinyurl.com/Aristotle-Book, (Last accessed: 16.10.2022)
[45] See Aristotle: Nicomachean Ethics, Trans. by W.D. Ross, Batoche Books, Kitchener 1999, available at: https://tinyurl.com/Aristotle-Book-2, (Last accessed: 26.03.2023)
[46] Duignan, B.: "*eudaimonia.*" Encyclopedia Britannica, July 3, 2020, available at: https://tinyurl.com/Britannica-Eudaimonia, (Last accessed: 02.07.2022)
[47] See OECD Guidelines on Measuring SWB, available at: https://tinyurl.com/OECD-Measuring-SWB, (Last accessed: 02.07.2022)
[48] Helliwell, J., Huang, H., R., Wang, S.: *The Social Foundations of World Happiness*, in WHR 2017, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2017, p. 10, available at: https://tinyurl.com/WHR-2017, (Last accessed: 03.07.2022)
[49] This quote may explain why happiness is also called SWB in the literature: "*But, O, how bitter a thing it is to look into happiness through another man's eyes*" (Shakespeare, As You Like It as cited in Gilbert, D.: Stumbling on Happiness, p. 31)
[50] See Plato: Republic, Trans. from the New Standard Greek Text with Introduction by C.D.C. Reeve, Indianapolis 2004, available at: https://tinyurl.com/Plato-Book, (Last accessed: 26.03.2023). To follow the discussion of happiness in the history of philosophy, see https://tinyurl.com/History-Pursuit-Of-Happiness, (Last accessed: 03.07.2022). See also Haybron, D.: "*Happiness*", The Stanford Encyclopedia of Philosophy (Summer 2020 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Ency-Happiness, (Last accessed: 06.12.2022); Cieslik, M.: The Happiness Riddle and the Quest for a Good Life, London, 2017, pp. 13-27. For the history of happiness, see also White, N.: A Brief History of Happiness, Blackwell Publishing, 2006.
[51] Frede, D.: "*Plato's Ethics: An Overview*", The Stanford Encyclopedia of Philosophy (Winter 2017 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Plato-Ethics, (Last accessed: 03.07.2022)
[52] The Philosophy of Happiness, https://tinyurl.com/Philosophy-Of-Happiness, (Last accessed: 03.07.2022), p. 17.

absence of physical suffering and mental discomfort.[53]From a different viewpoint, Epictetus supports the classical Stoic position that happiness is to live in accordance with nature and that for humans it is mainly based on living according to reason, and to his understanding, happiness can be taken as *imperturbability* in the form of mental and sentimental freedom.[54]In the Middle Ages[55], al-Ghazali states that happiness is inevitably associated with the knowledge of God, our happiness is completely subject to the extent of *affection* we have for him, and *love is the seed of happiness*[56]; while for the theologian Thomas Aquinas, God is quintessentially happiness because he is *happy* not through attaining or taking part in something else, but through his *essence*.[57]

Starting from the 15th century, the rising interest in happiness coinciding with a gradual critique of the power of religion and monarchy, headed thinkers to frame discussions of happiness around the individual's pursuit of happiness rather than the role of the divine effect or fate on well-being, and this change resulting from the Reformation and Luther's claims pioneered new ideas about happiness and religion, which moved the stress from wellbeing arising from rigid devotion to doctrines to one in which people have more liberty to pursue their belief and happiness in their own way.[58]

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[53] Konstan, D.: "*Epicurus*", The Stanford Encyclopedia of Philosophy (Summer 2018 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Epicurus, (Last accessed: 03.07.2022)
[54] Stephens, W. O.: Stoic Ethics: Epictetus and Happiness as Freedom, London 2007, p. 5.
[55] For a temporal understanding of the period, see Britannica, The Eds. of Encyclopedia: "*Middle Ages.*" Encyclopedia Britannica, May 6, 2021, available at: https://tinyurl.com/Britannica-Middle-Ages, (Last accessed: 03.07.2022)
[56] Al- Ghazzali: The Alchemy of Happiness, Trans. by Claud Field, 1910, p. 11, and pp. 15-16, available at: https://tinyurl.com/Ghazzali-Book, (Last accessed: 03.07.2022)
[57] Aquinas, T.: Summa Theologica First Part of the Second Part, Edited by Anthony Uyl, Canada 2018, p. 19. To grasp what St. Thomas Aquinas thought about happiness in the Summa Theologica, see also https://tinyurl.com/Aquinas-Summa-Theologica, (Last accessed: 03.07.2022)
[58] Cieslik, p. 22.

Following these developments, and being deeply influenced by the *Judeo-Christian tradition*, happiness, and its pursuit have arisen as a radical new power throughout *the Age of Enlightenment*.[59]Unlike the classical philosophy and Christian practice, where the godlike 'happy few' men and less often a woman with a remarkable virtue or extraordinary favor were considered as those who approached the gods, who went beyond the merely human, who reached a form of *transcendence*, the Enlightenment depicts happiness as something to which all people can seek in this life; thus, it is not a gift from God or a stroke of luck, a reward for outstanding behavior, but a natural human endowment that can, theoretically, be attained by every man, woman, and child; and if people are not happy, from the perspective of Enlightenment thinkers, something should be going wrong: with their *beliefs*, the *form of government*, *living conditions*, and *customs*.[60]Therefore, happiness, in line with the views of Enlightenment, can be taken as a self-evident truth (as Jefferson[61]underlined in the Declaration of Independence the right to pursue happiness was a 'self-evident truth'.) to be pursued and attained here and now rather than an ideal of godlike perfection.[62]

With the outbreak of the American and French Revolutions by the second half of the 18th century, happiness was prevalently recognized as a motivating ideal since the American Revolution highlighted the right to the pursuit of happiness[63]through the

[59] McMahon, Preface xiv. For more details about the Enlightenment, see Duignan, B.: "*Enlightenment*", Encyclopedia Britannica, 30 Nov. 2022, available at: https://tinyurl.com/Britannica-Enlightenment-2, (Last accessed: 06.12.2022); Bristow, W.: "*Enlightenment*", The Stanford Encyclopedia of Philosophy (Fall 2017 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Enlightenment, (Last accessed: 06.12.2022); White, M.: *The Enlightenment*, 2018, available at: https://tinyurl.com/British-Library-Enlightenment, (Last accessed: 06.12.2022)

[60] McMahon pp. 12-13.

[61] For Thomas Jefferson and the Declaration of Independence, see https://tinyurl.com/LOC-Jefferson, (Last accessed: 06.12.2022)

[62] McMahon, p. 13.

[63] For the Declaration of Independence, see https://tinyurl.com/BOR-Dec-Of-Independence, (Last accessed: 06.12.2022)

Declaration of Independence, and the French Revolution underlined the security of the happiness of all[64]through the Preamble of the Declaration of Rights of Man and the Citizen.[6566]Prior to these events, however, John Locke, the 17th-century philosopher who inspired both the European Enlightenment, and the Constitution of the U.S.[67], revealed his book "*Two Treatises of Government*" in 1690, where he enlisted the natural rights of "*life*, *liberty*, and *estate*"—estate corresponding to "property" in modern parlance—.[68]

According to some historians, Locke's writing had been highly *popular* among the Founding Fathers of the U.S. generally, and Jefferson[69]especially, and in line with traditional explanation, Jefferson reflected Locke's list of unalienable rights except for

[64] For the history and the text of the Declaration of the Rights of Man and of the Citizens, see https://tinyurl.com/Elysee-DecOTROMAOTC, (Last accessed: 06.12.2022). See also https://tinyurl.com/Yale-French-Declaration, (Last accessed: 06.12.2022)

[65] McMahon, p. 13.

[66] For the expression '*happiness of all*', see also *Preamble* of *the Declaration of the Rights of Woman and of the [Female]* Citizen, available at: https://tinyurl.com/Rights-of-Woman-Academia or https://tinyurl.com/De-Gouges-Rights-of-Woman, (Last accessed: 15.04.2023). For more information about this Declaration, see also Cokely, C. L.: "*Declaration of the Rights of Woman and of the [Female] Citizen.*" Encyclopedia Britannica, January 9, 2018, available at: https://tinyurl.com/Britannica-Rights-of-Woman, (Last accessed: 15.04.2023). 2 years after the Declaration of Human and Civic Rights of 26 Aug. 1789 and in the same year as the Declaration of the Rights of Woman and of the [Female] Citizen, the historic Constitution of 3 May 1791 for the Polish-Lithuanian Commonwealth addresses the issue of happiness as well. (For more information on this Constitution, see https://tinyurl.com/Britannica-Const-Of-1791, Last accessed: 15.10.2022; https://tinyurl.com/1791-Cons-Poland, Last accessed: 15.10.2022; https://tinyurl.com/Polish-History-1791-Cons, Last accessed: 15.10.2022). See the 2nd sentence of the 1st paragraph (**para.**) of Chapter 7 in the historic Constitution of 3 May 1791 for the Polish-Lithuanian Commonwealth under the title of "*the King, the Executive Authority*". According to this part of the Chapter, people's happiness is related to whether the laws are just or not. An interesting connection can be found between the happiness jurisprudence of today's TCC and the concept of happiness in the historical Polish-Lithuanian Commonwealth Constitution (For more details, see https://tinyurl.com/EU-May-3-1791-Constitution, Last accessed: 05.07.2022). Elements of the TCC's happiness jurisprudence arising from the rule of law principle may be grasped as a modern interpretation of the idea stated in the Constitution of 3 May 1791. It is, therefore, quite interesting to follow the historical continuity of the same concept 2 centuries later. To understand the analogy, see "*The Verification Attempt of the Elements of the Turkish Constitutional Court's Happiness Jurisprudence Arising from the Rule of Law Principle through Particular Global Parameters*"

[67] Rogers, G. A. J.: "*John Locke.*" Encyclopedia Britannica, April (**Apr.**) 26, 2022, available at: https://tinyurl.com/Britannica-John-Locke, (Last accessed: 03.07.2022)

[68] Conklin (The Origins), p. 197.

[69] "The inalienable rights to '*life, liberty, and the pursuit of happiness*' were cataloged by Thomas Jefferson in the Declaration of Independence in 1776." (Conklin (The Origins), p. 197)

the right of property; instead in writing the Declaration of Independence, he asserted the pursuit of happiness as an unalienable right.[70]For a number of scholarly researchers, this substitution of words has substantive meaning synonymous with the right to property; while for others, Jefferson included the pursuit of happiness in the Declaration as a rhetorical tool rather than as an unalienable right and provided the unalienable rights with an air of idealism.[71]

For one approach, the notion of the pursuit of happiness in legal history could be traced back to Blackstone's "*Commentaries on the Law of England*" and even more back to the "*Greek* idea *of eudaimonia*".[72]When it comes to Blackstone's *Commentaries*, its impact on the Anglo-American common law was so remarkable that the existence of a trio of unalienable human rights (*life*, *liberty*, and *the pursuit of happiness*) in the Declaration of Independence is even ascribed to Jefferson's reading of Blackstone.[73]Blackstone suggests that "The *happiness* of every person cannot be achieved without observing the *laws of eternal justice*, and God has reduced the rule of obedience to a single principle that a **human ought to *pursue his own true and substantial happiness***. This is the basis of *natural law* or *ethics*."[74]

Therefore, the ground of the discussion inevitably shifts to the field of law. In terms of legal history, the pursuit of happiness was first mentioned in a text of the law

[70] Conklin (The Origins), pp. 197-198.
[71] Conklin (The Origins), pp. 198-199. For other opinions, see the whole article; see also Claus and Morilas, pp. 119-133.
[72] Conklin (The Origins), p. 201 and p. 203.
[73] Prest, W.: *William Blackstone and the 'free Constitution of Britain'*, p. 228, in Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham, Edited by D.J. Galligan, Oxford University Press, 2014.
[74] Blackstone, W.: Commentaries on the Laws of England, edited by WM. Hardcastle Browne, A.M., of the Philadelphia Bar, St. Paul: West Publishing Co., 1897, p. 8. This part is rearranged by the author of this thesis. For the original version, see Blackstone's definition of *divine goodness* (p. 8). For more happiness-related content in Blackstone, see also the description of the *law of nature* (p. 8).

in the U.S. Declaration of Independence in 1776[75][76], while almost 3 weeks before the Declaration, the Virginia Declaration of Rights was adopted by the Virginia Constitutional Convention on Jun. 12, 1776, and in Section 1, instead of mentioning the expression "pursuit of happiness", "*pursuing and obtaining happiness*" was written as one of the certain inherent rights.[77]Nevertheless, the word happiness itself had already been used in the Act of Settlement in 1701.[78]

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[75] Claus and Morilas, p. 121.

[76] For a detailed analysis of the Declaration, see Britannica, The Eds. of Encyclopedia: "*Declaration of Independence.*" Encyclopedia Britannica, February 12, 2021, available at: https://tinyurl.com/Britannica-Dec-Of-Indep, Last accessed: 04.07.2022. Among the many different ideas and legal concepts in the text, for the well-known part about happiness see https://tinyurl.com/Archives-Dec-Of-Independent, Last accessed: 04.07.2022. Today, the influence of the Declaration of Independence on many existing constitutions can be easily traced even by following the similarities in word order and word choices. The Preambles of Belize's, Haiti's, Namibia's, and Seychelles' Constitutions (Happiness is seen as a right in these constitutions and it is included among the rights to life and liberty as in the Declaration of Independence.), and Article (**Art.**) 40 of the Constitution of Guyana, Art. 13 of the Constitution of Japan, and Art. 10 of the Constitution of the Republic of Korea are excellent examples of this claim. For more details, see *Chapter 2*.

[77] https://tinyurl.com/Archives-Virginia-DoR, (Last accessed: 04.07.2022). Therefore, pursuing and obtaining happiness had been accepted as one of the inherent rights. (Weber, T.: *The pursuit of happiness in modern Japan*, International Institute for Asian Studies the Newsletter, No. 67, Spring 2014, available at: https://tinyurl.com/Weber-PoH-In-Japan-Article, Last accessed: 05.07.2022)

[78] The emergence of the concept of happiness in any constitution or constitutional document predates the very start of the 18th century. It can be traced back to the Act of Settlement (1701), one of the constitutional documents of the UK. (See 1701 Act of Settlement: https://tinyurl.com/Act-Of-Settlement-UK-Parl, Last accessed: 04.07.2022). Interestingly, the concept of happiness is prominently prevalent in contemporary constitutions of the Commonwealth countries and some English-speaking countries. Whether this can be attributed to the Act of Settlement and their historical ties to British culture is a valid question, as 11 of the 27 countries that have the words "happy" and/or "happiness" in their constitutions are members of the Commonwealth. These are the UK, Pakistan, Antigua and Barbuda, Belize, Tuvalu, Namibia, Ghana, Seychelles, Nigeria, Guyana, and Eswatini. (For members of the Commonwealth, see https://tinyurl.com/Commonwealth-Members, Last accessed: 29.08.2022. For happy constitution countries, see https://tinyurl.com/Constitute-Project, Last accessed: 01.07.2023). One of the official languages of these Commonwealth countries is English. For the UK, see https://tinyurl.com/The-UK-English, (Last accessed: 15.10.2022); for English as a *de facto* official language not *de jure*, see also https://tinyurl.com/Languages-UK, (Last accessed: 15.10.2022); for Pakistan, see Art. 251/2 of Pakistan's Constitution of 1973; for Antigua and Barbuda, see Art. 17/1-a, 29/c, and 38/c of Antigua and Barbuda's Constitution of 1981, see also Tolson, R., Niddrie, D.L., Momsen, J.D.: *"Antigua and Barbuda"*, Encyclopedia Britannica, 16 September (**Sep.**) 2022, available at: https://tinyurl.com/Britannica-Antigua-Barbuda, (Last accessed: 15.10.2022); for Belize, see Art. 19/1-a of Belize's Constitution of 1981, see also Alford, A.E., Griffith, W.J., Bolland, O.N.: *"Belize"*, Encyclopedia Britannica, 8 Sep. 2022, available at: https://tinyurl.com/Britannica-Belize, (Last accessed: 15.10.2022); for Tuvalu, see https://tinyurl.com/Tuvalu-Language-CIA, (Last accessed: 15.10.2022); for Namibia, see Art. 3/1 of Namibia's Constitution of 1990; for Ghana, see https://tinyurl.com/Ghana-Language-CIA, (Last accessed: 15.10.2022); for Seychelles, see Chapter I/4-1 of Seychelles's Constitution of 1993; for Nigeria, see Art. 55, 97, and 318/1-c (iii) of Nigeria's Constitution of 1999, see also Udo, R.K., Ajayi, J.F.E., Falola, T.O., and Kirk-Greene, A.H.M.: "*Nigeria*", Encyclopedia Britannica, 16 August (**Aug.**) 2022, available at:

The late 18th-century American jurists thought that '*liberty*' and '*happiness*' were closely connected to the role of *a republican government*, and protection of '*life, liberty and the pursuit of happiness*' was a deep-rooted legal concept that government is founded for *the public or common good*.[79]The expression indicates the conception of a higher extent of happiness for as many individuals as possible[80]as in a Benthamite model of the utilitarian ideal of *the greatest happiness of the greatest number*.[81]In this direction, Arendt points out that the Declaration of Independence undoubtedly wants us to hear the term "*pursuit of happiness*" in its dual meaning: *private happiness* along with *the right to public happiness*, t*he pursuit of well-being* accompanied by *the right to appear in public*; Jefferson himself was persuaded that the happiness acquired in public life was the most definite, possibly the only assurance of the new body politic.[82]Arendt provides a common American definition of public happiness by quoting from Joseph Warren given in 1772 as "*depending on virtuous and unshaken attachment to a free constitution*"[83]

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https://tinyurl.com/Britannica-Nigeria, (Last accessed: 15.10.2022); for Guyana, see Art. 53/b of Guyana's Constitution of 1980, see also, https://tinyurl.com/Guyana-Language-CIA, (Last accessed: 15.10.2022); for Eswatini, see Art. 3/2 of Eswatini's Constitution of 2005. See also the CIA's entire list of languages: https://tinyurl.com/ytyfdt5m, (Last accessed: 29.08.2022); https://tinyurl.com/Language-List-Countries, (Last accessed: 15.10.2022). In addition to these countries, one of the official languages of Liberia, and Zimbabwe is English. (For Liberia, see Art. 41 of Liberia's Constitution of 1986, see also the CIA's list: https://tinyurl.com/ytyfdt5m, Last accessed: 15.10.2022; for Zimbabwe, see Art. 6/1, and 345 of Zimbabwe's Constitution of 2013). To wit, 41 percent of happy constitution countries hold membership in the Commonwealth, while 48 percent of countries with the word "happy" and/or "happiness" in their constitutions recognize English as one of their official languages.

[79] Claus and Morilas, p. 122. To observe a similar approach to the relationship between government and happiness, see the relevant section of George Washington's proclamation: https://tinyurl.com/Thanksgiving-Proc-by-Wash, (Last accessed: 31.03.2023)

[80] Claus and Morilas, p. 122.

[81] Smilova, R.: *The General Will Constitution: Rousseau as a Constitutionalist*, p. 286, in Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham, Edited by D.J. Galligan, Oxford University Press, 2014.

[82] Arendt, H.: *Revolution and Public Happiness*, Law, Government & Society, Nov. 1960, available at: https://tinyurl.com/Arendt-Article, (Last accessed: 06.12.2022). See also Arendt, H.: On Revolution, Penguin Books, New York 2006, p. 183.

[83] Arendt, H. (On Revolution), p. 172.

B. Happiness within American Constitutionalism with Regard to the Limited Government, Individual Freedoms, and the Rule of Law

This subsection shall concentrate mostly on the idea of happiness in American constitutionalism from the viewpoint of the U.S. founders. At the outset, it is essential to define the pursuit of happiness within the framework of American constitutional law. According to the Essential Law Dictionary, the pursuit of happiness corresponds to an inalienable right cataloged in the Declaration of Independence, which contains *freedom to pursue an occupation of one's choice*, *the right to have a family*, *freedom from discrimination or oppression*, *freedom of contract*, and all other individual freedoms that are essential to creating a life of one's own choice and to one's own satisfaction[84], while for Black's Law Dictionary, it is the principle that an individual ought to be permitted to pursue his wants, especially in relation to the profession, without the groundless intervention of the government.[85]The right to pursue happiness, on the other hand, means "*The constitutional right to* engage in any legitimate *activity or business*, in any way that does not interfere with *the equal rights of others*, that may give *the highest* pleasure, boost *one's prosperity* or enable the improvement *of one's faculties*"[86]and it is underlined that "The U.S. Constitution recognizes this as *a penumbral* right *rather than* an *explicit* one."[87]

The concept of happiness can be discussed with a focus on the basic dynamics and principles of the constitutions, and modern constitutionalism.[88]In Federalist Papers: No. 45, Madison laconically puts the aim of any type of government as the

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[84] Blackwell, A. H.: The Essential Law Dictionary, Illinois, 2008, p. 402.
[85] Garner, B. A.: Black's Law Dictionary 9th Edition, the United States of America (**U.S.A.**), 2009, p. 1356.
[86] Garner, p. 783. See also the "*liberty*" entry in the same dictionary for further clarification regarding the pursuit of happiness. (p. 1001)
[87] Garner, p. 783.
[88] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.

public happiness and/or good, "The ultimate goal to be accomplished is *the public good*, which is the *real welfare* of the vast majority of people. No form of government has any *value* other than being suitable to achieve this goal. If the convention plan was contrary to the *public happiness*, the plan should be rejected. If *the Union* were to be incompatible with *public happiness*, it would be better to end *the Union*. Likewise, if *the sovereignty of the States* and *the happiness of the people* cannot be reconciled, then the former can be given up for the latter."[89]The logic behind these lines is succinctly expressed in a Benthamite summary: *the greatest happiness of the greatest number*.[90]

According to Bentham's constitutional theory, one of the basic objectives of constitutional law may lay behind the axiom regarding the principle of utility[91]that *the greatest happiness* of the largest number of community members (everyone without distinction to the extent possible) is the sole true aim of government.[92]Additionally,

[89] The Federalist Papers: No. 45, Madison: The Alleged Danger from the Powers of the Union to the State Governments Considered for the Independent Journal, available at: https://tinyurl.com/Federalist-Papers-45, (Last accessed: 07.12.2022). Regarding the part '*the real welfare* of the vast majority of people', see Arendt underlines the dilemma between *freedom and prosperity in the minds of the American founders or the French revolutionaries*. (p. 189) For more details, see Arendt, H. (On Revolution), p. 189.

[90] Arendt, H. (On Revolution), p. 189.

[91] Schofield, P.: *Jeremy Bentham*, pp. 235-236, in Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham, Edited by D.J. Galligan, Oxford University Press, 2014.

[92] Bentham, J.: Constitutional Code; For the Use of All Nations and All Governments Professing Liberal Opinions, Vol. I, London, 1830, pp. 167-168. The following narrative may help explain the historical impact of Bentham's ideas on Japanese constitutionalism. Once World War II was over, the concept of happiness made its way into Japan's Constitution of 1946. It is noted that "*life*, *liberty*, and *the pursuit of happiness*" were enshrined in the post-war Japanese Constitution by the US occupation authorities. However, Jeremy Bentham's utilitarian ideas, summed up as the "greatest happiness principle" meaning *the greatest happiness of the greatest number* of people as the goal of good government, have had an impact on political discourse in Japan even more than half a century before the 1946 Constitution. *Politicized* thoughts of happiness arose as part of *the Movement for Freedom and People's Rights* in early Meiji Japan and indeed one of the first political societies in modern Japan had been named after the ideals proclaimed in the Virginia Declaration *id est* (***i.e.***), *the Society for Happiness and Safety*. As the Movement pressured the Meiji leaders to proclaim a civil constitution, Art. 9 of the 1889 Meiji Constitution had set the government's purpose as '*increasing the happiness of the people*' (Weber, available at: https://tinyurl.com/Weber-PoH-In-Japan-Article, Last accessed: 05.07.2022). According to another translated version of the article, the term '***the welfare of the subjects***' is used instead of the term 'the happiness of the people', see ***Art. 9***, available at: https://tinyurl.com/Japan-Constitution-1889, (Last accessed: 14.04.2023).

since the rulers may be expected to put their interest first against the political community as a whole, the individual interest of the rulers should be brought in accordance with the universal interest, and that is why, from the author of this thesis' point of view, he suggests that *the greatest happiness of the greatest number* would only be promoted under *a representative democracy* because the intersection of interests and duties cannot be achieved in any other form of government.[93]Therefore, it may be concluded that the ultimate goal of the state and/or government and the constitutional law is the greatest happiness of the greatest amount of people from the utilitarian perspective reflected by one of the founding fathers of the U.S. in the Federalist Papers.

James Wilson[94], another prominent founding father, expressed his views on the relationship between happiness and the ultimate goal of the government in the context of the Parliament of Great Britain's power by its constitution to make binding laws over American colonies, 14 years before Madison's *The Federalist Number (No.) 45*[95], and 2 years before Jefferson's Declaration of Independence, and from his perspective "The significance of the principle that, in accordance with the Great Britain Constitution, the king, the lords and the acts of parliament hold the highest authority,

[93] Schofield, p. 237, and p. 239. Following the thoughts of Bentham: "The greater the power of the person, the stronger his tendency to abuse it. Not in the *inverse* but in the *direct* ratio of the amount of power held is the degree of tendency to do evil in every way: the degree of inclination, and hence the amount of demand for securities against its existence and effects. In the hands of rulers, the coverage of these securities in different governments will naturally be different: optimal in *a pure* ***representative democracy***, less favorable in *a pure and absolute monarchy*, utterly negative in *a mixed monarchy*, *a mixture of monarchy and aristocracy*, with or without a representative democracy. *A pure representative democracy* is the most favorable because everyone benefits from *the efficiency of these securities*, and no one can hope to profit from their absence or inefficiency." (Bentham, J., pp. 149-151)

[94] For more details about him, see Britannica, The Eds. of Encyclopedia: "*James Wilson*", Encyclopedia Britannica, 10 Sep. 2022, available at: https://tinyurl.com/Britannica-James-Wilson, (Last accessed: 08.12.2022)

[95] For the date of the Federalist No. 45, see https://tinyurl.com/Federalist-Number-45, (Last accessed: 08.12.2022)

and have the capacity to bind the American colonies, originated from its propensity to support *the ultimate end of all government*. However, if the application of this principle is to abolish this end rather than advance it, then it should be refused because otherwise the end would be sacrificed to means that are only precious inasmuch as they further it. All people are *equal* and *free by nature*, and nobody has the authority to rule over another without that person's *consent*, all legitimate governments are established with *the consent* of the people who are subject to them; this consent was provided to guarantee and elevate *the happiness of the governed* above that which they can experience in a freestanding and isolated *state of nature*. The result is that ***the happiness of the society is the first law of every government***."[96]and suggesting as a first maxim of jurisprudence that every authority comes from the individuals and that their happiness is the goal of government.[97]

These lines are a reminder of the Declaration and the summary of Locke; at the same time, they are underlining Blackstone's understanding of the law of nature as a superior authority (as referenced in Footnote 74), while putting their feet on the ground of the positive law as much as possible; thus, since the superior authority clearly restrains the lower, the British Parliament must be constrained by the natural law asserting that the *happiness of the society is the first law of every government.*[98]Hence, since the happiness of the governed is the final purpose of any government, the power

[96] Wilson, J.: *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament, 1774*, pp. 4-5, in Wilson, J.: Collected Works of James Wilson Volume I, edited by Kermit L. Hall and Mark David Hall, Liberty Fund, Indianapolis, 2007. For an abridged online version of the text, see https://tinyurl.com/James-Wilson-Abridged, (Last accessed: 08.12.2022)
[97] Wilson, p. 9.
[98] Becker, C.: The Declaration of Independence: A Study in the History of Political Ideas, Vintage Books, New York, 1922, pp. 79-80.

of sovereignty as a limited power by the higher law of nature must be dependent on the control of the governed so that the final purpose can be reached.[99]

As it starts to appear that American constitutionalism and the concept of happiness may have some connections, as suggested that *in late 18th-century* thinking, happiness had an all-encompassing meaning and *intended* use *in American constitutionalism as a political and legal* premise.[100]With respect to 18th-century American constitutionalism, the Lockean liberal view of happiness is reflected in constitutional rights as a barricade mechanism to limit government, institutions, and people that strive to obstruct our natural due; while, the classical republican[101]opinion of happiness, which corresponds to being a society founded on the assent of *the governed*, is mirrored *in the democratic* construction of *American constitutionalism*, so this model connects *civic virtue* and the progression of the public good to society's happiness.[102]

The following summary may guide one to clarify his mind regarding both Lockean liberal and classical republican understanding of happiness in the framework of American constitutionalism[103]: "The '*pursuit of happiness*' was introduced from the very beginning in different and potentially contradictory directions as *public welfare* and *private pleasure* cohabitated in the identical expression. Jefferson, who was so characteristically a man of the Enlightenment in this regard, did not find the

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[99] Becker, p. 80.
[100] Charles, P.J.: *Restoring "Life, Liberty, and the Pursuit of Happiness" in Our Constitutional Jurisprudence: An Exercise in Legal History*, William & Mary Bill of Rights Journal, Vol. 20 (2011-2012), Iss. 2, Article 4, Dec. 2011, p. 476, available at: https://tinyurl.com/Charles-Article-2, (Last accessed: 08.12.2022)
[101] For more details, see Lovett, F.: "*Republicanism*", The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), Edward N. Zalta and (**&**) Uri Nodelman (eds.), available at: https://tinyurl.com/Stanford-Republicanism, (Last accessed: 08.12.2022)
[102] Charles, p. 479; and McMahon, D.M.: *The Pursuit of Happiness: A History from the Greeks to the Present*, 2006, p. 324, as cited by Charles, p. 479.
[103] Charles, pp. 477-478.

cohabitation to be an issue since it mirrored a broader 18th-century supposition and *article of faith*: *that* ***individual interest and the greater good, private, and public happiness*, might coexist in harmony.**"[104]

All this chain of arguments regarding the historical development of the concept of happiness as a constitutional phenomenon until now brings one to the point that constitutional happiness is like a two-faced coin, on the one side there is private (individual) happiness, and on the other side there is social happiness; while constitutional rights and liberties enhance and safeguard the individual interest; the consent of the governed through democratic processes improve and preserve the social interest. Although it is pointed out that the pursuit of happiness written by Jefferson lacks the qualifying adjective; thus, it is not clear whether it is meant by public happiness or individual welfare and blurs the distinction between private rights and public happiness[105]; this thesis' author chooses to assume that *public virtue* and *public happiness* are inextricably linked, and that liberty is the core of happiness.[106]

Happiness has up until now been dealt with on the axis of individual liberties, that is, on the axis of negative status rights, within the framework of the safeguards offered to people by a government constrained by the constitution. Namely, what has been put so far is more concerned with happiness as an end that arises because of a constitutionally limited government fulfilling its negative obligations.

The roots of such analysis can be confirmed to some extent by several U.S. Supreme Court rulings since the Court considers the pursuit of happiness under the

[104] McMahon, D.M.: Happiness: A History, pp. 330-331.
[105] Arendt, H. (On Revolution), pp. 177-178.
[106] Rossiter, C.: The First American Revolution New York, 1956, pp. 229-30, as cited by Arendt, H. (On Revolution), p. 178.

14th Amendment[107], and the rights discussed in these rulings may evoke individual liberties that derive, in large part, from the negative obligations of the state. The U.S. Supreme Court has referenced the notion of the pursuit of happiness several times[108], although it is not included in the U.S. Constitution.[109]According to the U.S. Supreme Court, "*Meyer v. Nebraska, 262 U.S. 390 (1923)*[110]*: the liberty guaranteed by the 14th Amendment*[111], *[Liberty]*[112], refers not only to *freedom from* physical *restraint*, but also to the individual's right to *contract*, to do any of *the common occupations of life*, to obtain *useful knowledge*, to get married, to create *a home* and raise *children*, to practice religion in accordance with one's own conscience, and generally to take advantage of the long-recognized *privileges at common law* as fundamental to *the orderly* ***pursuit of happiness*** *by free men*."[113]In *Board of Regents of State Colleges et alia* (***et al.***) *v. Roth, 408 U.S. 564 (1972)*[114]the Court repeated the pronouncement in the above decision.[115]In *Loving v. Virginia, 388 U.S. 1 (1967)*[116], which invalidated bans on interracial unions, the U.S. Supreme Court unanimously ruled that marriage is '*one of*

[107] See 14th Amendment, Section 1, 2nd Sentence, available at: https://tinyurl.com/Amendment-No-14, (Last accessed: 01.04.2023)
[108] See https://tinyurl.com/US-Constitutional-Happiness, (Last accessed: 13.07.2022). For the results when the concept of happiness is typed into the search engine on the website of the U.S. Supreme Court, see also https://tinyurl.com/US-Supreme-Court-Happiness, (Last accessed: 13.07.2022). For court rulings concerning the pursuit of happiness clause in the U.S., see Lim (Pursuit), pp. 91-100.
[109] For the full text of the Constitution of the U.S.A., see https://tinyurl.com/US-Constitution-Cornell, (Last accessed: 04.07.2022)
[110] For details of the case, see https://tinyurl.com/Meyer-Nebraska-Cornell, (Last accessed: 15.10.2022); https://tinyurl.com/Meyer-Nebraska-1923, (Last accessed: 15.10.2022). See also https://tinyurl.com/Meyer-Washington-Post, (Last accessed: 15.10.2022)
[111] For clarification, it is quoted from U.S. Reports 526 OCT. TERM 1998, p. 291, available at: https://tinyurl.com/US-Reports-526-Oct-Term-1998, (Last accessed: 01.04.2023)
[112] Garner, B.A.: Black's Law Dictionary, "*liberty*", p. 1001.
[113] U.S. Reports 510 OCT. TERM 1993, pp. 294-295, available at: https://tinyurl.com/US-Reports-510-Oct-Term-1993, (Last accessed: 01.04.2023)
[114] For details of the case, see Oluwole, J.: "*Board of Regents v. Roth.*" Encyclopedia Britannica, Jun. 22, 2022, available at: https://tinyurl.com/Britannica-Regents-v-Roth, (Last accessed: 04.07.2022)
[115] U.S. Reports 526 OCT. TERM 1998 p. 291, available at: https://tinyurl.com/US-Reports-526-Oct-Term-1998, (Last accessed: 04.07.2022)
[116] For details of the case, see Duignan, B.: "*Loving v. Virginia*" Encyclopedia Britannica, Jun. 5, 2022, available at: https://tinyurl.com/Britannica-Loving-v-Virginia, (Last accessed: 04.07.2022)

the fundamental individual rights necessary to *the orderly* ***pursuit of happiness*** *by free men.*'[117][118]

Finally, considering the fact that constitutionalism, as one of the centers of the happiness debate, is an idea frequently connected with the founding fathers of the U.S. that the powers of the government can and should be legally limited, and its authority or legitimacy rests on its compliance with these restrictions[119], all this seem vastly appropriate to the spirit of the period. Furthermore, it may be claimed that the arguments regarding the relationship between happiness and constitutionalism can also be associated with the rule of law since constitutionalism and the rule of law are connected ideas about how to restrain the powers of government and state officials[120], and the rule of law as constitutionalism or limited government, is regularly displayed as co-emerging with modern liberalism.[121]

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[117] Official Reports of The Supreme Court, Vol. 576 U.S.- Part 2, pp. 473-978; 1048-1096, Reporter of Decisions Christine Luchok Fallon, Jun. 25 through October (**Oct.**) 2, 2015, p. 664, available at: https://tinyurl.com/576-US-Part-2-Supreme-Co-Rep, (Last accessed: 04.07.2022)

[118] According to Cosgrove, "One way the Declaration of Independence is included in the doctrinal construal of the Constitution is by creating doctrines built around certain *key phrases* of the Declaration. A striking example is the phrase '*the pursuit of Happiness*'." (Cosgrove, C.H.: *The Declaration of Independence in Constitutional Interpretation: A Selective History and Analysis*, University of Richmond Law Review, Vol. 32, Iss. 1, Article 4, 1998, p. 113, available at: https://tinyurl.com/Cosgrove-Article, Last accessed: 13.12.2022). See also pp. 113-116 in the same article for the analysis of some of the U.S. Supreme Court rulings regarding the pursuit of happiness.

[119] Waluchow, W., Kyritsis, D.: "*Constitutionalism*", The Stanford Encyclopedia of Philosophy (Summer 2022 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Constitutionalism, (Last accessed: 09.12.2022)

[120] Ten, C.L.: *Constitutionalism and the Rule of Law*, p. 493, in A Companion to Contemporary Political Philosophy Volume I, edited by Robert E. Goodin, Philip Pettit, and Thomas Pogge, 2nd Edition, Blackwell Publishing, 2007. For the connection between the rule of law and constitutionalism, see "*The concepts of the rule of law and constitutionalism are clearly interrelated…*" (Gargarella, R.: *Constitutionalism and the Rule of Law*, p. 425, in The Cambridge Companion to the Rule of Law, edited by Jens Meierhenrich, Martin Loughlin, Cambridge University Press, 2021). "*Constitutionalism is closely related to the Anglo-American political principle called the "rule of law."*" (Way, A.L.: The American System of Government: Politics & Government in the U.S.A., Part Two: Constitutional Democracy & Other Political Regimes, available at: https://tinyurl.com/Way-Constitutionalism-RoL, (Last accessed: 09.12.2022). "…*The notion of rule of law is crucial for an understanding of constitutionalism*…" (Reynolds, N.B.: *Constitutionalism and the Rule of Law*, Faculty Publications, 1469, 1986, p. 24, available at: https://tinyurl.com/Reynolds-Article, Last accessed: 09.12.2022)

[121] Stimson, S.C.: *Constitutionalism and the Rule of Law*, p. 322, in The Oxford Handbook of Political Theory, edited by John S. Dryzek, Bonnie Honig, and Anne Phillips, Oxford University Press, New York, 2006.

"The overall conception of the rule of law is strongly related to Anglo-American constitution-making; therefore, without allegiance to the restricted government, which is then characterized as the *government* abiding by *the rule of law*, a state may be considered *to have a constitution in the mechanical sense of offices and administration, but lack constitutionalism*."[122]One may deduce that an apt notion of the rule of law ought to contain both concerns about individual autonomy, which is related to liberal values, and concerns regarding collective self-government, which is a basic ideal of constitutionalism.[123]The relationship between the rule of law and constitutionalism is expressed in other words but with a similar logic as follows: while the rule of law through constitutional government is a solution to the problem of restraining the rulers, constitutionalism is the science of such limitations.[124]In parallel, it is highlighted that under the rule of law, there are legal ways to hold government servants accountable for violating the constitution.[125]Lastly, Ten thinks that if Raz's claim "The rules governing the judiciary's independence, namely how judges are appointed, how they are secured in office, how their salaries are determined, and other conditions of service, are crucial for maintaining the rule of law because the judges will be free from extraneous pressures"[126]and Rawls' claim "While these procedures vary, the rule of law demands that there be some sort of due process: namely, a fairly constructed process to uncover the truth in a way that is in line with the other goals of the legal system, as to whether a violation has occurred and under what conditions"[127]is

[122] Stimson in The Oxford Handbook of Political Theory, p. 322.
[123] Gargarella, pp. 427-428.
[124] Reynolds, p. 2.
[125] https://tinyurl.com/Way-Constitutionalism-RoL, (Last accessed: 09.12.2022)
[126] Raz, J: The Authority of Law: Essays on Law and Morality, Oxford University Press, New York 1979, p. 217.
[127] Rawls, J.: A Theory of Justice, Revised Edition, The Belknap Press of Harvard University Press, Cambridge Massachusetts 1999, p. 210.

right, then some principles of the constitutionalism can be derived from the narrow understanding of the rule of law.[128]

In summary, for now, the link between the rule of law and happiness has been established quite indirectly through the association between the rule of law and constitutionalism; nevertheless, this link will be presented more directly and clearly in the third Chapter of the thesis.

C. Social Connotations of Happiness in Constitutional Theory: Social Justice and Happiness

Since the discussion regarding the notion of happiness has been carried out on the axis of limiting the government such as the rule of law, constitutionalism, and individual liberties up to this point, the relationship between the concept of happiness and the positive obligations of the government power may be discussed from this point on. In other words, it can be continued by including social dimensions such as social justice and social equality into the equation regarding the concept of happiness. Although the concept of happiness in the constitution with its relation to the social state principle emerged in post-industrial society as a response to the unbearable living and working conditions and increasing social injustices will be detailly analyzed later in the thesis, some arguments must be noted now for the sake of clarifying the concept.

Paine forthrightly portrays the relationship between happiness and inequality hidden behind poverty as follows: "*Excess* and *inequality* in *taxation*, concealed in the means, always manifest themselves in their effects. Since a large portion of the

[128] Ten in A Companion to Contemporary Political Philosophy Volume I, p. 499. However, according to Ten, "The possibility of deriving all of them looks unlikely." (p. 499)

community is thus plunged into *poverty* and *discontent*, they are perpetually on the verge of turmoil, and sadly those who are deprived of their means of information are easily angered. The true reason for *riots* is ***always want of happiness***, regardless of what the outside cause may appear to be."[129]

Regarding some positive government obligations and assistance for the impoverished, according to Wiltse's work, "The happiness principle, which elevates government beyond its simply *negative function* of shielding the person from external aggression, is the most crucial aspect of *Jefferson's* conception of rights. By acknowledging the right to pursue happiness, the state commits to helping its citizens take positive steps toward achieving their aspirations no matter what. The state must ensure not only *the greatest happiness of the greatest number* but so far as possible *the greatest happiness of all its citizens* regardless of their situation. Thus, it may indicate that many people are prevented from reaching maximum happiness, while others who are less privileged may achieve more than the minimum. No one may obtain everything they want, nevertheless, wherever the power of the state may reach, everyone will obtain something."[130]

It is highlighted that happiness and safety clauses in the State Constitutions in the U.S.A.[131]could be understood as a legally implementable declaration that government has a positive obligation to deliver at least the bare minimum requirements essential for human happiness and safety such as minimum necessities for food,

[129] Paine, T.: The Rights of Man, The Project Gutenberg Etext of The Writings of Thomas Paine Vol. II, Edition: 10, 2003, p. 72.
[130] Lockwood, B.B., Owens, R.C., Severyn, G.A.: *Litigating State Constitutional Rights to Happiness and Safety: A Strategy for Ensuring the Provision of Basic Needs to the Poor*, William & Mary Bill of Rights Journal, Vol. 2, Iss. 1, Article 2, May 1993, p. 15, available at: https://tinyurl.com/Lockwood-Owens-Severyn-Art, (Last accessed: 10.12.2022)
[131] Although the Federal Constitution does not include, according to Grodin, two-thirds of the State Constitutions have provisions declaring the right of individuals to pursue happiness or to attain it. (p. 1)

housing, health care, and an environment that is as safe as possible.[132]For example, in *Thiede v. Town of Scandia Valley*, Minnesota (**Minn.**) Supreme Court underlined that "The key principle that everyone possesses particular rights which are *inherent* and *inalienable* is the foundation of America's whole social and political system. These include *the right to be protected in life*, *liberty*, and *the pursuit of happiness*…Watching over the less prosperous constituents of the society, in our day, is universally deemed as a true governmental role or obligation to be undertaken in the interest of the wellbeing of all."[133]

As one may follow, the American concept of the pursuit of happiness has constantly been evolving to a new dimension and gaining new meanings through scientific doctrine in the light of historical developments like matryoshka dolls, and now clearly, at least for some authors, the concept may be interpreted with its social aspects. Although it may be claimed that happiness and security are best fostered by libertarian ideals, courts in the 20th or 21st century ought not to accept such a position.[134]This line of reasoning can be critical to comprehend how the meaning of happiness shifts from an individual to a social perspective.

President Franklin D. Roosevelt, in his State of the Union address of 1944, described the political character of *the Federal Bill of Rights* as no more sufficient to guarantee *freedom* and *equality* and acknowledged that since the economy altered, there may be no real freedom without economic rights.[135]As succinctly underlined by

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[132] Grodin, J.R.: *Rediscovering the State Constitutional Right to Happiness and Safety*, Hastings Constitutional Law Quarterly, Vol. 25, No. 1, Article 1, Fall 1997, p. 29, available at: https://tinyurl.com/Grodin-Article, (Last accessed: 10.12.2022)

[133] Thiede v. Town of Scandia Valley, 217 Minn. 218 (1944), Apr. 21, 1944, Minn. Supreme Court, No. 33,581, 217 Minn. 218, available at: https://tinyurl.com/Thiede-217-Minn-218-1944, (Last accessed: 10.12.2022). For the order of citations and the flow of arguments, see Grodin, pp. 30-31.

[134] Grodin, p. 30.

[135] Lockwood *et al.*, p. 16. For the President's Second Bill of Rights speech footage, see https://tinyurl.com/Roosevelt-Second-BoR-Video, (Last accessed: 10.12.2022). For more details about

the President's famous words: '*Necessitous men are not free men.*'[136]Regarding this approach, an analogy between argument in Hobbes' Leviathan that all political liberties depend primarily on the sovereign's ability to ensure physical protection as we cannot be free while worrying about our lives, and the fact that we are unable to vigorously pursue happiness if we are continuously distressed by financial insecurity may be explanatory.[137]

This approach may be validated to some extent by modern studies conducted by certain economists coming up with the result that more wealthy people express greater life satisfaction, which demonstrates that *higher national income* increases a country's SWB.[138]Although some arguments suggest that more income enhances happiness up to the point where one's basic necessities are addressed; beyond the point where there is sufficient income so that people no longer starve, their children do not lose their lives from easily avoidable diseases, and *absolute poverty* has been eradicated, additional income gains are no longer relevant to happiness[139], they still do not alter the conclusions regarding the claimed relationship between the pursuit of happiness and economic certainty, and continue to justify them even stronger.

Roosevelt's Second Bill of Rights, see Barnett, R.E., Sunstein, C.R.: *Constitutive Commitments and Roosevelt's Second Bill of Rights: A Dialogue*, Drake Law Review, Vol. 53, 2005, pp. 205-229, available at: https://tinyurl.com/Barnett-Sunstein-Article, (Last accessed: 10.12.2022); Sunstein, C.R.: Sunstein on Franklin Delano Roosevelt (**FDR**)'s Second Bill of Rights, 2004, available at: https://tinyurl.com/Sunstein-On-FDR-Second-BoR, (Last accessed: 10.12.2022); The Economic Bill of Rights, available at: https://tinyurl.com/Economic-Bill-of-Rights, (Last accessed: 10.12.2022)

[136] "Necessitous Men Are Not Free Men": The Case for FDR's Second Bill of Rights Today, available at: https://tinyurl.com/Necessitous-Men-FDR, (Last accessed: 10.12.2022). See also Stipelman, B.E.: "Necessitous Men Are Not Free Man:" The Political Theory of the New Deal, A dissertation submitted to the Graduate School – New Brunswick Rutgers, The State University of New Jersey, May 2008 New Brunswick, available at: https://tinyurl.com/Stipelman-Dissertation, (Last accessed: 10.12.2022)

[137] Stipelman, p. 162.

[138] Huang, P.H.: *Happiness Studies and Legal Policy*, Annual Review of Law and Social Science, 6(1), May 2010, p. 11, available at: https://tinyurl.com/Huang-Article, (Last accessed: 11.12.2022)

[139] Deaton, A.: *Income, Health, and Well-Being around the World: Evidence from the Gallup World Poll*, Journal of Economic Perspectives, Vol. 22, No. 2, Spring 2008, p. 54, available at: https://tinyurl.com/Deaton-Article, (Last accessed: 11.12.2022)

All these arguments imply that the active involvement of the state may help boost people's happiness or at least increase their likelihood of pursuing happiness since the welfare state ought to generate welfare among its citizens, and if it is successful, people should feel happier.[140]However, in contrast to this perception, in the liberal and individualistic theory and practice of law, there is an understanding that "First, since human happiness is fundamentally personal, only the person in question can determine what makes him or her happy, which means that the state's promotion of happiness through law only serves to impose foreign notions of happiness on people, thus making them more unhappy than happy. Second, the state and law exist not for happiness, but for other interests like security. Additionally, a state that prioritizes its citizens' happiness eventually adopts a *paternalistic policy* and even becomes a *dictatorship of happiness* in the end. Moreover, even though law and policy cope with the *distribution of goods*, which may be related to happiness, their distribution cannot be done in line with criteria for happiness maximization."[141]

Nevertheless, the advancement of the law and state, at least to a degree, has already been shifting towards a direction of fostering happiness since the end of the 19th century, the phenomenon of which may be observed in the evolution of the social state in numerous European nations, and even Jeffersonian notion of the pursuit of happiness may be construed as an ideal of *the collective good of common welfare*; thus, the question ahead of us cannot be formulated as *yes or no to the policy of happiness*

[140] Sandmo, A.: *The welfare state: a theoretical framework for justification and criticism*, Swedish Economic Policy Review, 5 (1998), p. 28, available at: https://tinyurl.com/Sandmo-Article, (Last accessed: 11.12.2022)

[141] Bayertz, K., Gutmann, T.: *Happiness and Law*, Ratio Juris (An International Journal of Jurisprudence and Philosophy of Law, Vol. 25, No. 2, Jun. 2012, pp. 240-241, available at: https://tinyurl.com/Bayertz-Gutmann-Article, (Last accessed: 11.12.2022)

at the present time, but *how and to what extent?*[142]In addition to this objection, the following idea has also a point against the liberal view in terms of bringing security and social justice on the same line with happiness: "People appear to have a great disposition to act in a reciprocal manner. If the happiness of some people or a group stands out prominently above the rest of the community, history proves that significant social turmoil will eventually result, jeopardizing the safety of many community members."[143]This idea has many similarities with Paine's views, where both of the arguments somewhat hold the view that the concept of happiness has social dimensions such as social justice, and/or equality[144], which may suggest that the concept of happiness in constitutions is too broad to be explained only in terms of individual liberties or social rights, but it is a phenomenon consisting of a combination of these two and corresponding to a greater synergy than the sum of them.

The following comparison will help to better grasp the significance of the social side of happiness in addition to individual rights. Figure 4 and Figure 5 may be an example of the different results arising out of the contradiction between the two approaches. While Finland can be accepted as a social state country, the United States (U.S.) might be viewed as a model for countries with neo-liberal policies but lax social safeguards.[145]

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[142] Bayertz and Gutmann, p. 242.
[143] Bagaric, M., McConvill, J.A.: *Goodbye Justice, Hello Happiness: Welcoming Positive Psychology to the Law*, Deakin Law Review, Vol. 10, No. 1, Apr. 2005, pp. 25-26, available at: https://tinyurl.com/Bagaric-McConvill-Article, (Last accessed: 11.12.2022)
[144] "*The equality of rights* was the basis of Paine's constitutional thoughts. All men were equal and were brought together to form a government." (Whatmore, R.: *Thomas Paine*, p. 417, in Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham, Edited by D.J. Galligan, Oxford University Press, 2014). "Paine does not talk about women when it comes to exercising political rights." (Whatmore, p. 417)
[145] This assumption, *inter alia*, can be based on a comparison of public social spending as a percentage of GDP, according to OECD Data, between these two countries. It is assumed that the country that allocates more resources for public social spending as a percentage of its GDP is considered as where the social state is at a higher level: https://tinyurl.com/OECD-Social-Spending, (Last accessed:

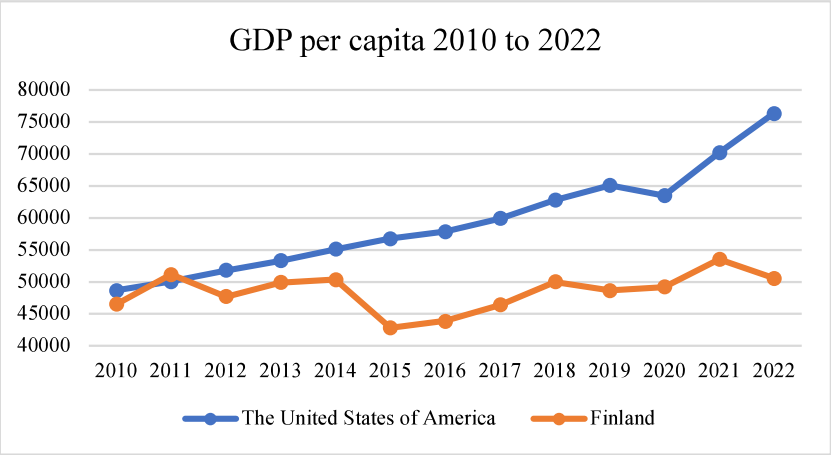


Figure 4: Comparison of GDP per capita between 2010 and 2022 in Finland and the U.S. (in United States dollar (USD))[146]

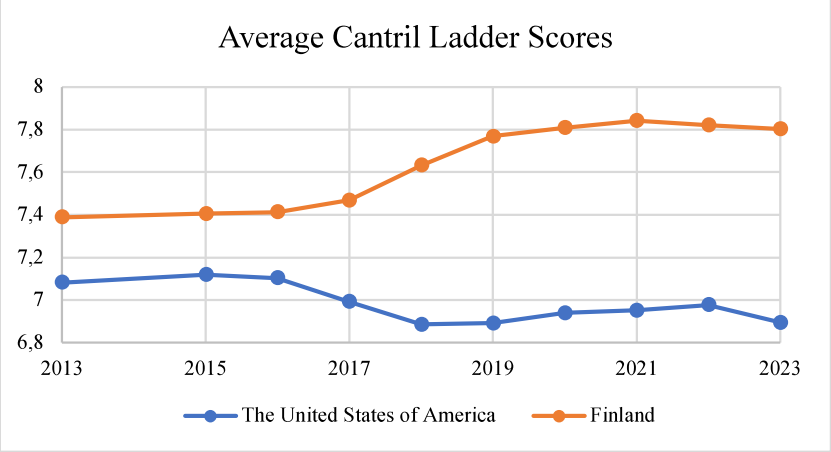


Figure 5: Average Cantril Ladder Scores[147] between 2013 and 2023 in Finland and the U.S.A.[148]

As shown in the figures, while the U.S.[149]has a higher GDP per person than Finland in almost all years, Finland still averages much better happiness scores than

04.07.2022). For more information about the Finnish welfare state, see https://tinyurl.com/Finnish-Welfare-State-History, (Last accessed: 12.10.2022); https://tinyurl.com/The-Guardian-Safe-Happy-Free, (Last accessed: 12.10.2022).

[146] https://tinyurl.com/World-Bank-GDP-Per-Capita, (Last accessed: 01.07.2023)

[147] For a comprehensive explanation of Cantril Ladder Scores, see "*The Concept of Happiness at the United Nations Level*"

[148] Scores are collected through the WHRs between 2013-2023: https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023)

[149] Sachs claims that it is not a coincidence that the U.S.A. has not seen an increase in life satisfaction for a long time because, among other reasons, for the last 50 years inequality has risen in the country (Sachs, J.: *Introduction*, in WHR 2012, Eds. J. Helliwell, R. Layard, J. Sachs, New York: Sustainable Development Solutions Network, 2012, p. 7). Increasing inequality can be interpreted as one of the side effects of neo-liberal economic policies without robust social protections.

the U.S. Thus, *ceteris paribus*, it is a legitimate question whether welfare states can under some circumstances achieve higher happiness scores, to some extent, than the states with stronger neo-liberal economic policies but weak social safety networks, even if the latter may be relatively wealthier.

For a similar comparison in the literature, one of the arguments regarding the welfare state and the redistribution of happiness is as follows: "*The Scandinavian welfare state model* is primarily distinguished by its universalism and far-reaching delivery of social services. Social democratic welfare states offer extensive and profoundly subsidized coverage of childcare, senior care, health, schooling, and other types of social assistance to their citizens. On the other hand, many social services need to be bought on the market in market-oriented economies where the government plays a limited role. Private insurance substitutes social insurance, and market mechanisms take the place of publicly provided services like health and childcare. A more laminated and unequal society that separates persons who can afford such amenities from persons who cannot is created by a market-oriented system."[150]

Some findings in the economics and psychology literature may be useful to further emphasize the social aspects of the concept of happiness, especially those related to social justice and equality. Classical economists recognized that people are driven, at least in part, by concerns about relative standing.[151]Adam Smith, regarding *the origin of ambition, and the distinction of ranks*, states that "There is nothing more embarrassing than having to publicly display our distress and feeling that no human

[150] Ono, H., Schultz Lee, K.: *Redistributing Happiness: How Social Policies Shape Life Satisfaction (Part 1)*, Japan Spotlight, July/Aug. 2020, pp. 60-63, available at: https://tinyurl.com/Ono-Lee-Article, (Last accessed: 17.12.2022)

[151] Luttmer, E.F.P.: *Neighbors as Negatives: Relative Earnings and Well-Being*, The Quarterly Journal of Economics, Vol. 120, Iss. 3, Aug. 2005, p. 963, available at: https://tinyurl.com/Luttmer-Article, (Last accessed: 12.12.2022)

can imagine even a fraction of the suffering we have endured, despite the fact that our plight is in front of all humanity. Mostly because of this consideration for human sentiments, we seek wealth and shun poverty."[152]Thus, utility is partly contingent upon relative position.[153]

In line with this view, Posner and Sunstein claim that happiness increases with wealth, but only up to a certain extent, and people feel less content when their neighbors have more wealth than they do.[154]In an almost identical manner, it is articulated that "*Social comparisons* with neighbors partially decide people's happiness. People's self-reported happiness is *negatively* impacted by the earnings of others in their field. For people who socialize more in their neighborhoods, raised neighbors' earnings have the biggest negative influence on their happiness. The detrimental effect of neighbors' earnings on happiness is actual and most probably due to a *psychological externality*, that is, people having *utility functions* contingent on *relative consumption* along with *absolute consumption*."[155]

According to the psychology Professor (**Prof.**) Gilbert "The human brain is not chiefly sensitive to the *absolute magnitude of stimulation*, nevertheless, it is extremely sensitive to differences and changes, *i.e.*, to *the relative magnitude of stimulation*. Our sensitivity to relative rather than absolute magnitudes is not restricted to physical properties like *weight*, *brightness*, or *volume*."[156]Kahneman and Tversky can be

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[152] Smith, A.: The Theory of Moral Sentiments, 6th Edition, 1790, p. 44, available at: https://tinyurl.com/Smith-Book, (Last accessed: 12.12.2022)
[153] Luttmer, p. 965.
[154] Posner, E.A., Sunstein, C.R.: *Introduction to the Conference on Law and Happiness*, p. 2, in Posner, E.A., Sunstein, C. R.: Law & Happiness, Chicago 2010.
[155] Luttmer, pp. 989-990. For a suspicious approach to the relativity of happiness specifying that "Happiness is not *relative* to the extent that it depends on *need* satisfaction." (p. 1), see Veenhoven, R.: *Is Happiness Relative?*, Social Indicators Research, 24(1):1-34, available at: https://tinyurl.com/Veenhoven-Article, (Last accessed: 12.12.2022)
[156] Gilbert, p. 152.

followed as the continuation of the argument that "Our *perceptual* system is adjusted to assess changes or differences rather than *absolute magnitudes*. A substance at a certain temperature might be felt as hot or cold to the touch depending on the temperature the person is used to. **The same rule is valid for *non-sensory* qualities such as *health*, *prestige*, and *wealth*.** For instance, the same quantity of wealth can indicate severe *poverty* for one and huge fortune for another, contingent on their existing assets."[157]Therefore, in terms of the social dimension of the concept of happiness, the ability of the human mind to make comparisons and the relative status of the person with respect to the people around him or her play an important role, and this might lead one to start to comprehend the psychological and biological roots of the relationship between happiness and the social justice.

Furthermore, only a security-based libertarian approach without any social aspects towards happiness can hardly create happiness, if it can at all, since "Concepts of *justice* or *fairness* are important, and vindictive feelings could come from unfair treatment" as suggested by Huang and Wu with reference to some other studies.[158]In the same direction, Kahneman *et al.* assert that even profit-maximizing firms will have the motivation to operate in a way that is identified as *fair* if the individuals with whom they do business are ready to oppose unjust transactions and penalize unfair firms at some expense to themselves.[159]Therefore, Huang stresses that "Happiness contains

[157] Kahneman, D., Tversky, A.: *Prospect Theory: An Analysis of Decision under Risk*, Econometrica, Vol. 47, No. 2, Mar. 1979, p. 277, available at: https://tinyurl.com/Kahneman-Tversky-Article, (Last accessed: 12.12.2022). See also Gilbert, p. 152.

[158] Huang, P.H., Wu, H.M.: *Emotional Responses in Litigation*, International Review of Law and Economics, 12, 1992, p. 34, available at: https://tinyurl.com/Huang-Wu-Article, (Last accessed: 12.12.2022)

[159] Kahneman, D., Knetsch, J.L., Thaler, R.H.: *Fairness and the Assumptions of Economics*, The Journal of Business, Vol. 59, No. 4, Part 2: The Behavioral Foundations of Economics Theory, Oct. 1986, p. 285, available at: https://tinyurl.com/Kahneman-Knetsch-Thaler-Art, (Last accessed: 12.12.2022)

various angles including *eudaimonia versus* (***vs.***) *hedonics*.[160]This implies that many people's concerns are greater than only *happiness* in terms of positive impact. Particularly, plaintiffs might file a suit to search for *justice*, retaliation, as well as other feelings beyond *happiness*."[161]

So far, the legal foundations of the notion of happiness have been examined historically, comparatively[162], and intertextually in the axis of constitutional law considering the interdisciplinary concerns. Thus, it might be concluded that the concept of happiness has a place dating back to ancient times, both in the history of philosophy and in the history of law; and in this rich history, many interesting debates and claims were brought forward by the influential intellectuals of the period. Parallel to the historical development of the notion, the meanings attributed to the concept of happiness have connected it to constitutionalism in one aspect and to the rule of law and the welfare state in another aspect. While it had been a part of natural law in Blackstone, it became an element of positive law in time and started to take place in legal texts and court decisions.

In brief, happiness has been at the center of political, economic, and philosophical discussions ranging from the individual dimension to the social dimension. Some scholars have envisaged it as a private interest connotation, others as a public interest connotation. The theoretical background of the concept in law has demonstrated that constitutional happiness is not something that can happen[163]to

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[160] See p. 8 to comprehend the characteristics of *hedonic* and *eudemonic versions* of happiness according to the author's understanding.
[161] Huang, P.H.: *Happiness Studies and Legal Policy*, pp. 23-24.
[162] For a more thorough comparative analysis, see *Chapter 2*.
[163] To comprehend the reference, see one of the meanings of happiness in the dictionary. According to the Oxford English Dictionary (**OED**), happiness is "*good fortune or good luck in life generally or in a particular affair…*" ("Happiness, noun (**n.**)" OED Online, Oxford University Press, Dec. 2022, Web, available at: https://tinyurl.com/OED-Happiness, (Last accessed: 13.12.2022). For a similar meaning in German, see "*Glück*" (https://tinyurl.com/Gluck-Deutsche-Wortschatz, Last accessed: 13.12.2022). In

people or countries with a mere *Fortuna's*[164]magic touch but it is rather an end of limited government ruled by laws prioritizing the individual and social welfare of people.

II. Recent Developments in the Legal Field: Gross National Happiness, Happiness as a Soft Law, and Comparative Analysis of Happiness Levels in the Happy Constitution Countries

In this section, the emergence of the GNH concept in Bhutan and the recent developments in the field of happiness which lead to the publication of the WHRs will be analyzed, bearing in mind the lately adopted soft law document of the UN has turned the concept of happiness into a legal concept in international law as well as in national constitutions.[165]Then, finally, the happiness performances of the happy constitution countries will be comparatively presented within the scope of happiness reports.

There is an aspect that is essentially reasonable in the notion that the difference in happiness between contemporary humans and primitive men is not directly correlated with the difference in their earnings, and the *Easterlin-Paradox* demonstrates that in nations with large growths in income, average levels of happiness remain unchanged over time; thus, this evidence is sufficient to disprove the claim that

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Middle English Dictionary "*hap*" is defined *inter alia* as "*person's lot* (*good or bad*), *luck*, *fortune*, *fate*…" (Middle English Dictionary, "Hap, n.", University of Michigan, available at: https://tinyurl.com/Middle-English-Dict-Hap, Last accessed: 13.12.2022)

[164] Britannica, The Eds. of Encyclopedia: "*Fortuna*", Encyclopedia Britannica, 12 Apr. 2019, available at: https://tinyurl.com/Britannica-Fortuna, (Last accessed: 13.12.2022)

[165] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.

the *utility function* can be justified only by *absolute income*.[166]Hence, economists and policymakers have become increasingly preoccupied with measures of quality of life and life satisfaction, along with the traditional measure of standard of living, which is a purely monetary measure.[167]As Stiglitz *et al.* underlined the time has come for our measurement system to place more focus on measuring people's *well-being* rather than *economic production*.[168]Therefore, although SWB is a psychological construct that is related to people's thoughts and feelings about their lives, the study of SWB interests more people than just psychologists, e.g., economists who connect the significance of traditional objective measures such as standard of living typically expressed in *per capita* GDP to their effect on SWB since "The importance of *economic performance* is that it may serve as a tool for achieving a goal…enhancing humanity's sense of *well-being*" as flawlessly put by Oswald.[169]

GDP is the most broadly applied indicator of economic activity with international standards for its calculation and well-considered statistical and conceptual foundations but it essentially reflects market production.[170]Yet GDP, national income, consumption, and other components of the National Accounts have been deemed by economists and non-economists as partial measures of society's well-being for a long time, even though National Accounts may not capture the following

[166] Di Tella, R., MacCulloch, R.: *Gross National Happiness as an Answer to the Easterlin Paradox*, Journal of Development Economics, 86 (2008), p. 38, available at: https://tinyurl.com/Di-Tella-MacCulloch-Article, (Last accessed: 15.12.2022)
[167] Maddux, J.E.: *Foreword*, p. xxi, in Snyder, C.R., Lopez, S.J., Edwards, L.M., Marques, S.C. (Edited by): The Oxford Handbook of Positive Psychology, 3rd Edition, Oxford University Press, New York 2021.
[168] Stiglitz, J.E., Sen, A., Fitoussi, J.P.: Report by the Commission on the Measurement of Economic Performance and Social Progress, p. 12, available at: https://tinyurl.com/Stiglitz-Sen-Fitoussi-Report, (Last accessed: 15.12.2022)
[169] Maddux, J.E.: *Subjective Well-Being and Life Satisfaction: An Introduction to Conceptions, Theories, and Measures*, p. 4, and p. 6, in Maddux, J.E. (edited by): Subjective Well-Being and Life Satisfaction, Routledge, New York, and London, 2018.
[170] Stiglitz *et al.*, p. 21.

points: "1) '*near-market*' activities, like household production (e.g., *unpaid cleaning, cooking, and child care*) that produce services that can be bought on the market, 2) the National Accounts do not value social contacts that significantly affect SWB, such as those between *friends* or couples, 3) the National Accounts fail to account for *consumer surplus* resulting from *market transactions* since the economic activity is measured by prices, which are *marginal* values in *perfectly competitive markets*. For instance, *diamonds* are considered more valuable than *water*; however, it is questionable whether diamonds contribute more to the well-being of society, 4) *externalities improperly accounted for*, 5) prices are distorted in markets where there is imperfect competition, 6) certain distribution of income in a country affects prices and marginal valuations."[171]While attempts have been made to adapt National Accounts to some of the mentioned constraints, such as valuing certain forms of non-market activity, these efforts are doubtful to go too far in surmounting these problems.[172]

"The notion of GNH, which advocates for 'happiness' promotion as a principal objective of development, is expressed *as an alternative* to the growth-based metric of *Gross National Product* (**GNP**), and as such it highlights other and more non-material values against the growth-based emphasis required by *the neo-liberal development approach*."[173]"GNH's growing international appeal is due to the global development community's growing return to *multidimensional* strategies such as *the human*

[171] Krueger, A.B., Kahneman, D., Schkade, D., Schwarz, N., Stone, A.A.: *National Time Accounting: The Currency of Life*, p. 10, in Krueger, A.B. (edited by): Measuring the Subjective Well-Being of Nations: National Accounts of Time Use and Well-Being, A National Bureau of Economic Research Conference Report, The University of Chicago Press, Chicago, and London, 2009.
[172] Krueger *et al.*, p. 10.
[173] Bothe, W.: *Gross National Happiness and Inequality*, p. 49, in Schmidt, J. D. (Ed.): Development Challenges in Bhutan: Perspectives on Inequality and Gross National Happiness, Switzerland, 2017.

development paradigm; nonetheless, happiness has a somewhat complex association with *human development* as both *the happiness approach* and *human development are* multifaceted *development* approaches that go beyond the conventional emphasis on economic *growth*."[174]

A. Emergence of the Gross National Happiness Concept in Bhutan

Even though the term 'GNH' was originally invented by the 4th King of Bhutan the idea has existed in the Kingdom of Bhutan for much longer; the 1729 legal code[175], dating *from the unification of Bhutan*, asserted that "*If the Government cannot create happiness (dekid) for its people, there is no purpose for the Government to exist*."[176]In 1972, the King of Bhutan[177][178]created and launched the concept of GNH[179]as an alternative to GDP to measure the well-being of the country.[180]According to King, "GNH is more significant than GDP"[181], and from this moment forward, the country

[174] Schroeder, K.: Politics of Gross National Happiness: Governance and Development in Bhutan, Palgrave Macmillan, Switzerland, 2018, p. 3.
[175] According to https://tinyurl.com/GNH-Centre-Bhutan-Org, (Last accessed: 15.12.2022), it is mentioned as *Bhutan's ancient legal code of 1629*.
[176] Ura, K., Alkire, S., Zangmo, T.: *Case Study: Bhutan Gross National Happiness and the GNH Index*, p. 111, in WHR 2012, available at: https://tinyurl.com/WHR-2012, (Last accessed: 15.12.2022)
[177] King Jigme Singye Wangchuck, https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023)
[178] For a comprehensive understanding of Bhutan's political situation, see *S.H. v. THE UNITED KINGDOM*, no. 19956/06, ECtHR. In the *Expert Reports* part of this judgment, "*2008 report by the Norwegian Refugee Council entitled "Bhutan: Land of Happiness for the Selected"*" was mentioned. To see the report: https://tinyurl.com/Bhutan-Report-NRC, (Last accessed: 27.03.2023)
[179] For a detailed view, see Schmidt, J.R.: Development Challenges in Bhutan Perspectives on Inequality and Gross National Happiness, Switzerland, 2017.
[180] Bhutan's Gross National Happiness Index, https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023). See also, Sachs' "*Taking Happiness Seriously*" heading (pp. 6-7) in the UN WHR 2012, available at: https://tinyurl.com/WHR-2012, (Last accessed: 05.07.2022)
[181] https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023). See also https://tinyurl.com/World-Bank-GNH, (Last accessed: 15.10.2022). See also Ura, K., Galay, K. (edited by): Gross National Happiness and Development, The Center for Bhutan Studies, Bhutan, 2004, p. viii, available at: https://tinyurl.com/Ura-Galay-Edited-Book, (Last accessed: 15.12.2022)

tailored its national policy and development objectives to GNH.[182]The implication of the concept of GNH is that sustainable development ought to have a *holistic approach* toward ideas of progress and accord non-economic aspects of well-being the same amount of weight[183], and suggests that when *spiritual* and *material* progress takes place next to each other, the constructive improvement of humanity comes into existence.[184]4 decades later, Bhutan adopted democracy in 2008, wherein the Constitution of Bhutan, Art. 9[185]instructs the State "*to promote those conditions that will enable the pursuit of GNH.*"[186]

Although GNH is not defined officially, the following explanation is commonly employed: "*GNH* gauges a country's quality *in a more holistic way than GNP* and holds that the useful advancement of humanity happens when *spiritual* and *material* advancement takes place next to each other to complement and strengthen one another."[187]The concept of GNH consists of 4 pillars, which are *good governance*, *sustainable socio-economic development*, *preservation and promotion of culture*, *and environmental conservation*.[188]To build an extensive understanding of GNH and to display the holistic scale of GNH values, these 4 pillars are divided into 9 domains and are shown in Figure 6. These domains create the foundation of the GNH Index that gives a synopsis of national GNH across 9 domains, comprising *33 clustered indicators*, *each of which is* comprised of various factors, and the index weights these 9 domains equally.[189]Indicators in these domains can be listed as follows:

[182] Ura and Alkire in WHR 2012, p. 111.
[183] https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023)
[184] https://tinyurl.com/GNH-Centre-Bhutan-Org, (Last accessed: 15.12.2022)
[185] https://tinyurl.com/GNH-Centre-Bhutan-Org, (Last accessed: 15.12.2022)
[186] Ura and Alkire in WHR 2012, p. 111.
[187] Ura and Alkire in WHR 2012, p. 111.
[188]https://tinyurl.com/GNH-Center-Bhutan-4-Pillars, (Last accessed: 07.07.2023)
[189] Ura and Alkire in WHR 2012, p. 110, and p. 112.



Figure 6: Gross National Happiness Indicators[190]

Concerning GNH and its place in the constitution, three provisions in Bhutan's first written Constitution are underlined regarding happiness: while one of them promotes GNH in general (Art. 9, Section 2), the other two provisions referring to happiness contain *collectively*, *promoting happiness through liberty*, *justice*, *tranquility*, *unity*, *peace*, *security*, *and good governance* (Preamble, Art. 20, Section

[190] The list was created by the suggestion of Yılmaz, Z.: "Personal Communication", Email to Berksun, S.U., 10.01.2023, based on the article of Ura and Alkire in WHR 2012, pp. 115-127. For the original illustration of the indicators, see also Figure I in the same article, p. 115.

1).[191]On the other hand, Iyer evaluates the inclusion of GNH in the Constitution as GNH, a defining feature of the king's political ideology, finding *pride of place as a guiding principle of state policy*.[192]

B. The Concept of Happiness at the United Nations Level

In 2011, the UN unanimously adopted the General Assembly RES.[193], sponsored by Bhutan, calling for a "*holistic approach to development*" aimed at promoting sustainable happiness and well-being.[194]This Resolution invites national governments to put greater emphasis on *happiness* and *well-being* when deciding how to accomplish and measure social and economic development.[195]According to the document, "*The pursuit of happiness* is a basic human objective. Happiness as a universal aim and ambition represents *the spirit of the Millennium Development Goals*. The *happiness* and *well-being* of individuals in a country are not sufficiently reflected by the GDP indicator since it was not fashioned to do so. Additionally, *unsustainable patterns of production and consumption* can obstruct *sustainable development*, and it is significant to acknowledge *the need for a more inclusive*, *equitable*, *and balanced*

[191] Givel, M.: *Evolution of the Meaning of Happiness in Modern Bhutan from 2008 to 2019*, Journal of Bhutan Studies, Vol 43, Winter 2020, pp. 52-53, available at: https://tinyurl.com/Givel-Article, (Last accessed: 15.12.2022)
[192] Iyer, V.: *Constitution-Making in Bhutan: A Complex and Sui Generis Experience*, The Chinese Journal of Comparative Law, Vol. 7, No. 2, 2019, p. 370, available at: https://tinyurl.com/Iyer-Article, (Last accessed: 15.12.2022)
[193] *A/RES/65/309. RES. adopted by the General Assembly on 19 July 2011. 65/309. Happiness: towards a holistic approach to development*. See the RES., https://tinyurl.com/RES-65-309-2011, (Last accessed: 07.07.2023). See also *A/67/697*, available at: https://tinyurl.com/A-67-697-UN, (Last accessed: 17.12.2022)
[194] https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023)
[195] https://tinyurl.com/WHR-2022-Foreword, (Last accessed: 05.07.2022)

approach to economic growth that fosters *sustainable development*, *poverty eradication*, *happiness*, and *well-being* of the entire persons."[196]

On Apr. 2, 2012; pursuant to the Bhutan-sponsored UN General Assembly RES.[197], the first WHR[198]was provided to evaluate the data from the arising happiness science for *the* '*Defining a New Economic Paradigm: The Report of the High-Level Meeting on Well-being and Happiness*.'[199][200]

On 28 Jun. 2012, UN General Assembly RES. 66/281[201]declares the 20th of March as the International Day of Happiness.[202]The WHRs started to be released around this day every year[203]as part of the celebration.[204]Many different areas, topics, and discussions of happiness have been covered in the Report over the past decade.[205]

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[196] https://tinyurl.com/A-RES-65-309-General-Assembly, (Last accessed: 16.12.2022)
[197] https://tinyurl.com/WHR-2021, (Last accessed: 05.07.2022)
[198] https://tinyurl.com/Wor-Hap-Rep-2012, (Last accessed: 05.07.2022)
[199] Royal Government of Bhutan: *The Report of the High-Level Meeting on Wellbeing and Happiness: Defining a New Economic Paradigm*, New York: The Permanent Mission of the Kingdom of Bhutan to the UN 2012, Thimphu: Office of the Prime Minister, available at: https://tinyurl.com/Sust-Bhutan-Happy-New-Paradigm, (Last accessed: 05.07.2022)
[200] https://tinyurl.com/WHR-2022-Foreword, (Last accessed: 05.07.2022)
[201] https://tinyurl.com/RES-66-281-2012, (Last accessed: 07.07.2023)
[202] https://tinyurl.com/WHR-2022-Foreword, (Last accessed: 05.07.2022)
[203] Except for 2014.
[204] https://tinyurl.com/WHR-2022-Foreword, (Last accessed: 05.07.2022). See the WHRs of 2012, 2013, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023: https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023)
[205] For example, Layard *et al.* revealed most of the external and personal determinants of happiness may be affected by *government policy*. (Layard, Clark, and Selik, p. 59, and p. 79, available at: https://tinyurl.com/Wor-Hap-Rep-2012, Last accessed: 16.12.2022). O'Donnell suggested that the desire to improve well-being is increasingly used to guide policy decisions, and offered the institutions like the UN, World Bank, and International Monetary Fund (**IMF**) to bear in mind transferring some of the focus currently given to GDP to better, wider metrics of *sustainable progress*. (O' Donnell, G.: *Using Well-Being as a Guide to Policy*, pp. 107-108., in Helliwell, J., Layard, R., Sachs, J. (edited by): WHR 2013, available at: https://tinyurl.com/Wor-Hap-Rep-2013, Last accessed: 16.12.2022). For relatively tiny disparities in happiness with respect to *age* and *gender* compared to the *international gap* between the first and the last 10 countries, see Fortin, N., Helliwell, J. F., Wang, S.: *How Does Subjective Well-Being Vary Around the World by Gender and Age?*, pp. 69-70, in Helliwell, J., Layard, R., Sachs, J. (edited by): WHR 2015, available at: https://tinyurl.com/Wor-Hap-Rep-2015, (Last accessed: 16.12.2022). Sachs underlined that "Although income per capita counts for happiness; *social conditions*, *work conditions*, *health*, *pollution*, and *values* like *generosity* are also important. Libertarian suggestion that economic freedom ought to be prioritized over all other values falls short on the test of happiness. Individual freedom is crucial for happiness, but this should not come at the expense of other goals and values. In comparison to the narrow *pursuit of income*, *economic freedom*, or other *one-dimensional* goals, sustainable development, and connected *holistic* ideas provide a more comprehensive guide for promoting human wellbeing." (Sachs (Happiness and Sustainable), p. 63,

These reports publish, *inter alia*, the Cantril Ladder scores and rankings of the countries as measured by the Gallup World Poll. On the one hand, the WHRs are based on various data; on the other hand, the most significant source has constantly been the *Gallup World Poll*.[206]Gallup has been an American-based research and polling organization since 1958 with a reputation predating back in 1935 as the founder of the American Institute of Public Opinion.[207]The company created the World Poll in 2005

available at: https://tinyurl.com/Wor-Hap-Rep-2016, Last accessed: 16.12.2022). For the factors that cause African states to score lower on life evaluations than other states in the world, see Møller, V., Roberts, B.J., Tiliouine, H., Loschky, J.: *'Waiting for Happiness' in Africa*, p. 110, in Helliwell, J., Layard, R., Sachs, J. (edited by): WHR 2017, available at: https://tinyurl.com/Wor-Hap-Rep-2017, (Last accessed: 16.12.2022). Sachs also drew attention to the most dramatic circumstance about happiness in America, which is the *Easterlin Paradox*: while income per person has more than doubled since 1972, happiness has stayed essentially the same or even dropped; to him, "The central problem for the U.S. is not the lack of tools to handle the *crises of public health* and dropping *well-being*. Instead, corporate lobbying, which upholds hazardous corporate practices as well as places enormous burdens on the nation's most vulnerable and underprivileged populations, may be the most practical obstacle, in addition to the American political system's letdown to handling and comprehending America's escalating social crisis. The complexity of achieving *well-being* is a subject of *high politics* and *economics* as well as the culmination of personal and group efforts." (Sachs (America's Health), p. 147, and p. 157, available at: https://tinyurl.com/Wor-Hap-Rep-2018, Last accessed: 16.12.2022). Bellet and Frijters demonstrated that scholars, governments, businesses, and other organizations can better evaluate and estimate people's well-being and inner lives thanks to *Big Data*, and it should be anticipated that this will foster the capacity to assess the influence of policies and significant changes on well-being, which should raise interest in and knowledge of well-being (Bellet, C., Frijters, P.: *Big Data and Well-being*, p. 118, in Helliwell, J., Layard, R., Sachs, J. (edited by): WHR 2019, available at: https://tinyurl.com/Wor-Hap-Rep-2019, Last accessed: 16.12.2022). For what makes Nordic people so remarkably content with their lives, see Martela *et al.*, p. 130, and p. 139, available at: https://tinyurl.com/Wor-Hap-Rep-2020, (Last accessed: 16.12.2022). In 2021, Helliwell *et al.* summarized the whole report as focusing on the impacts of the Coronavirus disease 2019 (**COVID-19**) including the effects of the pandemic on the construction and quality of individuals' lives, and the description and evaluation of the governments' responses around the world to the situation with a particular emphasis on why some countries have done so much better than others (Helliwell, J.F., Layard, R., Sachs, J.D., De Neve, J.E., Aknin, L.B., Wang, S.: *Overview: Life under COVID-19*, p. 7, in Helliwell, J., Layard, R., Sachs, J., De Neve, J.E., Aknin, L.B., Wang, S.: WHR 2021, available at: https://tinyurl.com/Wor-Hap-Rep-2021, Last accessed: 16.12.2022). See also Metzler, H., Pellert, M., Garcia, D.: *Using Social Media Data to Capture Emotions Before and During COVID-19*, p. 77, and p. 98, in Helliwell, J., Layard, R., Sachs, J., De Neve, J.E., Aknin, L.B., Wang, S.: WHR 2022, available at: https://tinyurl.com/Wor-Hap-Rep-2022, (Last accessed: 16.12.2022). Most recently and lastly, in 2023, Besley *et al.* compendiously put that "Essential components in the establishment of *effective states* are i*nvestments in state capacities* and accomplishing *peace without repression*." (Besley, T., Marshall, J., Persson, T.: *Well-being and State Effectiveness*, p. 79, and p. 99, in Helliwell, J., Layard, R., Sachs, J., De Neve, J.E., Aknin, L.B., Wang, S.: WHR 2023, available at: https://tinyurl.com/Wor-Hap-Rep-2023, Last accessed: 20.03.2023)

[206] https://tinyurl.com/WHR-2022-Table-of-Contents, (Last accessed: 05.07.2022)

[207] Bondarenko, P.: "*Gallup organization*", Encyclopedia Britannica, 17 Nov. 2016, available at: https://tinyurl.com/Britannica-Gallup-Organization, (Last accessed: 15.10.2022). See also https://tinyurl.com/Gallup-George-H-Gallup-Founder, (Last accessed: 15.10.2022)

and through the Gallup World Poll, it tracks many key issues around the world, including *food access*, *leadership performance*, *employment*, and ***well-being***.[208]Countries are ranked by their happiness scores in the WHRs, in line with life assessments provided by the Gallup World Poll[209], which is a historically well-grounded thought since Bentham and Mill argued that 'the degree of happiness might be measured and compared'[210], and since it is known that economists have been tackling with the challenges of studying happiness from the time when Easterlin's research was published in the 1970s.[211]

The method used in the Gallup World Poll surveys is the Cantril Self-Anchoring Scale devised by social scientist Doctor (**Dr.**) Hadley Cantril.[212]The question in the survey is simple: "Picture *a ladder* with numbered steps starting at *0 at the bottom* and *10 at the top*. The steps at the top and bottom of the ladder stand for the best and the worst *possible life for you*, respectively. Which step of the ladder do you personally feel you are currently on? At what step do you envision yourself standing around 5 years from now?"[213]"Each participant gives *a numerical response on this scale*, called the *Cantril ladder*; characteristically, approximately 1000 responses are collected each year *for each country* and *weighted averages are used to* generate *national averages* representing the population for each country for each year."[214]In order to more correctly predict each country's happiness rating, the

[208] How Does the Gallup World Poll Work?, https://tinyurl.com/Gallup-How-World-Poll-Work, (Last accessed: 05.07.2022)
[209] https://tinyurl.com/WHR-2022-Foreword, (Last accessed: 05.07.2022)
[210] Tiberius, V.: *Maximization and the Good*, p. 56, in Brockmann, H., Delhey, J. (Ed.): Human Happiness and Pursuit of Maximization: Is More Always Better?, 2013.
[211] Cieslik, p. 34.
[212] Understanding How Gallup Uses the Cantril Scale, https://tinyurl.com/Gallup-Uses-Cantril-Scale, (Last accessed: 05.07.2022)
[213] https://tinyurl.com/Gallup-Uses-Cantril-Scale, (Last accessed: 05.07.2022)
[214] https://tinyurl.com/Wor-Hap-Rep-2021, (Last accessed: 05.07.2022)

averages of the preceding 3 years' surveys are taken into consideration when calculating so that the sample size can be increased and the results can be less affected.[215]For instance, a particular country's ranking in 2021 shows the average happiness scores for 2018, 2019, and 2020.[216]

From this point on, based on data provided by the WHRs between 2013 and 2023[217][218], a comparative analysis of the happiness levels of countries with and without happiness clauses in their constitutions can be given.

C. Comparative Analysis of Happiness Levels in the Happy Constitution Countries

Under this heading, several charts will be examined, and the happiness levels of various countries will be compared with one another based on certain parameters and categories. However, first, some clarifications should be made regarding the terminology to be applied throughout the analysis. Initially, the term "*countries with happiness clause in their constitutions*" corresponds to the countries where the words "*happy*" and/or "*happiness*" are mentioned in their current constitutions, and these countries, henceforth, will be referred to as ***"happy constitution countries"***; other "*countries without happiness clause in their constitutions*", where the words "*happy*"

[215] https://tinyurl.com/Wor-Hap-Rep-2021, (Last accessed: 05.07.2022)
[216] See the WHR 2021.
[217] The WHR 2012 simply provided rankings; however, since precise happiness scores were not provided, this report was not considered when comparing the happiness levels of the countries.
[218] Except for 2014 as no reports were released that year.

and/or "*happiness*" are not mentioned in their current constitutions, on the other hand, belong to the group called **"*rest of the world*"**.[219]

1. Average Cantril Ladder Scores of Happy Constitution Countries

Figure 7 represents the average Cantril Ladder scores of happy constitution countries between 2013 and 2023, based on the data for the respective years revealed by the WHRs. Antigua and Barbuda, Tuvalu, Seychelles, Guyana, and the DPRK are not included in Figure 7 because the 2013-2023 UN WHRs do not include average Cantril Ladder score data for these countries. Moreover, some countries have data for only a few years, not all years.[220]Finally, although Egypt, Thailand, and Zimbabwe have the happiness data for all years from 2013 to 2023, Egypt's 2013, 2015, and 2016 scores, Thailand's 2015, 2016, 2017, 2018, and 2019, and Zimbabwe's 2013 and 2015 scores are not taken into consideration because there was no happiness clause in the constitutions of these three countries in those years.[221][222]

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[219] English-translated versions of the constitutions were considered for the above categorization. The research was conducted on the 'constitute project' web page, https://tinyurl.com/Constitute-Project, (Last accessed: 01.07.2023) with keywords "*happy*" and "*happiness*".

[220] Belize happiness data is for 2016, 2017, and 2018; while Bhutanese happiness data is for the years 2015, 2016, 2017, 2018, and 2019. On the other hand, Haiti's 2022, and 2023, and Namibia's 2013 and 2015 happiness data are not included in the Reports. Finally, Eswatini only has data for 2022.

[221] 3 years rule is explained above.

[222] Egypt puts the word happiness in its Constitution for the first time in 2014, meaning that the happiness surveys conducted in the country as of 2017 can accurately represent the time spent under the happiness clause; see *Egypt Constitution of 2014 with Amendments through 2019*. Although Thailand had the word happiness in its 2007 Constitution, the country's 2014 Constitution did not include that word, and then with the 2017 Constitution, the concept was once again constitutionally introduced. Therefore, the country scores of 2013, 2020, 2021, 2022, and 2023 surveys can fully represent the time spent under the happiness clause; see *Thailand's Constitution of 2007*. Additionally, Zimbabwe puts the word happy in its Constitution for the first time in 2013, meaning that the happiness surveys conducted in the country as of 2016 can precisely represent the time spent under the happiness clause; see *Zimbabwe's Constitution of 2013*. See also Zimbabwe's Constitution of 1980, available at: https://tinyurl.com/Zimbabwe-Constitution-1980, (Last accessed: 30.08.2022). For more information about the Constitution of Zimbabwe, see https://tinyurl.com/Cons-Hist-Of-Zimbabwe, (Last accessed: 16.10.2022)

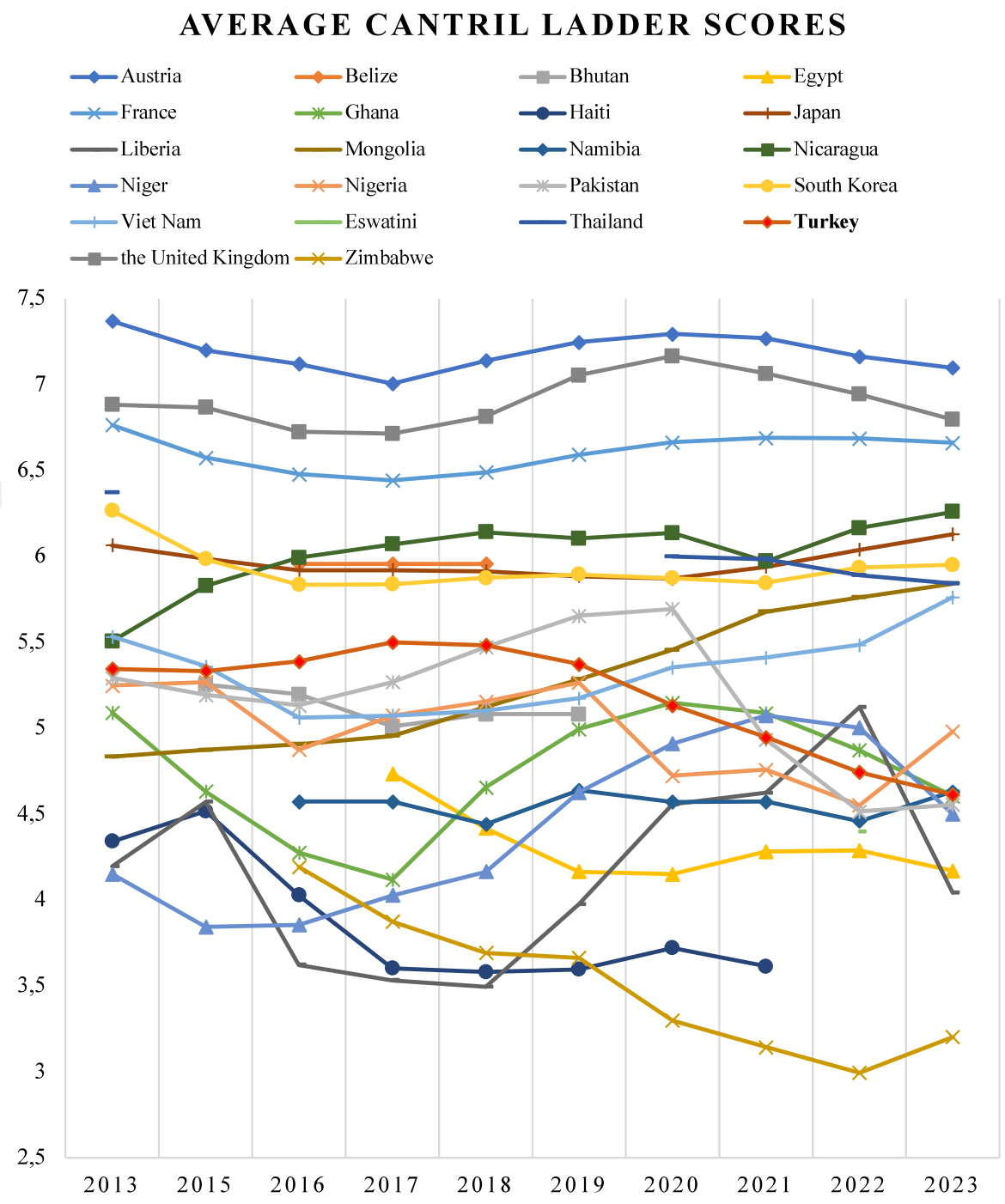


Figure 7: Average Cantril Ladder Scores between 2013 and 2023 in the Happy Constitution Countries[223]

[223] Data is collected from the UN WHRs published annually and calculated by the author of this thesis. (https://tinyurl.com/WHR-Reports, Last accessed: 20.03.2023).

According to Figure 7, Austria, the UK, and France, respectively, have maintained their 1st, 2nd, and 3rd ranks over the years, while significantly outperforming other happy constitution countries. On the other hand, Haiti, Liberia, Egypt, and Zimbabwe have performed relatively unsuccessfully, bearing in mind that Liberia's scores had been on an upward trend between 2018-2022. Moreover, Mongolia has managed to steadily improve happiness levels over the period, while the scores of Ghana and Pakistan have fluctuated drastically.

The average Cantril ladder scores of happy constitution countries are widely dispersed[224], as shown in Figure 7. This may indicate that while all of these countries, in one way or another, consider the concept of happiness important enough to include it in their constitutions, the difference in their happiness performances is quite observable when it comes to concrete data. Additionally, there is a strikingly big gap between the happiest and the unhappiest among these countries. Thus, the mere codification of the happiness clause in the constitution may not be adequate to reach the targeted goal, which is the happiness of citizens, if this clause is not supported by critical determinative factors such as the principle of the rule of law respecting human dignity and rights, and a well-functioning welfare state safeguarding social and economic rights and contributing to the social justice, which was already introduced above and will be expanded especially in *Chapter 3*.

[224] From 2,995 (Zimbabwe, 2022) to 7,369 (Austria, 2013). See https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023)

2. *Comparison of Average Cantril Ladder Scores between Happy Constitution Countries and the Rest of the World*

Figure 8 depicts the average happiness scores of happy constitution countries and the rest of the world between 2013 and 2023. For a country to be included in the 'rest of the world' category, it is not sufficient that there is no happiness clause in its constitution, but the happiness scores must be measured by the WHR for the corresponding year as well. In other words, the expression 'rest of the world' in this context refers to countries that do not have the happiness clause in their constitutions but are on the ranking list of the WHR. The number of countries with a happiness score in the WHRs' ranking varies depending on the year.[225]

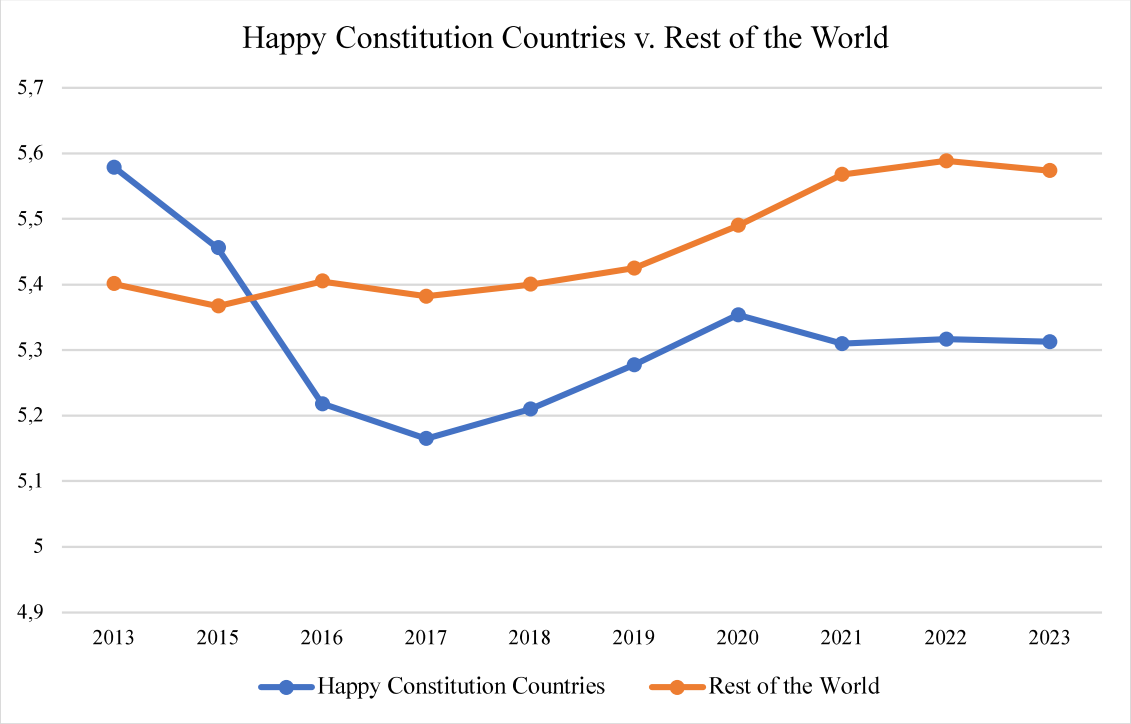


Figure 8: Average Cantril Ladder Scores of the Happy Constitution Countries and the Rest of the World[226]

[225] WHR 2013: 156 countries, WHR 2015: 158 countries, WHR 2016: 157 countries, WHR 2017: 155 countries, WHR 2018: 156 countries, WHR 2019: 156 countries, WHR 2020: 153 countries, WHR 2021: 149 countries, WHR 2022: 146 countries, WHR 2023: 137 countries.

[226] The chart was created by the author of this thesis based on data from the 2013-2023 WHRs. For all reports, see https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023)

Except for 2013 and 2015, the average level of happiness in the rest of the world is higher than in countries with a happiness clause. Now, *ceteris paribus*, one can claim that there may not be a direct association between the inclusion of the word happiness in the constitution and the real happiness of people. However, it should not be automatically concluded from these findings that the concept of happiness should be repealed from the constitutions. Nonetheless, it might be deduced that the concept of happiness may need to be supported by a perfectly functioning social state governed by the rule of law, as the scientific literature and the holdings of the TCC, which will be analyzed below, suggested.[227]

Therefore, as Figure 8 illustrates, the mere presence of the happiness clause in the constitution does not necessarily generate a higher level of happiness for each country; on the contrary, it may support the very opposite deduction on average except for 2013, and 2015. Going back to what Madison articulated in a nutshell: "*Good government* means two things; first, loyalty to the government's aim that is *the happiness of the people*; second, knowledge of the best ways for achieving that aim."[228]; thus, it may be self-evident—should one borrow from the Jeffersonian vocabulary—that aiming for happiness in the constitution might be a worthwhile endeavor in itself looking back at the developments in the history of constitutional law, but if the means to achieve it are neglected, the end may not go beyond fine rhetoric.

[227] See *Chapter 3*. Elements have been listed by the Court in its happiness jurisprudence. The formula and key elements of happiness underlined by the TCC may explain the level of happiness in certain countries to some extent.
[228] Murray, C.: In Pursuit: of Happiness and Good Government, Liberty Fund, Indianapolis, 2013, p. 1.

3. *Happiness Level of Countries with and without Happiness Clause in Their Constitutions: The Cases of Thailand, Egypt, and Zimbabwe*

Thailand, Egypt, and Zimbabwe can be suitable examples to check whether the happiness clause in the constitution, *ceteris paribus*, brings real happiness to a particular country, as all three countries have data on happiness scores before and after the happiness clause in their constitutions. Therefore, their happiness levels can be controlled and compared with and without the happiness clause in their constitutions.

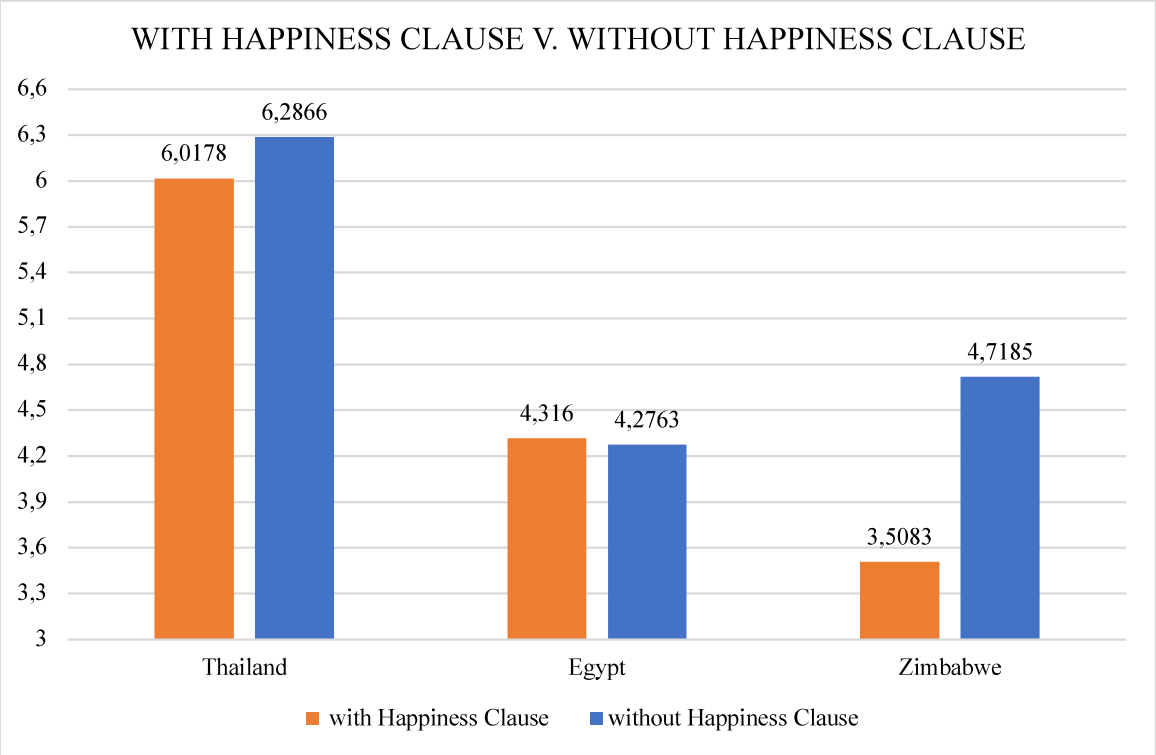


Figure 9: Average Cantril Ladder Scores of Egypt, Thailand, and Zimbabwe with and without the Happiness Clause in Their Constitutions[229][230]

[229] The chart was created by the author of this thesis based on data from the 2013-2023 WHRs. For all reports, see https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023). The constitutions on the 'constitute project' web page, https://tinyurl.com/Constitute-Project, are used to determine whether there is a happiness clause in the constitutions of these three countries. (Last accessed: 01.07.2023)

[230] The results of the WHRs for 2013 and 2015 for Zimbabwe; 2015, 2016, 2017, 2018, and 2019 for Thailand; and 2013, 2015, and 2016 for Egypt are included in the period without the happiness clause in their constitutions. As explained, while calculating the happiness score for a particular year in WHRs, the average of the previous 3 years' happiness scores is considered. In this context, while the average of the previous 3 years is taken, if some of these years correspond to a constitutional period with the happiness clause and some others correspond to a constitutional period without the happiness clause, that year is considered a constitutional period without the happiness clause.

Figure 9 illustrates that without the happiness clauses in the Constitution of Thailand and Zimbabwe, average happiness scores are measured higher than the time spent under the happiness clause. In other words, Thailand's average level of happiness in the 2014 Constitution period, when the happiness clause was not included, is higher than the 2007 and 2017 Constitutions periods, both of which contained the happiness clause; at the same time, Zimbabwe's average level of happiness in the 1980 Constitution period[231], when the happiness clause was not included, is higher than the 2013 Constitution period, where there is a happiness clause. Therefore, from the example of Thailand and Zimbabwe, it can be deduced that there may not be a relationship between the presence of the happiness clause in the constitution and the actual level of happiness in the country.

Egypt's situation, on the other hand, may lead one to a slightly different conclusion, if not the other way around, because the level of happiness in Egypt with the happiness clause in its constitution is slightly higher than the level of happiness without this clause in its constitution. In other words, the country's average level of happiness in the 2014 Constitution period, in which the happiness clause was included, is higher than in the 2012 Constitution period[232], in which the happiness clause was absent. Therefore, from the example of Egypt, it can be observed that there might be a slight relationship between the inclusion of the happiness clause in the constitution and the actual level of happiness in the country.

The above contradictory results may support the claim that a higher level of happiness is not necessarily guaranteed for every country just because there is a

[231] For Zimbabwe's 1980 Constitution, see https://tinyurl.com/Zimbabwe-Constitution-1980-2, (Last accessed: 30.08.2022)
[232] See also Egypt's 1971 Constitution, https://tinyurl.com/Egypt-Constitution-1971-ILO, (Last accessed: 30.08.2022)

happiness clause in the constitution; on the contrary, examples of Thailand and Zimbabwe support the very opposite conclusion. Hence, the end may matter only if one has the means to achieve it, beyond that it is just luck as in the root of **hap**piness.

CHAPTER 2

FUNCTIONS AND PLACES OF THE HAPPINESS CLAUSES IN CONSTITUTIONS

The happiness clause is a common phenomenon among various constitutions around the world as noted in the previous chapter. Within the scope of this study, it has been found that the words "happy" and/or "happiness" are expressed in the constitutions of 27 countries. In other words, 27 constitutional texts contain these words. They have been used 44 times in 43 different constitutional provisions and have been collected in various parts of constitutions with distinct functions. Hence, one may wonder in which places and with what functions the happiness clause can be sought in a particular constitution. These places and functions can be divided into six groups: happiness in the preambles (16 times), happiness as a general principle and duty of the state (14 times), happiness as a duty of executive power (4 times), happiness as a duty of legislative power (2 times), happiness as a fundamental right (3 times), "other" provisions on happiness in constitutions (4 times).

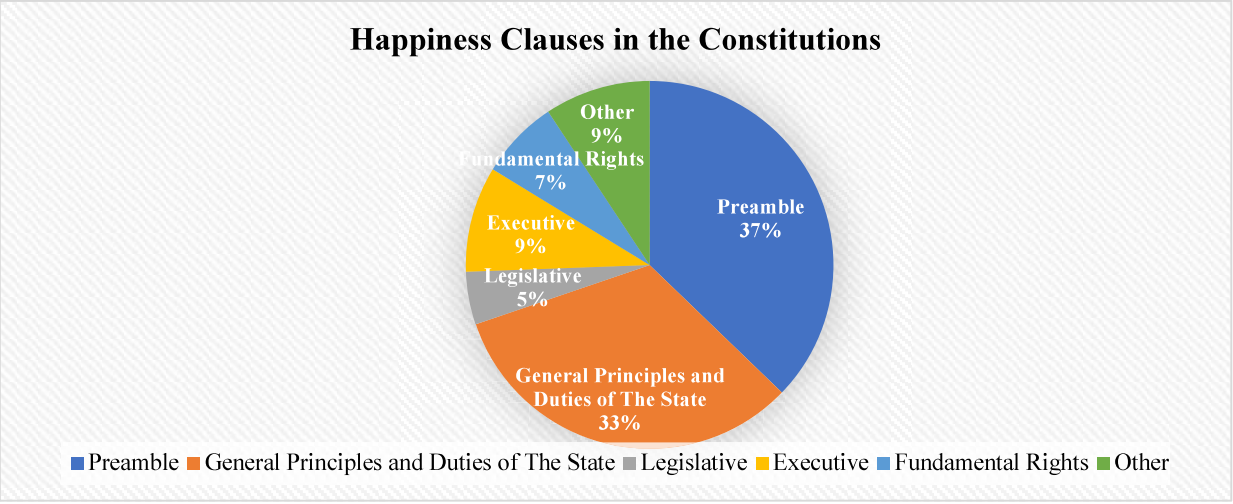


Figure 10: Functions and/or Places of the Happiness Clauses in the Constitutions

To this end, each group will be examined one by one consistent with the above classification.

I. Happiness in the Preambles

The preamble is a statement that introduces *a constitution*, law, *or other document* and explains its foundation and purpose.[233]In other words, it is an introductory section of a statute, constitution, *etc.*, which describes the reason for its creation and the aims it is meant to realize.[234]Preambles in constitutions articulate the philosophy behind the constitutions, the sociopolitical conditions of the period in which they are established, and the main principles and values on which they are grounded, by reflecting the will of those who create the constitution.[235]Namely, it is the part specifying the fundamental standpoint and doctrines on which the constitution is based.[236]Other features of these sections are that they are mostly authored in a literary style and do not contain applicable legal norms as a principle[237], while in some systems, the preamble can be regulated as an essential part of the constitution, in a way that is not different from a normative arrangement, in the content of the preamble itself

[233] Garner, p. 1294.
[234] Blackwell, p. 381.
[235] Sunay, Z. A.: Türk Anayasa Hukukunda Anayasa Başlangıç Kısımları, Ankara Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku (Anayasa Hukuku) Anabilim Dalı, Yüksek Lisans Tezi, Ankara 2006, p. 7, available at: https://tinyurl.com/Sunay-YLT-Ankara-Uni-2006, (Last accessed: 16.10.2022)
[236] Tanör, B., Yüzbaşıoğlu, N.: 1982 Anayasasına Göre Türk Anayasa Hukuku, 5. Baskı, İstanbul, 2004, p. 46. Here the authors make this evaluation while addressing the preambles in terms of the Turkish Constitutions of 1961 and 1982.
[237] Atar, Y., Çelik, Ö.: Türk Anayasa Hukuku, Editör: Yavuz Atar, Eskişehir, Eylül 2018, p. 27, available at: https://tinyurl.com/Atar-Celik-Book, (Last accessed: 16.10.2022). For the viewpoint regarding preambles as *legally binding constitutional clauses*, see Orgad, L.: *The preamble in constitutional interpretation* (Oct. 3, 2010), International Journal of Constitutional Law (**I-CON**), Vol. 8, No. 4, 2011, pp. 714-738, available at: https://tinyurl.com/Orgad-Article, (Last accessed: 16.10.2022)

or through a provision created in the constitution.[238]The preamble of a constitution, which is generally written in literary language as an ideological manifesto, carries the pride of the past and the hope for the future.[239]According to Orgad, one of the functions of the preamble is to be explanatory, which may help specify the eternal ideals of the constitution.[240]The same author argues that preambles generally outline a society's essential objectives, which are likely to be non-concrete ideas like *well-being* or *happiness*.[241]

Due to the explained nature of the preamble of the constitution, if the concept of happiness finds its place in the preamble, it may be used more as an ideal of constituent power in a relatively vague context rather than as a concretely defined legal term, although some exceptions may be identified, in terms of the legal value of these introductory parts of the constitutions. To clarify this point, each example should be analyzed separately.[242]

The words "happy" and/or "happiness" have been placed in the preamble of 16 different constitutions. These are Antigua and Barbuda's Constitution of 1981, Belize's Constitution of 1981, Bhutan's Constitution of 2008, Egypt's Constitution of

[238] Göl, M.: Anayasaların Başlangıç Kısımlarının Hukuki Değeri, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, Yüksek Lisans Tezi, İstanbul, 2015, pp. 92-93, available at: https://tinyurl.com/Gol-YLT-Istanbul-Uni-2015, (Last accessed: 16.10.2022)

[239] Gönenç, L.: *Siyasi İktidar Kavramı Bağlamında Anayasa Çalışmaları İçin Bir Kavramsal Çerçeve Önerisi*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, C. 56, S. 1, 2007, Sayfa (**s.**) 150, available at: https://tinyurl.com/Gonenc-Article, (Last accessed: 16.10.2022)

[240] p. 722. For more information on the preambles of constitutions, see Uran, P.: *Anayasaların Başlangıç Kısımları*, İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (**İÜHFM**) 2015, C. LXXIII, S.1, ss. 223-248, available at: https://tinyurl.com/Uran-Article, (Last accessed: 16.10.2022); see also Korkut, L.: *Başlangıç Kısımlarının Hukuki Etkisi, Temel Nitelikleri ve 1982 Anayasası: Karşılaştırmalı Bir Analiz*, İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi, C. 4, S. 2, 2017, pp. 43-82, available at: https://tinyurl.com/Korkut-Article, (Last accessed: 16.10.2022)

[241] p. 717.

[242] The Preamble of Turkey's Constitution of 1982 is not covered in this Chapter as it is analyzed in more detail and separately under "*Happiness in Turkish Constitutions*".

2014, France's Constitution of 1958[243], Haiti's Constitution of 1987, Namibia's Constitution of 1990, Nicaragua's Constitution of 1987, Pakistan's Constitution of 1973, Republic of Korea's Constitution of 1948, Seychelles' Constitution of 1993, Viet Nam's Constitution of 1992, Eswatini's Constitution of 2005, Thailand's Constitution of 2017, Turkey's Constitution of 1982, and Tuvalu's Constitution of 1986.

The closest concepts to happiness in these preambles are prosperity[244]; unity and well-being[245]; peace[246]and progress[247]; security and liberty[248]; independence and freedom[249]; order, good government, and welfare[250]; and dignity[251]. Hence, the constitutional concept of happiness may have some degree of similarity with these concepts, in accordance with the rules governing the syntactic and grammatical interpretation.[252]

According to the Preamble of Antigua and Barbuda's Constitution of 1981[253], a democratic social order is envisaged as the best way for individuals to reach and pursue the ideal of happiness. The concept of happiness is included here as the *supreme goal*[254]that can be achieved through a democratic society. In other words, the supreme

[243] In the Preamble of the French Constitution, the Declaration of Human and Civic Rights of 26 Aug. 1789 was referred to, and the expression "happiness" was used in this Declaration. For more detailed information on this issue, see the discussion under "constitutional block" of the Constitutional Council, https://tinyurl.com/Constitutional-Council, (Last accessed: 05.07.2022). See also https://tinyurl.com/Cons-Coun-No-71-44-DC, (Last accessed: 16.10.2022)
[244] See the Constitutions of Antigua and Barbuda, the Republic of Korea, and Thailand.
[245] See the Constitution of Bhutan.
[246] See the Constitutions of the Republic of Korea and Eswatini.
[247] See the Constitution of Pakistan.
[248] See the Constitution of the Republic of Korea.
[249] See the Constitution of Viet Nam.
[250] See the Constitutions of Eswatini and Tuvalu.
[251] See the Constitution of Thailand.
[252] For the interchangeable use of happiness and well-being, see below. E.g., compare the original version of the 2nd para. of the Preamble of the current Turkish Constitution with the translated version.
[253] See para. c in the Preamble.
[254] For the term, see Orgad's classification of the content of preambles, pp. 716-718.

goal of happiness is sought through a *universal objective*[255], which is a democratic society in this case.

In the Preamble of Belize's Constitution of 1981[256][257], happiness is recognized as a right with a vastly akin phrasing as in the American Declaration of Independence, although more rights are enumerated here than in the historical text. In Belize, therefore, the Preamble is used to constitutionalize the right to the pursuit of happiness, and in this way, it turns out to become an independently substantive source of rights.[258]In 2 accessed judgments before the Supreme Court of Belize, claimants refer to the Preamble of the Constitution, which enshrines the right to the pursuit of happiness.[259]Especially in one judgment, the counsel of the claimants "Call the Court's attention to the respect given to *the fundamental rights and freedoms* embodied in *the Preamble*", in particular to the subsection of the Preamble where the right to the pursuit of happiness is articulated.[260]

The Preamble of Bhutan's Constitution of 2008 underlines also happiness.[261]Although the Constitution of Bhutan has not made a statement as to whether the Preamble is included in the Constitution in the Preamble itself or any other constitutional provision[262], it should still be noted that the word happiness is used here

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[255] For the choice of wording, see Orgad, p. 717.
[256] Although happiness is regarded as a right here, it is nonetheless categorized under the preamble group since this right is acknowledged there. The 'vagueness claim' about the preamble that was previously discussed is barely relevant in this instance due to the explained nature of the provision.
[257] See para. e in the Preamble.
[258] Orgad, p. 715.
[259] The Supreme Court of Belize, Anno Domini (**A.D.**) 2012, "*The British Caribbean Bank Limited v. The Attorney General of Belize Claim No. 597 of 2011*", p. 34, available at: https://tinyurl.com/Belize-AD-2012-No-597-2011, (Last accessed: 17.10.2022); The Supreme Court of Belize, A.D. 2020, "*Shantel Berry v. Attorney General of Belize Claim No. 493 of 2019*", p. 8, available at: https://tinyurl.com/Belize-AD-2020-No-493-2019, (Last accessed: 17.10.2022)
[260] The Supreme Court of Belize, A.D. 2020, "*Shantel Berry v. Attorney General of Belize Claim No. 493 of 2019*", p. 8, available at: https://tinyurl.com/Belize-AD-2020-No-493-2019, (Last accessed: 17.10.2022)
[261] See the 2nd para. of the Preamble.
[262] Göl, p. 104.

rather expressing an abstract idea.[263]Therefore, instead of attributing a legal value to happiness in this context, it may be more realistic to underline its literary and idealistic nature. As a country, which introduced the 'GNH'[264], it should not be a coincidence to underline the importance of happiness in the Preamble of its first-ever drafted Constitution of 2008 as an ideal.[265]

The Preamble of Egypt's Constitution of 2014 mentions happiness as well.[266]According to Art. 227 of the same constitution, the constitution, including the *Preamble* and its *texts*, is a *well-knit fabric* that cannot be divided, and its provisions form a *coherent unit*. Hence, in the example of Egypt, the Preamble, like other provisions of the constitution, is transformed into a positive rule of law with a legal value[267], which can make it legally binding like other articles in the constitution and pave the way for the application of the judiciary as a standard norm in their judgments.[268]

However, when focused on the systematic of the Preamble of Egypt's Constitution and the place of happiness within (here are listed the prominent names of Egypt that lived in the past[269]), it fits the ceremonial-symbolic type in terms of the classification of preambles' legal functions, which aims at consolidating *national identity but lacks binding legal* power.[270]If the literal analysis of the section where the expression happiness is articulated can be made, it may be grasped that it is rather

[263] For the classification, see Orgad, p. 717.
[264] https://tinyurl.com/OPHI-Bhutan-GNH-Index-2, (Last accessed: 07.07.2023)
[265] For an expression 'the first-ever drafted constitution', see Ansari, M.: *Distress Migration and Individual Happiness in Bhutan*, p. 69, in Schmidt, J. D. (Ed.): Development Challenges in Bhutan: Perspectives on Inequality and Gross National Happiness, Switzerland, 2017.
[266] See para. 10 of the Preamble.
[267] Göl, p. 98
[268] Göl, p. 95. For the Preamble of the Egypt Constitution as a binding document like other provisions in the Constitution, see also Korkut, p. 55.
[269] Göl, p. 26.
[270] For the classification of preambles' legal functions, see Orgad, p. 715.

employed as a *political* tool for consolidating the *national identity* and acts as *a national* "*calling card*"[271], which may decrease the binding legal force of expression 'happiness'.

The Declaration of Human and Civic Rights of 26 Aug. 1789, referred to in the Preamble of France's Constitution of 1958, highlights the concept of happiness.[272]The most interesting example in terms of formulating the preambles, according to Korkut, is the French Constitution of 1958[273], because it refers to "…*the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946*…". The French Constitutional Council, in a decision of 16th July 1971, concluded that the Preamble is a legally enforceable independent source on human rights.[274]With this decision, the unimportant *1958 Preamble* was transformed into *Russian dolls* by *the Constitutional Council,* uncovering nearly unlimited *constitutional resources*[275], and in many subsequent cases, the principles contained in the Preamble have been the main justification for annulment decisions.[276]

Without ignoring this approach of the French Constitutional Court, arguments of Malberg and Esmein which arose after the approval of the 1958 Constitution regarding what position the Preamble and its contents would have in the system of

[271] Orgad, p. 722. In this context, the meaning of the calling card is "*something that describes or shows a person's typical qualities*", https://tinyurl.com/Cambridge-Dic-Calling-Card, (Last accessed: 18.10.2022)
[272] See the 1st para. of the Preamble of France's Constitution of 1958. See also the 1st para. of the Preamble of the Declaration of Human and Civic Rights of 26 Aug. 1789.
[273] p. 55.
[274] Korkut, pp. 55-56.
[275] Granger, M.P.: *The preamble(s) of the French Constitution: Content, Status, Uses and Amendment*, Acta Juridica Hungarica, Vol. 52, No. 1, 2011, p. 4, available at: https://tinyurl.com/Granger-Article, (Last accessed: 18.10.2022)
[276] Korkut, p. 56.

legal sources should be reminded.[277]They claimed that the Declaration was only an *ideological* and *cultural manifesto* of a *philosophical* kind, lacking any substantial legal significance, unlike the constitution, which could not have any *binding legal effects* on the law-maker.[278]In other words, rights enumerated in the documents to which the Preamble refers are framed too vaguely to be attributable, and should thus be regarded as *philosophical principles* rather than *legal rules*.[279]

Therefore, an approach similar to the one adopted regarding the Egyptian Constitution above may be accepted here as well, since it is stated that although the Constitution of Egypt attributes legal value to the Preamble, the expression of happiness in this section has more of a symbolic value, according to Orgad's classification and semantical analysis of the text. Based on this approach, it can be claimed in a very similar way that even though the Declaration of 1789, which is referred to by the France Constitution of 1958, is recognized as a legally binding text by the French Constitutional Council, it could be much more realistic to ascribe a symbolic and literary value to the expression of happiness, bearing in mind that this expression is only used in the Preamble of the Declaration of 1789, and thus attributing a legal value to the concept in such an implicit way could be an exaggeration.

The Preamble of Haiti's Constitution of 1987 remarks the same concept.[280]The similarity established for the Constitution of Belize with the American Declaration of Independence is also valid here for the Haitian Constitution. In Haiti, thus, the

[277] Frosini, J.O.: *Constitutional Preambles at a Crossroads between Politics and Law*, p. 65, 2012, available at: https://tinyurl.com/Frosini-Book, (Last accessed: 18.10.2022)
[278] Frosini, p. 65. For the contrary arguments of Duguit and Hauriou, see also Frosini, pp. 65-66.
[279] Frosini, p. 66.
[280] See the 1st para. of the Preamble.

Preamble is also used to constitutionalize the right to the pursuit of happiness, and in this manner, it turns out to become an independently substantive source of rights.[281]

The right to happiness derives from the Preamble of the Namibian Constitution[282], as in the Constitutions of Belize and Haiti, hence this right is constitutionalized and turned to an independently substantive source of right by the Preamble itself.[283]Thus, Namibia's Supreme Law, which is the constitution of the nation, gives recognition of the inherent dignity and of the equal and inalienable rights of all, including the right of the individual to life, liberty, and the pursuit of happiness.[284]

When mentioning the legality of contracts and freedom of contract, the Supreme Court of Namibia states that "It is essential for *natural persons* to be able to organize their own affairs, *pursue happiness*, and fulfill their maximum potential as *human beings*".[285]The same Court refers to the Preamble when underlining the purpose of the principle of democracy, and according to the Court, "Its purpose is to effectually uphold and safeguard the basic *complementary values of human dignity*, *equality*, *freedom*, *justice and peace and the right to life*, *liberty and the pursuit of happiness in a democratic society*…"[286]

The Electoral Court (**EC**) of Namibia also refers to the part of the Preamble where the right to the pursuit of happiness is expressed: "The *inherent dignity* and

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[281] Orgad, p. 715.
[282] See the 2nd para. of the Preamble of 1990 Namibia's Constitution, available at: https://tinyurl.com/Namibia-Constitution-1990, (Last accessed: 04.04.2023)
[283] Orgad, p. 715.
[284] https://tinyurl.com/Namibia-Superior-Courts, (Last accessed: 18.10.2022)
[285] The Supreme Court of Namibia, *Africa Personnel Services (PTY) LTD v. Government of the Republic of Namibia*, Case No. SA 51/2008, Heard on: 03.03.2009, Delivered on: 14.12.2009, p. 33, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)
[286] The Supreme Court of Namibia, *Rally for Democracy and Progress v. Electoral Commission of Namibia*, Case No. SA 12/2011, Heard on: 3-5 Oct. 2011, Delivered on: 25 Oct. 2012, p. 3, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 04.04.2023)

equal and *inalienable rights* of every member of the human family, including *the right of the individual to life*, *liberty* and *the pursuit of happiness*, were recognized by the founders of our Republic as being crucial for *freedom*, *justice*, and *peace*."[287]

Additionally, in the High Court of Namibia Main Division, the right of pursuit of happiness in the Preamble is applied when scrutinizing "*one's right not to be discriminated against on the basis of one's sexual orientation*"[288], "*protection of human dignity*"[289], "*constitutional values*"[290], while parties to the disputes from time to time underline "*right to liberty and pursuit of happiness*"[291], "*pursuit of economic emancipation/advancement/interest and happiness*"[292], "*pursuit of economic/financial advancement*, *happiness*, *and dignity, in violation of…constitutional right*"[293]. Moreover, the High Court refers to the relevant paragraph of the Preamble, which includes the right to the pursuit of happiness in one of its judgments, and afterward holds that "The Preamble of the constitution provides a *declaration of intent* regarding the *fundamental human rights* enshrined in our constitution. Hence, when interpreting the provisions of the constitution, the courts must observe the constitution *as a whole*;

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[287] The EC of Namibia, Windhoek, *Tjirare v The Chairperson of the Electoral Commission of Namibia* (EC 2/2020) [2020] High Court of Namibia, Main Division (**NAHCMD**) 283 (13 July 2020), §61, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[288] High Court of Namibia Main Division, Windhoek, *Digashu v Government of the Republic of Namibia (HC-MD-CIV-MOT-REV-2017/00447) and Seiler-Lilles v Government of the Republic of Namibia (HC-MD-CIV-MOT-GEN-2018/00427) [2022] NAHCMD 11 (20 January 2022)*, §126, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[289] High Court of Namibia Main Division, Windhoek, *Geingos v Hishoono* (HC-MD-CIV-ACT-OTH-2021/00538 [2021] NAHCMD 48 (11 February 2022), §44, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[290] High Court of Namibia Main Division, Windhoek, *Lühl v Minister of Home Affairs and Immigration* (HC-MD-CIV-MOT-GEN-2021/00094 [2021] HAHCMD 168 (19 Apr. 2021), §23, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[291] High Court of Namibia Main Division, Windhoek, *EK v EK* (I 3455/2015) [2018] NAHCMD 200 (3 July 2018), §17, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[292] High Court of Namibia Main Division, Windhoek, *Teek v The Minister of Fisheries and Marine Resources (I 2112/2010) [2017] NAHCMD 89 (17 Mar. 2017)*, §3, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

[293] High Court of Namibia Main Division, Windhoek, *Teek v The Minister of Safety and Security & 7 Others* (HC-MD-CIV-ACT-DEL-2019/01427) [2021] NAHCMD 348 (30 July 2021), §9, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 18.10.2022)

that is to say, the court ought to implement a *holistic* method to *constitutional interpretation* to guarantee that *fundamental rights* are enhanced rather than restricted."[294]

The Preamble of Nicaragua's Constitution of 1987 indicates happiness too.[295]Giuseppe de Vergottini describes the Constitution of Nicaragua's Preamble as an ideologically impregnated preamble.[296]From Frosini's point of view, this Preamble is ideologically divisive, "…*the Preamble has a decidedly anti-interventionist and anti-imperialist tone*…"[297]Former President of the National Assembly and member of the *Partido Liberal Constitucionalista* asserts that it is not conceivable to transform an *authoritarian constitution* into a *democratic one*; since it was written during a *revolution*, even *the Preamble* is *partisan*.[298]Hence, it seems extremely complex to attribute a legal value to the Preamble of the Nicaraguan Constitution. If the expression happiness is analyzed semantically under these circumstances, therefore, it apparently cannot go beyond carrying a symbolic value.

1973 Pakistan Constitution's Preamble expresses happiness.[299]According to Göl, although the Constitution of Pakistan's Preamble includes literary expressions in some paragraphs, as in symbolic examples, overall it can still be seen that the Preamble is written in a normative way.[300]The same author further points out that the relevant articles of the Constitution are referred to as standard norms in the constitutionality

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[294] High Court of Namibia Main Division, Windhoek, Appeal Judgment, *S v Venaani* (CA 38/2015) [2017] NAHCMD 114 (18 Apr. 2017), §23, available at: https://tinyurl.com/Namibia-Sup-Co-PoH, (Last accessed: 19.10.2022)
[295] See para. 13 of the Preamble.
[296] Frosini, p. 15.
[297] p. 131. For more detailed information about Nicaragua's Preamble, see *'The Ideologically Divisive Preamble of Nicaragua'*, as in Frosini.
[298] Frosini, p. 132.
[299] See para. 12 of the Preamble, available at: https://tinyurl.com/Pakistan-Cons, (Last accessed: 04.04.2023)
[300] pp. 163-164.

scrutiny of the Supreme Court of Pakistan, and other than 1 decision of the Court, the Preamble is not taken as a reference.[301]In the opinion of the author of this thesis, the part in the Preamble where the expression happiness is used corresponds to the part including literary expressions in Göl's evaluation. Furthermore, since the Supreme Court of Pakistan does not refer to the Preamble apart from 1 decision, it is extremely difficult to attach a legal meaning to the word happiness. Thus, happiness is used here as an abstract supreme goal.[302]

The preamble of the Republic of Korea's Constitution of 1948 asserts also happiness.[303]According to Korkut, the Preamble of the Korean Constitution is a part written in a literary language, consisting of fanciful sentences that express the national sentiment toward the adoption of the constitution.[304]Furthermore, the South Korean Constitution can be given as an example of a constitution that does not make a statement in the Preamble itself or in any other constitutional provision about whether the Preamble is included in the Constitution.[305]

Additionally, aside from giving legal meaning to the happiness expressed in the Preamble of the Constitution, even the right to pursue happiness provision that is explicitly stated in Art. 10 of the Constitution is a mere declaratory provision without any content, rather than a provision from which any significant right with truly coercive force may be drawn.[306]If the text is examined semantically with all these viewpoints in mind, it may not be easy to attribute a legal meaning to the expression

[301] p. 169.
[302] Orgad, p. 717.
[303] See para. 5 of the Preamble.
[304] p. 69.
[305] Göl, p. 104.
[306] Lim (Pursuit), p. 74.

happiness in the Preamble. Therefore, the existence of happiness here contributes to the text more rhetorically rather than legally.

The right of individuals to pursue happiness in Seychelles originated from the Constitution of Seychelles[307], as in the Constitutions of Belize, Haiti, and Namibia, so this right is constitutionalized and transformed into an independently substantive source of right by the Preamble itself.[308]Therefore, the explanations made above for other countries remain valid here as well.

The Preamble of Viet Nam's Constitution of 1992 highlights happiness.[309]The Constitution of Vietnam's Preamble explicitly sets a socialist agenda[310]and makes a historical reference to Ho Chi Minh.[311]According to Göl, in the 2nd para. of the Preamble, where the word happiness is mentioned, the leader and ideology are emphasized similar to China and Cuba, which are the representatives of the socialist system, and the revolution led by the Communist Party under the leadership of Ho Chi Minh, the independence, and the main factors of their success are stated nearby the importance of victories to realize socialism.[312]Therefore, the Preamble of the 1992 Vietnamese Constitution is a typical example of a symbolic preamble with content including ideological and symbolic concepts, emphasizing the political and social struggles of Vietnam from the past to the present, the prominent leader, and ideology.[313]

[307] See para. 8 of the Preamble of 1993 Seychelles' Constitution.
[308] Orgad, p. 715.
[309] See the 2nd para. of the Preamble.
[310] Orgad, p. 717.
[311] Frosini, p. 39.
[312] p. 156.
[313] Göl, p. 157.

The Constitution of Eswatini's[314]Preamble outlines a nation's fundamental goal of progressing under the constitution ensuring the happiness of the people, among other matters.[315]Symbolic and rhetorical expressions are preferred here rather than terms with substantial meanings. Therefore, happiness wording represents an abstract idea here rather than a concept with a legal definition.[316]

The Preamble of Thailand's Constitution of 2017 holds happiness as well.[317]Plato advocated the idea that preambles ought to convince citizens to obey important laws by speaking to their hearts and minds through both reason and poetry.[318]"*Platonic preambles* depend on the *arts of poetry*, *metaphor*, *symbols*, and *evocative narratives* along with *reason* to convince the citizen to *obey the law*."[319]The use of the word happiness here and the overall existence of this section in the Preamble is semantically reminiscent of this Platonic approach. Therefore, it has more poetic and symbolic meaning than a substantial legal value.

As a final example, in the Preamble of Tuvalu's Constitution of 1986, the concept of happiness is written.[320]This Preamble, along with its literary and philosophical language, is codified like a constitutional text, and it is referred to in numerous provisions of the Constitution.[321]According to Art. 1 of the Constitution, "*Tuvalu* is a *sovereign democratic state*, that is governed pursuant to this *constitution*,

[314] The former name of the country is Swaziland. For more information, see Masson, J. R.: "*Eswatini.*" Encyclopedia Britannica, July 19, 2021, available at: https://tinyurl.com/Britannica-Eswatini, (Last accessed: 05.07.2022). See also Swaziland King renames country 'the Kingdom of Eswatini', https://tinyurl.com/BBC-News-Swaziland-Eswatini, (Last accessed: 16.10.2022)
[315] See para. 8 of the Preamble of 2005 Eswatini's Constitution.
[316] For an abstract idea and happiness, see Orgad, p. 717.
[317] See the last para. of the Preamble.
[318] Roach, K.: *The Uses and Audiences of Preambles in Legislation*, McGill Law Journal, Vol. 47, No. 1, 2001, p. 129, available at: https://tinyurl.com/Kent-Roach-Article, (Last accessed: 20.10.2022)
[319] Roach, p. 140.
[320] See the 2nd and 3rd para.s of the Principles of the Constitution written in the Preamble, available at: https://tinyurl.com/Tuvalu-Cons-ILO, (Last accessed: 04.04.2023)
[321] Göl, p. 95.

and particularly the *principles* expressed in the *Preamble*.", and Art. 4/2 of the same constitution explicitly states that "This constitution must always be *interpreted* and *applied* in a manner *consistent* with the *principles* specified in the *Preamble*."[322], lastly Art. 13 of the Constitution clarifies that "The *principles* written *in the Preamble are adopted as part of the basic law of Tuvalu from which human rights* and *freedoms* originate and *on which they are founded*."

When the word happy is first mentioned in the Preamble, it is used as '*the right of the people of Tuvalu to a happy life*'. If Art. 13 is interpreted with Art.s 1 and 4, it can be concluded that the right to a happy life derives from the Preamble. Therefore, this part of the Preamble gives rise to a right as in the Constitutions of Belize, Haiti, Namibia, and Seychelles; thus, this right is constitutionalized and turned into an independently substantive source of right by the Preamble.[323]On the other hand, a semantic analysis of the Preamble section in which the term 'happiness' is used can reveal that it actually belongs to a section of the Preamble that uses language that is more literary and philosophical. In other words, this part has a symbolic value, according to Orgad's classification. Consequently, the concept of happiness in the example of Tuvalu is partially used with a substantial meaning, and partially with a symbolic meaning.

To summarize, happiness is deemed as a right in the Preambles of Belize's, Haiti's, Namibia's, Seychelles', and partly Tuvalu's Constitutions, and is included among the rights to life and liberty in these first four countries, as in the Declaration of Independence. However, since it is mentioned in the preambles of these

[322] The title of the article is *'Interpretation of the Constitution'*
[323] Orgad, p. 715.

constitutions, it is not classified as a fundamental right but is categorized under "*Happiness in the Preambles*". In all other constitutions, on the other hand, happiness is often set as an ideal to attain or used in a rhetorical sense, which fits perfectly with the symbolic natures of constitutional preambles. Therefore, while the concept of happiness has a symbolic value in some preambles, it has a substantial and legal value in others.

II. Happiness as General Principle and Duty of the State

Before unveiling the constitutional provisions that assign happiness to the state as a duty and/or as a general principle that directs the state, it is indispensable to explain the nature of general principles or in other words, the directive principles in constitutional law.[324]This heading adopts a functional approach to the general principle and duty of the state, which means it is not necessary to be designated or entitled explicitly by a constitution as a general principle and duty of the state for a provision to be classified here; in fact, Weis refers them as directive principles.[325]If the titles of the provisions related to happiness clauses or the chapters in which these provisions are included in the constitutions are examined, it can be grasped that the title of general principle and duty of the state under this heading is a generic name and can be formulated differently, e.g., 'principles of state policy', 'directive principles of state

[324] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.
[325] Weis, L.K.: *Constitutional Directive Principles*, Oxford Journal of Legal Studies (Forthcoming), p. 5, available at: https://tinyurl.com/Weis-Article, (Last accessed: 21.10.2022). For the article to be accessed, see also Oxford Journal of Legal Studies, Vol. 37, Iss. 4, Winter 2017, pp. 916-945, available at: https://tinyurl.com/Weis-Oxford-Article, (Last accessed: 21.10.2022)

policy', 'general provisions', or 'national objectives', *etc.*[326]Therefore, Weis' definition of directive principles can be applied to the above title as well. In other words, both concepts may be used interchangeably.

"Unique kinds of *social value provisions* known as *directive principles* are the phenomena that are observed in a growing number of constitutions, even if they are not all the time explicitly referred to as such. These principles have 2 key qualities: the first one is that directive principles are *obligatory*, which means they assign binding constitutional duties to the state to foster certain *social values*; the second one is that directive principles are not intended to be directly enforced by the judiciary because of their *contrajudicative* nature. For the first feature, it can be argued that directive principles are typically *aspirational* and can generally be cataloged *as a set of* '*fundamental*' *or* '*founding*' *values*. In addition to that, they establish state obligations in terms of fundamental values, and comprise *imperatives* like '*the state shall*' or '*the state must*'. Regarding the second feature, the substance of these obligations is characteristically *nonjusticiable* or otherwise judicially unenforceable, e.g., Art. 37 of India's Constitution of 1949, and they need to be put into effect through *non-judicial* ways."[327]

As articulated by Art. 45 of the 1937 Irish Constitution, which can be the origin of these principles as a technique of drafting social values[328], directive principles assign tasks only to the legislative in the creation of laws, not to the judicial branch or

[326] For more detailed information on this topic, see the article title references in the relevant footnotes below.
[327] Weis, pp. 5-7. For the inaccuracy of nonjusticiability and unenforceability claims, see also Weis' article.
[328] Weis, p. 10.

even to *the executive*.[329]While the contrajudicative quality of directive principles is explained, it is underlined that they need to be implemented *by non-judicial means*; this is mostly, even though not solely, *directed* ***legislation***.[330]These state obligation-creating provisions are not coupled with the *conferral of a substantive right* or do not mention a right-holder, and they are not classified in the same catalog as provisions that grant *directly enforceable rights*.[331]

For example, the Supreme Court of India understood the Directive Principles as reflecting crucial governmental "goals", and fundamental rights as placing restrictions upon the means that the government could employ to realize those goals.[332]This indicates a familiar distinction in Dworkin.[333]Dworkin expresses that "*A political right is an individuated political aim*" while, "*A goal is a nonindividuated political aim,* meaning that it does not specify any specific *opportunity*, *resource*, or liberty for any specific person."[334]While goals are specific end-states in the distribution of resources, a right is something, which the government is not allowed to infringe on in the pursuit of its selected goals.[335]

The directive principles in Indian Constitution identify and in large part concretize the goals and aspirations of the constitution-makers, as do fundamental

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[329] Gebeye, B.A.: The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights: A Comparative Study of Ethiopia and India, Central European University *Magister Legum* (***LL.M.***) Thesis, 2015, p. 17, available at: https://tinyurl.com/Gebeye-LLM-Thesis-2015, (Last accessed: 04.04.2023)
[330] Weis, p. 7.
[331] Weis, pp. 8-9.
[332] Bhatia, G.: *The Directive Principles of State Policy: Theory and Practise*, (Mar. 18, 2014), Oxford Handbook for the Indian Constitution, Oxford University Press, 2015, Forthcoming, pp. 2-3, available at: https://tinyurl.com/Bhatia-Article, (Last accessed: 21.10.2022)
[333] Bhatia, p. 3.
[334] Dworkin, R.: Taking Rights Seriously, Bloomsbury, 2013, p. 136. For a more detailed distinction between rights and goals, see the "*Rights and goals*" title in the same book.
[335] Dworkin, R: Taking Rights Seriously, as cited in Bhatia, p. 3.

rights.[336]Therefore, they can be taken in the Indian example as one massive footnote to the Preamble since both the Preamble and directives share many distinctive features such as reflecting high ideals of a liberal democratic polity, being able to be used by all agencies of the state as guidelines to act as major goals of policy, or being able to be used by courts for rhetorical judicial reasoning; however, "Neither gives *powers* or *legislative competence*; neither can in itself generate *a cause of action* for which a *court of law* can grant a *remedy*."[337]Therefore, the Indian example and doctrinal discussions above may be used to justify the claim that directive principles can be distinguished from rights provisions with their contrajudicative character, at least on the conventional understanding.[338][339]

To sum up, directive principles seemingly inject "*an element of political constitutionalism within the domain of legal constitutionalism*."[340]An argument that

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[336] Baxi, U.: *Directive Principles and Sociology of Indian Law- A Reply to Dr. Jagat Narain"*, Journal of the Indian Law Institute, Vol. 11, No. 3, 1969, p. 257, available at: https://tinyurl.com/Baxi-Article, (Last accessed: 22.10.2022)

[337] Baxi, p. 257.

[338] p. 9.

[339] *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* incorporates some of the directive principles into the *basic structure doctrine*. (Yılmaz, Z.: "Personal Communication", 13.11.2022, Microsoft Word comment). See the judgment, 1980 AIR 1789, 1980 SCC (3) 625, 1981 SCR (1) 206, § 255, and § 256, available at: https://tinyurl.com/Minerva-Supreme-Court-India, Last accessed: 03.01.2023). According to Kenny and Musgrove McCann, "In recent times the *directive principles of social or state policy* have received more attention. The first effort in this constitutional method was made in *Ireland*. **Some former *British colonies* adopted *this constitutional innovation*. India is the most noteworthy case**." (Kenny, D., Musgrove McCann, L.: *Directive Principles, Political Constitutionalism, and Constitutional Culture: The Case of Ireland's failed Directive Principles of Social Policy*, European Constitutional Law Review, Vol. 18, Iss. 2, Jun. 2022, pp. 207-208, available at: https://tinyurl.com/Kenny-McCann-Article, Last accessed: 03.01.2023). For *constitutional directives* adopted eagerly by *postcolonial constitutions of the New Commonwealth* such as ***India*** not only because the colonial administration denied *human rights* and *democracy*, but also because it denied significant *income* and *wealth* disparities, as well as *basic social* and *material* wants, see also Khaitan, T.: *Constitutional Directives: Morally-Committed Political Constitutionalism*, Forthcoming: Modern Law Review, Vol. 82, No. 4, 2019, p. 3, available at: https://tinyurl.com/Khaitan-Article, (Last accessed: 03.01.2022). For critiques of the *Minerva* case that *the Supreme Court of India does not have jurisdiction* to *rule on the constitutionality of constitutional amendments*, see also Gözler, K.: Judicial Review of Constitutional Amendments: A Comparative Study, Bursa, Ekin Press, 2008, pp. 8-9, available at: https://tinyurl.com/Gozler-Book, Last accessed: 03.01.2022)

[340] Weis, pp. 2-3.

can support this view in Turkish legal doctrine is that the *fundamental aims and duties of the state*, located in Art. 5 of the Constitution are evaluated as an ideological reflection of the primary constituent power.[341]

Considering all these explanations, the legal framework of the concept of happiness becomes clearer and plainer as a constitutional directive principle or as a general principle and duty of the state. However, it would be hasty to reach a universal conclusion that the general principle and duty of state clauses are in the exact nature as defined above, without evaluating the legal practices and court decisions of every country, especially when it comes to the argument of non-justiciability. Nevertheless, the given constitutional provisions below are bundled under the same group as one due to their structural similarities.

Happiness clauses have been used as a general principle and duty of the state, in 11 different Constitutions under 14 provisions. These are Bhutan's Constitution of 2008, Liberia's Constitution of 1986, Nigeria's Constitution of 1999, Viet Nam's Constitution of 1992, Thailand's Constitution of 2017, Turkey's Constitution of 1982, Ghana's Constitution of 1992, Eswatini's Constitution of 2005, Austria's Constitution of 1920, Zimbabwe's Constitution of 2013, and the DPRK's Constitution of 1972.[342]

[341] Evran Topuzkanamış, Ş.: *1982 Anayasasında Temel Hak ve Özgürlükler*, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, Prof. Dr. Durmuş Tezcan'a Armağan, C. 21, Özel S., 2019, s. 1772, available at: https://tinyurl.com/Evran-Article, (Last accessed: 22.10.2022)

[342] In the Constitution of the DPRK, happiness is considered a concept related to an independent national economy, and duties related to the realization of an independent national economy are assigned to the state. For the relationship between economy and happiness, see the Constitutions of Nigeria, Ghana, and Eswatini.

The closest concepts to happiness in these provisions are safety[343]; welfare[344], freedom[345], justice, and equality[346]; abundance and development[347]; and the common good of the nation[348]. Therefore, the concept of constitutional happiness bears some resemblance, and/or has certain relations to these concepts in terms of syntax and grammar rules.

Relevant examples from different constitutions, which impose happiness on the state as a duty, or one of the fundamental principles of the state, are listed below. In these constitutions, the state is obliged to ensure the happiness of its citizens.[349]

Art. 9[350]of Bhutan's Constitution of 2008 mentions the pursuit of GNH.[351]By the 2008 Constitution of Bhutan, Art. 9 inserted the inclusion and continuity of GNH values into the constitution to guarantee enabling conditions for happiness to be the solitary goal of its development.[352]However, around 4 centuries before this provision, Bhutan's ancient legal code had already assigned a similar task to the government with more straightforward language: "There is no reason for the government to exist if it cannot bring *happiness* to its people."[353]Thus, Art. 9 of the Constitution, which is a directive principle and a continuation of the historical code of the country, entrench state obligations, formulated in the imperative ('the state shall…') to promote happiness, which is one of the historically significant socioeconomic values of

[343] See the Constitution of Liberia.
[344] See the Constitutions of Ghana and Eswatini.
[345] See the Constitutions of Viet Nam, Ghana, and Eswatini.
[346] See the Constitution of Nigeria.
[347] See the Constitution of Viet Nam.
[348] See the Constitution of Thailand.
[349] Art. 5 of Turkey's Constitution of 1982 is not mentioned here because it is more detailly and separately analyzed in *Chapter 3*.
[350] The title of this article is "*Principles of State Policy*"
[351] See the 2nd para. of Art. 9.
[352] https://tinyurl.com/GNH-Centre-History-of-GNH, (Last accessed: 22.10.2022)
[353] https://tinyurl.com/GNH-Centre-History-of-GNH, (Last accessed: 22.10.2022)

Bhutan.[354]GNH and happiness are such important concepts for Bhutan that it is possible to see them reflected even in current court judgments.

For example, in a case where the petitioner (*Druk Nyamrup Tshogpa, a registered political party*) requests[355]*the constitutional writ* to examine *the constitutionality of the fiscal incentives* provided by the government before the Royal Court of Justice, High Court of Bhutan, the petitioner represented by the attorney highlighted in the submission's *conclusion* that "In the view of the political world, our country has evolved into a democratic constitutional monarchy and has become a model country enriched with ***GNH***. If the government does not abide by the law and the opposition does not oppose it, it is the duty of the political party to introduce certain *checks* and *balances* to avoid such *noncompliance*."[356]

In another case between *the Government of Bhutan (Appellant/Respondent)* and *Opposition Party (Respondent/Petitioner)* before the Supreme Court of the Kingdom of Bhutan, the Attorney General's Office, which represents the appellant, filed an appeal against the ruling of *the High Court videlicet* ***(viz.)*** *Larger Bench 10-100, dated 18/11/2010, in the case of the Royal Government Vs. the Opposition Leader*, and when it comes to the matter of an *erroneous* construal *of the constitution and relevant laws*, the appellant argues regarding the objective and core *of the direct and indirect taxes* that "The chief objective of taxation is to make favorable conditions

[354] Weis, p. 10.
[355] "The petitioner's main request is for a *constitutional writ* to declare the current government's action of *granting fiscal incentives in the form of tax holiday* to a certain amount of *the selective businesses in violation of Art. 14, Section 1* of the Constitution, and burdening *the consolidated fund under Art. 14, Section 3 of the Constitution* to be ultra-virus." (Order No. (Misc. 17-749) 2017/419, Petitioner…Druk Nyamrup Tshogpa (DNT) *Vs.* Respondent…Ruling Government: People's Democratic Party (PDP), p. 2, available at: https://tinyurl.com/Order-No-Misc-17-749-2017-419, Last accessed: 04.01.2023)
[356] Order No. (Misc. 17-749) 2017/419, Petitioner…Druk Nyamrup Tshogpa (DNT) *Vs.* Respondent…Ruling Government: People's Democratic Party (PDP), p. 8, available at: https://tinyurl.com/Order-No-Misc-17-749-2017-419, (Last accessed: 04.01.2023)

for the pursuit of happiness by all Bhutanese. This is in line with *the principles of state policy* set out in *Art. 9(7) of the Constitution* requiring that the state shall work to design and implement policies to reduce *income inequalities*, the *concentration of wealth*, and promote the *equitable distribution of public facilities* among persons and those residing in various parts of the Kingdom…"[357]

Art. 1[358]of Liberia's Constitution of 1986 indicates happiness.[359]An almost identical version of this provision was contained in the 1847 Constitutional Convention, which was the Liberian Declaration of Independence.[360][361]Supreme Court of Liberia, which is the head of the judiciary branch of the Government of the Republic of Liberia[362], delivered its opinion regarding this article when the dispute arose over the setting of a new election date.[363]

According to one of the parties to the dispute, who are petitioners for a writ of prohibition, it is only the people of Liberia who have the power to determine a new election date, after the second Tuesday in October (Oct. 16, 2014) scheduled for the conduct of the special senatorial elections was suspended by the President under the state of emergency announced; in questioning the power of the President and the Legislature to determine the elections' date, the petitioners use Art. 1 of the 1986 Constitution.[364]"The petitioners claim that pursuant to *Art. 1 of the Constitution*, it is

[357] Judgment No.SC (Hung 11-1), The Supreme Court of Bhutan, Between the Government of Bhutan and the Opposition Party, §2 under the '*argument of the appellant*' in Part VII, available at: https://tinyurl.com/Bhutan-Supreme-C-SC-Hung, (Last accessed: 04.01.2023)
[358] The title of the Chapter is "*Structure of the State*"
[359] See the 2nd sentence of Art. 1.
[360] https://tinyurl.com/LOC-Liberia-History-1847-1871, (Last accessed: 23.10.2022)
[361] https://tinyurl.com/1847-Constitutional-Convention, (Last accessed: 23.10.2022). See Art. 2 of the Convention. For a similar approach, see also the very end of the 1st para. of *Art. I. Declaration of Rights*.
[362] https://tinyurl.com/Liberia-Jud-Supreme-Court, (Last accessed: 23.10.2022)
[363] Supreme Court of the Republic of Liberia, Oct. Term, A.D. 2014, Jupica vs Nec, Heard: Dec. 8, 2014, Decided: Dec. 13, 2014, available at: https://tinyurl.com/Liberia-Supreme-Jupica-vs-Nec, (Last accessed: 23.10.2022)
[364] Jupica vs Nec., p. 28.

the *people*, not the *legislative* and/or *executive* branch of the state, who are empowered to *convene a conference* at which a new date for the senatorial election must be chosen. Hence, they ask this court to issue *the extraordinary writ of prohibition* for *the President* and *the National Legislature* to be restrained, prohibited, and enjoined from *setting an election date*, and the National Elections Commission of Liberia ***(NEC)*** from holding any elections until the people hold a conference at which the people could choose *a date for senatorial election.*"[365]

The response of the Court to such a request was "*Art. 1 of the Constitution* cannot be interpreted as giving the people the authority to manage the affairs of the nation on *the body politic* as a whole. This is a flawed assessment and construction of that article. According to our interpretation, when *Art. 1* speaks of the people's inherent power, it refers to their right to determine the nation's leadership *through elections organized by those* tasked with carrying out elections in accordance with the constitution. Hence, only those who have been *duly elected* by the people to serve as their representatives may exercise *the power of the people*. The drafters of this constitution did not intend for the whole population of this nation to come together and exercise such *power*. It is instead envisaged that a member or group of the political system, who has already been *duly elected* or *appointed*, would be in charge of acting or making decisions *on their behalf*. The rightful representatives of the people in this situation are the *legislative* and the *executive* branches of the state, which are in charge of choosing the date, organizing, and carrying out *an orderly election.*"[366]

[365] Jupica vs Nec., p. 29.
[366] Jupica vs Nec., p. 29.

Therefore, although petitioners attempted to invoke their right under Art. 1 when they think their happiness requires so, the Court narrowly interpreted the meaning of Art. 1. Finally, when this article is semantically examined, the government is indirectly given the goal of ensuring the happiness and security of people, and if it does not fulfill this, people have the right to alter the government.

Section 16[367]of Nigeria's Constitution of 1999 remarks *inter alia* the happiness of every citizen.[368]Nigeria is one of the countries that borrow distinctive techniques of constitutionally entrenching social values from Art. 45 of the 1937 Constitution of Ireland. In Nigeria, securing the maximum happiness of every citizen is set as one of the basic purposes and directive principles of state policy, and this directive principle includes a social value.[369]Additionally, this provision is not justiciable because *the fundamental objectives and directive principles of state policy are not justiciable*, along with *Section 6*/6-c *of the Constitution*.[370]

According to the Supreme Court of Nigeria, "We are not required to seek ambiguous means of enforcing *the Directive Principles* in the constitution. It is not necessary for these principles to be *mere* or *pious declarations*. It is up to the government and the *National Assembly*, working mutually, to express any of these via the proper *enactment* as the situation may need."[371]

Then the question is whether it means that the Directives are nothing more than ethical principles, sentimental wishes, and pious intentions in the absence of

[367] The title of the Chapter is "*Fundamental Objectives and Directive Principles of State Policy*"
[368] See subparagraph. b of para. 1 of Art. 16.
[369] Weis, p. 11.
[370] Okere, B.O.: *Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution*, The International and Comparative Law Quarterly, Vol. 32, No. 1, 1983, p. 220, available at: https://tinyurl.com/Okere-Article-Directive, (Last accessed: 23.10.2022). For details, see Chapter I, Part II, Section 6, Para. 6, Subparagraph c.
[371] A-G, Ondo State v. A-G, Federation (2002) 9 Nigerian Weekly Law Reports (**NWLR**) 222, 391 (Uwaifo JSC), as cited in Weis, p. 25.

justiciability, and the response to this question rests on the *political* awareness of the society and the lawmakers, in Okere's opinion.[372]"The same author thinks that directives, in principle, are created to develop part of the government policies and programs and to impact how the government acts; thus, it must be assumed that a party running for office and currently in power in the legislative has consented to carry out the obligation of executing *the minimum national program* outlined *in Directives*; on the other hand, any disregard of these goals and directives equals to the violation of *the constitutional trust by that party*, and *a breach of the* pledge of *allegiance* made by its members."[373]"Lastly, the simple provision that these principles are unjusticiable does not by definition deprive them of all legal significance; while ignoring *these principles* may not impact whether legislation is valid, courageous courts can give them legal importance."[374]Hence, the concept of happiness in the Nigerian Constitution should be analyzed within this legal framework.

Art. 3[375]of Viet Nam's Constitution of 1992 highlights the adjective happy.[376]Furthermore, Art. 60[377]of the same constitution remarks the same adjective.[378]As is evident, imperative features of directive principles, as in the example of 'state shall…', are directly reflected in these provisions.[379]Although Art. 3 prefers '*the state guarantees*', it is of the identical nature to 'state shall…' clauses. Besides, when two provisions are analyzed semantically, the duty of providing happiness is

[372] p. 223.
[373] Okere, p. 223.
[374] Okere, p. 223.
[375] The title of the Chapter is "*Political System*"
[376] For more details, see Art. 3 under Chapter I.
[377] The title of the Chapter is "*Economy, Society, Culture, Education, Science, Technology, and Environment*"
[378] See para. 3 of Art. 60 under Chapter III.
[379] Weis, p. 10.

directed toward the state as a goal. Therefore, happiness is seen as a general principle and the duty of the state in the 1992 Viet Nam's Constitution.

Section 3[380]of Thailand's Constitution of 2017 underlines the happiness of the public.[381]Additionally, Section 247[382]of Thailand's Constitution specifies the happiness of the Thai people as a significant factor[383], while Section 257[384]of the same constitution evinces 'happy people' as an objective.[385]Therefore, various branches of the Thai state are assigned to accomplish and ensure the happiness of the people while fulfilling their duties. From a semantic point of view, all these provisions are parallel to the directive principles outlined in the legal doctrine.

Art. 36[386]of Ghana's Constitution of 1992 mentions the happiness of every person in Ghana.[387]Ghana is one of the countries that borrow distinctive techniques of constitutionally entrenching social values from Art. 45 of the 1937 Constitution of Ireland as in the example of Nigeria; in Ghana, securing the maximum happiness of every person is located as one of the directive principles of the state policy, and this directive principle contains a social value.[388]From this point on, the question arises as to whether this provision is justiciable. It is undeniable that directive principles are *judicially cognizable* and hence accessible for courts to seek interpretive guidance in

[380] The title of the Chapter is "*General Provisions*"
[381] See the 2nd para. of Section 3 under Chapter I.
[382] The title of the Chapter is "*Independent Organs*", and the title of the Part is "*National Human Rights Commission*"
[383] See the last para. of Section 247 in Part 6 under Chapter XII.
[384] The title of the Chapter is "*National Reform*"
[385] See para. 3 of Section 257 under Chapter XVI.
[386] The title of the Chapter is "*The Directive Principles of State Policy*". The title of the article is "*Economic Objectives*"
[387] See para. 1 of Art. 36 under Chapter 6.
[388] Weis, p. 11.

sorting *legal ambiguities* out, although they cannot be judicially enforced.[389]The 1992 Constitution of Ghana does not contain a clause asserting *the Directive Principles* unjusticiable, thus, *leaving* unanswered the query *of whether* the *Ghanaian Constitution's* quietness *on the Directive Principles*' *justiciability* still leads to the deduction that they are not justiciable.[390]Since *the Directive Principles*' *justiciability* is not explicitly denied in the constitution, *socioeconomic rights* could be more legally enforceable *in Ghana than in most other African countries*, given that these principles define a range of *general economic and political* goals including the purpose of realizing socioeconomic rights like '*basic necessities of life*' in Ghana.[391]Courts in Ghana, as stated by Atupare, work to separate *principles of the rule of law*, which are justiciable, from the *principles of policy*, which are not *justiciable*; and justiciability of the Directive Principles can be reached if they could be comprehended as part of or associated with *a justiciable fundamental right*.[392]

For example, in *New Patriotic Party v. Attorney General*[393], it is adopted that while *the Directive Principles of State Policy* cannot be legally enforced by the *courts* on their own, certain exceptions are available to this principle: *the Directive Principles* become *enforceable* in this sense when *read together* with other *enforceable* parts of the constitution.[394]Therefore, as long as the part in Art. 36 of Ghana's Constitution, which aims to manage the national economy in a manner to secure the happiness of

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[389] Atupare, A. P.: *Reconciling Socioeconomic Rights and Directive Principles with a Fundamental Law of Reason in Ghana and Nigeria*, Harvard Human Rights Journal, Vol. 27, p. 86, available at: https://tinyurl.com/Atupare-Article, (Last accessed: 24.10.2022)
[390] Atupare, p. 94.
[391] Atupare, p. 84, and p. 94. See Chapter 6 in Ghana's Constitution of 1992.
[392] p. 105.
[393] (1996-1997) The Supreme Court of Ghana Law Reports, 729, as cited in Mubangizi, J. C.: *The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation*, African Journal of Legal Studies, 2(1), p. 17, available at: https://tinyurl.com/Mubangizi-Article, (Last accessed: 24.10.2022)
[394] (1996-1997) The Supreme Court of Ghana Law Reports, 788, as cited in Mubangizi, p. 17.

every person, can be associated with a justiciable fundamental right, it may be enforceable in the courts of law.

According to Section 59[395]of Eswatini's Constitution of 2005, the state must take all required actions to ensure the happiness of every individual.[396]Although Section 59 of Eswatini's Constitution of 2005 is identical to Art. 36 of Ghana's Constitution, unlike Ghana's Constitution, Section 56/3 of the Constitution of Eswatini clearly states that "*The provisions of sections 57 to 63 inclusive are not enforceable in any court or tribunal.*"[397]Therefore, the arguments of justiciability over directive principles in Ghana cannot be applied to Eswatini in the presence of a tangible constitutional provision. On the other hand, Weis' argumentation about directive principles in terms of their social values is valid here as well.[398]

Art. 14[399]of Austria's Constitution of 1920 mentions 'happy' as well.[400]Art. 14/5a mandates civic education in schools while embracing a list of those values the state desires to be promoted at the same time.[401]Austrian Constitutional Court rules that "As *enshrined* and explicitly stated *in Art. 14 para. 5a of the Constitution*, *Bundes-Verfassungsgesetz* (**B-VG**), *the educational mission of the school* is to pass on to students *the ability to be open-minded* towards the *religious* and *ideological* views of *others*. Thus, the school is founded, among other things, on the core principles of

[395] The title of the Chapter is "*Directive Principles of State Policy and Duties of the Citizen*". The title of the Section is "*Economic Objectives*"
[396] See para. 1 of Section 59 under Chapter V.
[397] Regarding the unenforceability of these principles, see also Limpitlaw, J.: Media Law Handbook for Southern Africa Volume 1, Republic of South Africa 2021, p. 240, available at: https://tinyurl.com/Limpitlaw-Media-Law-Handbook, (Last accessed: 24.10.2022)
[398] p. 11.
[399] The title of the Chapter is "*General Provisions. European Union*". The title of the Section is "*General Provisions*"
[400] See para. 5a of Art. 14 in Section A under Chapter I. See also https://tinyurl.com/Bundes-Verfassungsgesetz, (Last accessed: 29.08.2022)
[401] Wagrandl, U.: *Militant Democracy in Austria*, University of Vienna Law Review, Vol. 2, No. 1, 2018, p. 111, available at: https://tinyurl.com/Wagrandl-Article, (Last accessed: 25.10.2022)

openness and *tolerance*."[402]The main goal of this provision, Wagrandl claims, is to further liberal democratic ideas, while the provision is mostly *aspirational* and not suitable for *direct application*.[403]Therefore, it carries the aspirational character of directive principles in a way that is intended to serve as a source of guidance.[404]Briefly, the happiness of the children and juveniles in the provision may be inserted as a goal and/or fundamental value.

Section 8[405]of Zimbabwe's Constitution of 2013 states guiding objectives for the state and all institutions and agencies of government.[406]As can be grasped from the semantical analysis of Section 8, it is verbalized guidance role of the national objectives, as Gebeye puts "In general terms, directive principles of state policy are those that *guide a government in* its current *action and future direction* in relation to *its nation and people*."[407]*Rights in the Declaration of Rights* (*Chapter 4*) in Zimbabwe's Constitution of 2013 **can** be enforced through court proceedings while *National Objectives* in *Chapter 2* that guide state policy and affect the interpretation of other constitutional provisions and laws, **may** be justiciable, thus these objectives may impact political processes and offer a base for civil society advocacy, but their justiciability is not as secure as those included in the Declaration of Rights.[408]

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[402] *Verfassungsgerichtshof*, G 4/2020-27, 11.12.2020, §2.6.3., p. 20, available at: https://tinyurl.com/Verfassungsgerichtshof, (Last accessed: 25.10.2022)
[403] p. 112.
[404] Weis, p. 6.
[405] The title of the Chapter is "*National Objectives*". The title of the article is "*Objectives to guide State and all institutions and agencies of Government*"
[406] See para. 1 of Section 8 under Chapter 2.
[407] p. 6.
[408] Zimbabwe Lawyers for Human Rights: Briefing Paper: Analysis of Provisions Relevant to Economic, Social, and Cultural Rights in Zimbabwe's 2013 Constitution, The International Human Rights Clinic at Harvard Law School, 10 Dec. 2014, pp. 1-2, available at: https://tinyurl.com/Zimbabwe-Lawyers-Briefing, (Last accessed: 24.10.2022)

To clarify the justiciability of national objectives, *the right to work* in the constitution could be taken as an example; thus, according to Zimbabwe Lawyers for Human Rights, a non-profit human rights organization, since *the right to work* is included only in *the National Objectives*, and not in *the Declaration of Rights*, the extent to which the right can be shielded and enforced in court is questionable and necessitates interpretation by *the Constitutional Court* to be properly safeguarded.[409]Therefore, by analogy, the equivalent approach could be applied to the construction of the word 'happy' in Section 8. Moreover, the same organization suggests, *the right to work* and *the right to housing* are only included in *the National Objectives* Chapter *of the 2013 Constitution*, not in *the Declaration of Rights*, so these two rights could have been more powerfully guarded.[410]From this comment, it can be deduced that provisions enlisted under *the National Objectives* Chapter are less guarded compared to the provisions under the Declaration of Rights, which should be considered while interpreting the word 'happy' in Section 8.

Finally, Art. 26[411]of the DPRK's Constitution of 1972 highlights the economy as a foundation for the people's happy socialist life.[412]This provision can be a typical example of the directive principles in constitutions since the language of the text contains the expression 'the state shall', which shows the imperative character of the clause[413], and also semantically it has far-reaching goals in terms of the judiciary's sense, as *directive principles of state policy* are basic constitutional principles guiding the state in the direction of socio-economic and political justice.[414]

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[409] p. 2.
[410] Zimbabwe Lawyers for Human Rights, p. 10.
[411] The title of the Chapter is "*Economy*"
[412] See the 1st para. of Art. 26 under Chapter 2.
[413] Weis, p. 6.
[414] Gebeye, p. 3.

However, before making bold deductions and interpretations regarding the Constitution of North Korea, one should bear in mind the following warnings: "The North Korean Constitution is nothing more than a nature of North Korean laws. In North Korea, where there is no *rule of law*, but the *directives* and *words of leaders* and *administrative directives* apply, no legal basis is sought for the justification of state actions. Even though the constitution is the supreme law *in form*, it functions only as a *propaganda* tool. To put it another way, the constitution in North Korea does not exist to safeguard the *rights* and *interests* of citizens, but only to demonstrate the *superiority* of the state system to both its citizen and outside spectators."[415]

As pictured, one of the main principles of the state in given constitutions is mostly to provide, secure, and maximize[416]the happiness of individuals.[417]In other words, most of these states, if not all of them, aim at individual and social happiness as their goal, at least according to analyzed provisions in their constitutions. Although regarding the directive principles, the legal doctrine in the above-analyzed countries and the judicial practice are not well developed, and also justiciability issues are not resolved; happiness as a directive principle is 'an essential *constitutional principle* and creative replacement for constitutionalizing *some socio-economic rights*.'[418]One of the most interesting facts about these examples is that Ghana and Eswatini have identical provisions on happiness as a general principle and duty of the state. Furthermore, in

[415] Yoon, D.K.: *The Constitution of North Korea: Its Changes and Implications*, Fordham International Law Journal, Vol. 27, Iss. 4, Article 2, 2003, p. 1304, available at: https://tinyurl.com/Yoon-Article, (Last accessed: 25.10.2022)
[416] For the subject of happiness and maximization, see Bayertz, K.: *Happiness by Maximisation?*, in Human Happiness and the Pursuit of Maximization: Is More Always Better?, Eds. H. Brockmann, J. Delhey, Bremen, 2013, pp. 41- 54.
[417] To follow academic discussions on happiness and the state, see Prinz, A.: *Should the State Care for the Happiness of its Citizens?*, in Human Happiness and the Pursuit of Maximization: Is More Always Better?, Eds. H. Brockmann, J. Delhey, Bremen, 2013, pp. 177-190.
[418] Gebeye, p. 101.

the constitutions of Nigeria, Ghana, Eswatini, and the DPRK, happiness is considered a concept related to the economic objectives of the state, which can be a perfect illustration of the above-implied relationship between the concept of constitutional happiness and economics.

A. Happiness as a Duty of Executive Power

Although the term "state" in '*Happiness as General Principle and Duty of the State*' encapsulates *per se* the executive[419], such a subdivision may still be useful since, despite their structural similarities, the following happiness-related provisions as directive principles are distinguished from the above-mentioned ones, as they are directed at not any organ of the state or the state itself, but specifically at the executive branch or an organ within that body. For example, Art. 9 of the Bhutan Constitution, which is entitled as 'principles of state policy' in the Constitution, is already addressed before; however, the happiness clause in Art. 20 of the same Constitution under this subtitle is directly assigned to the executive. Additionally, since problems of justiciability regarding directive principles in the courts of law, especially in the non-existence of a clear provision in constitutions about their enforceability through the judiciary, are already underlined, the below provisions eliminate such complications and simplify which branch of the state is responsible from them.

Directives offer guidelines for the implementation of constitutionally bestowed powers upon the legislature, executive, and judiciary.[420]Nevertheless, they can mainly

[419] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.
[420] Baxi, p. 250.

be addressed to the executive, alongside legislature; and agencies functionally are more suitable to achieve their realization.[421]

"Happiness" has been used in four different provisions in three constitutions that regulate the executive branch of the government. These are Bhutan's Constitution of 2008, Niger's Constitution of 2010 (2 times)[422], and Thailand's Constitution of 2017.

The concepts closest to happiness in these articles are peace, security, and well-being[423]; oath[424]; and fairness, unity, and solidarity[425]. Hence, the concept of happiness has some aspects similar to these concepts according to syntax and grammar rules.

Happiness can be entrusted to the executive as a task. Therefore, in some constitutions, the executive must work for the happiness of the people. Relevant examples are delivered below:

Art. 20[426]of Bhutan's Constitution of 2008 underlines that the government must guarantee the happiness of the people.[427]Thus, the government as the executive branch is delegated to ensure the happiness of the people. It is preferred to use 'the government shall…' instead of 'the state shall…' which is an excellent reminiscent of the imperative nature of the directive principles[428]; even though the direction of the imperative is focused on a specified body in the state. The principles of good governance, which consists mainly of *participation*, *rule of law*, *transparency*, *accountability*, *efficiency*, *effectiveness*, *responsiveness*, *consensus orientation*, *equity*,

[421] Baxi, p. 261.
[422] See both Art. 50 as the presidential oath and Art. 74 as the prime minister's oath.
[423] See the Constitution of Bhutan.
[424] See the Constitution of Niger.
[425] See the Constitution of Thailand.
[426] The title of the article is *"The Executive"*
[427] See para. 1 of Art. 20.
[428] Weis, p. 6.

and *inclusiveness*, are at the center of all public policy in Bhutan, and this fact is confirmed by Art. 20 of the Constitution.[429]These principles reflect the values that ought to be employed to validate the system of governance.[430]To summarize, in line with all these principles embodied in Art. 20, the Constitution stipulated that the government should ensure the happiness of the people.

Nevertheless, Acharya asks "*How about the happiness of the people in exile?*"[431]since, thousands of people needed to flee from Bhutan to India and Nepal due to some ethnic conflicts, and a series of measures discriminating against certain people, resulted in the mass exile of one-sixth of the population at the beginning of 1990s.[432]As Adhikari and Mishra put it, without a systematic method to make the notion of GNH operational, and while an important part of the population is still in poverty or discontented in refugee camps in Nepal, it is obvious whom GNH makes happy: *the regime*.[433]Such criticisms must be kept in mind while discussing the directive principles of the constitution and the goals of government regarding the happiness of the people in Bhutan.

While Art. 50[434]of Niger's Constitution of 2010 states that the President of the Republic takes an oath, *inter alia*, to work for the people's happiness before entering into his functions[435], on the other hand, Art. 74[436]of the same constitution highlights

[429] Ura, D.K.N.: *Balancing GDP with GNH*, in Otsubo, S.T. (ed.): Globalization and Development: In Search of a New Development Paradigm Volume III, Routledge 2016, p. 70.
[430] Ura, p. 14.
[431] Acharya, J.: *Bhutanese Refugees: The Struggle in Exile*, p. 34, in Hofman, R., Caruso, U. (eds.): Minority Rights in South Asia, Frankfurt am Main 2011.
[432] https://tinyurl.com/Bhutanese-Refugees, (Last accessed: 25.10.2022)
[433] Adhikari, I.P., Mishra, V.: *Bhutan's future in democracy*, 25.10.2022, Microsoft Word document. The document was available at: https://tinyurl.com/Adhikari-Mishra, (Last accessed: 25.10.2022), however, as of 29.03.2023, the link cannot be accessed.
[434] The heading of the title is "*Of the Executive Power*". The title of the Section is "*Of the President of the Republic*"
[435] See para. 2 of Art. 50 in Section 1 under Title III.
[436] The heading of the title is "*Of the Executive Power*". The title of the Section is "*Of the Government*"

that prime minister takes an oath, *inter alia*, to work for the same purpose as the President before taking the office.[437]In Niger, the President is the head of the state, who is above the political parties[438]while the prime minister is the head of the government, who directs, animates, and coordinates the governmental action.[439]The fact that both the head of state and the head of the government take an oath that they would work tirelessly for the happiness of the people before taking these two positions at the top of the executive power, shows how much the Niger Constitution attaches importance to the concept of happiness. So much so that, they can be legally held responsible in case of perjury, as the text of both oats contains "…*In the case of perjury, may we suffer the rigors of the law.*" Both provisions entrust the holder of these two positions to work for the happiness of the people in the form of an oath rather than a directive principle, although both articles can be reformulated as 'the Prime Minister shall…, the President shall…' since they have the similar imperativeness as in the directive principles. However, when it comes to the justiciability of these provisions, it may be more prudent to wait for a judicial interpretation of the phrase 'happiness of the people'.

Section 164[440]of Thailand's Constitution of 2017 holds that the Council of Ministers must act, *inter alia*, to promote all sectors of society to co-exist with happiness.[441]This part of the provision includes reference to fraternity and solidarity and is included in the section where the individual and collective responsibilities of the ministers are set. Encouraging all sectors of society to co-exist with happiness is

[437] See para. 2 of Art. 74 in Section 2 under Title III.
[438] See Art. 46 of the Niger's Constitution of 2010.
[439] See Art. 73 of the Niger's Constitution of 2010.
[440] The title of the Chapter is "*The Council of Ministers*"
[441] See subparagraph 4 of para. 1 of Section 164 under Chapter VIII.

assigned to the Council of Ministers as a duty, according to the semantical analysis of the rule, and if they do not fulfill this task, it is recognized that the individual and collective responsibility of ministers will arise, considering the place of the provision. The formulation of the sentence clearly illustrates that the inherent nature of the provision is of a similar genre as the directive principles, only this time it refers to the Council of Ministers, not to the state.

B. Happiness as a Duty of Legislative Power

Although the term "state" in '*Happiness as General Principle and Duty of the State*' encompasses *per se* the legislative itself[442], such a subheading, despite its fundamental connections to the main heading, may still be suitable, as the following provisions on happiness do not apply to any organ of the state or the state itself, as guiding principles, but specifically to the legislature, or a legislative body. Furthermore, directive principles of state policy are not usually part of the jurisdiction of the court, on the contrary, they entrust tasks to the parliament in making laws.[443]

At this point, the debate that took place in Dáil Éireann, which is the lower house of the Oireachtas[444](legislative body in Ireland[445]), on May 11, 1937, can be quite enlightening in understanding the role of legislation on the directive principles: "Some persons point out the following in reference to these *social directives*: 'they cannot be considered by the court, so why are they there? They are *pious aspirations*.'

[442] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.
[443] Gebeye, p. 17.
[444] https://tinyurl.com/Dail-Eireann, (Last accessed: 26.10.2022)
[445] For details on the Irish Parliament, see https://tinyurl.com/Oireachtas-How-Parl-Works, (Last accessed: 26.10.2022)

The response to this question is that they will stay there as *a constant headline*, allowing the public to assess the direction in which they are moving as a whole; something by which the people's representatives may be *judged* and the people as a whole may *judge* themselves. We will *judge* our advancement in a particular *direction* by asking *how far* we have come in that *direction*. They aim to be *directive* to the *legislature*. They should, therefore, not be decided by the *courts*; it is the *legislature* which must decide *how far it can go* periodically given the *circumstances* to strive to guarantee *these ideals*, *aims*, and *objectives*."[446]

In the provisions that regulate the legislative branch, the word "happiness" has only been mentioned in 2 constitutions. These are Niger's Constitution of 2010 and Thailand's Constitution of 2017.

The concepts closest to happiness in these articles are oath[447]and the common interest of the nation[448]. Hence, to some extent, the concept of happiness has a grammatical and syntactic connection with these concepts.

Happiness can be entrusted to the sovereign legislative organ as a task to be accomplished for the citizens of a particular country. Therefore, the purpose of the legislative in some constitutions is to work for the happiness of the people. Relevant examples are highlighted below:

Art. 89[449]of the Niger's Constitution of 2010 indicates that the President of the National Assembly takes an oath, *inter alia*, to work for the people's happiness before

[446] Dáil Éireann debate, Tuesday, 11 May 1937, Vol. 67, No. 1, Bunreacht na hEireann (Dréacht)— Dara Céim, available at: https://tinyurl.com/Dail-Debates, (Last accessed: 26.10.2022). See also Gebeye, pp. 17-18.
[447] See the Constitution of Niger.
[448] See the Constitution of Thailand.
[449] The heading of the title is "*Of the Legislative Power*"

entering into his functions.[450]Thus, the Constitution of Niger places such an emphasis on the concept of happiness that the President of the National Assembly must take an oath to work for the happiness of the people before taking office. The legal characteristics of the provision are very similar to Art. 50 and Art. 74 of the 2010 Niger Constitution.

Section 114[451]of Thailand's Constitution of 2017 points out that Members of the House of Representatives and Senators must perform duties for the happiness of the people.[452]Performing duties honestly for the happiness of the Thai people is assigned to the Members of the House of Representatives and Senators as a duty in accordance with the semantical analysis of the rule. The verbalization of the provision visibly demonstrates that the inherent nature of the provision is of a similar type to the directive principles, nevertheless, in this instance, it refers not to the state, but to the representatives of the Thai people. Considering that the historical function of the legislative has been to ensure the representation of the people, providing happiness can be counted as a part of this function as well.[453]

III. Happiness as a Fundamental Right

Before attempting to elucidate fundamental rights, it is essential to clarify what is meant by this expression; by fundamental rights, is it meant to be civil and political rights (first generation rights)[454]or human rights as a whole as in the Vienna

[450] See para. 3 of Art. 89 under Title IV.
[451] The title of the Chapter is "*The National Assembly*". The title of the Part is "*Provisions Applicable to Both Houses*"
[452] See Section 114 in Part 4 under Chapter VII.
[453] Yılmaz, Z.: "Personal Communication", 13.11.2022, Microsoft Word comment.
[454] https://tinyurl.com/CoE-Human-Rights-Evolution, (Last accessed: 11.01.2023)

Declaration and Programme of Action (25 Jun. 1993) stating that "*All human rights are universal, indivisible and interdependent and interrelated…*"[455][456]? The answer to this question could be obtained in the latter one; thus, indivisibility and interdependency of human rights mean that *one set of rights* could not *be enjoyed fully without the other*, or in other words to say, 'the complete *enjoyment of one set of rights* depends on the fulfillment *of the other.*'[457]"For instance, moving forward in civil and political rights facilitates the enjoyment of social, economic, and cultural rights. Likewise, violations of social, economic, and cultural rights may adversely impact many other rights."[458]

Fundamental rights enshrined in the constitution define a personal sphere of individual freedom and grant the bearer the right of legal defense against the state's power, and they also define objective fundamental norms or values, in other words, 'constitutional principles', which the state is obliged to safeguard.[459]Fundamental rights may be expressed as: "Universal legal assurances without which persons and groups are not able to safeguard their fundamental freedoms and human dignity, and that apply equally to each human irrespective of *nationality*, *place of residence*, *sex*,

[455] For the Vienna Declaration and Programme of Action adopted 25 Jun. 1993 by the World Conference on Human Rights in Vienna, see, https://tinyurl.com/Vienna-Dec-25-June-1993, (Last accessed: 11.01.2023)
[456] Yılmaz, Z.: "Personal Communication", 13.11.2022, Microsoft Word comment.
[457] GA/SHC/3501, 9 Nov. 1998, available at: https://tinyurl.com/UN-Indivis-Interdep, (Last accessed: 11.01.2023)
[458] https://tinyurl.com/UN-What-Are-Human-Rights, (Last accessed: 11.01.2023)
[459] Künkler, M., Stein, T.: *Fundamental Rights and Constitutional Principles in Böckenförde's Work*, p. 210, in Böckenförde, E.W.: Constitutional and Political Theory: Selected Writings, Edited by Mirjam Künkler and Tine Stein, Oxford 2017. It is also available at: https://tinyurl.com/Funda-Rights-Oxford, (Last accessed: 23.12.2022). According to the authors, these *fundamental rights* are *enshrined in the Basic Law in the jurisprudence of the Federal Constitutional Court* (in Germany). See also '*fundamental right*' in Garner, Black's Law Dictionary, p. 744.

national or ethnic origin, *color*, *religion*, *language*, or *any other status* according to the legal system of a country without any conditions."[460]

On the other hand, 'human rights' corresponds to "The rights which a person or a group of persons have just because they are *human*, or as a result of *inherent human vulnerability*, or since they are necessary for the prospect of *a just society*. Irrespective of the theoretical grounds, *human rights* refer to a broad set of *values* or abilities that are considered to improve *human agency* or safeguard *human interests* and are proclaimed to be *universal* in character, in some ways *equally claimed for all human beings*, *present and future*."[461]

European Union (**EU**) Agency for Fundamental Rights underlines that the term fundamental rights are conventionally used in a constitutional framework while the term human rights are used in international law[462]; nevertheless, the two terms are essentially relevant to the same substance as could be perceived, for example, by the many resemblances between the Charter of Fundamental Rights of the EU and the European Convention on Human Rights.[463]

Human rights, before becoming the subject of the constitutional order, are rights in the moral sense; the reason why they are rights conveying the highest moral demands is that the basic values safeguarded by human rights are the highest moral values; thus, the practical implication of this superiority is that claims and demands

[460] https://tinyurl.com/European-Com-Funda-Rights, (Last accessed: 28.10.2022)
[461] Weston, B.H.: "*human rights*", Encyclopedia Britannica, Apr. 6, 2023, available at: https://tinyurl.com/Britannica-Human-Rights, (Last accessed: 06.04.2023)
[462] For the idea that rights and freedoms granted to individuals and groups of people are termed with separate concepts in various documents and legal systems, see Uygun, O.: 1982 Anayasası'nda Temel Hak ve Özgürlüklerin Genel Rejimi, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Doktora Tezi, İstanbul 1991, pp. 3-10, available at: https://tinyurl.com/Uygun-Doktora-IU-1991, (Last accessed: 28.10.2022)
[463] https://tinyurl.com/EU-FRA-Fundamental-Rights, (Last accessed: 27.10.2022)

build upon these rights prevail over all other claims.[464]Hence, libertarian constitutional models have re-recognized human rights as the concept of 'fundamental rights', which is another concept that has a strong emphasis as in human rights, and place their moral contents into a legal frame and provide a constitutional status for them.[465]As a result, their **recognition**—which, together with **protection** and **implementation**, is one of the fundamental factors in the realization of human rights[466]—is accomplished.

Fundamental rights, in principle, grant right holders the authority to demand from those who are obligated to not do something, to do something as much as possible, or to endure something.[467]These rights as part of the constitutions are high-ranked norms vis-à-vis laws and regulatory acts of the executive, all the concrete administrative acts, and acts of the judiciary, meaning that all sub-constitutional law and all concrete actions based on it are required to be in conformity with the constitution, and they are unconstitutional and, as a rule, not valid unless they are compatible with the norms of fundamental rights which constitute part of the constitution.[468]

On the other part, fundamental rights cannot be exercised absolutely or limitlessly, as none of these rights is *absolute* in the sense that they supersede all other rights[469], because while they compete with each other they may restrict each other,

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[464] Caniklioğlu, M.D.: *Anlamı, Kapsamı ve Sınırlarıyla Temel Haklar ve Anayasalarımız*, in Dokuz Eylül Üniversitesi Hukuk Fakültesi Mahmut Tevfik Birsel Armağanı, İzmir 2001, p. 466, available at: https://tinyurl.com/Caniklioglu-Article, (Last accessed: 27.10.2022)
[465] Caniklioğlu, p. 466.
[466] Yılmaz, Z.: "Personal Communication", 04.06.2023, Email to Berksun, S.U.
[467] Gören, Z.: *Temel Hakların Varlığı ve Önemi*, İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi, 20(41), p. 751, available at: https://tinyurl.com/Goren-Temel-Haklar-Article, (Last accessed: 27.10.2022)
[468] Gören (Temel Hakların), p. 760.
[469] Konrad, K.A., Simon, S.A.: *Paternalism Attitudes and the Happiness Value of Fundamental Freedoms*, Working Paper of the Max Planck Institute for Tax Law and Public Finance No. 2021-04, p. 26, available at: https://tinyurl.com/Konrad-Simon-Article, (Last accessed: 28.10.2022)

and when it comes to this point it is the court of law to weigh them up.[470]Under the circumstances of war, natural disasters, terrorism, or the unfavorable outcomes of a pandemic, for example, several branches of the government ought to compromise on some of the fundamental rights that conflict with one another, and all the measures taken have to be suitable, appropriate, and proportionate to the conditions of the situation, which means a measure's drawbacks cannot be disproportionate to its benefits.[471]Therefore, these general statements and explanations regarding the structure of fundamental rights should not be forgotten when examining the constitutional provisions given below regarding the right to happiness.

Constitutions contain various fundamental rights such as the right to life, freedom of expression, and the right to property, *etc.* In some constitutions, the right to happiness, or to be more precise *the right to a happy life*[472], *the right to the pursuit of happiness*[473], or *the right to pursue happiness*[474], is included among these rights. "Happiness" has been used as a fundamental right in three constitutions. These are Guyana's Constitution of 1980, Japan's Constitution of 1946, and the Republic of Korea's Constitution of 1948.[475]

The closest concepts to happiness in these constitutions are creativity and productivity[476]; the right to life and liberty[477]; and human worth, dignity, and inviolable

[470] Konrad, K.A., Simon, S.A.: *Paternalism, Fundamental Rights and Happiness during the Pandemic*, Oxford Business Law Blog, https://tinyurl.com/Konrad-Simon-OBLB, (Last accessed: 28.10.2022)
[471] Konrad and Simon, p. 26
[472] Art. 40 of Guyana's Constitution of 1980.
[473] Art. 13 of Japan's Constitution of 1946.
[474] Art. 10 of the Republic of Korea's Constitution of 1948.
[475] According to Prof. Lim, the current Art. 10 of the Korean Constitution, which was revised in 1980, imitates Art. 13 of the 1946 Japanese Constitution, which mentions "the pursuit of happiness", and the reason why it appeared in the Korean Constitution was that *the pursuit of happiness* clause was one of many ostensibly democratic clauses in the Constitution adopted by the military regime at the time to legitimize its rule. (Lim (Pursuit), p. 75)
[476] See the Constitution of Guyana. The opposites of happiness are hunger, ignorance, and want.
[477] See the Constitution of Japan.

human rights.[478]Therefore, when the syntactic and grammatical structure of the articles in the below constitutions is examined, the notion of constitutional happiness is close to these concepts to some extent.

The relevant constitutional provisions are as follows:

Art. 40[479]of Guyana's Constitution of 1980 mentions that every individual is entitled to the basic right to a happy life.[480]The 1980 Constitution established the legal roots for the operation of the post-colonial authoritarian state, and the philosophy lying at the center of the constitution, which was claimed by the ruling party, was the departure from the Westminster model; state elites contended that the Independence Constitution of 1966 had been slanted towards capitalist development and had fortified limited participation by the people in the matters of the country, and these two issues were the primary troubles of Westminster-type constitutions and the reasons why a 'socialist' constitution was necessary.[481]Although statements in the constitution on social benefits as rights to workers or the fundamental rights and freedoms, which are enshrined in Art. 40 may seem that it is a candid progressive working-class document; in fact, the political practice of *the post-colonial authoritarian state* has shown that the *social*, *economic*, *political*, and *fundamental human rights* preserved in *the 1980 Constitution* were more pointless than real and incompatible with the historical experience of the nation.[482]

[478] See the Constitution of the Republic of Korea.
[479] The title of both the article and Chapter is "*Fundamental Rights and Freedoms of the Individual*"
[480] For the current version of the article, see para. 1 of Art. 40 in Chapter III under Part 1. This article was amended in 2003. (https://tinyurl.com/Guyana-Cons-2003, Last accessed: 29.10.2022). 1980 version of this provision can be found in Canterbury, D.C.: Neoliberal Democratization and New Authoritarianism, 2019 New York, p. 184 under Chapter 6.
[481] Canterbury, pp. 181-182.
[482] Canterbury, pp. 183-184.

"Some criticisms were directed toward this constitution that it was not originated from the distinctive social, political, economic, and cultural experiences of the Guyanese people, but it is rather foreign to the national soul. Fundamental human rights, among the social, economic, and political rights, were the source of huge skepticism among the masses since these rights are only statements of intent, and the post-colonial authoritarian state had consistently violated the human rights of citizens. Fundamental social rights without equivalent duties cannot be enforced directly and are, thus, practically the same as no rights. The problem, therefore, was people's lack of confidence in these rights and uncertainty about their enforceability."[483]Eventually, it would be useful to keep this constitutional framework and criticisms in mind when evaluating Art. 40.

Art. 40 had long been deemed by jurists as only introductory and not granting any justiciable rights; in *Ameerally v. Attorney General*, the Court decided that "'*Protection of the law*' *in Section 3 of the 1966 Constitution*, *the predecessor to Art. 40 in the 1980 Constitution*, was not intended to grant *enforceable rights* and, thus, did not stop *the State* from *proceeding with the charge*."[484]"Since Art. 40 achieves no purpose and should be dispensable without adverse results it may lead the drafters of the constitution to repeal the old version of Art. 40 and replace it with the version mentioned above. The tragedy of this constitutional amendment, however, is that it disregards developments in law and annihilates the emerging growth of jurisprudence

[483] Canterbury, pp. 185-186.
[484] Bulkan, A.: *Democracy in Disguise: Assessing the Reforms to the Fundamental Rights Provisions in Guyana*, Georgia Journal of International and Comparative Law, Vol. 32:613, 2004, p. 616, available at: https://tinyurl.com/Bulkan-Article, (Last accessed: 23.12.2022)

in both Guyana and the rest of the Caribbean, which started to be in harmony with Art. 40."[485]

"*Kent Garment Factory v. Attorney General of Guyana* was one of the earliest cases to deviate from *Ameerally v. Attorney General*, where the Court of Appeal concluded that the amendments in Section 3 of the Constitution of 1966, which had been already replaced and modified by Art. 40 of the new 1980 Constitution[486], are of an important nature, and it was argued that Art. 40 conferred enforceable rights. However, the part conferring the enforceable rights was the '*protection of the law*' clause, as Chancellor George articulated 'The article that was substituted combines *idealism*, *aspirations*, *statements of principle*, and *entitlements*; and *the right to the protection of the law* is one of such *entitlements*'. Then judges started to consider Art. 40 more broadly. In *Abrams v. Attorney General of Guyana*, for example, 'protection of the law' was considered to contain *the right of access to court and a fair hearing followed by an impartial judgment*."[487]Thus, over the years, Art. 40 became a very useful provision, and its potential was limited only by the talent of the judges in charge of enforcing it, while the current article, with its concise and barren formulation, lacks similar potential and is admittedly only introductory nature at the moment.[488]

Therefore, the enforceability or justiciability of Art. 40 in its current form and the phrase 'basic right to a happy life' in it is quite challenging. In fact, as can be seen from the decisions held in the times of the previous version of the provision, although 'the protection of the law' phrase was considered enforceable by the courts, as

[485] Bulkan, p. 616.
[486] Here it must be understood the first version of Art. 40 in the 1980 Constitution, which is referred to in Footnote 480.
[487] Bulkan, pp. 616-617.
[488] Bulkan, p. 618.

Chancellor George has pointed out, the provision was still a mixture of desires and ideals and rights; thus, the enforceability of the expression 'the basic right to a happy life' was not a solved problem back then as well.

Indeed, the examined paragraph of Art. 40 is a general provision that draws the legal framework regarding fundamental rights, while the provisions in Title 1 of Part 2 of the Constitution specify the mentioned fundamental rights and ensure the protection of these rights as can be understood from the 2nd para. of Art. 40. Under Title 1 of Part 2, many rights are included, some of which are the right to life, the right to personal liberty, protection from inhuman treatment, freedom of expression, the right to work, the right to pension and gratuity, the right to an environment which is not harmful to people's health or well-being, *etc.* While the 1st para. of Art. 40 is under the part named *General Provisions*, the fact that the provisions in Title 1 are under Part 2 named *Specific Rules*, shows that the rights articulated in Art. 40 create a general framework and their specific form is in Title 1 of Part 2. However, the approaches that derive rights from the wording of Art. 40 still exist. So much so that some claim the right to food[489]or the right to water[490]can be derived from Art. 40. Nevertheless, it is very unlikely for these rights to be derived from the exact expression '*the basic right*

[489] Chen, Y.: Trade, Food Security, and Human Rights: The Rules for International Trade in Agricultural Products and the Evolving World Food Crisis, 2016 New York, p. 195. Art. 40 of Guyana's Constitution is counted among the *explicit constitutional provisions* that recognize *the right to food around the world.* (Knuth, L., Vidar, M.: Constitutional and Legal Protection of the Right to Food around the World, Food and Agriculture Organization of the UN, Rome 2011, p. 33, available at: https://tinyurl.com/Knuth-Vidar-Right-to-Food, (Last accessed: 30.10.2022)

[490] Centre on Housing Rights and Evictions: Legal Resources for the Right to Water and Sanitation, January 2008, 2nd Edition, p. 67, available at: https://tinyurl.com/Right-to-Water-Sanitation, (Last accessed: 30.10.2022)

to a happy life', but they may rather be originated from the words '*free from hunger and want*'.[491]

Finally, regarding this provision in the Guyana Constitution, attention should be drawn to the potential holder or holders of this right. According to the initial report submitted by Guyana under Art. 73 of the Convention (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*) pursuant to the simplified reporting procedure in the UN, the specific reference to 'every person' in Art. 40 of the Constitution indicates that it applies equally to both Guyanese and foreign nationals, underpinning the principle of non-discrimination in international law.[492]Therefore, the holders of the right to a happy life are not only the citizens of Guyana but everyone in the country.

Art. 13[493]of Japan's Constitution of 1946 announces that people's right to the pursuit of happiness shall be the supreme consideration in legislation and other affairs of government.[494]Lim holds the opinion that Japan took the pursuit of happiness clause from the U.S., or to be more specific, Art. 1 of the Virginia Declaration of Rights and Art. 2 of the Declaration of Independence from 1776[495], nonetheless Art. 13 of Japan's Constitution cannot be compared with its American counterpart since Japanese legal scholars and judges recognize and interpret this article as *a general provision* which contains *non-enumerated rights* proclaiming the idea that certain rights ought not to be *neglected* despite not being explicitly listed in the constitution.[496]

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[491] For a short opinion regarding the expression 'free from want', see Lowe, S.: Guyana to be free from want: Art. 40 (1), available at: https://tinyurl.com/Lowe-Guyana-Free-From-Want, (Last accessed: 30.10.2022)
[492] CMW/C/GUY/1, 13 July 2018, available at: https://tinyurl.com/UN-CMW-C-GUY-1, (Last accessed: 29.10.2022)
[493] The title of the Chapter is "*Rights and Duties of the People*"
[494] See the 2nd sentence of Art. 13 under Chapter III.
[495] Lim (Pursuit), p.75.
[496] Lim (Pursuit), pp. 101-102.

According to one view, Art. 13 is framed in a way more like a government objective than as a justiciable right.[497]In addition to that, while the concept of public welfare in the Japanese Constitution is being reviewed, it is extrapolated that Art. 13, accompanied by Art. 11, and Art. 12, suggests that human rights are eternal and inviolable rights, but that they can be limited by their intrinsic nature so that conflicting fundamental rights can be synchronized and each individual's rights are esteemed equally, and this sort of limitations on human rights are originated from the concept of the public welfare.[498]Thus, the right to the pursuit of happiness might be restricted if it interferes with the public welfare, which clarifies that this right does not provide unlimited freedom just like all other rights. In other words, Art. 13 has been construed as a limitations clause, allowing for the abridgment of rights where the government can direct to a "public welfare" need.[499]

Herzog finds "The formulation of Art. 13 "awkward" because although it is undoubted that the individual must be respected as a human being, and the rights stated in the provision are closely associated with human dignity, these rights in no way can be said to constitute the supreme consideration in all governmental affairs. This "awkwardness" can only be avoided by having a better grasp of the *nature* of the *state* and of *individual rights*. Only an acknowledgment of the particular difference of the object of government from the object of individual existence could guarantee individual liberty. The state does not have a direct relationship with the life, liberty, and happiness of the individual. They are objects of individual concern, and the state

[497] Chang, W., Thio, L., Tan, K., Yeh, J.: Constitutionalism in Asia: Cases and Materials, Hart Publishing, Oregon 2014, Under the heading "*B. Culture as Normative Matrix*".
[498] https://tinyurl.com/Welfare-Japan-Constitution, (Last accessed: 30.10.2022)
[499] O'Regan, K, Khosla, M.: *Equality in Asia*, pp. 302-303, in Dixon, R., Ginsburg, T. (eds.): Comparative Constitutional Law in Asia, Massachusetts 2014.

appears only to the degree that general or public circumstances impact these rights. On the other side, without the recognition of these rights, there can be no public welfare; and in this regard '*to secure* (making safe, not obtaining) *life*, *liberty*, and *the pursuit of happiness*' should be among the goals of *government*"[500]

Over the years, the right to the pursuit of happiness in Art. 13 has been interpreted by Japanese courts, and the possible interpretation of this right has been attempted to be clarified and solidified. For example, *Japan does not explicitly* assert *the right to privacy in its constitution*, but Japanese courts have created *the right to privacy* out of the pursuit of *happiness* clause in Art. 13.[501]Although Japanese law lacks a clear *basis for the right to be forgotten*, after the 1960s, the Japanese courts have become quite active in safeguarding a particular type of individual interest, afterward frequently identified as "*privacy*", *through statutory and constitutional* construal.[502]

"*The Supreme Court judgments on Dec. 24, 1969 (Kyotofugakuren case), 23 KEISHU 1625, and on Apr. 14, 1981 (Referral of criminal record case), 35 MINSHU 620,* have been afterward grasped that they recognize *privacy* to be safeguarded *at the*

[500] Herzog, P.J.: *Political Theories in the Japanese Constitution*, Monumenta Nipponica, Vol. 7, No. 1/2, 1951, pp. 6-7, available at: https://tinyurl.com/Herzog-Article, (Last accessed: 15.04.2023). According to Herzog, the well-known phrase of the Declaration of Independence mentioned in Art. 13 summarizes some of the most important principles of liberal democracy, and this formulation originates from Jefferson; nevertheless, it embodies Locke's ideas regarding the nature of the state and the objectives of the government. (p. 6) Locke thinks that the goal of the government was the common good, and the supreme consideration in legislative and other governmental affairs should be the peace, safety, and public good of the people. (Locke, J.: Second Treatise Government, Edited by C.B. Macpherson, Hackett Publishing Company, Cambridge 1980, p. 68, §131)

[501] Werro, F.: *The Right to Be Forgotten: The General Report-Congress of the International Society of Comparative Law, Fukuoka, July 2018*, p. 9, in Werro, F. (ed.): The Right To Be Forgotten: A Comparative Study of the Emergent Right's Evolution and Application in Europe, the Americas, and Asia, Ius Comparatum-Global Studies in Comparative Law, Vol. 40, Springer, 2020.

[502] Yamaguchi, I.: *A Japanese Equivalent of the "Right to Be Forgotten": Unveiling Judicial Proactiveness to Curb Algorithmic Determinism*, pp. 293-294, in Werro, F. (ed.): The Right To Be Forgotten: A Comparative Study of the Emergent Right's Evolution and Application in Europe, the Americas, and Asia, Ius Comparatum-Global Studies in Comparative Law, Vol. 40, Springer, 2020.

level of the *constitutional guarantee*, yet, neither the majority opinion of the latter case nor *the Court*'s *opinion in the former* contained the precise term "*privacy*". To frankly summarize, it is usually expressed that *since the 1960s*, *the right to privacy* has been acknowledged by *Japanese courts* as both *a private right* covered by *civil tort law* and *a constitutional right* guaranteed by *the "pursuit of happiness" clause* of Art. 13 of the Constitution."[503][504]

To fully comprehend the scope of Art. 13 of the Japanese Constitution, it may be worthwhile to project another judgment. When it is claimed that some of the articles of the Law on Proscribing Stalking Behavior and Assisting Victims infringe Art. 13 of the Constitution since the scope of the regulations is too extensive and the way of regulation is unreasonable, the Supreme Court holds that "The purpose of *the Law on Proscribing Stalking Behavior* is to prevent harm against the person's body, liberty, or reputation, and also to contribute to the safety and peace of individuals through imposing a required restriction on stalking behavior such as imposing punishment for stalking behavior and by way of envisaging assisting measures to the other party, and this purpose ought to be considered justifiable…To accomplish the abovementioned objective, *the Law* states that *the object of regulation* is *an act of stalking* that violates generally recognized *social boundaries* and endangers the other party's physical security, residential tranquility, or *reputation*, or the *act of stalking* which is performed in a way that raises concern that *freedom of action* might be severely harmed. Of these,

[503] Yamaguchi, p. 294, and p. 297.
[504] For a more detailed approach to the protection of the right to privacy and data protection by Art. 13 of the Japanese Constitution and related Supreme Court decisions, see Official Journal of the EU, Commission Implementing Decision (EU) 2019/419 of 23 January 2019 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by Japan under the Act on the Protection of Personal Information, (especially) **§8**, available at: https://tinyurl.com/OJoEU-Decision-2019-419, (Last accessed: 04.07.2023)

the Law punishes…consistent with the *intention of punishment of the other party* only when the *legal damage* to the other party is severe and *punitive control* is required…It is not particularly *harsh* in comparison with *the Penal Code*, *the Minor Offence Law*, and *other related laws*. Given the *legitimacy of the Law*'s objective, and *rationality* and *reasonability* of the regulations' contents, it is sensible to grasp that the articles in question are not in breach of ***Art. 13 of the Constitution***."[505]

Another crucial development regarding the application of Art. 13 happens in the sphere of same-sex marriages in Japan. In a recent decision dated Mar. 17, 2021, a Japanese District Court decided, for the first time in the country, that it is constitutionally inadmissible for the national government to refuse to recognize same-sex marriage; in the decision, the Court referred to Art. 13 of the Constitution, though it was not breached according to the Court, while Art. 14, Para. 1 of the Constitution, which is related to equality among people, was the main reason for the violation of the Constitution.[506]

The mentality behind the fact that Art. 13 of the Constitution is not breached is attempted to be explained with the background of legal opinions on same-sex marriage in Japan.[507]"…Under the Meiji Civil Code, same-sex marriage was not allowed, as homosexuality was thought a mental disorder and the law did not need to contain any explicit provisions against it. Moreover, the understanding of homosexuality as a mental disorder did not alter in the 1947 Amendment of the Civil Code. Same-sex marriage was still thought naturally unacceptable, the same

[505] Supreme Court of Japan, 2003 (A) 520, Date of the judgment: 2003.12.11, available at: https://tinyurl.com/Japan-Sup-Court-2003-A-520, (Last accessed: 30.10.2022)
[506] https://tinyurl.com/Same-Sex-Marriage-Japan, (Last accessed: 31.10.2022). See the provided link for more information on this important ruling.
[507] https://tinyurl.com/Same-Sex-Marriage-Japan, (Last accessed: 31.10.2022)

perception as under the Meiji Civil Code. Hence, the same idea of *homosexuality* is reflected even in ***Art. 24*, *Para.s 1 and 2*, and *Art. 13* of the Constitution** which was adopted in 1946. Therefore, *same-sex marriage* is not included in *Art. 24*. Given the aforementioned legislative background and usage of language like "*both sexes*" and "*husband and wife*" that indicate *men* and *women*, it is acceptable to interpret *Art. 24* as mandating *opposite-sex marriage* rather than *same-sex marriage*…We decide that *Art. 13*, which is a *comprehensive* human rights clause in the *Constitution*, does not protect *any right to seek a specific system for same-sex marriage* and *the families created from such unions*…**It is challenging to explicitly draw *a system of same-sex marriage* from the construction of the Constitution's *Art. 13* alone.** Hence, *the Court* does not conclude that the failure of *the Provisions to recognize same-sex marriage* infringes *Art. 13 of the Constitution*."[508]However, Japan has a civil law system so this case does not create a precedent, which should be adhered to by other courts in the country.[509]

Art. 10[510]of the Republic of Korea's Constitution of 1948 expresses that every citizen shall have the right to pursue happiness.[511]This article specifies the right of persons to pursue happiness, while the Constitutional Court of Korea construes the extent of safeguard with this Art. 10 to contain *the general freedom to behave*, *the freedom to express* one's *characteristics* and individuality, and *the right to sexual self-determination*.[512]Other two terms that are connected with the right to pursue happiness

[508] Case No. (Wa) 267 of 2021, Claim for Damages Case, Date of conclusion of the oral argument: 28 Oct. 2020, p.11, available at: https://tinyurl.com/Case-No-Wa-267-of-2021, (Last accessed: 31.10.2022)
[509] https://tinyurl.com/Same-Sex-Marriage-Japan, (Last accessed: 31.10.2022)
[510] The title of the Chapter is *"Rights and Duties of Citizens"*
[511] See the 1st sentence of Art. 10 under Chapter II.
[512] The Constitutional Court of Korea, 2004 Hun-Ba 65, decided on Apr. 28, 2005, in Lee, H.J.: Discrimination Based on Sexual Orientation: Jurisprudence of the European Court of Human Rights

in the article are *human worth* and *dignity*. *Human worth* and *dignity* are regarded as *the inviolable fundamental rights* of all individuals according to Art. 10 of the Korean Constitution, and the root of *such fundamental human rights is the right to self-determination*, which people possess *not as a means but as an end*, thus the essential independence of the personality has to be kept in any case, even if certain freedoms could be restrained for the continuation of a communal society.[513]

The interrelationship between human worth and dignity and the right to pursue happiness, which is outlined in the same provision, is a subject of debate among scholars, just as the nature and content of the right to pursue happiness in conjunction with *other fundamental right provisions*, although there is an agreement on the character of this right that it is both a natural law provision and a comprehensive provision.[514][515]

The Constitutional Court of Korea does not picture Art. 10 merely as a fundamental principle and value with no normative authority; in the case regarding *the constitutionality* of the punishment of *adultery* in the Korean Criminal Code, although the Constitutional Court stated that "*The pursuit of happiness* presupposes the right to make one's own decisions about one's *faith* and this right involves *the right of self-decision in sex* regarding whether or not to *have sex* and *with whom*.", but it concluded that "*Art. 241 of Criminal Code*, which punishes *adultery*, is a justified constraint of the right to pursue *happiness* since the intention of *the provision* was to preserve *good*

and the Constitutional Court of Korea, Interdisciplinary Studies in Human Rights Vol. 8, Springer, Switzerland 2022, p. 225.

[513] Lee, p. 37.

[514] Lim (Pursuit), pp. 75-76.

[515] For Lim's division of these different views into 3 groups based on enforceability and other characteristics, see pp. 76-78.

sexual morality and the monogamous system, ensure a duty of sexual fidelity in the relationship, and safeguard *family life* from societal ills."[516]

Art. 10 of the Korean Constitution is also found related to the parent's right to educate children. Korean Constitutional Court held that even though the parent's right to educate children is not stated in the constitution, it arises, among other constitutional provisions, out of Art. 10, the guarantee of the right to pursue happiness.[517]

The right to the pursuit of happiness is found connected with the right to freedom of contract as well. While underlining the boldness of the Korean Constitutional Court, it is asserted that the Court is willing to establish new rights by interpreting the text of the constitutional document very broadly; for example, in 1991, the Constitutional Court construed Art. 10 of the Constitution granting individuals a right to pursue happiness, to encompass a right to freedom of contract.[518]

The Korean Constitutional Court holds that the right to the pursuit of happiness is also associated with the freedom to marry. Pursuant to the Korean Civil Code Art. 809, "*The kin* who have the same last name and *family origin* are not permitted to be married.", the couples, whose marriage registrations were not accepted, due to the fact they shared the same surname with the same family origin, took the case before the

[516] Adultery case, 89 heonma 82 (constitutional case in file 'e') (Korean Constitutional Court, Sep. 10, 1990), as in Lim (Pursuit), pp. 79-80. 11 years after this decision on Oct. 25, 2001, *in the Korean Constitutional Court*, *although majority opinions* held that *criminal punishment* is required for *adultery*, the dissenting opinion stated "…Criminalizing *adultery* is equivalent to compelling the *spouse* to feel *love* and *affection*. Such coercion is in breach of *human dignity* as it *deprives* an individual of *his/her independence*, which is, of *sexual self-determination*…" (The Constitutional Court of Korea, 2000 Hun-Ba 60, Grand Chamber Decision, decided on Oct. 25, 2001. Judicial Report of precedents 13-2, pp. 488-489, as in Lee, p. 37). However, in 2015, the Korean Constitutional Court made the criminal punishment of adultery unconstitutional. (The Constitutional Court of Korea, 2009 Hun-Ba 17, etc., February 26, 2015, as in Lee, p. 39.)

[517] The Constitutional Court of Korea, 12-1 KCCR 427, 98Hun-Ka16, etc., Apr. 27, 2000, as in Chang *et al.*, Under the heading "*B. Culture as Normative Matrix*".

[518] Ginsburg, T.: *Constitutional courts in East Asia,* p. 54, in Dixon, R., Ginsburg, T. (eds.): Comparative Constitutional Law in Asia, Massachusetts 2014.

Seoul District Family Court, and the case reached the Korean Constitutional Court to review.[519]The majority in the Court ruled that the provision in the dispute is in breach of the Constitution, and one of the reasons for the Court to reach such a conclusion was: "By interfering with *the freedom to marry*, which includes the ability to select *one's partner* and *the time of the marriage*, *Art. 809* directly infringed *Art. 10 of* the *Korean Constitution* which protects *human value and dignity* and *the right to pursue happiness*."[520]The case has an aspect regarding the principle of equality as well since according to the Court, "In addition to losing both *its social acceptance* and *rationality* as a *marriage ban*, *Art. 809 of the Civil Act* also directly contradicts the *constitutional ideas* and *provisions* with regard to '*human dignity and worth and the right to pursue happiness*' and the *constitutional provisions* with respect to establishing and upholding marriage and family life on the basis of '*individual dignity* and *gender equality*'. Additionally, as the restriction only applies to those with the same *surnames* or those who have *the same patrilineal blood ties*, it constitutes *gender discrimination* without a justification, and infringes *the constitutional principle of equality*."[521]

Lee states that Art. 10 could serve as the legal foundation to ensure *the right to marry for same-sex couples*, and this article could be taken *as legal grounds* for *same-sex marriage* in the nonexistence of particular legal provisions about it; nevertheless, *South Korean courts* have yet to legalize it due to their belief that *same-sex marriage* goes against public opinion.[522]

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[519] Lim, J.: *Judicial Intervention in Policy-Making by the Constitutional Court in Korea*, pp. 16-17, in Mayali, L., Yoo, J. (eds.): Current Issues In Korean Law, California 2014, available at: https://tinyurl.com/Mayali-Yoo-Eds-Book, (Last accessed: 31.10.2022)

[520] Lim (Judicial), p. 18.

[521] Same-Surname-Same-Origin Marriage Ban Case (9-2 KCCR 1, 17-18, 95 Hun-Ka 6, etc., July 16, 1997), in Dong-Heub, L.: *Development and Current Situation of the Constitutional Adjudication in Korea*, Seoul Law Journal, Vol. 53, No. 2, Jun. 2012, p. 31, available at: https://tinyurl.com/Dong-Heub-Article, (Last accessed: 01.11.2022)

[522] p. 226, and p. 228. For more details about *same-sex marriage in Korea*, see Lee, p. 226.

On the other hand, when it comes to the matter of same-sex sexual acts in the military, the Supreme Court of Korea handed down a landmark judgment very recently.[523]In this ruling, the Supreme Court overturned the 2019 military court conviction of 2 male soldiers convicted of having consensual sexual intercourse outside their military facilities.[524]Art. 92/6 of Korea's Military Criminal Act punishes consensual sexual acts between men in the military with up to 2 years imprisonment under an "indecent acts" clause; the Supreme Court of Korea held that "*The Act* is not applicable if *same-sex* sexual activities occurred outside the *base* while the soldiers were out of *duty* and by *mutual consent*. The Court also considered that criminalizing *these acts* may *unreasonably* infringe soldiers' constitutionally protected rights to *sexual autonomy*, *non-discrimination*, *equality*, and *dignity*, as well as to ***pursue happiness***."[525]

Regarding the relationship between Art. 10 and the right to adequate food, according to the Food and Agriculture Organization of the UN, even though there is no explicit constitutional safeguarding for the right to adequate food in South Korea, Art. 10 of the Constitution may be one of the related articles, among others, to the right to adequate food.[526]

As for the connection between abortion and the right to the pursuit of happiness: Abortion is decriminalized in South Korea effective from January 1, 2021, when the provisions of the Criminal Act, which are Art.s 269 and 270[527], that

[523] https://tinyurl.com/Amnesty-S-Korea-LGBTI-Jud, (Last accessed: 01.11.2022)
[524] https://tinyurl.com/Jurist-S-Korea-Supreme-Court, (Last accessed: 01.11.2022)
[525] https://tinyurl.com/Amnesty-S-Korea-LGBTI-Jud, (Last accessed: 01.11.2022)
[526] https://tinyurl.com/FAO-S-Korea-Right-to-Food, (Last accessed: 01.11.2022)
[527] For the Criminal Act of South Korea, see https://tinyurl.com/Criminal-Act, (Last accessed: 01.11.2022)

criminalized abortion became invalid.[528]"A doctor who had conducted *an abortion* was accused of the *crime* of '*abortion by the medical profession with the woman's consent*' (*Criminal Act Art. 270*, *para. 1*, *as amended*) in the case before *the Constitutional Court*. She filed a motion asking the *trial court* to *refer* her case to *the Constitutional Court* for the constitutionality review of *the Criminal Act*'s abortion-criminalizing provisions while her case was still *pending* before *the trial court*."[529]

The judges, who support the constitutional nonconformity opinion regarding this Act, held that "*The general right to personality* stemmed from *human dignity* secured by *the 1st sentence* of *Art. 10* of *the Constitution* specifying *inter alia* '***the right to* the *pursuit of happiness***'…*The general right to personality* offers comprehensive protection to the fundamental conditions for the *free development of personality* that is intimately tied to *human dignity*, and an individual's right to *self-determination* stems from such *general right to personality*…*The right to self-determination* is a medium to fulfill *human dignity* and is the right of people to *freely* take basic *decisions* with regard to the *development* of *their personality* and lifestyle in their *private sphere of life*. The idea of *human dignity*, which is not only the foundation but also the objective of *the right to self-determination*, places a *duty* on *the state* to esteem and defend *human dignity*. It is obvious that this *right to self*-determination and the 'relationship between human beings and the state' should *equally* apply to both *men* and *women*. This is especially clear considering the fact that *women*, *unlike men*, have the ability to *become pregnant* and *give birth to a child* and their choices with respect to *pregnancy* and *childbirth* have a significant influence *on their lives*. Thus, a

[528] https://tinyurl.com/LOC-Abortion-S-Korea, (Last accessed: 01.11.2022)
[529] https://tinyurl.com/LOC-Abortion-S-Korea, (Last accessed: 01.11.2022)

woman's *right to self-determination* involves her right to *freely* build *her own private sphere of life* based on her own respectable *right to personality*, and a *pregnant woman*'s *right* to choose whether to *continue her pregnancy* and *give birth* is included in such right as well…The Court further noted that *the right to self-determination* or *the general freedom of action*, arising from ***the right to pursue happiness under Art. 10 of the Constitution***, *respects* the decision or choice made by *a reasonable* and *responsible person* in relation to his or her own *destiny* but presumes that this person accepts *the responsibility* for such decision or choice…We see that the core of this *constitutional right to self-determination* is based on an individual's *self-evaluation* and *self-determination* of the meaning and consequences of *his or her action*."[530]

The right to the pursuit of happiness has given rise to discussions regarding the right to die or euthanasia[531], or the right of young people to play *online games*, and the parents' right to *direct* their children's *education outside of school*[532]as well. Thus, especially in South Korea, many rights have been derived from the right to the pursuit of happiness by the courts, and many disputes regarding the current political debates have been resolved by the implementation of this right through the judiciary. Hence, it has played a key role to open many locked doors in the hands of judges, but it is a matter of interpretation whether it is an emancipatory clause or an overused hoax.

[530] Case on the Crimes of Abortion, 2017Hun-Ba127, Apr. 11, 2019, pp. 11-12, and 29, available at: https://tinyurl.com/Case-on-the-Crimes-of-Abortion, (Last accessed: 01.11.2022)
[531] For more information, see Chen, C.: *Legislating the Right-To-Die With Dignity in a Confucian Society-Taiwan's Patient Right to Autonomy Act*, Hastings International and Comparative Law Review, Vol. 42, No. 2 Summer 2019, pp. 485-508, available at: https://tinyurl.com/Chen-Article, (Last accessed: 01.11.2022)
[532] Sang Y., Park, S., Seo, H.: *Mobile Game Regulation in South Korea: A Case Study of the Shutdown Law*, p. 59, in Jin, D.Y. (ed.): Mobile Gaming in Asia: Politics, Culture and Emerging Technologies, Springer 2017.

IV. "Other" Provisions on Happiness in Constitutions

There are four more constitutional provisions where the words "happy" and/or "happiness" have been used. These are Schedule 2[533] of Bhutan's Constitution of 2008, the Second Schedule[534] of Guyana's Constitution of 1980, Art. 12[535] of Mongolia's Constitution of 1992, which describes the State Coat of Arms, and the UK's Act of Settlement of 1701[536], one of the constitutional statutes[537] of the UK. Since these provisions have a relatively random nature in terms of their places and functions in these Constitutions, such a title has been chosen for this section.

The mentioned parts of the Constitution of Bhutan, Guyana, Mongolia, and the UK exemplify the haphazard and rhetorical use of the word "happiness". In this sense, these provisions have a remotely similar nature to the provisions classified under "*Happiness in the Preambles*". The use of "happiness" in the Constitution of Bhutan and the Constitution of Mongolia can be excellent examples of its coincidental application to a part of the legal texts, while in the Constitutions of both Guyana and the UK, its appearance is nothing more than mere rhetoric. Thus, regardless of whether the word "happiness" is used haphazardly or rhetorically, detailed attention is not required to elicit the already limited legal nature of these provisions.

Since the questions of where to find happiness and what functions can be attributed to it in given constitutions are examined in this Chapter, the concept of

[533] The title of the Schedule is "*The National Anthem of Bhutan*"
[534] The title of the Schedule is "*The National Pledge*"
[535] The title of the Chapter is "*Sovereignty of Mongolia*"
[536] For more information on the UK Constitution, see https://tinyurl.com/CONSOC-the-UK-Constitution, (Last accessed: 05.07.2022). To understand relatively recent developments in the UK regarding the Constitution, see also *The UK Constitution: A summary, with options for reform*, Mar. 2015, available at: https://tinyurl.com/HoC-Committee-UK-Constitution, (Last accessed: 05.07.2022)
[537] For the constitutional statutes, see What is the UK Constitution? https://tinyurl.com/UCL-the-UK-Constitution, (Last accessed: 05.07.2022)

happiness in Turkish Constitutions and the TCC's jurisprudence remain to be analyzed in the following Chapter.

CHAPTER 3

THE CONCEPT OF HAPPINESS IN TURKISH CONSTITUTIONAL LAW: AN ASSESSMENT IN THE LIGHT OF THE JURISPRUDENCE OF THE TURKISH CONSTITUTIONAL COURT AND AN ATTEMPT AT ITS EMPIRICAL JUSTIFICATION

Happiness, and many terms which may connote happiness, such as welfare or well-being are not unknown phenomena in the history of Turkish constitutional law. These concepts, which appear with multifarious facades in different constitutional periods, have become embedded in our constitutional vocabulary. In other words, even though there have been issues with their protection and implementation as a right or duty, as there were in the aforementioned constitutions, which is both the cause and the effect of the issue with its justiciability, there have been no issues with happiness being recognized in Turkish Constitutions.[538]

It may be possible to give a concrete meaning to the concept of happiness, which has been the subject of various TCC decisions, especially since the beginning of the millennium, in Turkish constitutional law. According to the Court, individual happiness can be guaranteed by the combination of the rule of law and the social state. The question is to what extent one could verify the accuracy of this jurisprudence. As will be detailed below, this approach of the Court can be confirmed to some extent by studies in the legal and social sciences literature, taking into consideration different social and economic indicators.

[538] Yılmaz, Z.: "Personal Communication", 04.06.2023, Email to Berksun, S.U.

All these aspects will be portrayed in the following order: first, the development of the concept of happiness in Turkish constitutional history will be briefly reflected, then the happiness jurisprudence of the TCC will be examined, and finally, the happiness level of the Turkish people will be presented comparatively according to the WHRs.

I. Happiness in the Turkish Constitutions

The origin of the concept of happiness dates back to "*Gülhane Hatt-ı Hümâyunu*" in 1839[539], known as "*Tanzimat Fermanı*"[540], (Noble Edict of the Rose Chamber)[541]and "*Hatt-ı Hümâyun*" in 1856[542], known as "*Islahat Fermanı*"[543], (Ottoman Reform Edict of 1856)[544] in the history of the Ottoman-Turkish

[539] For the original text, see https://tinyurl.com/Tanzimat-Metin, (Last accessed: 08.11.2022). For the simplified Turkish text and explanations, see Tanör, B.: Osmanlı-Türk Anayasal Gelişmeleri (1789-1980), 24. Baskı, İstanbul, 2014, pp. 127-141. See also https://tinyurl.com/Tanzimat-Metin-2, (Last accessed: 08.11.2022). For the English translation, see https://tinyurl.com/Rescript-of-Gulhane, (Last accessed: 08.11.2022)

[540] For more information about Tanzimat, see Britannica, The Eds. of Encyclopedia: "*Tanzimat*", Encyclopedia Britannica, 14 Apr. 2016, available at: https://tinyurl.com/Britannica-Tanzimat, (Last accessed: 11.08.2022). See also Akyıldız, A.: *Tanzimat*, Türkiye Diyanet Vakfı (**TDV**) İslam Ansiklopedisi, TDV İslam Araştırmaları Merkezi, 2011, available at: https://tinyurl.com/Islam-Ans-Tanzimat, (Last accessed: 08.11.2022)

[541] For the nomenclature of this edict, see Britannica, The Eds. of Encyclopedia: "*Abdülmecid I*", Encyclopedia Britannica, 21 Jun. 2022, available at: https://tinyurl.com/Britannica-Abdulmecid, (Last accessed: 08.11.2022)

[542] For the original Ottoman text, see https://tinyurl.com/Islahat-Fer-1856, (Last accessed: 08.11.2022); see also https://tinyurl.com/Islahat-Fer-2, (Last accessed: 08.11.2022). For the simplified Turkish text and explanations, see Tanör, pp. 145-148. See also https://tinyurl.com/Islahat-Fer-2, (Last accessed: 08.11.2022). For the English translation, see https://tinyurl.com/Rescript-of-Reform, (Last accessed: 08.11.2022)

[543] For more information about Islahat Fermanı, see https://tinyurl.com/Britannica-Imperial-Edict-1856, (Last accessed: 08.11.2022). See also Gülsoy, U.: *Islahat Fermanı*, TDV İslam Ansiklopedisi, TDV İslam Araştırmaları Merkezi, 1999, available at: https://tinyurl.com/Islam-Ans-Islahat, (Last accessed: 08.11.2022)

[544] For the nomenclature of this edict, see Ottoman Reform Decree, 1856, available at: https://tinyurl.com/World-History-Reform-Decree, (Last accessed: 08.11.2022)

constitutional developments.[545]While the former edict includes the word "*refah*", which may mean 'well-being'[546], 'welfare'[547], 'prosperity'[548], or 'happiness'[549], the latter one contains the word "*saadet*", which can be translated as 'happiness'[550].

Although both edicts played constitutionally crucial roles in the history of the Ottoman-Turkish constitutional developments, the promulgation of "*Kanûn-ı Esâsî*" (the first Constitution of the Ottoman Empire)[551]may be one of the most important cornerstones of Turkish constitutional history. It has dated back to 1876. However, it took 48 years to witness the first mention of the word "happiness" in one of the Turkish Constitutions.

The word "happiness" was included in the 16th[552]and 38th[553]Art.s of the 1924 Turkish Constitution.[554]It should not be ignored that until the proclamation of the 1924 Turkish Constitution, there had been a sole framework Constitution of 1921[555]in Turkish history, which was in force during the war years and the political transition

[545] For a comprehensive picture of the Ottoman-Turkish constitutional history, see Tanör, B.: Osmanlı-Türk Anayasal Gelişmeleri (1789-1980).
[546] https://tinyurl.com/Cambridge-Dict-Well-Being, (Last accessed: 08.11.2022)
[547] https://tinyurl.com/Cambridge-Dict-Welfare, (Last accessed: 08.11.2022)
[548] https://tinyurl.com/Cambridge-Dict-Prosperity, (Last accessed: 08.11.2022)
[549] While simplifying and explaining the edict, Tanör prefers to use the word "*mutlu*", which means "happy", as a counterpart to the word "*refah*". See Tanör, p. 128.
[550] https://tinyurl.com/Cambridge-Dict-Happiness, (Last accessed: 08.11.2022)
[551] For the full text in Turkish, see https://tinyurl.com/1876-Kanun-i-Esasi, (Last accessed: 06.07.2022). For the English translation, see https://tinyurl.com/Ottoman-Cons-1876, (Last accessed: 28.03.2023)
[552] For the English translation of the 1924 Constitution and the mentioned provision, see Earle, E. M.: *The New Constitution of Turkey*, Political Science Quarterly, Vol. 40, No.1 (Mar. 1925), p. 90, available at: https://tinyurl.com/Earle-Article, (Last accessed: 06.07.2022). In accordance with the secularization process of Turkey, with the amendments made in 1928, the oath was changed, and religious expressions were abolished.
[553] Earle, p. 93
[554] In 1945, the 1924 Turkish Constitution was completely amended and purified in terms of the language of the entire text. Meanwhile, the word "*saâdet*" in the old text has been replaced by the word "*mutluluk*", and both can be translated into English as happiness. For the Turkish version of the 1924 Constitution, see https://tinyurl.com/1924-Anayasasi-TC-AYM, (Last accessed: 06.07.2022)
[555] For the whole text, see https://tinyurl.com/1921-Anayasasi-TC-AYM, (Last accessed: 06.07.2022). See also Özbudun, E.: 1921 Anayasası, Atatürk Kültür, Dil ve Tarih Yüksek Kurumu, Atatürk Araştırma Merkezi, 2008.

period from the Ottoman monarchy to the Turkish Republic; nevertheless, the text of this constitution did not contain "happiness".

The word "happiness" was not included in the 1961 Constitution as well, but the 2nd para. of Art. 10 of this Constitution mentions "*individual well-being*", which can be taken as a close substitute for "happiness".[556][557]Indeed, this article bears many similarities with Art. 5 of the 1982 Turkish Constitution[558], in which happiness is explicitly mentioned in the text. In the 1982 Constitution, happiness was mentioned not only in Art. 5 but also in the 2nd para. of the Preamble.[559][560]

From this point on, the Turkish Constitutions of 1924, 1961, and 1982 can be examined one by one to comprehend the role of constitutional happiness in these texts.

A. Happiness in the Turkish Constitution of 1924

"Happiness" is mentioned twice in the 1924 Constitution, one of which is Art. 16 and the other is Art. 38.

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[556] Especially in the literature of economics and psychology, the concept of SWB has been used interchangeably to correspond to the concept of happiness. For a more detailed view, see the relevant literature in economics and psychology. For an economic viewpoint, see Posner, E. A., Sunstein C. R.: Law & Happiness. See also Brockmann, H., Delhey, J. (Eds.): Human Happiness and the Pursuit of Maximization: Is More Always Better?, Springer, 2013.

[557] Balkan, S., Uysal, A. E., Karpat, K. H. (Trans.): Constitution of the Turkish Republic, Ankara, 1961, p. 5, available at: https://tinyurl.com/1961-Turkish-Constitution, (Last accessed: 06.07.2022). For the Turkish version of the text, see https://tinyurl.com/1961-Anayasasi-RG-10859, (Last accessed: 06.07.2022)

[558] For the English translation of the 1982 Turkish Constitution, see https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023). For another version of the translation of Art. 5, see *SADAK AND OTHERS v. TURKEY (No.2)*, nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, § 24, ECtHR.

[559] Although the Turkish version of the text uses "*mutluluk*" (the English equivalent of the word "happiness"), it is translated into English as "well-being". For the Turkish version of the text, see https://tinyurl.com/TC-Anayasasi-1982-Mevzuat, (Last accessed: 06.07.2022)

[560] https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023)

Pursuant to Art. 16, Members of Parliament (**MPs**) take the oath on the day they are admitted to Parliament. In this oath, they promise[561]that they will not aim at anything contrary to the happiness of the fatherland and the nation. On the other hand, the Constitution does not directly specify what happiness means in the text. Nevertheless, it can be interpreted that the expression of happiness carries the function of a directive principle to the state, or more specifically to the legislative. Therefore, general explanations provided regarding the nature of the directive principles in constitutions can be applied to this provision. Finally, it should be noted that "safety"[562]comes immediately after "happiness" in the word order, and they are linked by the conjunction "and", which may suggest that these two concepts are perceived as somewhat close to each other by the constituent power.

According to Art. 38, the President of the Republic takes an oath before the Parliament after being elected. In this oath, he promises to devote all his efforts to ensuring the happiness of the Turkish nation. However, as in Art. 16, what should be understood as happiness is not clear in the text. Moreover, since the TCC was not established until the 1961 Constitution, there was no judicial authority for the interpretation of this concept specifically or the constitution as a whole.[563]Nevertheless, the role of the expression of happiness in this provision can be construed as a directive principle to the state, or more specifically to the executive;

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[561] Considering the 1928 Constitutional Amendment aimed at secularization, "promise" is specifically chosen instead of "swear" in a way that does not allow the religious connotations of the word "swear". However, for the period between 1924 and 1928, the phrase "*swear before God*" may be more accurate.

[562] Although, "safety" is chosen in the translation given, according to the original text, "*selâmet*" and "*esenlik*" are used respectively, before and after the purification in the constitutional language, both of which may also be translated as "well-being". See the original texts, https://tinyurl.com/1924-Anayasasi-TC-AYM, (Last accessed: 06.07.2022)

[563] For constitutionality review initiatives of those years, see Onar, E.: *Refik Gür'ün Anayasaya Aykırı Olduğunu Düşündüğü Bir Kanun Karşısında Tutumu*, içinde A. Refik Gür, Osmanlı İmparatorluğu'nda Kadılık Müessesesi, Hazırlayan: M. Nihat Aryol, İstanbul 2015, ss. 211-218. For the *short history* of the TCC, see also https://tinyurl.com/History-Cons-Court-of-the-RoT, (Last accessed: 24.02.2023)

thus, it may be useful to follow the same method of interpretation as in Art. 16, and ought to refer to the general explanations made above.

B. Happiness in the Turkish Constitution of 1961

Unlike the 1924 Constitution, the word happiness is not explicitly expressed in the 1961 Constitution. Instead, the term "well-being" is used as a close substitute for "happiness" in the 2nd para. of Art. 10. Art. 10 falls within the scope of Part 2 and Section 1 of the Constitution, where on the one hand, fundamental rights and duties are regulated in Part 2; on the other hand, the title of Section 1 is general provisions.[564]The specific title of Art. 10 is "*the nature of the fundamental rights and their protection*".[565]

According to Art. 10, the state must remove all political, economic, and social obstacles (duty to liberate citizens from all political, economic, and social obstacles[566]) that restrict the fundamental rights and freedoms of the individual in a way that is incompatible with the principle of well-being. That is to say, the constituent power of the 1961 Constitution prefers the expression of well-being over happiness. To comprehend what could be understood from the concept of well-being in the context of this constitution, it is possible to zoom in on the words closest to it. Consistent with the word order in Art. 10, "the rule of law" and "social justice" come after "well-

[564] https://tinyurl.com/1961-Turkish-Constitution, (Last accessed: 06.07.2022)
[565] Balkan *et al.*: Constitution of the Turkish Republic (Trans.), Ankara, 1961, available at: https://tinyurl.com/1961-Turkish-Constitution, (Last accessed: 28.03.2023)
[566] Yılmaz, Z.: "Personal Communication", 01.07.2023, Microsoft Word comment.

being".[567]Therefore, they are syntactically linked to each other, which can be interpreted as having some degree of a close relationship.

Moreover, the TCC comes to a similar conclusion that some elements of the Court's happiness jurisprudence stem from the rule of law, while other elements of the same jurisprudence stem from the social state principle.[568]Although the Court developed this case law under the 1982 Constitution, the same logic can be applied to clarify the rationale behind the word "well-being" in the 1961 Constitution. Additionally, Art. 10 does not only create a general framework regarding the nature of the fundamental rights but also has various similarities to the directive principles of the state policy, characteristics of which are explained above.

C. Happiness in the Turkish Constitution of 1982

The word happiness turned into a constitutional vocabulary as the 1982 Constitution came into force. "Happiness" is included twice in this constitution: one of them is the 2nd para. of the Preamble, and the other is Art. 5[569]. However, in the English translation of the text, "well-being" is preferred over "happiness" in the 2nd para. of the Preamble. Art. 5, on the other hand, is included in the first part of the Constitution, which regulates the general principles. The title of Art. 5 is "*fundamental aims and duties of the State*".[570]

[567] See Art. 10 of the 1961 Constitution.
[568] For a detailed explanation see "*Analysis of the Turkish Constitutional Court's Happiness Jurisprudence*".
[569] For the relevant parts of the 1982 Constitution, see https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023)
[570] https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023). When interpreting the article titles of the 1982 Constitution, Art. 176/2 of the 1982 Constitution should be considered.

Pursuant to the 2nd para. of the Preamble, prosperity, and material and spiritual "well-being" (happiness) of the Republic of Turkey are mentioned side by side. Although it is difficult to attach a legal meaning to the text[571]due to the relatively rhetorical nature of the Preamble[572], still according to Art. 176/1[573], "The Preamble that indicates the fundamental *views* and *principles* on which the Constitution is *based*, is an *integral part* of the Constitution".

Art. 5 provides that one of the fundamental aims and duties of the state is to ensure the welfare, peace, and happiness of the individual and society.[574]This shows that the happiness of the individual and the society is regarded so highly that it is considered among the fundamental aims and duties of the state by the 1982 Constitution. In the reasoning of the text adopted by the Consultative Assembly, which played a consultative[575]role in the drafting of the 1982 Constitution, it is highlighted that the fundamental aims and duties of the state are explained in Art. 5, and based on this explanation, besides its other duties, the state is also responsible for ensuring the peace of the nation and making its members happy.[576]Thus, the state will ease the individual's struggle for life while enabling the individual to live in an environment suitable for human dignity, so that the social state can fulfill one of its duties.[577]

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[571] See the reference by the Turkish Council of State to the 2nd para. of the Preamble as one of the relevant laws related to the case before it in one of its judgments: Danıştay 8. Daire, Esas Sayısı (**E.**) 2018/5768, Karar Sayısı (**K.**) 2021/4195, Karar Tarihi (**T.**) 29.09.2021. (https://tinyurl.com/Danistay-Karar-Arama, Last accessed: 18.07.2022)

[572] See the dissenting opinion of Justice Paksüt of the TCC confirming **the idealistic and discretionary nature of the provision** while quoting the 2nd para. of the Preamble, which can be analyzed to understand the Court's approach to the interpretation of this paragraph. (Anayasa Mahkemesi (**AYM**), E. 2005/52, K. 2007/35, T. 03.04.2007, Resmî Gazete (**RG**) 18.03.2008, the dissenting opinion of Osman Alifeyyaz Paksüt, p. 39, 2nd para. under the heading B)

[573] https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023)

[574] https://tinyurl.com/Turkish-Constitution-1982, (Last accessed: 28.03.2023)

[575] Yılmaz, Z.: "Personal Communication", 14.04.2023, Microsoft Word comment.

[576] Yılmazoğlu, Y.E., Perdecioğlu, İ.E. (hazırlayanlar): Türkiye Cumhuriyeti Anayasası (Gerekçeli), 3. Baskı, Mart 2021, s. 25, available at: https://tinyurl.com/TC-Gerekceli-Anayasa, (Last accessed: 09.11.2022)

[577] Yılmazoğlu and Perdecioğlu, s. 25.

From this point of view, this article has a very similar nature to the directive principles of the state policy, since it creates obligations for the state with respect to fundamental values in an aspirational and guiding way while its justiciability through the judiciary may create controversy.[578]However, the TCC has over the years brought this provision into effect on the axis of the social state governed by the rule of law principle specified in Art. 2 of the Constitution.

It is highlighted that since the matters in Art. 5 are not only the duty of the state but also its purpose, the state may have practically disappeared in the sense of the modern legal order as a result of the deeds and transactions contrary to these matters.[579]

Aslan's answer to the question of how Art. 5 would be enforced in case of its violation by the state is the simple one: through the functional and effective checks and balances between powers of the state, or shortly the separation of powers, and this may be possible with the help of the rule of law; that is to say, "The legislature should make laws in a way that will ensure the prevention of violations and compensate for the violations made in order to prevent the deeds and transactions of the executive and judiciary that are contrary to the aforementioned aims and duties. The executive ought to mind the contradictory legislations of the legislature and the judgments of the judiciary against the aforementioned aims and duties while administrating the state. The judiciary should annul the act of the legislature that made laws contrary to the aforementioned aims and duties with the constitutional judiciary and annul and/or compensate the act of the executive in the administrative judiciary."[580]

[578] Weis, pp. 6-7.
[579] Aslan, B.: Devletin Temel Amaç ve Ödevleri Işığında Öznel Gelişme Hakkı (1982 Anayasası Madde (**M.**) 5), Marmara Üniversitesi Sosyal Bilimler Enstitüsü Hukuk Anabilim Dalı Kamu Hukuku Bilim Dalı, Yüksek Lisans Tezi, İstanbul 2007, s. 85.
[580] Aslan, ss. 85-86.

Furthermore, the state has many aims and duties other than those in Art. 5, so what is enlisted in Art. 5 is not *numerus clausus*, considering the fact that the expression "*fundamental*" in the title of the article reminds one that there must be secondary aims and duties of the state; nevertheless, the fact that such aims and duties are explicitly specified in the constitution creates clarity in case the state does not act in accordance with them.[581]

The equivalent of Art. 5 in the 1982 Constitution was the 2nd para. of Art. 10 of the 1961 Constitution, but its place and the way it is expressed has significantly changed; thus, first, the examined provision has been repositioned from being a requirement of fundamental rights and freedom to the duties of the state, which has brought an end to the profound equation between freedom and emancipation that had been created by the 1961 Constitution since according to the understanding of Art. 10/2, freedom was not something that had already existed and could be contented with its safeguard, but it is a process of becoming that must be carried out continuously.[582]

Additionally, instead of strict orders and imperatives such as "*The State shall remove all…obstacles*" and "*The State prepares the conditions required…*" in the 1961 Constitution, there are timid phrases in the 1982 Constitution such as "*…to strive for the removal of…obstacles…to provide the conditions required…*"[583]However, such criticisms on the nature of Art. 5 seem to be eliminated by the happiness jurisprudence of the TCC over the years.

Last but not least, it is also vital to note the *international agreements duly put into effect* within the scope of their provisions on happiness in the face of the existence

[581] Aslan, ss. 88-89.
[582] Tanör and Yüzbaşıoğlu, pp. 135-136.
[583] Tanör and Yüzbaşıoğlu, p. 136.

of Art. 90/5 such as the Preamble of the CRC[584], Preamble of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)[585], Art. 10 of the Convention on the Elimination of All Forms of Discrimination against Women[586]. Despite not being explicitly mentioned in the European Convention on Human Rights, the ECtHR refers to happiness in its jurisprudence within the scope of Art. 8.[587]Additionally, it is important to draw attention to rights that are indirectly related to happiness, such as *the right of self-*

[584] See para. 7 of the Preamble, available at: https://tinyurl.com/UN-CRC-1989, (Last accessed: 06.06.2023). See also Footnote 24.

[585] In this Convention, the word 'well-being' is used instead of 'happiness'. See para. 6 of the Preamble, available at: https://tinyurl.com/Lanzarote-Convention, (Last accessed: 06.06.2023)

[586] In this Convention, the word 'well-being' is used instead of 'happiness'. See para. h of Art. 10, available at: https://tinyurl.com/CEDAW-1979, (Last accessed: 06.06.2023)

[587] See Art. 8, available at: https://tinyurl.com/ECHR-Article-8, (Last accessed: 06.06.2023). For instance, Judges Sajó, Vučinič, and Kūris, in their joint dissenting opinion, hold that "…*As a matter of common sense, however, for a citizen, even if* naturalized*, to have to wait twenty-eight years for permission to reunite in his country of citizenship is disproportionately, drastically and unjustly far too long and amounts for that human being, and for his spouse, to deprivation of their* ***right to*** **the** ***pursuit of happiness***…" (*BIAO v. DENMARK*, no. 38590/10, § 34 of Joint Dissenting Opinion of Judges Sajó, Vučinič, and Kūris, ECtHR, available at: https://tinyurl.com/HUDOC-BIAO-v-DENMARK, Last accessed: 28.10.2022). In another judgment, Judge Yudkivska, in his partly dissenting opinion, quotes a part from Milan Kundera's novel "Immortality", where the right to happiness and its content are being criticized, "…*The more the fight for human rights gains in popularity, the more it loses any concrete content, becoming a kind of universal stance of everyone toward everything, the world has become man's rights and everything in it has become a right: the desire for love the right to love, the desire for rest the right to rest, the desire for friendship the right to friendship, the desire to exceed the speed limit the right to exceed the speed limit, the desire for* ***happiness*** *the* ***right to happiness,*** *the desire to publish a book the right to publish a book, the desire to shout in the street in the middle of the night the right to shout in the street.*"(*EVERS v. GERMANY*, no. 17895/14, § 9 of Partly Dissenting Opinion of Judge Yudkivska, ECtHR, available at: https://tinyurl.com/HUDOC-EVERS-v-GERMANY, Last accessed: 28.10.2022). For another approach advocated by Wojtyczek, one of the judges of the ECtHR, referring to an earlier judgment in his dissenting opinion, see "…*In the case of Erményi v. Hungary (no. 22254/14, 22 Nov. 2016), Judge Kūris argued eloquently:*
"The perspective of examining privacy in terms of the right and value protected by Article 8 must be returned to its natural angle. To present it graphically, 8 should indeed be seen as
8
and not – as increasingly tends to be the case – like the sign of infinity: ∞.""" After the quotation from this judgment, Wojtyczek interprets it as follows: "According to the prevailing approach at that point in time, Art. 8 did actually turn out to be a vastly broad ***right to happiness***, bringing about *associations* with the Preamble of *the 1776 U.S. Declaration of Independence* and Section 1 of *the 1776 Virginia Declaration of Rights*. Art. 8 also became and still continues to be, the *default provision* utilized by the Court to fill gaps in the Convention protection through *judge-made law*, rapidly growing beyond the boundaries set forth by *the wording of this provision as read* considering the applicable treaty interpretation rules." (*MILE NOVAKOVIĆ v. CROATIA*, no.73544/14, § 2 of Judge Wojtyczek's dissenting opinion, ECtHR)

determination outlined in Art. 1 of the International Covenant on Civil and Political Rights[588]and Art. 1 of the International Covenant on Economic, Social and Cultural Rights[589], as well as *the right to the enjoyment of the highest attainable standard of physical and mental health* outlined in Art. 12 of the International Covenant on Economic, Social and Cultural Rights[590].[591]

At this point, it could be examined how the TCC has developed its interpretation and jurisprudence on Art. 5 in particular and on constitutional happiness in general. Then, the validity of the elements revealed by the Court in its case law on happiness will be evaluated in the light of various data.

II. Happiness in the Turkish Constitutional Court and Its Empirical Analysis

In contemporary liberal democratic regimes, mechanisms for reviewing the constitutionality of laws have been developed to implement the principle of "rule of the constitution"; thus, 2 methods can be highlighted: "political review" (review by the legislative and executive branches) and "judicial review" (review by the judiciary).[592]Since the establishment of the TCC by the 1961 Constitution, the power to review the constitutionality of laws had been endowed solely with the Constitutional

[588] See 1st sentence in para. 1 of Art. 1, available at: https://tinyurl.com/Cov-on-Civil-and-Pol-Rights, (Last accessed: 06.06.2023)
[589] See 1st sentence in para. 1 of Art. 1, available at: https://tinyurl.com/Cov-on-Eco-Soc-and-Cul-Rights, (Last accessed: 06.06.2023)
[590] See para. 1 of Art. 12, available at: https://tinyurl.com/Cov-on-Eco-Soc-and-Cul-Rights, (Last accessed: 06.06.2023)
[591] Yılmaz, Z.: "Personal Communication", 04.06.2023, Email to Berksun, S.U.
[592] Gönenç, L.: *Yasaların Anayasaya Uygunluğunun Denetimi ve Anayasa Yargısı*, Türkiye Ekonomi Politikaları Araştırma Vakfı (**TEPAV**) Anayasa Çalışma Metinleri, 2010, available at: https://tinyurl.com/TEPAV-Gonenc-AY-Cal-Metinleri, (Last accessed: 10.11.2022)

Court[593], meaning that Turkey adopted the method of judicial review. Moreover, the Court was based on the European model of posteriori constitutional review[594], meaning that the constitutionality review is carried out only by a special court appointed for this task as opposed to the American model, where all courts have the power to review the constitutionality of laws, at the same time laws can only be reviewed after their entry into force, unlike the a priori model, where the laws can be reviewed before their entry into force.[595]

The current 1982 Constitution in force had maintained the system of a constitutional review launched by the 1961 Constitution with some revisions.[596]The Constitutional Court's functions and powers are those granted to it by the constitution, and since the Court does not have a general power, that is, all of its powers are "exceptional" ones, they must be specified separately and explicitly in the constitution.[597]Therefore, it is essential to draw attention to Art. 148 of the 1982 Constitution.[598]According to the 1st para. of this article, "TCC shall review the *constitutionality* of *laws*, *presidential decrees*, and *the Rules of Procedure of the Grand National Assembly of Turkey* in terms of both *form* and *substance* and make decisions

[593] https://tinyurl.com/History-Cons-Court-of-the-RoT, (Last accessed: 10.11.2022)
[594] https://tinyurl.com/History-Cons-Court-of-the-RoT, (Last accessed: 10.11.2022)
[595] Gönenç (Yasaların Anayasaya), (Last accessed: 10.11.2022)
[596] https://tinyurl.com/History-Cons-Court-of-the-RoT, (Last accessed: 10.11.2022)
[597] Gözler, K.: Türk Anayasa Hukuku, Birinci Baskı, Temmuz 2000, Bursa, s. 873.
[598] "*Art.s 146-153 of the 1982 Constitution lay down in detail the composition, duties, working methods of the Constitutional Court and other issues concerning constitutional review.*" (https://tinyurl.com/History-Cons-Court-of-the-RoT, Last accessed: 11.11.2022). For detailed information about the Court's organization, structure, proceedings, and disciplinary proceedings, see the Code on Establishment and Rules of Procedures of the Constitutional Court (No. 6216, 30.03.2011), (https://tinyurl.com/History-Cons-Court-of-the-RoT, Last accessed: 11.11.2022), available at: https://tinyurl.com/6216-s-AYM-Kur-ve-Yar-Us-Hk-K, (Last accessed: 11.11.2022). For the English version of the Code, see https://tinyurl.com/Law-on-Const-Court-6216, (Last accessed: 12.11.2022). For more information about the Court, see also https://tinyurl.com/Cons-Court-of-Turkey, (Last accessed: 11.11.2022)

on *individual applications*[599]. *Constitutional amendments* shall be subject to examination and verification *only* with respect to their *form*…"[600]

When it comes to the constitutional review of laws in the Court, it can be handled in 2 ways: 1- action for annulment[601](*abstract review of norms*), and 2- claim of unconstitutionality[602](*concrete review of norms*).[603]Apart from these powers, the Court has jurisdiction over constitutional complaints (individual applications) as well, introduced by the Amendments to the 1982 Constitution in 2010, which have granted a brand-new right to people.[604]Beyond these powers, many more powers such as *dissolution of political parties*, *financial audit of political parties*, and *trial of statesmen before the Supreme Criminal Tribunal* have been assigned to the Court.[605]However, within the scope of the Court's happiness jurisprudence, the Court's powers over constitutionality reviews and individual applications are significant.

The TCC has used the word "happiness" in its decisions over the years. The total number of decisions reached is 68 when "happiness"[606]is typed as a keyword into

[599] According to Göztepe, in the Turkish legal literature, the concept of "*constitutional complaint*" is mostly used and considering the Turkish constitutional judicial system and the ways to apply to the Constitutional Court, it would be more accurate to express the new right regulated in Art. 148 of the Constitution as a "*constitutional complaint*". (Göztepe, E.: *Türkiye'de Anayasa Mahkemesi'ne Bireysel Başvuru Hakkının (Anayasa Şikâyeti) 6216 Sayılı Kanun Kapsamında Değerlendirilmesi*, TBB Dergisi, Iss. 95, 2011, p. 14, available at: https://tinyurl.com/Goztepe-Article-Bireysel, Last accessed: 07.07.2023)

[600] https://tinyurl.com/Turkish-Cons-Constitute-Pro, (Last accessed: 11.11.2022). The provisions from the Turkish Constitution quoted and/or mentioned in this Chapter can be accessed from this page after this point. Unless it is quoted from another source and stated otherwise, it should be assumed that this page has been used in accessing the constitutional provisions in question.

[601] With regard to the *annulment action*, see Art. 150 of the Constitution.

[602] Regarding the *claim of unconstitutionality before other courts*, see Art. 152/1 and 3 of the Constitution.

[603] https://tinyurl.com/Cons-Court-of-Turkey, p. 22, (Last accessed: 11.11.2022)

[604] For more details see also 3rd, 4th, and 5th para.s of Art. 148.

[605] https://tinyurl.com/Cons-Court-of-Turkey, p. 25, (Last accessed: 11.11.2022)

[606] Happiness means "*mutluluk*" in Turkish.

the search engine in the TCC Decisions Data Bank.[607]59 of these are constitutionality reviews, while only 9 are individual applications.[608]However, not all decisions involving the abovementioned keywords, are directly related to the purpose of this research because the word "happiness" is used haphazardly or arbitrarily in some of these decisions (including all individual applications) , that is, the presence of such words in these decisions does not serve any legal purpose and does not contribute to the constitutional happiness debate.[609]Therefore, they may not be considered within the scope of this research. Thus, all 9 individual application cases should be excluded from the analysis, which means that 59 decisions remain to be examined further. As it turns out, all decisions that need further investigation are constitutionality reviews.

Although the initial review dates back to 1966[610], the Court did not begin developing its case law linking happiness to the concepts of the social state or the social state governed by the rule of law until the 2000s. After its first four decisions[611], one of the earliest signs that TCC considers that the discussion of happiness should be held within the framework of the social state governed by the rule of law provision

[607] https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, (Last accessed: 07.06.2023)

[608] *M.M.E ve T.E.*, Başvuru Numarası (**B. No**): 2013/2910, 05/11/2015, RG 02/02/2016; *Murat Türk (2)*, B. No: 2013/7082, 29/06/2016; *Korkut Duman*, B. No: 2013/7896, 20/04/2016; *Kemal Kılıçdaroğlu ve Cumhuriyet Halk Partisi*, B. No: 2014/12482, 08/05/2019, RG 29/05/2019; *Hülya Karadeniz*, B. No: 2015/19340, 27/06/2018; *Kıvanç Ersoy ve diğerleri*, B. No: 2016/7095, 12/01/2021; *Mehmet Al*, B. No: 2021/6664, 06/10/2021, RG 14/12/2021; *Hüseyin El ve Nazlı Şirin El*, B. No: 2014/15345, 07/04/2022, RG 28/07/2022; *Hasan Fehmi Canan*, B. No: 2018/12684, 04/07/2022 (https://tinyurl.com/Karar-Bilgi-Bank-Bireysel-B, Last accessed: 07.06.2023)

[609] For the haphazard and arbitrary nature of the usage of the word "*happiness*", see the following applications and given paragraph numbers (§) in them: the Application of *M.M.E. and T.E.,* §42 and 44; the Application of *Murat Türk (2)*, §19; the Application of *Korkut Duman*, §22; the Application of *Kemal Kılıçdaroğlu and Republican People's Party*, §14; the Application of *Hülya Karadeniz*, §13 and 21; the Application of *Kıvanç Ersoy and Others*, §10; the Application of *Mehmet Al*, §17; the Application of *Hüseyin El and Nazlı Şirin El*, §48; the Application of *Hasan Fehmi Canan*, §15.

[610] AYM, E. 1963/156, K. 1966/34, T. 20.09.1966, RG 08.05.1967, s. 5.

[611] AYM, E. 1963/156, K. 1966/34, T. 20.09.1966, RG 08.05.1967, s. 5; AYM, E. 1980/19, K. 1980/48, T. 03.07.1980, RG 03.11.1980, s. 9, s. 11, and s. 13; AYM, E. 1987/11, K. 1988/2, T. 21.01.1988, RG 29.03.1988, s. 15; AYM, E. 1990/25, K. 1991/1, T. 10.01.1991, RG 05.03.1992, s. 5, s. 27, and s. 32.

(Art. 2) is a decision from 1998[612], where the Court claims that one of the main purposes of the social state is to ensure well-being, peace, and happiness of individuals, bearing in mind the social rights and minimum living standards of individuals.

Just 2 years after this decision, in 2000[613], the TCC laid out the first stone that paved the way for its happiness jurisprudence and its relationship with the principle of the social state governed by the rule of law. Then, over the next 22 years (The final decision was made in 2022.)[614]53 more decisions followed that decision, and the TCC establishes its deep-rooted happiness jurisprudence by determining its elements one by one. In these 54 decisions, the Court finds it necessary to apply its happiness jurisprudence 57 different times.

Before examining each element of the Court's case law one by one, the question of 'which articles of the 1982 Constitution does the TCC refer to most within the scope of its jurisprudence on happiness?' must be addressed.

A. Articles of the Turkish Constitution Most Referred to by the Turkish Constitutional Court within the Scope of its Jurisprudence on Happiness

The answer to the above question will clarify the Court's approach to happiness and will give some important hints and tips about the Court's perspective on which articles of the 1982 Constitution might be more relevant to the happiness debate. According to the numerical order of the articles in the constitution, among the 59 constitutionality review decisions of the TCC, the most referred articles of the Turkish

[612] AYM, E. 1997/18, K. 1998/42, T. 30.06.1998, RG 06.12.2000, s. 3.
[613] For the first decision of the TCC in which it started to develop its jurisprudence on happiness, see AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3.
[614] AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16.

Constitution are as follows: Art. 2 (*social state governed by rule of law*), Art. 5 (happiness as one of the *fundamental aims and duties of the state*), Art. 10 (*equality before the law*), Art. 17/1 (*the right to life and the right to protect and improve his/her corporeal and spiritual existence*), Art. 48 (*freedom of work and contract*), Art. 49 (work as a *right and duty*), Art. 56/3,4,5 (right to health care, *central planning and functioning of the health services* as a task and the responsibility of the state, and the introduction of the *general health insurance* for establishing widespread health services), Art. 60 (*right to social security*), Art. 73/1,2 (*duty to pay taxes,* and *equitable and balanced distribution of the tax burden* as *the social objective of fiscal policy*).

The articles that are referred to by the Court from the Turkish Constitution may contain many different principles and aims within themselves, but the Court has often emphasized the importance of the principles and points given in parentheses above in these articles. For example, Art. 2 mentions different constitutional concepts including secularism and democracy; however, the Court considers only the principle of the social state governed by the rule of law and ignores others for the sake of its happiness-oriented discussion.

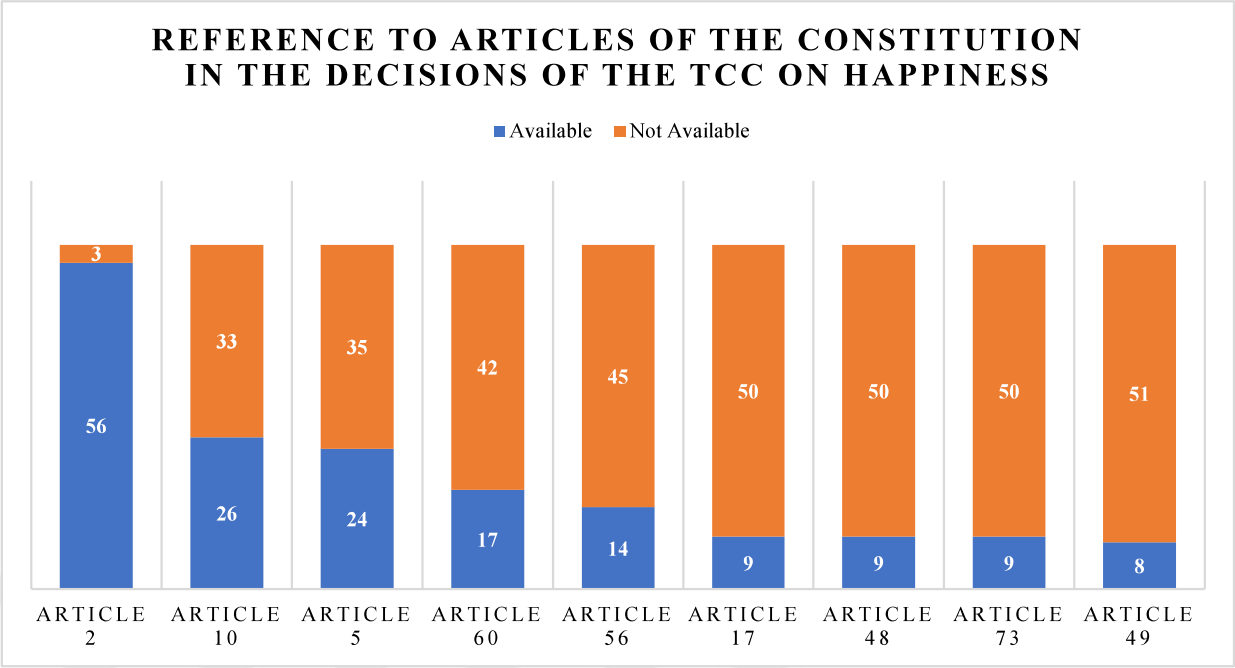


Figure 11: Availability of References to Certain Articles of the Turkish Constitution in the TCC's Decisions on Happiness[615][616][617]

The TCC most frequently refers to Art. 2 when discussing happiness.[618]Furthermore, although references to the following articles are less frequent and are not depicted in Figure 11, the Court still refers to Art. 36 (*freedom to claim rights*) 5 times, Art. 35 (*right to property*), and 50 (*working conditions and right to rest and leisure*) 4 times, Preamble 3 times, Art.s 51 (*right to organize unions*), 54 (*right to strike, and lockout*) and 61 (*persons requiring special protection in the field*

[615] The equivalent to Art. 17 of the 1982 Turkish Constitution is Art. 14/1 of the 1961 Turkish Constitution. See Balkan *et al.*: Constitution of the Turkish Republic (Trans.), Ankara, 1961, available at: https://tinyurl.com/1961-Turkish-Constitution, (Last accessed: 18.07.2022)

[616] The chart is created by the author of this thesis based on the given TCC's decisions in Footnotes 611, 612, 613, 684, 691, 692, and AYM, E. 2010/25, K. 2011/136, T. 12.10.2011, RG 29.12.2011, s. 3, s. 8, s. 10, and s. 11. The repeated decisions in the mentioned footnotes are not taken into account in the calculation.

[617] Turkish Council of State also refers to Art. 5 of the Turkish Constitution regarding its relationship with happiness. See Danıştay 2. Daire, E. 2005/621, K. 2007/4361, T. 14.11.2007; Danıştay 5. Daire, E. 2016/57342, K. 2020/2648, T. 23.06.2020; Danıştay 5. Daire, E. 2017/4537, K. 2020/2789, T. 29.06.2020. (https://tinyurl.com/Danistay-Karar-Arama, Last accessed: 18.07.2022)

[618] For the relationship between happiness (well-being) and the welfare state, see Davidson, R., Pacek, A. C., Radcliff, B.: *Public Policy and Human Happiness: The Welfare State and the Market as Agents of Well-Being*, in Human Happiness and the Pursuit of Maximization: Is More Always Better?, Eds. H. Brockmann, J. Delhey, Bremen, 2013, pp. 163-175.

of social security) 2 times, and Art. 53 (*rights of* the *collective labour agreement and collective agreement*) once under its jurisprudence on happiness.[619]

Considering the given data, a clear picture of constitutional happiness begins to emerge in line with the TCC's decisions. Now, the most reviewed laws by the Court in terms of their constitutionality under its happiness jurisprudence can be analyzed to complete this picture.

B. The Mostly Reviewed Laws by the Turkish Constitutional Court within the Framework of its Jurisprudence on Happiness

The Court often prefers to use its happiness jurisprudence or the words "happy" and/or "happiness" regarding reviewing the constitutionality of certain laws. This may suggest that according to the approach of the TCC, happiness jurisprudence and discussions may be more related to specific areas of law. The constitutionality of 71 different laws or some provisions of these laws, out of 59 decisions examined, is reviewed by the Court within the framework of happiness jurisprudence and discussions.[620]Pursuant to the Court's pattern in the reviewed 59 decisions, happiness is an issue that is mainly related to the following laws: 1- social security laws (16

[619] The calculation is made by the author of this thesis based on the given TCC's decisions in Footnotes 611, 612, 613, 684, 691, 692, and AYM, E. 2010/25, K. 2011/136, T. 12.10.2011, RG 29.12.2011, s. 3, s. 8, s. 10, and s. 11. The repeated decisions in the mentioned footnotes are not taken into account in the calculation.

[620] Out of the 59 decisions reviewed by the Court, the number of laws examined for their constitutionality exceeds 71. However, only if the Court uses the words "happy" and/or "happiness" when reviewing the constitutionality of these laws, the laws are included in the calculation here.

times), such as laws regulating pensions, retirement age, and social benefits[621][622], 2- health and health system-related laws (11 times), such as laws regulating the health system and infrastructure, medical personnel[623], and their working conditions[624], 3- laws regarding taxation (9 times), such as laws governing income tax, charges, and private consumption tax[625], 4- laws on laborers and their various rights (8 times), such as laws regulating occupational health safety, unemployment coverage, unions, and

[621] AYM, E. 1997/18, K. 1998/42, T. 30.06.1998, RG 06.12.2000, s. 1; AYM, E. 2001/479, K. 2005/1, T. 06.01.2005, RG 18.10.2005, s. 1; AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 1; AYM, E. 2008/114, K. 2010/53, T. 01.04.2010, RG 06.07.2010, s. 1; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 1; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 25; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 1; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 5; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 11; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 1; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, s. 1; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §31; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, s. 1.

[622] For details of the social security system in terms of the Constitution, see Araslı, U.: Anayasa Mahkemesi İptal Kararları Açısından Anayasal Temel İlke ve Kavramlar, Ankara 2015, ss. 379-380, available at: https://tinyurl.com/Urasli-AYM-Iptal-Karar-Acisi, (Last accessed: 06.07.2022); see also Araslı, pp. 382-383 for the happiness link pursuant to Art. 5 of the Turkish Constitution (AYM, E. 2003/31, K. 2003/87, T. 08.10.2003, RG 24.02.2004), (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 24.07.2022). Here the Court concluded that "…The fact that the participants who deserve to receive an old-age pension are also obliged to pay a premium-like continuous payment (with deduction) for health benefits after retirement is not only injurious to the right to social security but also violates the principle of legal security, certainty, and predictability required by the rule of law. It is also incompatible with the state's aim and duty of providing peace and **happiness**."

[623] See Araslı, pp. 101-102 for a brief review of the TCC, AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008.

[624] AYM, E. 2006/21, K. 2006/38, T. 13.03.2006, RG 11.12.2007, s. 1; AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008, s. 7; AYM, E. 2012/103, K. 2013/105, T. 03.10.2013, RG 17.12.2014, s. 7 and s. 16; AYM, E. 2014/61, K. 2014/166, T. 07.11.2014, RG 19.06.2015, s, 28 and s. 34; AYM, E. 2015/17, K. 2015/20, T. 05.03.2015, RG 19.06.2015, s. 1; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 75; AYM, E. 2016/181, K. 2018/111, T. 20.12.2018, RG 05.04.2019, §106; AYM, E. 2019/13, K. 2021/31, T. 29.04.2021, RG 02.07.2021, §22.

[625] AYM, E. 1987/11, K. 1988/2, T. 21.01.1988, RG 29.03.1988, s. 1; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 4; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 1; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 1; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, ss. 10-11; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 1, AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, s. 1.

labor contracts[626]. It may also be linked to criminal laws[627](3 times) and laws related to markets[628](2 times), although the number of decisions made by the Court concerning these laws is insignificant.

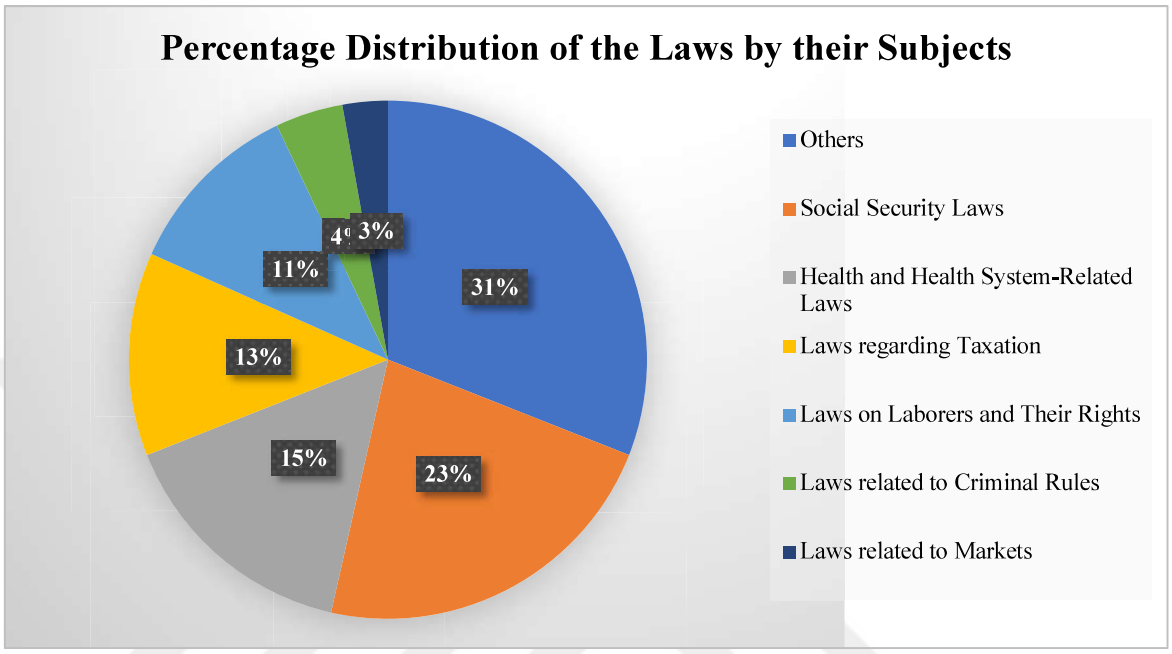


Figure 12: Percentage Distribution of the Laws by their Subjects among the Decisions Examined[629][630]

Among these laws, there are some specific acts, whose compliance with the Turkish Constitution is reviewed more than once by the Court, and since the Court's happiness jurisprudence and discussions are mostly shaped around the

[626] AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 1; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 1; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 5, AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 5; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 1; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 29; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §2 and s. 27.

[627] AYM, E. 1980/19, K. 1980/48, T. 03.07.1980, RG 03.11.1980, s. 1; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 1; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, ss. 1-2.

[628] AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 91; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §212.

[629] Data are collected from the decisions in Footnotes 611, 612, 613, 684, 691, 692, and AYM, E. 2010/25, K. 2011/136, T. 12.10.2011, RG 29.12.2011, s. 3, s. 8, s. 10, and s. 11, and calculated by the author of this thesis. The repeated decisions in the mentioned footnotes are not taken into account in the calculation.

[630] The part labeled as "Others" in Figure 12 can be divided into smaller parts. However, different categories other than those noted in the Figure do not seem to help clarify the narrative of the TCC's approach to happiness.

constitutionality review of these acts, it seems that these acts are more related to its happiness jurisprudence and discussions. They are the Social Insurance and General Health Insurance Act[631](8 times), Family Practice Act[632](5 times), Social Insurance Act[633](4 times), Labor Act[634](3 times), Act on the Retirement Fund of the Republic of Turkey[635](3 times), Income Tax Act[636](3 times), the Basic Law on Health Care[637](2 times), Act on Occupational Health and Safety[638](2 times), Act on Real Estate Rents[639][640](2 times).[641]

Consequentially, it can be found that certain areas of laws and some specific acts in these laws are more related to happiness than others. Although analysis of the TCC's happiness jurisprudence will be dealt with on an element-by-element basis under the following title, it may be put in a nutshell for the sake of making a meaningful deduction from the given data. Thus, according to the TCC, a social state governed by the rule of law is the guarantee of individual peace, **happiness**, and well-being. Once this fact is set as a guiding principle, the way to achieve such a goal, where there is both a social state and the rule of law (or where there is happiness since it is

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[631] Act No. 5510 of 31 May 2006, published on RG, 2006-06-16, No. 26200, available at: https://tinyurl.com/Act-No-5510-ILO, (Last Accessed: 07.07.2022)
[632] Act No. 5258 of 24 Nov. 2004, published on RG, 2004-12-09, No. 25665.
[633] Act No. 506 of 17 July 1964, published on RG, 1964-07-29,30,31-1964-08-01, No. 11766-11779.
[634] Act No. 4857 of 22 May 2003, published on RG, 2003-06-10, No. 25134, available at: https://tinyurl.com/Law-No-4857-Labour-Act-ILO, (Last accessed: 07.07.2022)
[635] Act No. 5434 of 8 Jun. 1949, published on RG, 1949-06-17, No. 7235, available at: https://tinyurl.com/Act-No-5434-ILO, (Last accessed: 07.07.2022)
[636] Act No. 193 of 31 Dec. 1960, published on RG, 1961-01-06, No. 10700.
[637] Act No. 3359 of 7 May 1987, published on RG, 1987-05-07, No. 19461.
[638] Act No. 6331 of 20 Jun. 2012, published on RG, 2012-06-30, No. 28339, available at: https://tinyurl.com/Act-No-6331-ILO, (Last accessed: 07.07.2022)
[639] Act No. 6570 of 18 May 1955, published on RG, 1955-05-27, No. 9013.
[640] Repealed by Act No. 6101 of 12 January 2011 of Art. 10, available at: https://tinyurl.com/Mevzuat-6570-Repealed-by-6101, (Last accessed: 07.07.2022)
[641] Data are collected from the decisions in Footnotes 611, 612, 613, 684, 691, 692, and AYM, E. 2010/25, K. 2011/136, T. 12.10.2011, RG 29.12.2011, s. 3, s. 8, s. 10, and s. 11, and calculated by the author of this thesis. The repeated decisions in the mentioned footnotes are not taken into account in the calculation.

the outcome of them), is mainly through convenient and happiness-oriented social security laws, laws regarding health services and health system, laws on laborers and labor rights and laws regarding taxation. Therefore, the state, in which individuals' right to social security is recognized; where laws confer adequate health care for its citizens; where labor laws protect workers and allow them to live with dignity; and where tax laws consider the principle that "The *social* goal of *fiscal policy* is to distribute the *tax burden* in an *equitable* and *balanced* manner"[642][643]can be a place that aims for a higher level of happiness among its citizens.

Henceforth the TCC's happiness jurisprudence can be analyzed meticulously, and its accuracy may be verified with the help of the data.

C. Analysis of the Turkish Constitutional Court's Happiness Jurisprudence and an Attempt for its Verification through Data

The case law of the TCC on happiness cannot be separated from the Court's approach to the principle of the social state governed by the rule of law, because in 54

[642] See Art. 73/2 of the Turkish Constitution.

[643] To grasp how taxes and happiness are related, see the following arguments: According to Akay *et al.*, although in theory taxes are withdrawal of personal income, which ought to have negative impacts on SWB; on the other side, taxes are used to pay for public goods that taxpayers will benefit from, and the consumption of these public goods should result in an increase in happiness. (Akay, A., Bargain, O., Dolls, M., Neumann, D., Peichl, A., Siegloch, S.: *Income, Taxes and Happiness*, 2012, p. 21, available at: https://tinyurl.com/Akay-Et-Al-Article, Last accessed: 04.07.2022). Additionally, Albanese *et al.* find substantial proof of a link between the social-tax ratio and happiness (Albanese, M., Bonasia, M., Napolitano, O., Spagnolo, N.: *Happiness, Taxes, and social provision: A note*, Economics Letters, Vol. 135, Oct. 2015, pp. 100-103, available at: https://tinyurl.com/Albanese-Et-Al-Article, Last accessed: 24.06.2022), while Oswald underlines that based on the WHR 2022, the 10 happiest countries in the world (From the top, respectively: Finland, Denmark, Iceland, Switzerland, the Netherlands, Luxembourg, Sweden, Norway, Israel, and New Zealand) are those with extremely high taxes in calculations of OECD, and the ratio of total tax revenues to the GDP in these countries is above or significantly above the OECD average of 33,5 percent. (Oswald, A.J.: Letter: Why is it high-tax countries appear happier?, available at: https://tinyurl.com/Financial-Times-Oswald-Letter, Last accessed: 04.07.2022)

of the 59 constitutionality reviews examined[644], the Court considers happiness as an outcome of the social state governed by the rule of law or simply the social state.[645]

Before diving into the deeper layers of the TCC's jurisprudence on happiness, it is useful to define the rule of law and the social state and to explain these concepts. The term rule of law (*hukuk devleti* in Turkish) is of German origin: *Rechtsstaat*, but the rule of law (in the sense of the supremacy of law) is favored in various countries, particularly in Anglo-Saxon countries; however, there is no significant difference between them in terms of meaning and function.[646]It can be defined as "*The supremacy of regular as opposed to arbitrary* power, also called the *supremacy of law*…"[647]The concept of the rule of law necessitates a precise and predictable legal system in which everyone has the right to be treated with dignity, equality, rationality and pursuant to the laws by all decision-makers, and to have the opportunity to object to decisions before independent and impartial courts through fair procedures.[648]

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[644] Decisions referred to in Footnote 613, 684, 691, 692, and AYM, E. 2010/25, K. 2011/136, T. 12.10.2011, RG 29.12.201, s. 3, s. 8, s. 10, and s. 11. The repeated decisions in the mentioned footnotes are not taken into account in the calculation.

[645] See AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (In these decisions, happiness is not seen as an outcome of the social state governed by the rule of law, but as an outcome of the social state). See also AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §9 in the dissenting opinion of Osman Alifeyyaz Paksüt (In his dissenting opinion, Justice Paksüt quotes Court's paragraph on the social state and happiness from the decision numbered AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18). In the same direction, see also AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16, the Court here also refers to the decision numbered AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last Accessed: 07.06.2023)

[646] Tanör and Yüzbaşıoğlu, p. 106.

[647] Garner, p. 1448. For more details regarding the term, see also Martin, E.A. (ed.): A Dictionary of Law, 5th Edition, Oxford University Press, Oxford, 2003, p. 441. For an approach to the concept from the court's perspective, see Essential Law Dictionary, p. 439. For the connection between the rule of law and the independence of the judiciary, see Sicilianos, L.A.: *The Rule of Law and the European Court of Human Rights: the independence of the judiciary*, available at: https://tinyurl.com/ECHR-RoL-Indep-of-Judiciary, (Last accessed: 13.11.2022).

[648] European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, p. 10, § 15, available at: https://tinyurl.com/Venice-CoE-RoL-Checklist, (Last accessed: 13.11.2022). See also, Goldstein, L., Ban, C.: *The Rule of Law and the European Human Rights Regime*, Center for the Study of Law and Society Jurisprudence and Social Policy Program, JSP/ Center for the Study of

In Turkish legal doctrine, according to Özbudun, it is a system guaranteeing the legal security of people; thus, under this description, there are implied 3 elements that are vastly vital to the rule of law: 1) judicial control over the legality of the administrative acts, 2) judicial control over the constitutionality of the laws, and 3) independence of the judiciary.[649]

What is indicated by the term 'rule of law', therefore, is the environment of legal security, the state's compliance with the law, and the dependence of the decisions and actions of the state on judicial review, thus the law here is not just any law but a democratic and liberal one based on values and human rights, and for this reason, the principles of *Rechtsstaat* and democratic state are like twins which complement each other.[650]Moreover, the constitutional state, whose foundation is morally constituted by constitutionalism which consists of a series of values such as the rule of law, and the democratic state are like two sides of the same coin.[651]Hence, the implementation of

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Law and Society Faculty Working Papers, University of California, Berkeley, Year 2003, Paper 13, pp. 1-42, available at: https://tinyurl.com/Goldstein-Ban-Article, (Last accessed: 13.11.2022)

[649] Özbudun, E.: *Constitutional Law*, in Ansay, T., Wallace Jr., D., Önay, I. (edited by): Introduction to Turkish Law, 7th Edition, Kluwer Law International, 2020. For more definitions in Turkish legal doctrine regarding the rule of law, see also https://tinyurl.com/Hukuk-Devleti-Doktrin, (Last accessed: 13.11.2022). For the concept of the rule of law used as the opposite of the police state, see Tanör and Yüzbaşıoğlu, p. 107. For the definition of the police state, see Garner, Black's Law Dictionary, p. 1538. For the arbitrariness as a characteristic of many types of despotism, absolutism, authoritarianism, and totalitarianism, see Choi, N.: "*rule of law*", Encyclopedia Britannica, Nov. 2, 2022, available at: https://tinyurl.com/Britannica-Rule-of-Law, (Last accessed: 13.11.2022). For the police state (*Polizeistaat*) with the authority to take all kinds of measures interfering with the fundamental rights of individuals without being bound by any legal rule to ensure the welfare and safety of the public, see Günday, M.: İdare hukuku, İmaj Yayınevi (**Yay.**), 10. Baskı, Ankara 2011, s. 38 as cited by Yıldız, H.: *Hukuk Devleti'nin Gelişim Sürecinde Mülk Devleti ve Polis Devletinin Yeri*, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, C. 15, S. 2, 2013, s. 217, available at: https://tinyurl.com/Gunday-Cited-by-Yildiz-Article, (Last accessed: 23.12.2022)

[650] Tanör and Yüzbaşıoğlu, p. 107. Some legal philosophers like Raz distinguished the rule of law from democracy, human rights, and social justice; for details, see Waldron, J.: "*The Rule of Law*", The Stanford Encyclopedia of Philosophy (Summer 2020 Edition), Edward N. Zalta (ed.), available at: https://tinyurl.com/Stanford-Rule-of-Law, (Last accessed: 13.11.2022)

[651] Keskinsoy, Ö., Kaya, S.B.: *Hukuk Devletinin Kanun Devletine Anayasal Devletin Anayasalı Devlete Evrilmesi*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, 70 (3), 2021, p. 1147, and pp. 1199-1200, available at: https://tinyurl.com/Keskinsoy-Kaya-Article, (Last accessed: 13.11.2022)

the principle of the rule of law and the creation of a democratic system are intensely related.[652]

After these explanations regarding the rule of law principle, it is compulsory to clarify what the social state principle means. The term "social state" in the Turkish constitutional system is vastly comprehended as "welfare state" in the West.[653][654]The welfare state is a social system where a government is responsible for the economic and social welfare of its citizens and includes policies to offer free health care, money for unemployed people, *etc.*; it is also a country that has such a system.[655]The welfare state is founded on the principles of equality of opportunity, the fair distribution of wealth, and the public responsibility for those who cannot help themselves with minimal provisions for a good life.[656]

The welfare state in its essence varies from the liberal state perception of the previous centuries, where the state's intervention in economic and social life is very exceptional.[657]According to the gendarmerie government construction inspired by the liberal philosophy, the duties of the state consist of defense, security, and justice services; thus, the state should ensure the safety of individuals, but should not interfere

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[652] Çoban, A.R.: *The Rule of law in Turkey*, p. 1, in Matthias Koetter, Gunnar Folke Schuppert, Understandings of the Rule of Law in various Legal Orders of the World, available at: https://tinyurl.com/Coban-Article, (Last accessed: 15.11.2022). For further connection between democracy and the rule of law, and the intimate association between these concepts emphasized by the ECtHR, see European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, p. 9, § 11, available at: https://tinyurl.com/Venice-CoE-RoL-Checklist, (Last accessed: 13.11.2022). For the association between these terms among the characteristics of the Republic of Turkey in the 1961 and 1982 Constitutions within a single concept as the "democratic state governed by rule of law", see Alan, N.: *(Demokratik) Hukuk Devleti ve Anayasa*, Ankara Üniversitesi SBF Dergisi, C. 58, S. 1, 2003, s. 2, available at: https://tinyurl.com/Alan-Article, (Last accessed: 13.11.2022)

[653] Özbudun, E. (Constitutional Law), Social State.

[654] For the definition of the welfare state, see Garner, p. 1732. For the social-service state, see Garner, p. 1538. For the definition of welfare law, see Martin, p. 535.

[655] https://tinyurl.com/UN-Welfare-State-Definition, (Last accessed: 15.11.2022)

[656] Britannica, The Eds. of Encyclopedia, "*welfare state*", Encyclopedia Britannica, 28 Nov. 2020, available at: https://tinyurl.com/Britannica-Welfare-State-2, (Last accessed: 15.11.2022)

[657] Tanör and Yüzbaşıoğlu, p. 103.

with their activities.[658]This understanding, so ta say, was resurrected under the name of neo-liberalism after the state's interventions were held responsible for the economic crisis that emerged in the early 1970s.[659]The neoliberal theory, which opposes the welfare state understanding of the Keynesian period, advocates 'the free operation of the market in accordance with the principle of competition' against state intervention.[660]

Undoubtedly, in the historical process of the emergence of the social state[661], not only the pressure generated by the struggles of the working class, but also the tendency of Marxist and socialist ideas to spread in the face of liberal values led by the bourgeoisie, the world economic crisis that arose all around the world in 1929, and the destruction caused by the World Wars played a vital role.[662]The social state understanding, which was adopted by the masses after the 2nd World War, lived its golden ages until the 1970s.[663]

In this period, the most significant step regarding the social state in Turkey was the 1961 Constitution, because the social state perception is guaranteed by the "social state principle" in the constitution.[664]However, the introduction of the social state

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[658] Gözler (Türk Anayasa), s. 155.
[659] Ataay, C.K.: *Hayek ve Friedman'ın Devlet Anlayışı*, Marmara Üniversitesi Siyasal Bilimler Dergisi, C. 4, S. 1, Mart 2016, s. 129, available at: https://tinyurl.com/Ataay-Article, (Last accessed: 15.11.2022)
[660] Ataay, s. 129.
[661] For the historical transformation of the social state, see also Yanık, C., Kara, M.: *Küreselleşmenin Sosyal Devlet Anlayışındaki Dönüşüme Etkisi: Genel Bir Değerlendirme*, HAK-İŞ Uluslararası Emek ve Toplum Dergisi, C. 3, Yıl: 3, S. 6, 2014/2, available at: https://tinyurl.com/Yanik-Kara-Article, (Last accessed: 16.11.2022)
[662] Gümüş, A.T.: *Sosyal Devlet Anlayışının Gelişimi ve Dönüşümü*, Selçuk Üniversitesi Hukuk Fakültesi Dergisi, C. 18, S. 2, 2010, s. 120, available at: https://tinyurl.com/Gumus-Article, (Last accessed: 15.11.2022)
[663] Karaca, C., Çam, Y.: *Türkiye'de Sosyal Devlet Anlayışının Değerlendirilmesi*, Maliye Dergisi, Ocak-Haziran 2019, 176, s. 73, available at: https://tinyurl.com/Karaca-Cam-Article, (Last accessed: 16.11.2022)
[664] Yay, S.: *Tarihsel Süreçte Türkiye'de Sosyal Devlet*, 21. Yüzyılda Eğitim ve Toplum Eğitim Bilimleri ve Sosyal Araştırmalar Dergisi, C. 3, S. 9, Kış 2014, s. 157, available at: https://tinyurl.com/Yay-Article, (Last accessed: 15.11.2022)

principle into the constitution was not easy, because there were vital divisions of view between *the more conservative* and *the more liberal-leftist wings of the Republican People's Party*, which held the strong majority in the House of Representatives that is one of the chambers of the bicameral Constituent Assembly next to the National Unity Committee created for the preparation of the new constitution (the 1961 Constitution).[665]

"Art. 2 of the draft prepared by *the Constitutional Committee of the House*, regarding the *characteristics of the Republic*, is as follows: '*The Republic of Turkey is democratic and secular; it is based on human rights and liberties, work and social justice*.' *More conservative members* opposed this wording on the bases that references to *work* and *social justice* might suggest ***a socialist state***. Ultimately, the phrase ***"social state"*** was agreed upon."[666]This debate, which arose during the preparation phase of the 1961 Constitution, flared up once more in the reasoning of Art. 5 of the 1982 Constitution,[667]and it was once again emphasized by the primary constituent power that the social state and the socialist state should be separated from each other. Thus, it is clearly underlined in the reasoning that the perception of the social state is not related to the socialist state, as misunderstood, or deliberately distorted by some people; above all, the social state respects people and their right to freedom of thought,

[665] Özbudun, E., Gençkaya, Ö.F.: Democratization and the Politics of Constitution-Making in Turkey, Central European University Press, Budapest 2009, pp. 14-15.
[666] Özbudun and Gençkaya, pp. 15-16.
[667] For the view that the provisions from the 1961 and 1982 Constitutions do not share an identical perception of the social state, see the following argumentation: "In the Constitutions of 1961 and 1982, the social state was not viewed in the same way. The January 24 decisions (1980) constitute essentially the foundation of the 1982 Constitution. As a result, these Constitutions differ in their fundamental nature. Furthermore, property was a social right in the 1961 Constitution, but it was included in the category of fundamental rights in the 1982 Constitution. Privatization also became a part of the Constitution in 1999 (Art. 47)." (Yılmaz, Z.: "Personal Communication", 06.05.2023, Microsoft Word comment.)

and within these boundaries, one of its main duties among others is to remove the obstacles which restrict the exercise of individual rights and freedoms.[668]

Hence, the 1982 Constitution acknowledged the social state system, not the socialist state, because, on the one hand, Art. 35 of the Constitution clearly recognized "*the right to own and inherit property*", on the other hand, Art. 48 of the Constitution recognized "*the freedom to work, conclude* contracts, and *establishment of private enterprises*"; however, unlike the gendarmerie government construction, these rights are not recognized in an unrestricted manner; for example, according to Art. 35/2-3 of the 1982 Constitution, *the right to own and inherit property* "*may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest.*", furthermore, Art. 48/2 states that "*The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in security and stability.*", which means the state can interfere with the freedom of private enterprises.[669]

The aims of the social state can be listed as follows: the assurance of the balance of labor and capital, the guarantee of humane living conditions for employees, the provision of social security, the prevention of unemployment, the assurance of equality of opportunity, and the fair distribution of the national income.[670]To put it differently, the aim of the welfare state is to protect human dignity, just like the rule

[668] Danışma Meclisinin Kabul Ettiği Metnin Gerekçesi, M. 4, available at.: https://tinyurl.com/TC-Gerekceli-Anayasa, (Last accessed: 15.11.2022)
[669] Gözler (Türk Anayasa), s. 156.
[670] Odyakmaz, Z., Kaymak, Ü., Ercan, İ.: Anayasa Hukuku-İdare Hukuku, 13. Baskı, İstanbul Temmuz 2011, s. 33.

of law principle, which emerged at the end of the bourgeois revolution, aiming the same but cannot achieve it alone due to the industrialization process.[671]

The means of achieving these goals in the 1982 Constitution are 1- social rights, which are *the right to unionize*, *the right to strike*, *the right of collective bargaining*, *the right to vacation with pay*, *the right to social security*, *the right to medical care*, *and the right to education*…(*Art.s 41-65*); 2- special duties and protective obligations falling on the state such as education, training, and working opportunities, fair wages, health-environment, and housing rights; 3- taking measures to limit the right to property and the freedom of private enterprise in view of public interest such as *the case of expropriations*; 4- *equitable and balanced distribution of the tax burden* (Art. 73) such as *progressive taxation on income and various taxes on wealth*[672]; 5- determining the means of development and social balance through planning mechanisms.[673]

The 1982 Constitution does not provide the guarantee of the social state principle in an isolated way; it does not assure this principle solitarily, but instead assures the principle of the social state governed by the rule of law[674].[675]Therefore, elements related to the social state principle in the jurisprudence of the TCC regarding

[671] Bulut, N.: *Sosyal Devletin Düşünsel Temelleri ve Çağdaş Sosyal Devlet Anlayışı*, Prof. Dr. Tufan Yüce'ye Armağan Dokuz Eylül Üniversitesi Hukuk Fakültesi, İzmir 2001, s. 332, available at: https://tinyurl.com/Bulut-Article, (Last accessed: 16.11.2022)
[672] Özbudun (Constitutional Law), Social State.
[673] Tanör and Yüzbaşıoğlu, p. 105.
[674] The current Turkish Constitution includes the "rule of law" among the characteristics of the Republic (Art. 2), in addition to that, "*removal of political, economic, and social obstacles*" that are "*incompatible with rule of law*" is counted among the fundamental aims and duties of the state (Art. 5); and the principles of democratic (national) sovereignty, separation of powers (Art. 6-9), and equality (Art. 10) back the principle of the rule of law up. (Tanör and Yüzbaşıoğlu, p. 107)
[675] Gören, Z.: *Sosyal Devlet İlkesi ve Anayasa Hukuku Açısından Yaşam Kalitesi*, Anayasa Yargısı Dergisi, C. 14, s. 129, available at: https://tinyurl.com/Goren-Sosyal-Devlet-Article, (Last Accessed: 16.11.2022)

happiness will be separated from the elements related to the rule of law[676], and only then the happiness jurisprudence of the TCC will be discussed.

A functioning social state under the rule of law can ensure people's happiness, according to the TCC, which also reserves the privilege to determine the elements of such a state as the highest court in the country. Which elements derive from the principle of the social state[677], and which are based on the principle of the rule of law, can be understood since the Court defines the rule of law principle separately in its numerous decisions.[678]This allows the elements of the rule of law to be separated from those arising from the principle of the social state with the help of simple algebra principles, that is, if both the definition of the social state governed by the rule of law and the definition of the rule of law is known, the definition of social state can also be derived from this equation.

The three elements included in the jurisprudence below derive directly from the TCC's definition of the rule of law principle: The first is the expression "which is based on human rights", and the second is the expression "which establishes and

[676] As in Karagülmez, p. 1, Footnote 4.
[677] For explanations on the principle of the social state, see also Araslı, p. 99.
[678] Since the constitutional period of 1961, the Constitutional Court has given immense significance to the principle of the rule of law and has made this principle one of the most frequently applied reference norms. (Aliefendioğlu, Y.: "*Türk Anayasa Mahkemesinin hukuk devleti anlayışı*", Hukuk Felsefesi ve Sosyolojisi Arkivi (**HFSA**) 3, Haz. H. Ökçeksiz, Alkım Yay., İstanbul 1996, in Tanör and Yüzbaşıoğlu, p. 108). For more information about the reference norms in the Turkish Constitutional Justice, see Turhanoğlu, P.: Türk Anayasa Yargısında Ölçü Normlar Bloğu, Eskişehir Anadolu Üniversitesi Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, Kamu Hukuku Anabilim Dalı, Eylül 2007, available at: https://tinyurl.com/Turhan-YLT-Anadolu-Uni-2007, (Last accessed: 13.11.2022). For similar definitions of the rule of law by TCC during the constitutional period of 1961 and 1982, see Aliefendioğlu, Y.: *Türk Anayasa Mahkemesi'nin Hukuk Devleti Anlayışı*, pp. 76-77, available at: https://tinyurl.com/HFSA-Aliefendioglu-Article, (Last accessed: 28.03.2023). For the emphasized principles (such as human rights) by TCC regarding the rule of law, see Tanör and Yüzbaşıoğlu, p. 108. For the incumbent President of the TCC's message regarding safeguarding and promoting the rule of law as the basic function of the Court, see Constitutional Court of Turkey, p. 3, The President's Message, available at: https://tinyurl.com/Cons-Court-of-Turkey, (Last accessed: 13.11.2022).

maintains a fair legal order in all areas", and the third is the expression "which can strike a fair balance between individual rights and freedoms and public interest".[679]

Since it is known which elements belong to the definition of the rule of law of the TCC, other elements must be related to the principle of the social state. Thus, the elements arising from the social state factor are as follows: "which protects workers by improving the working life and taking the economic measures, enabling them to lead a life in accordance with human dignity", "which prevents unemployment", "which takes necessary measures for the fair distribution of national income", "which pays regard to social justice and social balances by protecting the weak against the strong", "which can implement the right to social security", "which ensures that individuals benefit from health services sufficiently".[680]

Such a categorization of the origins of the elements contained in the jurisprudence can be essential and useful in verifying the Court's happiness jurisprudence when compared and checked against real-life data. Justice Kantarcıoğlu perfectly illustrates this distinction in one of her dissenting opinions: "With the emphasis on the social state governed by the rule of law in Art. 2 of the Constitution, which is among the characteristics of the Republic, it is clear that the harmonious coexistence of rule of law, which is supposed to protect and improve fundamental rights and freedoms, and the social state, which emphasizes social justice and social security, is targeted. There is no doubt that this goal can be achieved, on the one hand,

[679] See AYM, E. 2010/57, K. 2012/14, T. 26.01.2012, RG 26.06.2012, s. 5; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9, available at: https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, (Last accessed: 07.06.2023). In these decisions, according to the Court, "The state that is governed by the rule of law is the entity whose actions and transactions are in accordance with the law, which is based on human rights, protecting, and strengthening these rights, creating and developing a fair legal system in all areas, avoiding situations and attitudes that are incompatible with the Constitution, is bound by the law, and can be subject to judicial review."

[680] See the jurisprudence of the TCC below.

by allowing the individual to freely organize his living space; on the other hand, by making the necessary arrangements in cases where this freedom can only be realized when the minimum living standards are secured. Developments in the understanding of the social state governed by the rule of law show that the rule of law, without its social character, is not enough to ensure individual well-being, peace, and happiness."; afterward, she underlines the fact that Art. 5 of the Constitution lists the fundamental aims and duties of the state, and by doing so, the obligation of the state has been determined in the realization of the social state governed by the rule of law.[681]

According to this dissenting opinion, the existence of the rule of law in a given country may, up to a point, bring a certain level of happiness where there is a lack, however, once that point is reached, the rule of law is not a sufficient tool to place the citizens of that country among the happiest, and from that point on, only the social (welfare) state can help increase the level of happiness even more.[682]Therefore, the rule of law is a necessary but not a sufficient condition for the happiness of individuals in a given country.

Although the Court uses various elements to define the principle of the social state governed by the rule of law in different terms in its decisions, the general pattern of the Court and word choices in its definition are still discernible. Hence, the following jurisprudence will be an umbrella jurisprudence that will cover each element mentioned in the 54 decisions reviewed. This premise suggests that it does not mean every element is necessarily used in every decision by the Court to define the

[681] AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, quoted from the dissenting opinion of Fulya Kantarcıoğlu, p. 31, 3rd para. of the opinion.
[682] To understand the level of the welfare state in each country, one of the critical indicators among others can be public social spending as a percentage of GDP. For a detailed view of the countries with the highest proportion of public social spending to their GDP, see the OECD statics: https://tinyurl.com/OECD-Public-Social-Spending, (Last accessed: 19.07.2022)

relationship between happiness and the social state governed by the rule of law, but rather that the Court decides to select the necessary factors based on the case before it.

According to the TCC, a social state governed by the rule of law specified in Art. 2 of the Constitution[683]:

i which is based on human rights,[684]

ii which can strike a fair balance between individual rights and freedoms and the public interest,[685]

iii which protects workers by improving the working life and taking economic measures, enabling them to lead a life in accordance with human dignity,[686]

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[683] This jurisprudence is used 57 times in these 54 decisions.

[684] While this is the most preferred expression by the Court, there are other options available as follows: "**which respects the human rights and freedoms**" (AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2001/479, K. 2005/1, T. 06.01.2005, RG 18.10.2005, s. 3; AYM, E. 2006/21, K. 2006/38, T. 13.03.2006, RG 11.12.2007, s. 5; AYM, E. 2004/114, K. 2007/85, T. 22.11.2007, RG 24.12.2007, s. 3; AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008, s. 8; AYM, E. 2012/103, K. 2013/105, T. 03.10.2013, RG 17.12.2014, s. 8 and s. 17; AYM, E. 2013/1, K. 2014/161, T. 22.10.2014, RG 11.11.2015, §100; AYM, E. 2014/61, K. 2014/166, T. 07.11.2014, RG 19.06.2015, s. 36; AYM, E. 2015/17, K. 2015/20, T. 05.03.2015, RG 19.06.2015, s. 3; AYM, E. 2016/125, K. 2017/143, T. 28.09.2017, RG 23.01.2018, §65; AYM, E. 2016/181, K. 2018/111, T. 20.12.2018, RG 05.04.2019, §108; AYM, E. 2019/13, K. 2021/31, T. 29.04.2021, RG 02.07.2021, §30), "**which is based on human rights, protecting, and strengthening these rights and freedoms**" (AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt), and "**which is respectful of human rights**" (AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6). (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[685] The Court also prefers to shorten this element several times in its decisions as "**which constitutes the balance between the individual and society**" (AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2001/479, K. 2005/1, T. 06.01.2005, RG 18.10.2005, s. 3; AYM, E. 2006/21, K. 2006/38, T. 13.03.2006, RG 11.12.2007, s. 5; AYM, E. 2004/114, K. 2007/85, T. 22.11.2007, RG 24.12.2007, s. 3; AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008, s. 8; AYM, E. 2012/103, K. 2013/105, T. 03.10.2013, RG 17.12.2014, s. 8 and s. 17; AYM, E. 2013/1, K. 2014/161, T. 22.10.2014, RG 11.11.2015, §100; AYM, E. 2014/61, K. 2014/166, T. 07.11.2014, RG 19.06.2015, s. 36; AYM, E. 2015/17, K. 2015/20, T. 05.03.2015, RG 19.06.2015, s. 3; AYM, E. 2016/125, K. 2017/143, T. 28.09.2017, RG 23.01.2018, §65; AYM, E. 2016/181, K. 2018/111, T. 20.12.2018, RG 05.04.2019, §108; AYM, E. 2019/13, K. 2021/31, T. 29.04.2021, RG 02.07.2021, §30). The Court may also express it as follows: "**balancing between individual rights and the benefit of society**" (AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6). (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[686] The Court also uses the following expressions in some of its other decisions: "**which protects employees and ensures that they live humanely by taking social, economic and financial measures for the stable development of working life**" (AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG

iv which prevents unemployment,

v which takes the necessary measures for the fair distribution of national income,

vi which pays regard to social justice and social balance by protecting the weak against the strong,[687]

vii which can implement the right to social security,

viii which ensures that individuals benefit from health services sufficiently,

ix which establishes and maintains a fair legal order in all areas,

15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6), "**which takes measures to improve working life**" (AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3), and "**which protects its employees by taking economic measures and enable them to live a life in accordance with human dignity**" (AYM, E. 2008/114, K. 2010/53, T. 01.04.2010, RG 06.07.2010, s. 5). (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[687] In 1 of its decisions, the Court approaches the concept of social justice as **real equality**. (AYM, E. 2001/479, K. 2005/1, T. 06.01.2005, RG 18.10.2005, s. 3). It also uses the following expressions: "**which protects the weak against the strong**" (AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5), "**realizing social justice by protecting the weak against the strong**" (AYM, E. 2006/21, K. 2006/38, T. 13.03.2006, RG 11.12.2007, s. 5; AYM, E. 2004/114, K. 2007/85, T. 22.11.2007, RG 24.12.2007, s. 3; AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008, s. 8; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6; AYM, E. 2012/103, K. 2013/105, T. 03.10.2013, RG 17.12.2014, s. 8 and s. 17; AYM, E. 2013/1, K. 2014/161, T. 22.10.2014, RG 11.11.2015, §100; AYM, E. 2014/61, K. 2014/166, T. 07.11.2014, RG 19.06.2015, s. 36; AYM, E. 2015/17, K. 2015/20, T. 05.03.2015, RG 19.06.2015, s. 3; AYM, E. 2016/125, K. 2017/143, T. 28.09.2017, RG 23.01.2018, §65, "**which realizes social justice**" (AYM, E. 2016/181, K. 2018/111, T. 20.12.2018, RG 05.04.2019, §108; AYM, E. 2019/13, K. 2021/31, T. 29.04.2021, RG 02.07.2021, §30), and "**which pays regard to social justice and social balance**" (E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16). (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

is the state in which individual peace, well-being, and **happiness** are guaranteed.[688][689][690]

Based on this jurisprudence, it may seem reasonable to deduce that individual peace, well-being, and happiness can be guaranteed with a social state governed by the rule of law, the characteristics of which are listed by the TCC; hence, this is not just any social state governed by the rule of law, but the one defined and disclosed by the Court in its case-law.

From this point on, some elements of the TCC's happiness jurisprudence will be checked by applying them to real-life data. These elements will be divided into 2 main groups: 1-Elements of the TCC's happiness jurisprudence arising from the rule of law principle, and 2-Elements of the TCC's happiness jurisprudence arising from the social state principle.

[688] Changes in the places of the elements and bolding belong to the author of this thesis.

[689] In 1 of its decisions, the Court adds another interesting element to its jurisprudence: "**which considers the intervention of the state in economic and social life as legitimate and necessary**" (AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 15). The Court also adds the following element to its jurisprudence: "**taking measures for disabled people, to participate in economic, social and cultural life, to realize themselves by benefiting from education and employment opportunities and enabling them to lead a life in accordance with human dignity**" (AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 22).

[690] For a very similar approach from the Turkish Council of State, see "Art. 2 of the Constitution states that the Republic of Turkey is a social state governed by the rule of law. The social state governed by the rule of law specified in this article is the one that realizes and guarantees the fundamental rights and freedoms to the widest extent, pays regard to the social requirements and the benefits of society, balances the interests of the individual and the society, realizes the social solidarity at the highest level, provides equality and social justice by protecting the weak against the strong, protects employees by taking measures for developing working life, undertakes to solve the social security problems, aims at a fair distribution of national income among the social layers in the development of the country. The principle that does not allow the weak to be oppressed against the strong requires making everyone, including employees, pensioners, and the elderly, live in a healthy, **happy**, and safe manner, with arrangements appropriate to their situation." (Danıştay 2. Daire, E. 2004/7942, K. 2005/4297, T. 23.12.2005, https://tinyurl.com/Danistay-Karar-Arama, Last accessed: 18.07.2022)

1. *The Verification Attempt of the Elements of the Turkish Constitutional Court's Happiness Jurisprudence Arising from the Rule of Law Principle through Particular Global Parameters*

The TCC happiness jurisprudence can be rearranged in terms of the elements solely related to the rule of law principle as follows: "The rule of law principle can guarantee the happiness of the individuals through 1) the basis of the human rights[691], 2) the configuration of the fair balance between individual rights and freedoms and the

[691] AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3; AYM, E. 2008/114, K. 2010/53, T. 01.04.2010, RG 06.07.2010, s. 5; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 3; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 4; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2011/54, K. 2011/142, T. 20.10.2011, RG 29.12.2011, s. 6; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 2; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 15 and s. 22; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 3; AYM, E. 2013/41, K. 2013/124, T. 31.10.2013, RG 28.12.2013, s. 4; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, s. 9; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, s. 5; AYM, E. 2016/162, K. 2017/156, T. 15.11.2017, RG 08.12.2017, §6; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §220; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §43; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

public interest[692], and 3) the foundation and the continuation of the just legal order[693]." Therefore, under this category, individual happiness can be summarized as the outcome of the quality and presence of human rights and freedoms and a fair legal system in a particular country. In other words, **according to the happiness jurisprudence of the TCC**, it can be assumed that there may be a positive correlation between the rule of law and human rights standards of countries and their happiness levels.

[692] AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 3; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 4; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2011/54, K. 2011/142, T. 20.10.2011, RG 29.12.2011, s. 6; AYM, E. 2010/57, K. 2012/14, T. 26.01.2012, RG 26.06.2012, s. 5; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 2; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 22; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 3; AYM, E. 2013/41, K. 2013/124, T. 31.10.2013, RG 28.12.2013, s. 4; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, s. 9; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/162, K. 2017/156, T. 15.11.2017, RG 08.12.2017, §6; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §220; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §43; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[693] AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 3; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 4; AYM, E. 2011/54, K. 2011/142, T. 20.10.2011, RG 29.12.2011, s. 6; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 2; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 15; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 3; AYM, E. 2013/41, K. 2013/124, T. 31.10.2013, RG 28.12.2013, s. 4; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, s. 9; AYM, E. 2016/162, K. 2017/156, T. 15.11.2017, RG 08.12.2017, §6; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §220. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

In the literature, there are data and arguments supporting the relationship between happiness and the rule of law specified by the case law of the TCC. For instance, according to World Justice Project (**WJP**) staff, there is an overall positive correlation between a country's level of rule of law and happiness, and this may indicate that a country with a limited level of rule of law is more likely to be a country with a lower happiness level and vice versa.[694]One of the global providers of legal, regulatory, and business information and analytics highlights that countries with higher rule of law scores perform better on measures of happiness.[695]It is thought that nations, ensuring the rule of law are also homes for happy people.[696]

As far as putting the impact of the economy on the link between happiness and the rule of law into the equation is concerned, it is argued that while *a household's income* affects *life satisfaction*, there are still other factors that *matter more*, such as the *rule of law*.[697]People are happier in rich countries than in poor ones since the zero-order correlation with real income per capita equals +.65, but approximately half of the correlation comes from societal features like freedom and the rule of law.[698]The

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[694] Does the Rule of Law Make You Happy?, https://tinyurl.com/WJP-RoL-and-Happiness, (Last accessed: 06.07.2022)

[695] https://tinyurl.com/LexisNexis-RoL-and-PoH, (Last accessed: 21.06.2022). "*Methodology* for *LexisNexis Rule of Law Analysis*: The relationships between a nation's scores on the *Rule of Law Index* and *socio-economic indicators* related to *measures of life*, *liberty*, and *happiness* were examined by the company's data science team. This examination uses data from *the WJP Rule of Law Index (https://tinyurl.com/WJP-Research-and-Data), World Bank country statistics (https://tinyurl.com/World-Bank-Data-2), Civil Liberty data from Freedom House (https://tinyurl.com/Freedom-House-2), and the WHR (https://tinyurl.com/WHR-Report-2).*"

[696] Bajpai, G. S., Bajpai M.: *The law of happiness*, 2018, available at: https://tinyurl.com/Indian-Express-Law-of-Hap, (Last accessed: 21.06.2022)

[697] Sachs (Introduction), p. 7.

[698] Veenhoven, R.: *Happiness in Nations: Pursuit of Greater Happiness for a Greater Number of Citizens*, p. 274, in Snyder, C.R., Lopez, S.J., Edwards, L.M., Marques, S.C. (Edited by): The Oxford Handbook of Positive Psychology, 3rd Edition, Oxford University Press, New York 2021. An online version of the Chapter is available at: https://tinyurl.com/Veenhoven-Happiness-in-Nations, (Last accessed: 18.11.2022). The author continues with the following argumentation: "Due to the fact that *freedom* and *justice* are somewhat dependent on *economic development*, *such controls* may undervalue the economy's true impact." (Veenhoven (Happiness in Nations), p. 274). However, one might argue with the same logic that it is not clear whether freedom and justice depend on economic development to some extent, or economic development depends on freedom and justice. It is certainly debatable

response to the question of how the rule of law can affect the happiness of the citizens[699]in a country is that it may be related to the perception of fairness, or the availability of a predictable environment where individuals can efficiently pursue their goals, or the reduction of 'transaction costs' thanks to the rule of law so that exchange can be facilitated and economic development could be fostered, or the fact that individuals having more choice with the permission of the rule of law may become less dependent on kin; thus, the concern for rule of law is not *a culture-specific value*, but *a universal condition* for happiness.[700]

Huber perfectly demonstrates the relationship between personality, happiness, and the rule of law: life, liberty, and property enjoy the protection of the rule of law not just for their own sake, but also for the sake of a high value that man is a human being (namely, human's personality), which is expressed by the constitution as 'human dignity'; thus, the rule of law guarantees life, liberty, and property to protect the personality of the human.[701]In other words, the material content of the principle of the rule of law is the recognition, assurance, and promotion of the personality; hence, for Goethe, the personality is the highest **happiness**[702]since the protection of the

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which of these options is the first driving force, or is it the total and simultaneous synergy between the two triggers? In both cases, the influence of the rule of law on happiness seems undeniable.

[699] For an excerpt from the Petition of Grievances (1610), which states that the rule of law makes not only citizens happy but also rulers, see Hayek, F.A. (Trans. by Sevda Gültekin Aktolga, Ali Rıza Çoban): Siyasi Bir İdeal Olarak Hukuk Devleti (Hukuk Devleti Siyasi İdeali), pp. 89-90, in Çoban, A.R., Canatan, B., Küçük, A. (Eds.): Hukuk Devleti Hukuki Bir İlke Siyasi Bir İdeal, 2. Baskı, Adres Yayınları, available at: https://tinyurl.com/Hayek-Ceviri-Hukuk-Devleti, (Last accessed: 29.03.2023)

[700] Veenhoven, R.: *Rule of Law and Happiness in Nations*, Optenia News, Mar. 2018, Vol. 8(1), p. 16, available at: https://tinyurl.com/Veenhoven-RoL-Article, (Last accessed: 18.11.2022)

[701] Huber and Ansay, s. 32.

[702] "…*Höchstes Glück der Erdenkinder Sey nur die Persönlichkeit*…" For the original text, see Goethe, J.W.: West-östlicher Divan, Stuttgart, 1819, s. 143, available at: https://tinyurl.com/Geothe-Suleika-Divan-1819, (Last accessed: 17.11.2022). "…*In sense of personal being lies A child of earth's chief happiness*…" For the English version, see Goethe, J.W.: West-Eastern Divan (Trans. by Edward Dowden), London and Toronto 1980, p. 114, available at: https://tinyurl.com/Zuleika-Geothe-English, (Last accessed: 17.11.2022). According to Holm-Hadulla and Wendt, Goethe's *creative* explorations led him to an all-encompassing *sense of love* that sacrificed neither *community* for *exaltation* nor *personality* for *exhilaration*; thus, given part from the West-Easter Divan declares the significance of

personality is the sign of the material existence of **the rule of law** in the era of bourgeois society.[703]In summary, the happiness of a person is directly dependent on his/her personality (*i.e.*, human dignity in the constitutional context), and this can only be protected by the rule of law.

According to another similar view, the main purpose of the rule of law, in which fundamental rights and freedoms are guaranteed, is to ensure the peace and happiness of people.[704]Additionally, justice, which is one of the bases of the rule of law as a value, aims to achieve the happiness of people besides its function of maintaining order in society.[705]On the other hand, in tyrannical regimes that violate even the minimum requirements of the rule of law from time to time, the publicity of the citizen is destroyed[706]; thus, "*Tyranny…deprived of public happiness*, *though not necessarily of private well-being…*"[707], whereas both public happiness and private well-being are of equal importance in the regimes adopting the principle of the rule of law, from the author of this thesis' point of view.

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the *autonomous personality* as the *centre of human nature*. (Holm-Hadulla, R.M., Wendt, A.N.: *Cosmopolitan Love: The Actuality of Goethe's Passions*, p. 746, in Mayer, C.H., Vanderheiden, E. (eds.): International Handbook of Love: Transcultural and Transdisciplinary Perspectives, Springer, Switzerland 2021.

[703] Huber, s. 32.

[704] Yılmaz, S.: Geleneksel Devletten Modern Devlete Geçişte Hukuk Devleti Paradigmasının Analizi, Kahramanmaraş Sütçü İmam Üniversitesi Sosyal Bilimler Enstitüsü Kamu Yönetimi Ana Bilim Dalı, Yüksek Lisans Tezi, Kahramanmaraş, Eylül 2010, s. 23, available at: https://tinyurl.com/Yilmaz-YLT-Kahramanmaras-2010, (Last accessed: 07.07.2023)

[705] Yılmaz, s. 25.

[706] Şen, İ.G.: *Hukuk ve Üstünlüğü: Tarihi İzler ve Karşılaştırmalı Hukuk Işığında Bir Kavramsal Çerçeve Denemesi*, Kamu Hukukçuları Platformu VII. Toplantı, 21-23 Nisan 2018, § 46, available at: https://tinyurl.com/Sen-Hukuk-Article, (Last accessed: 18.11.2022). See also https://tinyurl.com/Kamu-Hukukcu-2018-Bildiriler, (Last accessed: 18.11.2022). For *the foundation of the rule of law and the legal state in freedom,* see also Kirste, S.: *Philosophical Foundations of the Principle of the Legal State (Rechtsstaat) and the Rule of Law*, in Silkenat, J.R., Hickey Jr., J.E., Barenboim, P.D. (eds.): The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat), Ius Gentium: Comparative Perspectives on Law and Justice Vol. 38, Springer, Switzerland 2014. For Arendt's quote in Chapter 3, see p. 37, Footnote 32.

[707] Arendt, H. (On Revolution), pp. 180-181.

It is also possible to observe the connection between happiness and the rule of law in the context of the right of defense and the freedom to claim rights specified by Art. 36 of the Turkish Constitution. "On the one hand, the rule of law is a principle that provides legal security for individuals and guarantees fundamental rights, and freedoms; on the other hand, rights, and freedoms are meaningful and valuable as long as they are exercised. The realization of rights and freedoms depends on the existence of the right of defense and the freedom to claim rights. Hence, these rights are so vital that it could not be possible for an individual to live **freely and happily** without them."[708]

The link between freedom, the rule of law, and happiness[709], which is emphasized in the doctrinal arguments, is reflected in the data to a certain extent. The following graphs portray the real-life situation in the happy constitution countries regarding the link between the existence of the rule of law, human rights, and happiness, emphasized by the TCC in its jurisprudence and accepted by the doctrine to some degree. The figures below represent the average global freedom scores for 2017- 2023[710]; the average rule of law index scores for 2015-2022[711], and the average happiness scores for 2013-2023[712], respectively, of countries with a happiness clause in their constitutions.

[708] Erdemir, N.: *Hukuk Devleti ve Savunma Hakkı*, TBB Dergisi, 1988 Yılı 1. Sayı, s. 85, available at: https://tinyurl.com/Erdemir-Article, (Last accessed: 18.11.2022)
[709] Yılmaz, Z.: "Personal Communication", 09.10.2022, Microsoft Word comment.
[710] https://tinyurl.com/Freedom-House-Countries, (Last accessed: 09.03.2023)
[711] https://tinyurl.com/WJP-RoL-Index-Rankings, (Last accessed: 12.11.2022)
[712] See WHRs for 2013-2023, available at: https://tinyurl.com/WHR-Reports, (Last accessed: 20.03.2023)

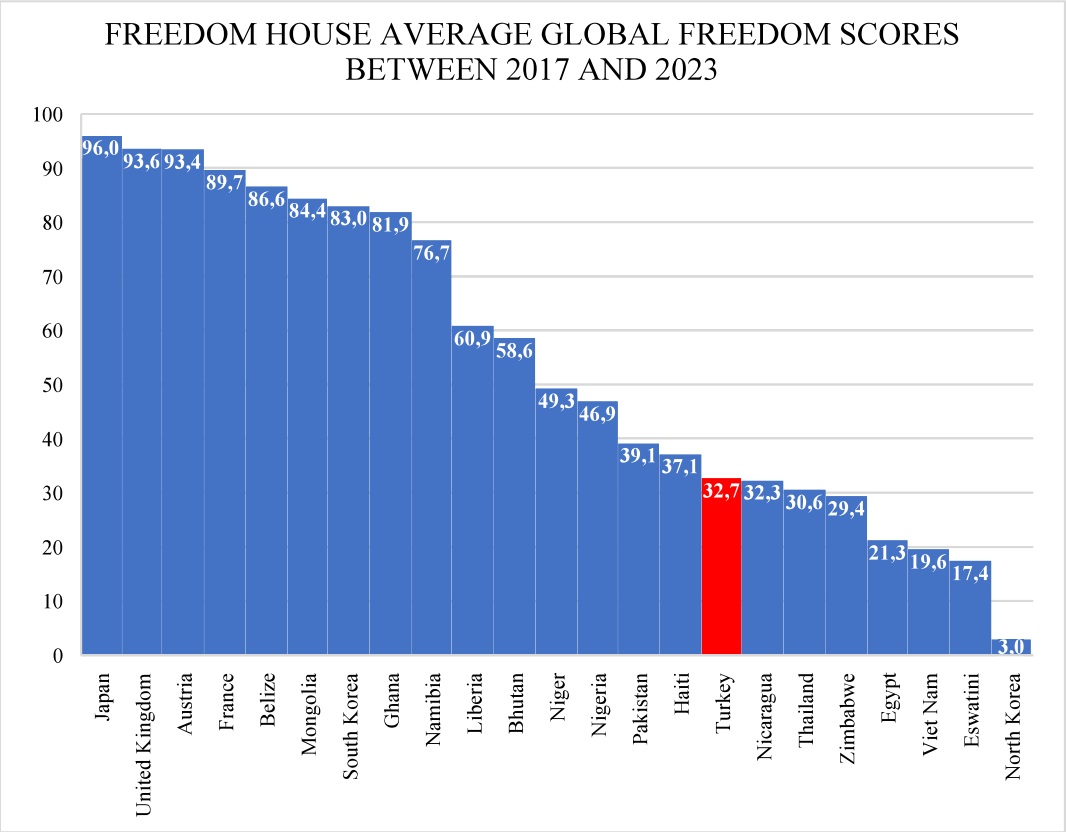


Figure 13: Average Global Freedom Scores of the Happy Constitution Countries in Freedom House's Annual Freedom in the World Report between 2017 and 2023[713]

Freedom House is the U.S. nongovernmental organization promoting democracy and scrutinizing the level of political and economic freedom in countries around the world.[714]Its Freedom in the World reports follow the global inclinations in political rights and civil liberties for 195 countries and 15 territories as of 2023.[715]In these reports, countries are evaluated in terms of 25 different indicators, 15 of which are related to civil liberties and 10 to political rights, with each indicator ranging from 0 to 4 points, with 0 representing the smallest degree of freedom and 4 representing

[713] These averages reflect Freedom House's degree of people's access to political rights and civil liberties. Data is collected from annual freedom in the World Reports and calculated by the author of this thesis. (https://tinyurl.com/Freedom-House-2, Last accessed: 09.03.2023)
[714] Britannica, The Eds. of Encyclopedia: "*Freedom House*", Encyclopedia Britannica, 9 Aug. 2011, available at: https://tinyurl.com/Britannica-Freedom-House, (Last accessed: 18.11.2022)
[715] https://tinyurl.com/FH-Freedom-in-World, (Last accessed: 09.03.2023)

the highest degree of freedom.[716]Therefore, a country can achieve a global freedom score between 0 and 100 points overall, 40 percent of which is derived from political rights and the remaining 60 percent from civil liberties.[717][718]

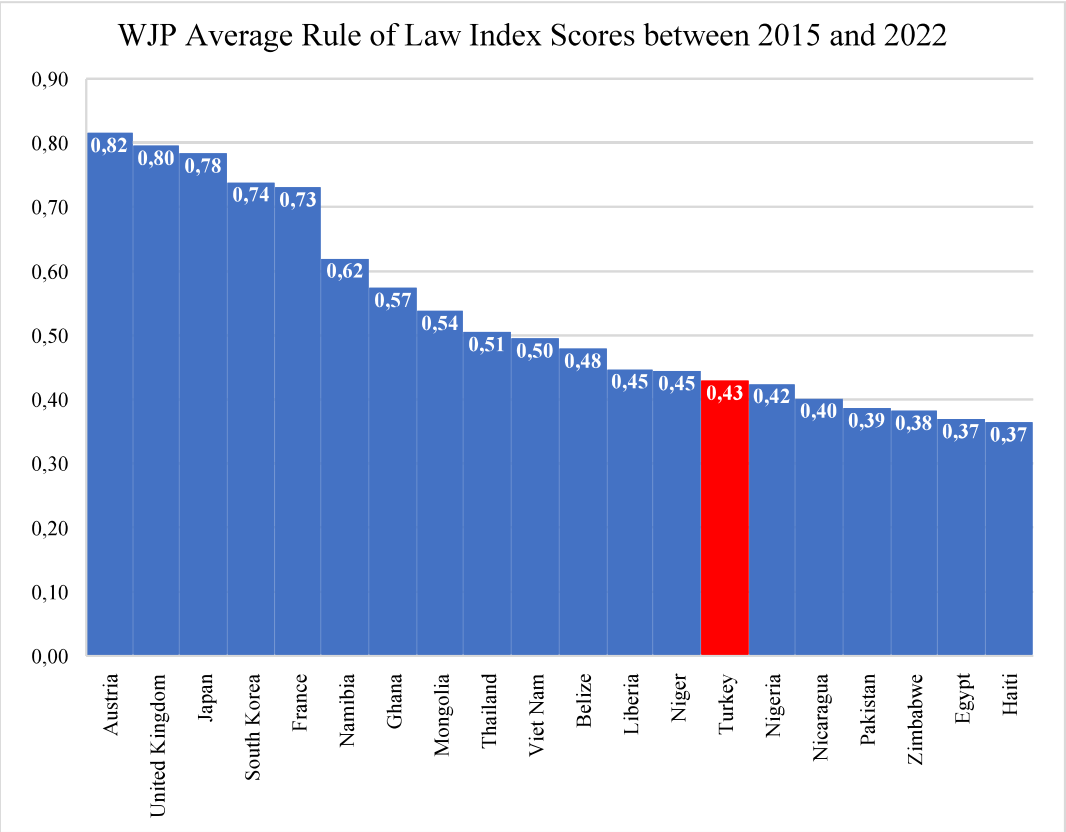


Figure 14: WJP Average Rule of Law Index Scores of the Happy Constitution Countries between 2015 and 2022[719]

The WJP is an independent organization operating to improve the rule of law around the globe.[720]Its Rule of Law Index measures the rule of law in 140 countries

[716] https://tinyurl.com/Freedom-H-Research-Method, (Last accessed: 09.03.2023)
[717] https://tinyurl.com/Freedom-H-Research-Method, (Last accessed: 09.03.2023). For "*Research and Ratings Review Process*", see https://tinyurl.com/Freedom-H-Research-Method, (Last accessed: 09.03.2023)
[718] "By 2023, **political rights** are evaluated under 3 different sub-groups: 1- electoral process, 2- political pluralism and participation, and 3- functioning of government. On the other hand, the assessment of **civil liberties** is divided into 4 sub-categories: 1- freedom of expression and belief, 2- associational and organizational rights, 3- rule of law, and 4- personal autonomy and individual rights." (https://tinyurl.com/Freedom-H-Research-Method, Last accessed: 09.03.2023)
[719] These averages reflect the WJP's overall rule of law index scores of combined factors. Data is collected from the WJP Rule of Law Index and calculated by the author of this thesis. (https://tinyurl.com/World-Justice-Project, Last accessed: 12.11.2022)
[720] https://tinyurl.com/WJP-About-2, (Last accessed: 19.11.2022)

and jurisdictions as of 2022.[721]In this index, countries are evaluated under 8 factors disaggregated into 44 sub-factors.[722]Each country's adherence to the rule of law strengthens as index scores approximate 1 and weakens as index scores approximate 0.[723][724]

To verify the accuracy of the TCC's happiness jurisprudence arising from the rule of law principle, it might be assumed that while the average rule of law performances of the happy constitution countries reflected by the above-given 2 figures are accepted as independent variables, the average happiness performances of the happy constitution countries demonstrated by the below-given figure are taken as dependent variables.

[721] https://tinyurl.com/WJP-Rule-of-Law, (Last accessed: 19.11.2022)
[722] WJP Rule of Law Index 2022, p. 15, available at: https://tinyurl.com/World-Jus-Pro-RoL-Index, (Last accessed: 29.03.2023). For a detailed explanation regarding the methodology of the WJP Rule of Law Index, see https://tinyurl.com/WJP-Methodology, (Last accessed: 19.11.2022)
[723] https://tinyurl.com/WJP-RoL-Index-2022-Rankings, (Last accessed: 19.11.2022)
[724] "By 2022, factors affecting the evaluation of countries' rule of law are as follows: 1- *constraints on government* powers, 2- the *absence of corruption*, 3- *open government*, 4- *fundamental rights*, 5- *order and security*, 6- *regulatory enforcement*, 7- *civil justice*, 8- *criminal justice*." (WJP Rule of Law Index 2022, p. 15, available at: https://tinyurl.com/World-Jus-Pro-RoL-Index, Last accessed: 29.03.2023). For sub-factors, see also the given link.

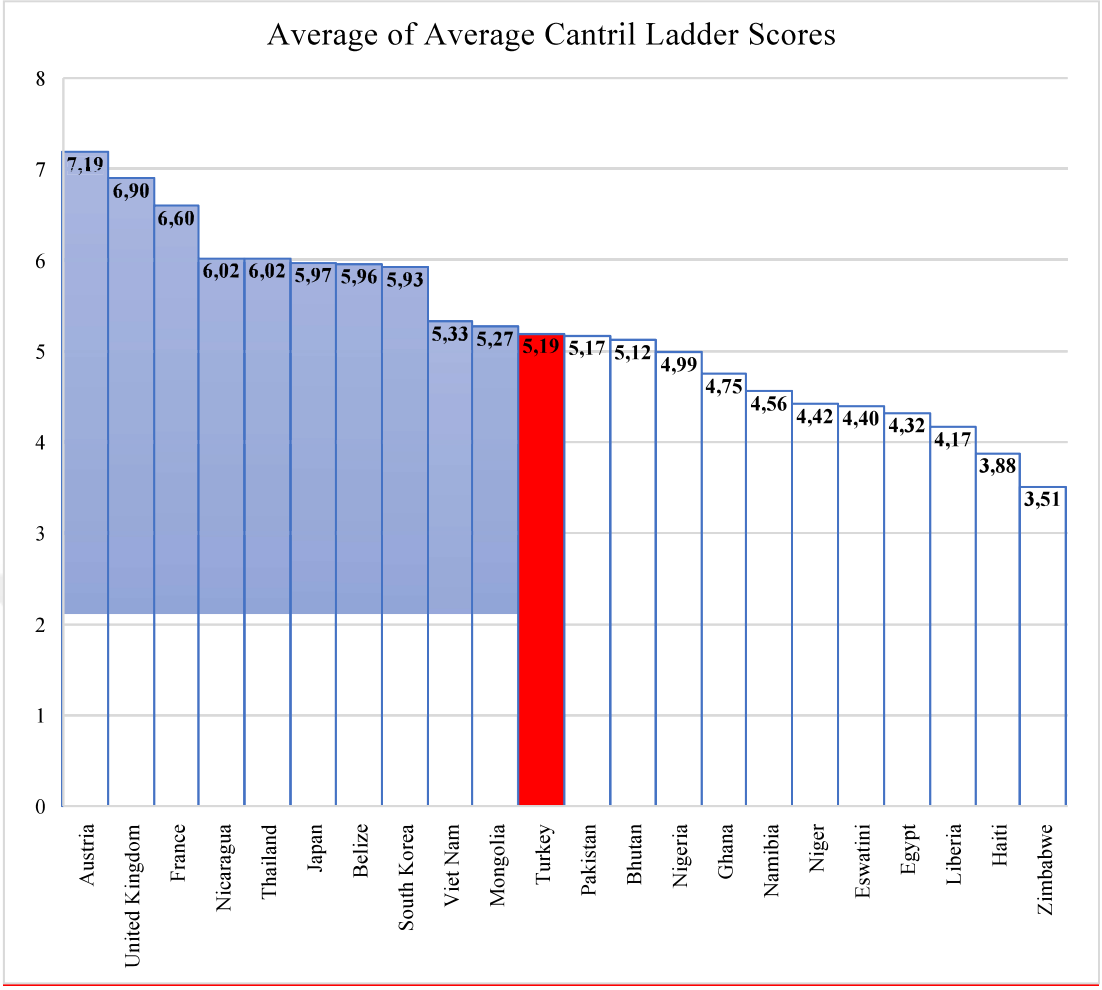


Figure 15: Average of Average Cantril Ladder Scores in the Happy Constitution Countries between 2013 and 2023[725]

Many values regarding the principle of the rule of law as specified and defined by the TCC and the legal doctrine are reflected in the global freedom scores, and the rule of law index scores, respectively measured by the Freedom House and the WJP through the mentioned indicators. Additionally, to prevent the scoring from being affected by annual or periodic fluctuations, the averages are considered for each happy constitution country; thus, it is intended to draw a relatively general profile of

[725] These averages reflect countries' happiness scores as measured by the Gallup World Poll survey. Data is collected from the UN WHRs published annually since 2012 except for 2014 and calculated by the author of this thesis. (https://tinyurl.com/WHR-Reports, Last accessed: 20.03.2023). See also Figure 7.

freedoms, human rights, the rule of law, and happiness levels in these countries rather than an annual snapshot.

The relatively more positive and successful rule of law, human rights, and freedom records of Austria, the UK, and France are directly able to be converted into higher happiness scores and rankings in these countries, while the comparatively poorer performances of Nigeria, Egypt, Haiti, and Zimbabwe in terms of the same parameters are reflected into their lower happiness scores and rankings as well. Thus, the positive correlation between the quality of the rule of law, freedom, and happiness, as underlined by the TCC, can be visibly traceable in these countries.

On the other hand, it would be difficult to claim the existence of the same positive link for countries such as Thailand, Nicaragua, Ghana, Namibia, and Liberia because Thailand and Nicaragua considerably overachieve in terms of happiness in comparison with their rule of law records while Ghana, Namibia, and Liberia noticeably underperform in respect of happiness compared to their relatively better rule of law records.

Furthermore, even though not as obvious as the ones mentioned above, Japan in particular, South Korea, and Mongolia also could not convert their relatively well enough achievements in the field of human rights and the rule of law into their happiness scores at the same rate and scale; on the contrary, the very opposite phenomenon occurs in **Turkey** and Pakistan as these two countries seem to have achieved an unexpectedly higher happiness ranking compared to their level of human rights and the rule of law.

Despite all this, these three charts, *ceteris paribus*, may provide sufficient evidence and data to support and verify the connection between the rule of law, human

rights, and happiness mentioned by the TCC to a certain extent. Thus, the performance patterns of the countries in terms of their happiness levels seem to suggest that **the TCC's happiness jurisprudence** is on the right track to explain the factors that contribute to happiness in a given country to a certain point.

In other words, on the one hand, elements of the TCC's happiness jurisprudence stemming from the rule of law principle can be supported by data up to a point; on the other hand, these elements cannot be the only factors that clarify the whole picture regarding happiness on their own, as flawlessly stated by Justice Kantarcıoğlu when she pointed out that the rule of law by itself without its social nature is not sufficient to guarantee the individual happiness.[726]Therefore, at this point, the elements of the TCC's happiness jurisprudence arising from the social state principle should also be analyzed thoroughly so that the happiness statistics of certain countries that are not fully clarified by the rule of law principle can make more sense.

2. *The Verification Attempt of the Elements of the Turkish Constitutional Court's Happiness Jurisprudence Arising from the Social State Principle through Particular Global Parameters*

The TCC happiness jurisprudence can be rearranged in terms of elements solely related to the social state principle as follows: "The social state principle can ensure the happiness of people via 1) the protection of workers by improving working life and taking economic measures, enabling them to pursue a life in accordance with human dignity, 2) the prevention of unemployment, 3) the fair distribution of national

[726] AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, quoted from the dissenting opinion of Fulya Kantarcıoğlu, p. 31, 3rd para. of the opinion. For the related part of this dissenting opinion, see above.

income through necessary measures, 4) the lookout of social justice and social balances by protecting the weak against the strong, 5) the implementation of the right to social security, 6) the provision of sufficient health services for the benefit of people." Therefore, under this category, individual happiness can be summarized as an outcome of the quality and the existence of the social state in a certain country. In other words, according to the happiness jurisprudence of the TCC, there may be a positive correlation between the social state standards of countries and their happiness levels.

These 6 elements asserted by the TCC can be rearranged into 3 subgroups for the sake of a simplistic examination: a) social state elements related to the working life, workers, and employment (containing elements 1 and 2), b) social state elements related to social justice (containing elements 3 and 4), and c) social state elements related to the right to social security and health services (containing elements 5 and 6). Each subgroup ought to be clarified and verified separately and combined with the doctrinal views, available data, statistics, and charts. However, before detailed explanations of these subgroups, it is necessary to convey the views on the general connection between the social state and happiness.

In the literature, there are various data and arguments endorsing the positive relationship between happiness and the social state. For instance, Rothstein asserts that "The welfare state has a positive relationship with happiness, though it is not any kind of welfare state but a certain type, which is the most favorable to the SWB of citizens: the universal welfare state. Thus, countries are inclined to cluster in such a way that countries with considerable and predominantly universal welfare state programs are places where low levels of corruption, a high degree of social trust, and high levels of

happiness and social well-being exist."[727]In the same direction, Gören argues that the social state defines a state system whose aim is the happiness of everyone and the welfare of the society[728], while Andaç claims that the social state, which provides social welfare, social justice, and social peace as its three main duties, ensures the welfare, peace, and happiness of the person and the society.[729]

The social state organization model, which was constructed as a significant tool in ensuring social justice, has become even more crucial with the distribution policies intended for guaranteeing the welfare and happiness of its citizens under its administration.[730]Moreover, while the rule of law describes a state system whose aim is the freedom of the individual; the welfare state portrays a system whose target is the happiness of all and the welfare of the society.[731]

"It is possible to incorporate the positive relationship between political interferences in market deficiencies and happiness into the social state debate. Thus, the market does not hinder *well-being*, but rather in the context of a capitalist economy, political interferences which seek to remedy *market deficiencies* are likely to *produce* higher *levels of human happiness*. Hence the market should not be blamed for affecting life satisfaction, but instead, *the quality of human life is best when inequalities* and

[727] Rothstein, B.: *Happiness and the Welfare State*, Social Research, Vol. 77, No. 2, 2010, pp. 22-23, available at: https://tinyurl.com/Rothstein-Article, (Last accessed: 22.11.2022)
[728] Gören, Z. (Sosyal), p. 21, available at: https://tinyurl.com/Goren-Article-Sosyal-Devlet, (Last accessed: 22.11.2022)
[729] Andaç, F.: *Sosyal Devlet Anlayışı İçinde Girişimcilik*, in Proceedings of International Conference of Eurasian Economies 2012, p. 366, Almaty, Kazakhstan, available at: https://tinyurl.com/Andac-Article, (Last accessed: 22.11.2022)
[730] Eraslan, İ.H., Kızıldağ, Ş., Karabalık, A.E.: *Gazi Mustafa Kemal Atatürk'ün Stratejik Liderliği Işığında Sosyal Devlet Örgütü Anlayışı*, Erzincan Binali Yıldırım Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi, 3(1), Haziran 2021, p. 100, available at: https://tinyurl.com/Eraslan-Et-Al-Article, (Last accessed: 22.11.2022)
[731] Çimen, H.Ç.: Sosyal Devlet İlkesi Açısından Ailenin Korunması, Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, Yüksek Lisans Tezi, 2009, p. 4, available at: https://tinyurl.com/Cimen-YLT-DEU-2009, (Last accessed: 22.11.2022)

uncertainties in the market are diminished by government interference representing *the interests of workers and citizens*, which may imply that life satisfaction precisely depends on *government size*, *welfare state generosity*, and the extent of *pro-worker state regulation* of *the labor market*."[732]

There are also those who are skeptical of the mentioned views on this positive relationship between the welfare state and happiness[733], as well as those who have more nuanced ideas to reach such a conclusion. For example, according to one approach, the connection between welfare states and happiness is real, but also complex: Although more protection by welfare states generates more happiness for people at risk, having more flexible labor markets also generates higher happiness even if total levels of protection in a country are lower because individual life satisfaction (happiness) does not only depend on decommodification, which means protecting people's access to the basic resources they need to sustain their lives from the market risks they would face if disease, old age, and unemployment disrupt market-based resource flows but it is also related with people's ability to make choices.[734]For instance, a highly regulatory welfare state that grants people not much freedom of choice in labor markets may produce less life satisfaction than a liberal welfare state even if decommodification is equally high (as the greatest life satisfaction is created

[732] Davidson, Pacek, and Radcliff, pp. 172-173.
[733] For those who oppose the correlation between the welfare state and happiness, see also part a. *Against the Correlation* under the title of *Welfare States and Happiness- A Positive Relationship?*, in Heß, A.: *Happiness and the welfare state in times of globalization: A review of empirical findings,* Ordnungspolitische Diskurse, No. 2020-3, OrdnungsPolitisches Portal (**OPO**), Erfurt, 2020, pp. 11-14, available at: https://tinyurl.com/Hess-Article, (Last accessed: 22.11.2022). See also, Veenhoven, R.: *Well-Being in the Welfare State: Level Not Higher, Distribution Not More Equitable*, Journal of Comparative Policy Analysis, Vol. 2, pp. 91-125, 2000, available at: https://tinyurl.com/Veenhoven-Wellbeing-Article, (Last accessed: 24.11.2022)
[734] Anderson, C.J., Hecht, J.D.: *Happiness and the Welfare State: Decommodification and the Political Economy of Subjective Well-Being*, p. 357 and 359, in Beramendi, P., Häusermann, S., Kitschelt, H., Kriesi, H. (edited by): The Politics of Advanced Capitalism, Cambridge University Press, New York 2015.

in Nordic countries where an encompassing welfare state with the strong state interferences goes hand in hand with investment-oriented policies which deliver flexibility for individuals); therefore, higher levels of decommodification do not necessarily create reports of higher levels of life satisfaction among a country's citizens, in other words, both social protection and labor flexibility is crucial for happiness.[735]

Likewise, Heß points out that although many studies have found a positive relationship between the welfare state efforts *(e.g., measured as decommodification*, *left-wing dominance*, or *social expenditures)* and 'happiness', the overall picture is still uncertain.[736]Again, it is suggested that "*Income maintenance programs* have caused '*laziness*' and '*degradation*' among the beneficiaries of *the welfare state* (*and society more generally*, because, in the abstract, welfare is always available as an option once offered).[737]Consequently, the higher *the level of political* intervention in *the market system*, *the less satisfying life becomes*."[738]

Up to this point, the positive relationship between happiness and the principle of the social state put forward by the TCC has been largely approved by the doctrine, with some reservations. After this point, to clarify and verify the picture further, it is essential to deal with the elements of the social state principle one by one in accordance with the provided subgrouping, because only in this way can it be verified whether the connection between happiness and the social state, which is claimed by the TCC in its

[735] Anderson and Hecht, p. 357, 358, 379, and 380.
[736] Heß, p. 2, and 21.
[737] Somers M.R., Block, F.: *From poverty to perversity: ideas, markets, and institutions over 200 years of welfare debate*, American Sociological Review, 70(2):260–287, Apr. 2005 as cited by Davidson, Pacek, and Radcliff, p. 166. For the original article, see https://tinyurl.com/Somers-Block-Article, (Last accessed: 22.11.2022)
[738] Davidson *et al.*, p. 166.

happiness jurisprudence, has a justification in real-life data and scientific teaching, and thus, the scientific legitimacy of the Court's happiness jurisprudence can be asserted.

a) The Relationship Between Happiness and the Components of the Social State Principle Related to the Working Life, Workers, and Employment

Social rights, as the means of achieving the objectives of the social state and the aims of the Turkish state indicated in Art. 5, are of particular concern to segments of society who are oppressed by social inequalities and deprivations; thus, in this part of the TCC's jurisprudence, the link between the social state and happiness is attempted to be explained by focusing on workers, one of the most important social rights holders of the society.[739]In other words, happiness is taken here from the individual right holder's point of view, and it is argued that the state should take certain actions to protect the weak and those in need of economic and social protection for them to achieve a minimum standard of living[740], and only in this way could people be happy. Since the principle of the welfare state emerged as a reflection of the objections of the working class, which was condemned to misery by the Industrial Revolution[741], it should come as no surprise that the TCC established a link among the social state, the happiness of the people, and the workers and their conditions.

When it comes to the conditions of workers in a given country, the wages of workers and working hours can be useful indicators to grasp their protection level,

[739] Tanör and Yüzbaşıoğlu, p. 184.
[740] Sağlam, Ö.: Sosyal Devlet ve İnsan Hakları, Maltepe Üniversitesi Sosyal Bilimler Enstitüsü İnsan Hakları Ana Bilim Dalı İnsan Hakları Programı, Yüksek Lisans Tezi, İstanbul, Nisan 2011, s. 19, available at: https://tinyurl.com/Saglam-YLT-Maltepe-Uni-2011, (Last accessed: 23.11.2022)
[741] Aydın, M.K., Çakmak, E.E.: *Sosyal Devletin Temelleri*, Bilgi Dergi, Vol. 19, Iss. 1, İstanbul, Summer 2017, p. 1, available at: https://tinyurl.com/Aydin-Cakmak-Article, (Last accessed: 23.11.2022)

although there may be many other relevant indicators. Starting with wages of workers, there is a statistically (and normally highly) significant association between *income* and *happiness*; in this regard, *income does* '*buy happiness*'[742]Since *absolute income* and *well-being* are positively correlated, it can be assumed that raising *the minimum wage* may improve the average *well-being*, especially for *low earners*, and the research *using the introduction of* a *minimum wage* reform implemented in *Germany* in 2015 demonstrates that the *minimum wage* has considerably *positive* impacts on life satisfaction, job satisfaction, and *pay satisfaction*.[743]Regardless of the size of the economy, current economic conditions, or the chosen time period, the higher the minimum wage, the higher the satisfaction with life[744][745]; furthermore, "…*Pro-worker labor market regulations* are connected with *higher life satisfaction levels*."[746]

Parallelly, Art. 55/2 of the Turkish Constitution charges the state with the duty to take the necessary measures to ensure that workers receive a fair wage appropriate to the work they perform and enjoy other social benefits, while the following paragraph

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[742] Frey, p. 27.

[743] Gülal, F., Ayaita, A.: *The impact of minimum wages on well-being: Evidence from a quasi-experiment in Germany*, SOEPpapers on Multidisciplinary Panel Data Research, No. 969, Deutsches Institut für Wirtschaftsforschung (**DIW**), Berlin, p. 1, 3, and 11, available at: https://tinyurl.com/Gulal-Ayaita-Article, (Last accessed: 23.11.2022)

[744] Although Krassa and Radcliff's analysis considers only those Western industrial democracies where a statutory minimum wage is available, it should be reminded that in countries such as the ones in Scandinavia, where there is no statutory minimum wage, there are labor unions representing such a big portion of workers that the setting of a minimum earnings rate is left by the government for the unions to negotiate with the business community, and as a result of negotiations, minimum wages are even higher than the countries with a statutory minimum wage, thus the countries with powerful labor movements are inclined to be the happiest countries in the world. (https://tinyurl.com/WP-Krassa-Radcliff, Last accessed: 23.11.2022)

[745] Authors highlight that they have conducted *statistical controls* for other factors as well, but with these *controls* in place, *the minimum wage* continues to have a statistically significant positive relationship with satisfaction. For more details, see https://tinyurl.com/WP-Krassa-Radcliff, (Last accessed: 23.11.2022)

[746] Krassa, M., Radcliff, B.: Does a higher minimum wage make people happier?, available at: https://tinyurl.com/WP-Krassa-Radcliff, (Last accessed: 23.11.2022). Regarding the "pro-worker" labor market regulations, Radcliff highlights that "Greater levels of *SWB* are promoted by greater *employment protection*." (Radcliff, B.: The Political Economy of Human Happiness: How Voters' Choices Determine the Quality of Life, Cambridge University Press, New York 2013, p. 144, and 146)

underlines that the minimum wage is determined by considering the balance between the living conditions of the workers and the country's economic conditions; thus, both the *right to just remuneration* and the *right to* a *reasonable standard of living* seems to be provided in the constitution. Therefore, the development of the minimum wage, as one of the most essential issues of working life under the social state principle, and bringing it to a humane level is a fundamental duty imposed on the public authority by the constitution; that is to say, the intervention of the social states aiming to safeguard and develop the well-being, and welfare of their citizens with the power they derive from their constitutions, in the market (the labor market in this case) through public policy can be considered as the most vital tool in realizing their goals (toward happiness).[747]

It might be continued with the link between the working hours, protection of workers, and happiness. Working hours, a concept created by industrialization, has been one of the most discussed areas in the history of labor law, where the demand for workers is the highest, the state intervention is the greatest, and currently, it still maintains its importance due to the search for flexibility; as a matter of fact, the working hours can be described as the time that the workers spare from their life in favor of the employers.[748]Organizing and limiting working hours is very crucial for the health, and safety of workers, for them to maintain their social life in their leisure time, to take care of their families, and for the healthy development of society.[749]On

[747] Öçal, M., Korkmaz, A.: *Bir Sosyal Politika Analizi: Türkiye'de Asgari Ücret Uygulaması*, Sosyal Siyaset Konferansları Dergisi, 76, 2019, s. 193, ve 210, available at: https://tinyurl.com/Ocal-Korkmaz-Article, (Last accessed: 24.11.2022)

[748] Köseoğlu, A.C., Kabul, S.: *4857 Sayılı İş Kanunu Bağlamında Çalışma Süresinin Aşılması: Fazla Çalışma*, Journal of Istanbul University Law Faculty, Vol. 72, No. 2, 2014, p. 233, available at: https://tinyurl.com/Koseoglu-Kabul-Article, (Last accessed: 24.11.2022)

[749] Topçuoğlu, İ.: Türk Hukukunda Fazla Çalışma ve Fazla Sürelerle Çalışma, Selçuk Üniversitesi Sosyal Bilimler Enstitüsü Özel Hukuk Ana Bilim Dalı, Yüksek Lisans Tezi, Konya 2007, s. 1, available at: https://tinyurl.com/Topcuoglu-YLT-Selcuk-Uni-2007, (Last accessed: 24.11.2022)

the other side, overtime[750]is a concept in labor law arisen as a result of the emergence of the concept of working hours and the necessity to limit it in terms of the protection of the worker.[751]Thus, while Art. 18 of the Turkish Constitution prohibits forced labor (including the fact that normal or overtime work must necessarily be paid)[752], Art. 50 provides all workers the right to rest and leisure, as well as the right to paid weekends, holidays, and annual leave.

Now, happiness may be inserted into this equation. "Despite the acceptance that money is the most central resource in American's pursuit of happiness, increased happiness necessitates paying attention to time. Not only is time valuable since the time spent cannot be recovered, but the ways people select to spend their time and the experiences they accumulate over the course of such temporal spending, make up literally every person's life. Indeed, because focusing on money is incompatible with happiness-inducing behaviors (while focusing on time naturally nurtures these behaviors), people may find it even easier to achieve happiness when they pay attention to their *temporal* (compared to *monetary*) resources."[753]Depending on the WHR 2019 data, while the weekly working hours of the top 10 happiest countries in the world vary between 32-40 hours, the weekly working hours of the 10 unhappiest countries vary between 34-43 hours; furthermore, it is found that there is an inverse

[750] For the overtime wage in Turkish law, see Art. 41 of the Labour Act of Turkey (Law No. 4857), available at: https://tinyurl.com/Labour-Act-of-Turkey-ILO, (Last accessed: 24.11.2022). For the Turkish version, see https://tinyurl.com/Is-Kanunu-4857-Mevzuat, (Last accessed: 24.11.2022). For the secondary legislation, see also https://tinyurl.com/Fazla-Calisma-Yonetmeligi, (Last accessed: 24.11.2022)

[751] Mollamahmutoğlu, H.: İş Hukuku, 2. Bası, Ankara 2005, s. 691, as cited in Çil, Ş.: *4857 Sayılı İş Kanununa Göre Fazla Çalışma ve Fazla Sürelerle Çalışma*, Çalışma ve Toplum, C. 3, S. 14, 2007, s. 57, available at: https://tinyurl.com/Mollamahmutoglu-Cited-in-Cil, (Last accessed: 24.11.2022)

[752] See Topçuoğlu, s. 3; Köseoğlu and Kabul, s. 237.

[753] Aaker, J., Mogilner, C., Rudd, M.: *If Money Doesn't Make You Happy, Consider Time*, 2010, Research Paper Series, Stanford Graduate School of Business, p. 11, available at: https://tinyurl.com/Aaker-Et-Al-Article, (Last accessed: 06.07.2022)

correlation between people's happiness and their weekly working hours.[754]Additionally, it is indicated that one additional hour of work has an evident negative impact on the life satisfaction of men for those who already work full-time.[755]In the same direction, Lepinteur points out that diminished working hours produce noteworthy and robust rises in job and leisure satisfaction of the workers affected in both Portugal and France, with the increase in the former mostly being explained by greater satisfaction with working hours and working conditions.[756][757]

Ultimately, if fair wages or the presence of minimum wage regulations, and fewer working hours can be accepted as better conditions and protection for workers, then **the TCC's supposition** that the enhanced working life conditions for workers with proper economic measures, which enable them to pursue a life in accordance with

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[754] Arslan, A., Bektaş, Ç.: *Do We Work Less to be Happy? The Correlation between Happiness and Working Hours*, International Social Mentality and Researcher Thinkers Journal, 7(40), pp. 6-7, available at: https://tinyurl.com/Arslan-Bektas-Article, (Last accessed: 24.11.2022). For concerns about underemployment in particular and other concerns, see Golden, L., Okulicz-Kozaryn, A.: *Work Hours and Worker Happiness in the US: Weekly Hours, Hours Preferences and Schedule Flexibility*, February 10, 2015, pp. 1-27, available at: https://tinyurl.com/Golden-Kozaryn-Article, (Last accessed: 06.07.2022)

[755] Collewet, M., Loog, B.: *The Effect of Weekly Working Hours on Life Satisfaction*, Apr. 2015, p. 1, and 17, available at: https://tinyurl.com/Collewet-Loog-Article, (Last accessed: 25.11.2022). For the different findings for women, see Collewet and Loog, p. 17.

[756] Lepinteur, A.: *The shorter workweek and worker wellbeing: Evidence from Portugal and France*, 2016, p. 1, available at: https://tinyurl.com/Lepinteur-Article, (Last accessed: 25.11.2022)

[757] Finally, an average of the average annual hours worked per person employed between 2010 and 2022 in some happy constitution countries can implicitly help provide a rough picture of the availability of leisure time for each person employed and by doing so, give some insight into the living conditions of workers; thus, in South Korea, **Turkey** (Data for 2022 is not available), Japan, the UK, France, and Austria, these values are 2034 hours, **1785 hours**, 1688 hours, 1515 hours, 1512 hours, and 1498 hours, respectively. (Data is collected from the OECD Data Bank and calculated by the author of this thesis. For the definition and explanations regarding *average annual hours worked*, see https://tinyurl.com/OECD-Hours-Worked, Last accessed: 01.07.2023). When these values and Figure 15 are analyzed together, there are some visible patterns in which countries such as France, the UK, and Austria, whose workers work fewer hours per year, all other things being equal, perform better on a measure of happiness, which can be an expected result as people working fewer hours will find more leisure time to refresh themselves and this can help increase their happiness levels. (For ideas about working for leisure and the importance of leisure, see Karabudak, H. B..: "ECON 103: Principles of Economics", 2018-2019 Fall Semester, İhsan Doğramacı Bilkent University, Ankara, Lecture. For a detailed visual analysis of more countries, see finance writer Marcus Lu's article: https://tinyurl.com/World-Econ-Forum-Lu, Last accessed: 06.07.2022)

human dignity, may ensure the happiness of people[758]can legally and scientifically be verified to a certain point by the arguments provided.

When it comes to the verification of **the TCC's claim** that the social state can guarantee the people's happiness through the prevention of unemployment[759], first, it must be noted that Art. 49 of the Turkish Constitution entrusts the state with the task of creating suitable economic conditions for prevention of unemployment and securing labor peace; while the state's protection of workers and the unemployed for improving the general conditions of labor is being highlighted. However, the question is whether the prevention of unemployment can have a positive impact on individuals' happiness. In the economic literature, while Winkelmann argues that there is overwhelming evidence that unemployment takes a heavy toll on life satisfaction[760][761], Ohtake goes a step further, claiming that even at the same income level, the unemployed are less

[758] AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2008/114, K. 2010/53, T. 01.04.2010, RG 06.07.2010, s. 5; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[759] AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[760] According to the author, his article adopts *the established* convention in *economic happiness literature* and does not separate *happiness*, *satisfaction*, *and well-being*. (Winkelmann, R.: *Unemployment and happiness*, Forschungsinstitut zur Zukunft der Arbeit (**IZA**) World of Labor 2014, p. 2, available at: https://tinyurl.com/Winkelmann-Article, (Last accessed: 06.07.2022))

[761]Winkelmann, p. 1, available at: https://tinyurl.com/Winkelmann-R-Article, (Last accessed: 06.07.2022)

happy than those with jobs.[762]Unemployment hurts well-being more than any other trait (including significant negative ones such as divorce and separation).[763]

Besides, happiness research offers critical information on the strong negative consequences of unemployment on individual well-being and emphasizes the shock and psychic cost of being unemployed as well; furthermore, even if people are not unemployed themselves, they can be unhappy about unemployment; they may empathize with the unfortunate fate of the unemployed and fear the possibility that they may be unemployed in the future as well.[764]

Moreover, the study, which examines the connection between employment/unemployment, expectations, and happiness in Turkey by utilizing the Life Satisfaction Survey conducted regularly by the Turkish Statistical Institute (**TURKSTAT**) between 2003 and 2018, demonstrates that being unemployed is associated with negative life satisfaction, and negative relationship exists between happiness and unemployment.[765]Therefore, up until now, the TCC's claim can be supported by the studies in the literature of economics.

On the other hand, it is very difficult to draw an immediate conclusion that *ceteris paribus*, countries with lower average unemployment rates outperform countries with a higher average unemployment rate in terms of happiness

[762] Ohtake, F.: *Unemployment and Happiness*, Japan Labor Review, Vol. 9, No.2, Spring 2012, p. 73, available at: https://tinyurl.com/Ohtake-Article, (Last accessed: 06.07.2022)
[763] Clark, A., Oswald, A.J.: *Unhappiness and Unemployment*, The Economic Journal, Vol. 104, No. 424, May 1994, p. 655, available at: https://tinyurl.com/Clark-Oswald-Article, (Last accessed: 25.11.2022)
[764] Frey, pp. 51-52.
[765] Kanlıoglu, M. B., Dumludag, D.: *The Relationship Between Unemployment, Employment Expectations and Happiness in Turkey for the years: 2003-2018*, Erasmus Happiness Economics Research Organisation ((**EHERO**) working paper, 2021-02), cited from the abstract, available at: https://tinyurl.com/Kanlioglu-Dumludag-Article, (Last accessed: 25.11.2022)

scores.[766]There can be many factors such as the type of unemployment[767], the duration of unemployment, social norms[768], *etc.*, that can affect the level of happiness on different scopes and scales. Therefore, the average unemployment rates of the countries alone may not be sufficient to describe the overall relationships and correlations between happiness and unemployment as it is only one macro-indicator among many others, thus it should be considered, keeping in mind that different combinations of statistics can lead to more nuanced and discrete results.[769]

Hence, ultimately, the TCC's hypothesis that the prevention of unemployment may guarantee the happiness of people can be verified to some extent by the arguments provided, although the Court should clarify in detail in its case law what types of unemployment should be prevented, for which age group, and under what conditions since a decent job with acceptable working hours and a fair wage can create happiness in the welfare state.

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[766] When Figure 15 and the average unemployment rate in some happy constitution countries between 2010 and 2022 as the percentage of the total labor force are examined together, the predicted negative connection may not be found between the average unemployment rate and the level of happiness in some examples, because there are countries with relatively small unemployment rates like Niger with 0.75 percentage (**%**), Liberia with 2.82%, Bhutan with 3.15%, and Pakistan with 3.66%, where these small rates do not turn into higher happiness levels; and there are countries with comparably higher average unemployment rates (than many other happy constitution countries with lower happiness scores) such as Austria with 5.23%, the UK with 5.56%, and France with 9.06%, where relatively higher happiness levels continue existing despite these higher rates. However, for countries such as Eswatini, Namibia, Haiti, and Egypt comparably higher average unemployment rates (respectively 24.17%, 20.39%, 14.32%, and 10.53%) may, to some extent, be an explanatory indicator for understanding relatively lower levels of happiness. (Data is collected from: https://tinyurl.com/World-Bank-Unemployment-Total, and calculated by the author of this thesis. For the *statistical concept and methodology*, and the *development relevance* regarding the total unemployment, see *Details* at: https://tinyurl.com/World-Bank-Unemployment-Total, Last accessed: 01.07.2023)

[767] Cyclical, structural, or frictional unemployment. For more information, see https://tinyurl.com/Investopedia-Unemployment, (Last accessed: 21.07.2022)

[768] Winkelmann, p. 5.

[769] To put the unemployment rates of the happy constitution countries in better perspective and to have a more advanced idea of the work-life and employment conditions in them, see also employment to population ratio, 15+, Total (%), Modeled International Labour Organization (**ILO**) Estimate (https://tinyurl.com/World-Bank-Employ-to-Pop, Last accessed: 08.03.2023). For the *interpretation and uses* of the *employment-to-population ratio*, see the 1st para. of Article *6.4.* in ILO's central portal to labour statistics (**ILOSTAT**), https://tinyurl.com/ILOSTAT-Labour-Force-Stats, (Last accessed: 08.03.2023).

b) The Relationship Between Happiness and the Components of the Social State Principle Related to Social Justice

One of the most basic duties of the social state is to eliminate social injustice and to provide social justice.[770]Different from justice in a broad term, social justice is a rather recent concept that emerged from the struggles surrounding the Industrial Revolution and the occurrence of socialist views on the organization of society.[771][772]Numerous narrower constructions perceive social justice to be equivalent to or partly constitutive of distributive justice.[773]

"Essentially, the problem is whether the state has a role to play in actively promoting the values of *social justice* and *human dignity*, or whether such initiatives, however well-intentioned, create consequences contrary to what was intended."[774]

As for the Turkish doctrine, "Social justice in the legal literature is defined as ensuring that everyone receives a decent share of the national income and that every stratum and group in the society can sustain their economic life at a sufficient standard. Endeavors for increasing national income single-handedly are not sufficient, it is also necessary to ensure a balanced distribution of national income. Ultimately, social

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[770] Sağlam, s. 31.
[771] UN: The International Forum for Social Development: Social Justice in an Open World the Role of the UN, Department of Economic and Social Affairs Division for Social Policy and Development, New York 2006, p. 2, available at: https://tinyurl.com/UN-Social-Justice-Open-World, (Last accessed: 26.11.2022)
[772] For the definition of social justice, see Garner, p. 943. Rawls defines social justice on account of the classical utilitarians as "The principle of rational common sense applied to a collective understanding of *the welfare of the group*" (Rawls, p. 21). Based on his and Dworkin's works, the lately developed philosophical position, named '*luck egalitarianism*', goes further and claims that a strong meritocracy is not sufficient for social justice because even in a society where a strong meritocracy rules, resources, and life prospects will be unequally distributed because of inequalities in natural abilities over which individuals do not have any control; thus, luck egalitarianism requires state action to fix these further sources of '*brute luck*' inequality. (White, S.: *Ethics*, p. 29, in (Eds.) Beland, D., Morgan, K.J., Obinger, H., Pierson, C.: The Oxford Handbook of the Welfare State, 2nd Edition, New York 2021)
[773] Duignan, B.: "*social justice*", Encyclopedia Britannica, 22 Nov. 2022, available at: https://tinyurl.com/Britannica-Social-Justice, (Last accessed: 26.11.2022). For further information on distributive justice, see Blackburn, p. 195.
[774] Radcliff, p. 50.

injustice occurs when laws on the social and economic rights in a country are not qualified to safeguard indirectly protected fundamental rights."[775]

In the same direction, it is highlighted that the social state does not reject the understanding of the rule of law, which was in force even before it existed and which is based on the protection of the individual against the state; on the contrary, the welfare state principle suggests that the principle of protection of the person, which the rule of law aims at, can only be possible with the provision of social justice in the industrial environment.[776]

The contemporary situation regarding the duties of the state towards fundamental rights and especially social rights is portrayed as follows: respect, protect, and fulfill; hence, the state is obliged to take measures to help socially weak groups benefit from fundamental rights and thus to ensure social justice in terms of equal opportunities.[777]Individuals in advance cannot be aware of which of the social welfare steps they will occupy during their lifespan, in this respect, social policy practices have a fundamental significance in ensuring social justice and minimizing inequalities.[778]

To summarize, social justice is a theory that may be articulated on the foundation of social realism, equal rights, and equal sharing; thus, it moves from concrete facts in the restructuring of society and as a value that imposes obligations, adds positive demands to the avoidant perception of justice, its focus is not the individual, but the society itself; therefore, it presupposes a balance between the ideal

[775] Sağlam, ss. 31-32.
[776] Bulut, N.: *Küreselleşme Sosyal Devletin Sonu mu?*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, C. 52, S. 2, 2003, s. 192, available at: https://tinyurl.com/Bulut-Article-2, (Last accessed: 27.11.2022)
[777] Alp, M.: *Avrupa Birliği Temel Sosyal Hakları ve Türk İş Hukuku*, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, C. 6, S. 1, 2004, ss. 12-13, available at: https://tinyurl.com/Alp-Article, (Last accessed: 27.11.2022)
[778] Sunal, O.: *Sosyal Politika: Sosyal Adalet Açısından Kuramsal Bir Değerlendirme*, Ankara Üniversitesi SBF Dergisi, C. 66, S. 3, 2011, s. 303, available at: https://tinyurl.com/Sunal-Article, (Last accessed: 27.11.2022)

of freedom and the ideal of equality; additionally, while questioning the origins of inequalities between social classes, it unveils how an unjust social order can be transformed in favor of the disadvantaged segments of the society.[779]However, social justice is not to ensure absolute equality for all, but to remove the social and economic barriers that will prevent economic inequalities from making social life unbalanced and unlivable; to put it another way, social justice is to emancipate individuals from the burden of their needs and to keep all roads open so that they can reach a point commensurate with their capabilities, through the equitable distribution of national income.[780]

According to the TCC, "The social state governed by rule of law corresponds to the state which must protect the weak against the strong, and to provide real equality, that is, social justice and social balance. The contemporary perception of the state requires the establishment of a social state governed by the rule of law, together with all its institutions, in accordance with the essence and spirit of the constitution. The protection of the individual targeted by the rule of law can be attained by providing social security and social justice in the society."[781]

Since both the arguments in the doctrine and the happiness jurisprudence of the highest court underline the fair distribution of national income when it comes to social justice, it may make sense to portray the situation of the happy constitution countries in terms of these variables. The average GDP per capita combined with the average

[779] Kaya, P.A.: *Sosyal Adaletin Teorik Çerçevesi Üzerine Bir Değerlendirme*, s. 229, in Prof. Dr. Nusret Ekin'e Armağan, Ankara, 2000, available at: https://tinyurl.com/Nusret-Ekin-Armagan-Book, (Last accessed: 27.11.2022)
[780] Ruhi, E.: 1982 Anayasası Çerçevesinde Sosyal Devlet ve Özelleştirme, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku, Doktora Tezi, İstanbul 1999, s. 50, available at: https://tinyurl.com/Ruhi-Doktora-IU-1999, (Last accessed: 27.11.2022)
[781] AYM, E. 1988/19, K. 1988/33, T. 26.10.1988, RG 11.12.1988, s. 5, available at: https://tinyurl.com/AYM-E-1988-19-K-1988-33, (Last accessed: 28.11.2022)

Gini index data can be used to address concerns about the fair distribution of national income. The Gini index can provide an opportunity to quantitatively control the fair distribution of national income in line with social justice, because "The *Gini index* calculates the degree *to which the distribution of income* (or, in some circumstances, *consumption expenditure*) across persons or households in *an economy deviates from a perfectly equal distribution*. Perfect equality is represented by a *Gini index* of *0*, whereas perfect inequality is indicated by a *Gini index* of *100*."[782]

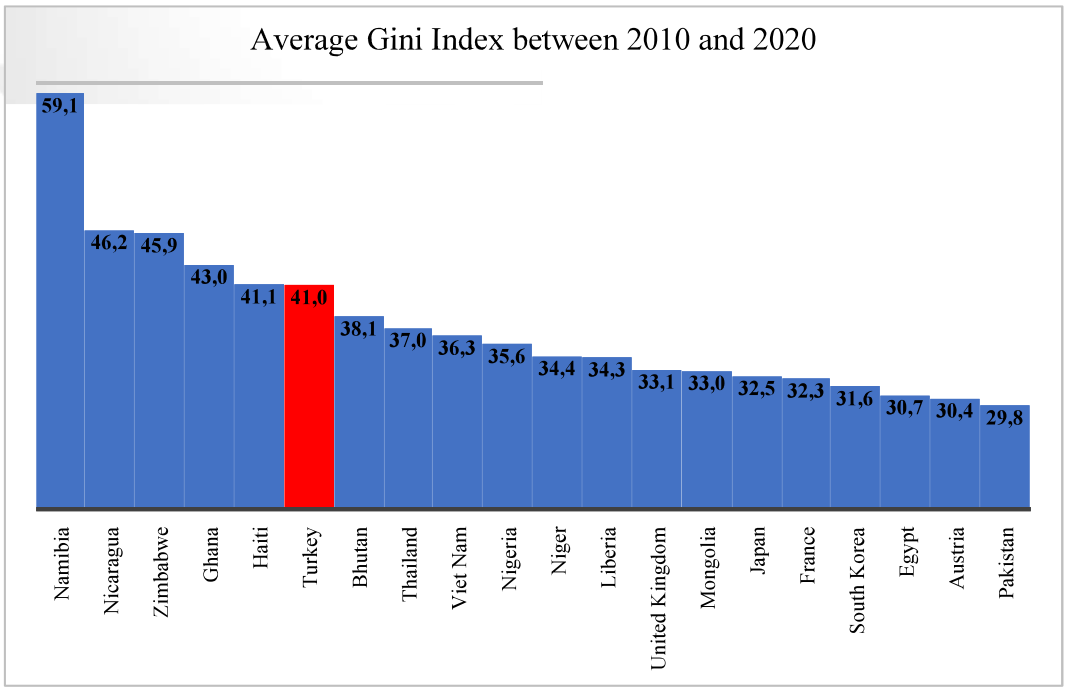


Figure 16: Average Gini Index in the Some Happy Constitution Countries between 2010 and 2020[783]

Given that *the Gini coefficient* measures *relative* wealth, not *absolute* wealth, and since it is likely for a developing nation's *Gini coefficient* to increase due to rising income disparity while the number of individuals living in *absolute poverty*

[782] https://tinyurl.com/World-Bank-GINI-Data, (Last accessed: 08.03.2023)
[783] Data is collected from: https://tinyurl.com/World-Bank-Gini-Index, and calculated by the author of this thesis. (Last accessed: 01.07.2023). The averages in this graph should be approached with caution, as there is not sufficient data (to reach statistically significant averages) about some countries in the source from which the relevant statistics are obtained.

declines[784], it may be considered to add GDP per capita to the equation as well, as it can be useful to comprehend the overall picture. Moreover, the reason for controlling Figure 16 and Figure 17 together is also related to happiness; thus, **according to the studies, both the amount of income[785]and its fair distribution[786]go hand in hand with the level of happiness.**

[784] https://tinyurl.com/World-Bank-GINI-Data, (Last accessed: 08.03.2023)

[785] For the positive correlation (although it is not strong) between wealth and SWB at a given time, see Christopher Hsee's opinion. According to Hsee, this correlation is particularly high for people in poor countries because the poorer people are, the happier wealth can make them since wealth can be converted into meeting more basic survival needs such as food or shelter for those who lack it. (Will Money Ever Bring You Happiness?, https://tinyurl.com/US-News-Money-Happiness, Last accessed: 06.07.2022). For the key idea of '*diminishing marginal utility of income*' due to the law of diminishing marginal returns, see Sachs (Introduction), p. 5, available at: https://tinyurl.com/World-Happiness-R-2012, (Last accessed: 22.07.2022). In the same direction, see Gilbert, D.: Money, marriage, kids, available at: https://tinyurl.com/Harvard-Gilbert-Happiness, (Last accessed: 06.07.2022)

[786] Income inequality rather than absolute income is an important indicator of happiness (Yu, Z., Wang, F.: *Income Inequality and Happiness: An Inverted U-Shaped Curve*, Frontiers in Psychology, 2017, Vol. 8, available at: https://tinyurl.com/Yu-Wang-Article, Last accessed: 06.07.2022), while keeping in mind that absolute numbers are also important up to some amount of income (See Gilbert, pp. 152-155). Easterlin paradox asserts that happiness varies directly with income, both between and within countries at a given time, but happiness does not increase with a rise in a country's income over time (Easterlin, R. A., McVey, L. A., Switek, M., Sawangfa, O., Zweig, J. S.: *The happiness-income paradox revisited*, Proceedings of the National Academy of Sciences of the United States of America (**PNAS**), Dec. 28, 2010, Vol. 107, No. 52, p. 22463, available at: https://tinyurl.com/Easterlin-Et-Al-Paradox, Last accessed: 06.07.2022), because social comparison dominates people's long-term assessments of income, that is to say, as economic growth increases incomes in general, the positive effect of growth in one's income on happiness is undercut by growth in one's comparison group incomes (Easterlin, R. A., O'Connor, K. J.: *The Easterlin Paradox*, Dec. 2020, IZA Institute of Labor Economics, p. 13, available at: https://tinyurl.com/Easterlin-OConnar-Article, Last accessed: 06.07.2022). Therefore, income inequality comes into play at this point, since behavioral researchers have painted a more realistic picture, arguing that happiness is primarily dependent on relative wealth and relative consumption levels. (Hsee, C. K., Yang, Y., Li, N., Shen, L.: *Wealth, Warmth and Well-Being: Whether Happiness is Relative or Absolute Depends on Whether It Is About Money, Acquisition or Consumption*, Journal of Marketing Research (**JMR**), Jun. 2009, Vol. XLVI, p. 407, available at: https://tinyurl.com/Hsee-Et-Al-Article, Last accessed: 20.02.2023). For a study in Canada showing that income inequality negatively affects individual happiness, see Latif, E.: *Does Income Inequality Impact Individual Happiness? Evidence from Canada*, International Journal of Applied Economics, 15(1), Mar. 2018, p. 50, available at: https://tinyurl.com/Latif-Canada-Article, (Last accessed: 29.03.2023). For a similar finding in the U.S. demonstrating the negative relationship between social income inequality and happiness due to the perceived fairness and general trust, see Oishi, S., Kesebir, S., Diener, E.: *Income Inequality and Happiness*, Psychological Science, Vol. 22, No. 9, 2011, pp. 1095-1100, available at: https://tinyurl.com/Oishi-Et-Al-Article, (Last accessed: 06.07.2022)

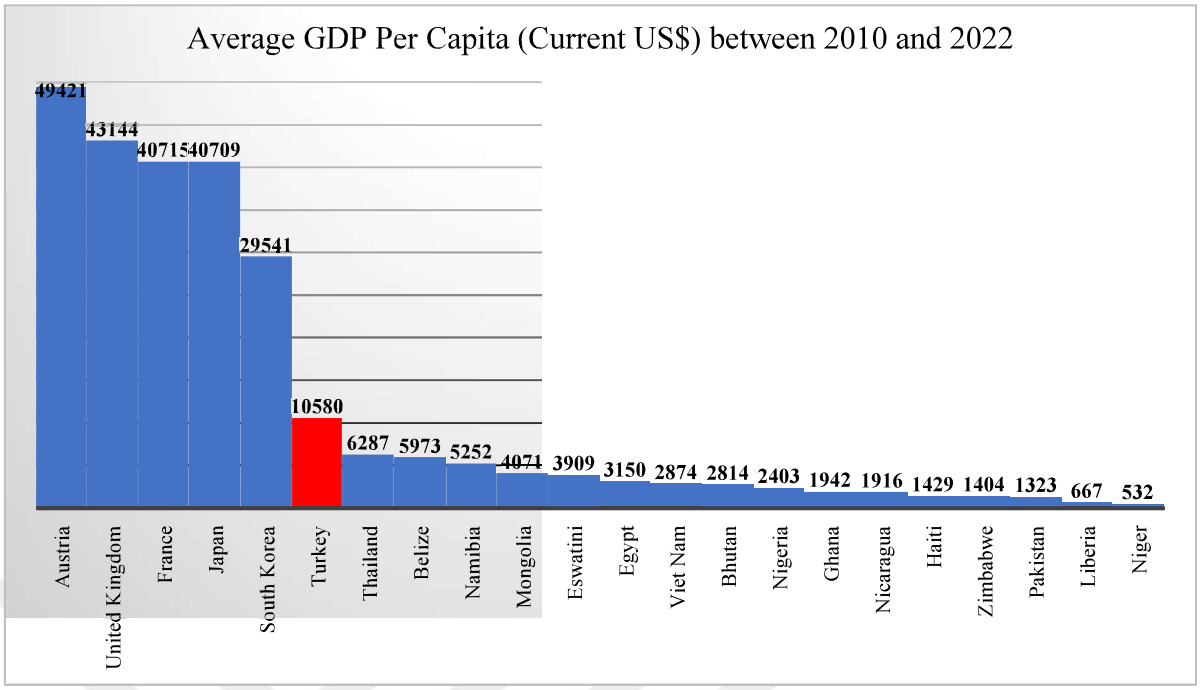


Figure 17: Average GDP Per Capita (Current US$) in Some of the Happy Constitution Countries between 2010 and 2022[787]

When Figure 15, Figure 16, and Figure 17 are examined together, it can be observed that countries with higher average GDP per capita and lower average Gini index numbers such as Austria, the UK, France, Japan, and South Korea perform relatively better in happiness statistics than countries with lower average GDP per capita and higher average Gini index such as Zimbabwe, Haiti, and Ghana, with some exceptions (e.g., Nicaragua). Therefore, if the country is relatively wealthy and this wealth is distributed fairly, it is highly likely that the level of happiness in that country will be above a certain threshold. Thus, **the assumption of the TCC** that the fair distribution of national income among individuals in relation to social justice may lead to happiness[788]can be confirmed to some extent.

[787] Data is collected from: https://tinyurl.com/World-Bank-Open-Data, and calculated by the author of this thesis. (Last accessed: 01.07.2023).

[788] AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG

Ultimately, the relationship between the TCC's statement of "the lookout of social justice and social balances by protecting the weak against the strong" and happiness can be evaluated through the parameter of public spending on incapacity. Art. 61 of the Turkish Constitution may exemplify what the protection of the weak against the strong could mean, and *inter alia* it assigns the state with the duty of safeguarding people requiring special protection including *state support for the disabled*. Social expenditures to be made by the state in this area are an obligation of being a social state, and the social expenditures made as a requirement of being a social state aim at amplifying social welfare and achieving social justice.[789]It is among the constitutional priorities of modern states to ensure that the disadvantaged people, especially people with disabilities, enjoy basic human rights and, above all, contribute

19.11.2008, s. 3; AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2005/2, K. 2008/181, T. 18.12.2008, RG 07.10.2009, s. 6; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 3; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 4; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2011/54, K. 2011/142, T. 20.10.2011, RG 29.12.2011, s. 6; AYM, E. 2010/57, K. 2012/14, T. 26.01.2012, RG 26.06.2012, s. 5; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 2; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 15; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 3; AYM, E. 2013/41, K. 2013/124, T. 31.10.2013, RG 28.12.2013, s. 4; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, s. 9; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/162, K. 2017/156, T. 15.11.2017, RG 08.12.2017, §6; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §220; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §43; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[789] Sağlam, s. 67.

to the values of the country as productive and **happy** individuals, through legal regulations, and social policies in the national and international level.[790]

In this respect, it is necessary to mention the community-based rehabilitation (**CBR**) approach. This is the approach agreed to in 1994 by ILO, the UN Educational, Scientific and Cultural Organization, and World Health Organization (**WHO**): "*CBR* is a community development scheme for the *rehabilitation*, ***equalization of opportunities*** and *social integration* of all individuals with disabilities. *CBR* is put into practice by combining the efforts of *disabled* persons, their *families*, and *communities*, as well as the suitable *health*, *education*, *vocational*, and *social services*."[791]The social state should make plans for the implementation of the CBR strategy through programs, including multifaceted support programs, where the state takes an active role in all fields and issues from monetary support to cooperation activities.[792]

The study demonstrates that although *people with disabilities* exhibit considerably *lower* SWB compared to those *without disabilities*, *the social-democratic welfare-state regime type* (as in Nordic countries), which can be distinguished by the biggest *welfare expenditure* and the soundest *measures to* decrease *inequalities*, performs *best* at delivering *equal living conditions* for people with and without

[790] Küçükali, A.: *Engellilere Uygulanan Sosyal Politikaların Değerlendirilmesi: Atatürk Üniversitesi Örneği*, Kırıkkale Üniversitesi Sosyal Bilimler Dergisi, C. 4, S. 1, 2014, s. 61, available at: https://tinyurl.com/Kucukali-Article, (Last accessed: 29.11.2022)

[791] Economic and Social Commission for Asia and the Pacific: Understanding Community-Based Rehabilitation, UN, New York, 1998, available at: https://tinyurl.com/UN-Comm-Based-Rehabilitation, (Last accessed: 29.11.2022). For more information see also Community-Based Rehabilitation, WHO, available at: https://tinyurl.com/WHO-Comm-Based-Rehabilitation, (Last accessed: 29.11.2022). See also, Bölükbaşı, R.: *Toplum Temelli Rehabilitasyon*, available at: https://tinyurl.com/Bolukbasi-Rehabilitasyon, (Last accessed: 29.11.2022)

[792] İsbir, E.G., Çubuk, H.: *Engellilerin Anayasal Haklarını Kullanmalarını Zorlaştıran Sebepler*, İstanbul Aydın Üniversitesi Hukuk Fakültesi Dergisi, C. 4, S. 1, 2018, s. 14, available at: https://tinyurl.com/Isbir-Cubuk-Article, (Last accessed: 29.11.2022)

disabilities since welfare-state regimes affect the gap in SWB.[793]Ultimately, the figure below can be analyzed in line with Figure 15 to comprehend the relationship between happiness, and the public expenditure on incapacity.

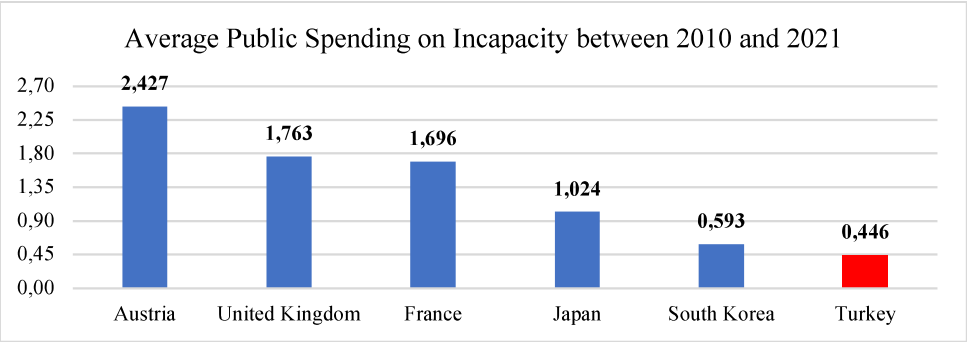


Figure 18: Average Public Spending on Incapacity in Some Happy Constitution Countries between 2010 and 2021, Total, % of GDP, OECD[794]

When Figure 15 and Figure 18 are taken together, *ceteris paribus*, there is an observable relationship between the allocation of the larger share of the public spending on incapacity as a percentage of GDP and countries' happiness performances, to the extent that these countries are ranked in identical order in terms of their happiness performances, and the public spending on incapacity. Hence, countries, where the weak people tried to be more protected against the strong with the help of public expenditures, tend to perform more successfully in the parameter of happiness, which, to a certain extent, may justify and verify **the TCC's claim** that the social state principle can ensure the happiness of people thanks to the protection of the weak against the strong in the context of the principle of social justice.[795]Namely,

[793] Hadjar, A., Kotitschke, E.: *How the Welfare-State Regime Shapes the Gap in Subjective Well-Being Between People with and without Disabilities*, Kölner Zeitschrift für Soziologie und Sozialpsychologie, 73: 501-525, 2021, p. 501, and 509, available at: https://tinyurl.com/Madjar-Kotitschke-Article, (Last accessed: 29.11.2022)

[794] Data is collected from: https://tinyurl.com/OECD-Pub-Spending-Incapacity, and calculated by the author of this thesis. (Last accessed: 09.03.2023). For a definition of public spending on incapacity, see the given link as well.

[795] AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K.

claims in the case law regarding social justice can easily be correlated with the available data and scientific arguments, bearing in mind that the number of relevant indicators may exceed those mentioned.[796]

c) The Relationship Between Happiness and the Components of the Social State Principle Related to Social Security and Health Services

First, the concept of social security[797]may need to be clarified. According to ILO, "*Social security* is the safeguard which a society offers to persons and households to guarantee that they have *access to healthcare* and to assure *income security*, mainly

2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3; AYM, E. 2008/110, K. 2010/55, T. 01.04.2010, RG 21.06.2010, s. 3; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2007/114, K. 2011/36, T. 10.02.2011, RG 14.04.2011, s. 4; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2011/54, K. 2011/142, T. 20.10.2011, RG 29.12.2011, s. 6; AYM, E. 2010/57, K. 2012/14, T. 26.01.2012, RG 26.06.2012, s. 5; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2011/28, K. 2012/22, T. 16.02.2012, RG 21.07.2012, s. 2; AYM, E. 2011/13, K. 2012/45, T. 22.03.2012, RG 21.07.2012, s. 5; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 15; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2012/91, K. 2013/86, T. 10.07.2013, RG 27.03.2014, s. 3; AYM, E. 2013/41, K. 2013/124, T. 31.10.2013, RG 28.12.2013, s. 4; AYM, E. 2013/30, K. 2014/13, T. 29.01.2014, RG 12.09.2014, s. 9; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2016/162, K. 2017/156, T. 15.11.2017, RG 08.12.2017, §6; AYM, E. 2016/150, K. 2017/179, T. 28.12.2017, RG 15.02.2018, §220; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman Alifeyyaz Paksüt; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §43. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[796] For more indicators, *inter alia* see statistics on violence against women, available at: https://tinyurl.com/OECD-Inequality-Violence, (Last accessed: 06.07.2022). See also, statistics on female and male political representation, available at: https://tinyurl.com/UN-Parliament-Women-Proportion, (Last accessed: 06.07.2022). Here the proportion of seats held by women in national parliaments is shown.

[797] See also the concept of social assistance: "*Social assistance* offers *social protection* for those in need. The word is used chiefly in *Europe*, whereas *Americans* use the word '*welfare*', as opposed to *social security*." (Bahle, T., Wendt, C.: *Social Assistance*, p. 624, in (Eds.) Beland, D., Morgan, K.J., Obinger, H., Pierson, C.: The Oxford Handbook of the Welfare State, 2nd Edition, New York 2021.)

in circumstances of *old age*, *unemployment*, illness, *invalidity*, *work injury*, *maternity*, or death of *a breadwinner*."[798][799]

When it comes to the concept of social security as a right, according to the Office of the United Nations High Commissioner for Human Rights (**OHCHR**), "The right to social security is vital to ensuring *human dignity* when encountered with conditions which deprive all individuals of their potential to fully exercise their human rights. The right to social security includes *the right to access and maintain benefits without discrimination* to be protected from 1- *a lack of work-related income* due to illness, *disability*, *maternity*, *employment injury*, *unemployment*, *old age*, or loss of a

[798] https://tinyurl.com/ILO-Social-Security-Facts, (Last accessed: 30.11.2022). For more details, see Abel-Smith, B.: "*social security*", Encyclopedia Britannica, 29 Jul. 2022, available at: https://tinyurl.com/Britannica-Social-Security, (Last accessed: 30.11.2022)

[799] Historically, the provision of welfare and social security had been the responsibility of the individual and the family at first, and then religion and charitable institutions have undertaken this task; nevertheless, since the facilities they provided were not sufficient, organized aid programs were developed, and the first examples of these may be workers' associations, trade unions, and aid organizations (Özok, Ö.: *Sosyal Güvenlik*, TBB Dergisi, S. 53, 2004, p. 31, available at: https://tinyurl.com/Ozok-Article, Last accessed: 30.11.2022). However, a stronger shielding structure was needed to boost protection against social risks —especially after the Industrial Revolution, because of the miserable working conditions of the workers triggering mass movements, states had to make numerous legal arrangements regarding social rights— (Karabulut, A.: *Sosyal Güvenlik Hakkı ve 1982 Anayasası'na Yansımaları*, İş ve Hayat, C. 2, S. 3, 2016, s. 188, available at: https://tinyurl.com/Karabulut-Article, Last accessed: 30.11.2022), and the ultimate version of this structure is named as the social state, which may suggest that the direction of the protection has shifted to the state level, and the social insurances implemented by the state have become increasingly widespread (Kılıç, M.: *Sosyal Güvenlik Hakkının Kapsamı ve Sınırı*, İş ve Hayat, C. 3, S. 5, 2017, s. 382, available at: https://tinyurl.com/Kilic-Article, Last accessed: 30.11.2022). The regulation of the issue by the state has unavoidably arisen since securing the present and the future is essential for the preservation of social peace and balance, and there is a demand directed towards the state by the individuals, and at this stage, it has become possible to define social security as a human right (Turan, E.: *Sosyal Güvenlik Hakkı*, Kamu-İş, C:7, S:3, 2003, s. 2, available at: https://tinyurl.com/Turan-Article, Last accessed: 30.11.2022). Especially there were 2 critical turning points that occurred before the 1940s, the 1st World War and the 1929 economic crisis (To understand the spirit of the period, see the Social Security Act of 1935 in the U.S. available at: https://tinyurl.com/Archives-Soc-Security-Act-1935, Last accessed: 30.11.2022. See also '*Social Security Act*' in the Black's Law Dictionary, p. 1517. For the indispensability of the welfare state, see the *Republican President Eisenhower*'s statement in 1954, Garland, p. 58), which led to the enlargement of the scope of social policy and the recognition of social security as a right. (Kılıç, s. 382)

family member; 2- *unaffordable health care*; and 3- *insufficient family support*, especially *for children and adult dependents*."[800]

Today, the right to social security is guaranteed by many international documents and conventions such as Art. 22 of the Universal Declaration of Human Rights[801], Art. 9 of the International Covenant on Economic, Social and Cultural Rights[802], Art. 34 of the Charter of Fundamental Rights of the EU[803], and many instruments by ILO[804]including Social Security (Minimum Standards) Convention, 1952 (No. 102)[805], Social Protection Floors Recommendation, 2012 (No. 202)[806], or Equality of Treatment (Social Security) Convention, 1962 (No. 118)[807], *etc.*[808]Furthermore, the ECtHR has a well-developed case law on social security rights.[809]

The right to social security is assured by many constitutions around the world[810], including Art. 60 of the 1982 Turkish Constitution. In Art. 61 of the same Constitution, people who require special protection in terms of social security are included, and in Art. 62, Turkish citizens working abroad are considered a special

[800] OHCHR and the right to social security, https://tinyurl.com/UN-OHCHR-Right-to-Soc-Sec, (Last accessed: 30.11.2022)
[801] https://tinyurl.com/Uni-Dec-of-Human-Rights, (Last accessed: 30.11.2022). See also, https://tinyurl.com/UN-Article-22-Right-Soc-Sec, (Last accessed: 30.11.2022)
[802] https://tinyurl.com/UN-Int-Cov-Econ-Soc-Cul-Rights, (Last accessed: 30.11.2022)
[803] https://tinyurl.com/EU-Charter-Rights-Article-34, (Last accessed: 30.11.2022)
[804] See International Labour Office: Building Social Protection Systems: International Standards and Human Rights Instruments, Geneva, 2021, available at: https://tinyurl.com/ILO-Soc-Protection-Building, (Last accessed: 01.12.2022)
[805] https://tinyurl.com/ILO-Convention-No-102, (Last accessed: 30.11.2022)
[806] https://tinyurl.com/ILO-Recommendation-No-202, (Last accessed: 30.11.2022)
[807] https://tinyurl.com/ILO-Convention-No-118, (Last accessed: 30.11.2022)
[808] For all instruments of ILO regarding social security, see https://tinyurl.com/ILO-Standards-Soc-Security, (Last accessed: 30.11.2022)
[809] See Heredero, A.G.: Social Security as a Human Right: The protection afforded by the European Convention on Human Rights, Human rights files No. 23, Council of Europe Publishing, Strasbourg 2007.
[810] For some examples, see ILO Global Study: The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice Volume 1: Europe, Geneva 2016, available at: https://tinyurl.com/ILO-Soc-Sec-Right-in-Cons, (Last accessed: 30.11.2022)

group with regard to their social security rights.[811]Among the indirect provisions of the 1982 Constitution regarding social security, the aim, and duty of the state to develop the material and spiritual existence of individuals (Art. 5), the principle of equality before the law (Art. 10), the right to life, protection and the improvement of the corporeal and spiritual existence of people (Art. 17), protection of the family and children's rights (Art. 41), and the provision of the fair wage (Art. 55) can be counted as well.[812]

Moreover, the TCC regularly emphasized the relationship between the right to social security and the social state governed by the rule of law in its decisions.[813]At this stage, the role of happiness can be included in the given picture. From Hamdovalı's point of view, social security, which aims to protect individuals against social risks, carries out the purpose of realizing **human happiness**.[814]In the same vein, it is claimed that the main purpose of social security policies is to make individuals happy, in addition to providing for their economic and social security.[815]According to the TCC's description of the social security framework, "…Among the fundamental aims and duties of the state, there are such things as striving for providing conditions required for the development of the individual's material and spiritual existence[816], making individuals happy, facilitating their struggle for life, and ensuring that they

[811] Erdoğan, Ç.: *Sosyal Güvenlik Hakkının Yargıtay Kararlarına Yansıması*, Sosyal Güvenlik Dergisi, C. 4, S. 2, Temmuz 2014, s. 194, available at: https://tinyurl.com/Erdogan-Article, (Last accessed: 01.12.2022)
[812] Şen, M.: *Hukuk Devleti İlkesi Bağlamında Sosyal Güvenlik Hakkı*, Melikşah Üniversitesi Hukuk Fakültesi Dergisi, C. 3, S. 2, 2014, s. 196, available at: https://tinyurl.com/Sen-Sosyal-Guvenlik-Article, (Last accessed: 01.12.2022)
[813] Karabulut, s. 203.
[814] Hamdovalı, G.: Türk Anayasa Hukukunda Sosyal Güvenlik Hakkı ve Uygulamaları, Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi, Ankara 2022, p. 20, available at: https://tinyurl.com/Hamdovali-YLT-Hacet-Uni-2022, (Last accessed: 06.07.2022)
[815] Levent, R.: Dünyada ve Türkiye'de Sosyal Güvenliğin Gelişimi, available at: https://tinyurl.com/Levent-Is-ve-Sosyal-Guvenlik, (Last accessed: 06.07.2022)
[816] https://tinyurl.com/CP-Turkish-Cons-1982, (Last accessed: 01.12.2022)

live in an environment which suits for human dignity. One of the tools that serve this happiness with the sense of future security it creates is the assurance of social security."[817]

A study conducted in China supports that social security satisfaction positively affects people's SWB.[818]This study claims that the field and scope of social security coverage as a public service (such as medical care, education, employment, pensions, and welfare) directly affects people's quality of life, especially for vulnerable groups in society, and with the help of satisfactory social security, a more balanced distribution of national interests can be achieved while the gap between rich and poor is reduced.[819]Therefore, under the premise of fulfilling people's basic lives, people with high levels of social security satisfaction are more likely to have a good quality of life, which may lead to positively affected SWB outcomes.[820]Similarly, according to an empirical analysis, the social security system significantly raises residents' subjective happiness levels, and the fair effect of the social security system as a mechanism of redistributing national income will increase the perception of fairness in the public, which will affect the perception of happiness of the citizens.[821]

However, the realization of human happiness in line with the right to social security is directly related to the economy and finance. Social security is in general a

[817] Aydın, M. A.: Sosyal Güvenlik Hakkı, Selçuk Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi, Konya, 2009, s. 121'den atıfla AYM, E. 1986/16, K. 1986/25, T. 21.10.1986, available at: https://tinyurl.com/Aydin-YLT-Selcuk-Uni-2009, (Last accessed: 23.07.2022)
[818] Li, N., He, M.: *Social Security Satisfaction and People's Subjective Wellbeing in China: The Serial Mediation Effect of Social Fairness and Social Trust*, Frontiers in Psychology, 04 Apr. 2022, available at: https://tinyurl.com/Li-He-Article, (Last accessed: 23.07.2022)
[819] https://tinyurl.com/Li-He-Article, (Last accessed: 23.07.2022)
[820] https://tinyurl.com/Li-He-Article, (Last accessed: 06.07.2022)
[821] Zhang, J., Ding, J.: *Happiness Effect of the Social Security Participation in Urban and Rural China: An Empirical Analysis Based on CGSS 2015 Data*, Vol. 204, Vol. Title: Proceedings of the 2018 4th International Conference on Economics, Social Science, Arts, Education and Management Engineering (**ESSAEME** 2018), July 2018, p. 218, available at: https://tinyurl.com/Zhang-Ding-Article, (Last accessed: 04.07.2022)

resource allocation problem and it is not achievable for a social security system to survive without considering the financial/economic scheme.[822]In this context, **the extent** of the Turkish state's duty to provide social security (as a fundamental right in international law documents and contemporary constitutions regulated under the heading of "economic and social rights"[823]) arising from the specified articles of the constitution above is drawn by Art. 65.[824]The constitutional happiness stated in the Preamble and Art. 5 of the Turkish Constitution, is found by the TCC to be directly related to the social state principle and correspondingly social and economic rights. It is known that the social state principle and the social and economic rights arising from this principle should generally be exercised under the pressure of limited public resources.

After this point, concerns regarding Art. 65 of the Turkish Constitution should also be included in the narrative. This article provides that "*The state* shall realize *its duties* under *the Constitution* in the *social* and *economic* spheres within the limits of *its financial resources*, considering *the priorities* appropriate to *the aims of these duties*". The main concern here arises from the *prima facie* conflict between the principle of the social state governed by the rule of law in relation to Art. 5 and Art. 65. Indeed, this is not a real conflict, but a matter of interpretation, and can be resolved by applying a simple rule of interpretation, "*Praktische Konkordanz*"[825], *the canon*

[822] Acar, İ.A., Kitapcı, İ.: *Sosyal Güvenliğin Demografik Boyutu: Türkiye'deki Emeklilik Sistemindeki Değişim*, Maliye Dergisi, S. 154, Ocak-Haziran 2008, s. 78, available at: https://tinyurl.com/Acar-Kitapci-Article, (Last accessed: 01.12.2022)
[823] Turan, s. 14.
[824] Erdoğan, s. 194.
[825] This principle has been developed by the Federal Constitutional Court of the Federal Republic of Germany to resolve seemingly contradictory provisions in the Constitution. (Keskinsoy, Ö., Kaya, S. B.: *Anayasa Mahkemesi Kararlarını Biçimlendirme Çabası Olarak Yorum*, Hacettepe Hukuk Fakültesi Dergisi (**Hacettepe HFD**), 11(1) 2021, pp. 86-88, available at: https://tinyurl.com/Keskinsoy-Kaya-Article-2, (Last accessed: 06.07.2022)

which presumes that when conflicting, *protected constitutional values* should be *harmonized* with each other.[826]According to this rule, the limitations imposed on the positive obligations of the state by Art. 65 of the Turkish Constitution can only be meaningful as long as they do not interfere with the jurisprudence of the social state, which is subject to the rule of law in Art. 2 of the Constitution. Thus, Art. 2 of the Constitution determines the minimum standards that cannot be violated by the state so that both articles can continue to exist in harmony with each other under the same constitution.[827]Therefore, the state cannot invoke Art. 65 unless the minimum requirements of the citizens are met. These minimums require an economic analysis of the law and the inclusion of various data and statistics to draw the line between what is constitutionally minimum and what is at the discretion of government policy margin, given limited resources and a limited public budget.

The following dissenting opinion by Justice Paksüt is an excellent example for those who are in a dilemma about where to draw the line: "Although it could be said that the concepts such as **"prosperity, material, and spiritual happiness"** in the Preamble of the Constitution express an ideal, therefore it is up to the discretion of the legislator to realize **social security rights** subject to the capacity of the state's financial resources **(see Art. 65)**[828]to the extent allowed by the circumstances; the legislator must act in accordance with the basic principles of the Constitution and law, especially

[826] Kommers, D.P., Miller, R.A.: The Constitutional Jurisprudence of the Federal Republic of Germany, 3rd Edition, Revised and Expanded, Duke University Press, Durham and London 2012, p. 67. For more details about the practical concordance, see pp. 67-68, and p. 586 of the same book.
[827] For more information, see https://tinyurl.com/Goren-Anayasa-Article, (Last accessed: 06.07.2022). See also Savaş, V.: *Anayasalarda Ekonomik Hak ve Özgürlükler: T.C. Anayasaları Örneği*, available at: https://tinyurl.com/Savas-Article, (Last accessed: 06.07.2022)
[828] Added by the author of this thesis.

the rule of law in Art. 2 and the principles of equality in Art. 10 while exercising this discretionary power."[829]

In summary, "Social spending is a vital factor in welfare policy, and is fundamentally initiated to increase well-being among the population."[830]Additionally, the economic and social development of the states is also reflected in the social insurance systems and thus, in the deeds offered by them.[831]Having these in mind, one might attempt to verify the TCC's claim that the social state can provide happiness through the implementation of the right to social security, with respect to the parameters of public social spending plus social security contributions. The parameter of the social security contributions needs to be considered to demonstrate where the money used for financing the welfare state comes from, since "The majority of *revenues* derive from *social security contributions* and *taxes*…to *finance* the welfare state" even though there are different sources.[832]On the other hand, average public social spending data can be useful to have an overall approach to the economic and fiscal situation of the right to social security in a given country.

[829] AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 39.
[830] Nordheim, O., Martinussen, P.E.: *Happiness and the role of social protection: how types of social spending affected individuals' life satisfaction in OECD countries, 1980-2012*, Journal of International and Comparative Social Policy, 36:1, 2020, p. 1, available at: https://tinyurl.com/Nordheim-Martinussen-Article, (Last accessed: 01.12.2022)
[831] Kılıç, s. 393.
[832] Obinger, H.: *Social Expenditure and Welfare State Financing*, p. 465, in (Eds.) Beland, D., Morgan, K.J., Obinger, H., Pierson, C.: The Oxford Handbook of the Welfare State, 2nd Edition, New York 2021.

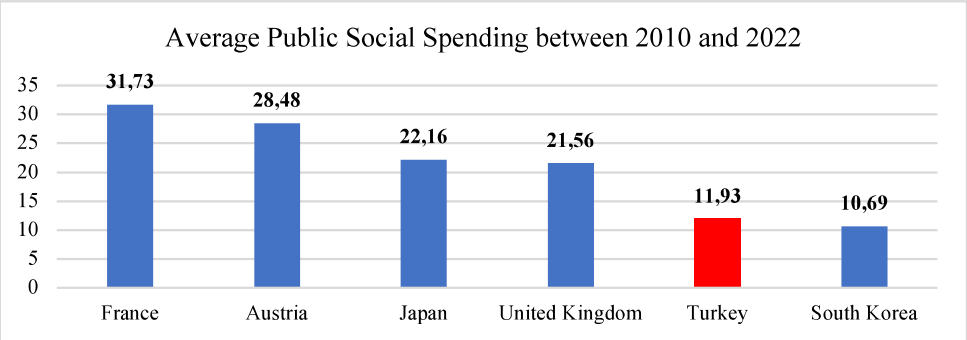


Figure 19: Average Public Social Spending in Some Happy Constitution Countries between 2010 and 2022, % of GDP, OECD[833][834]

When Figure 15 and Figure 19 are interpreted together, countries' happiness levels are not ranked by what percentage of the GDP they allocate as public social spending; however, for France, Austria, Japan, and the UK relatively higher percentages of public social spending to GDP may have an impact on their relatively higher levels of happiness. Therefore, if more public social spending can be attributed to better opportunities for individuals to exercise their social security rights, **the TCC's hypothesis** that the right to social security may bring happiness[835]can be validated to some extent.

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[833] Data is collected from: https://tinyurl.com/OECD-Social-Spending-Public, on 09.03.2023 and calculated by the author of this thesis, (Last accessed: 09.03.2023). See also Average Social Security Contributions in Some Happy Constitution Countries between 2010 and 2021, % of GDP, OECD: France 16,09%, Austria 14,59%, Japan 12,07%, **Turkey 6,97%**, South Korea 6,5%, UK 6,17%. (Data is collected from: https://tinyurl.com/OECD-Soc-Sec-Contributions, and calculated by the author of this thesis, Last accessed: 09.03.2023. For more details regarding *social security contributions*, see https://tinyurl.com/OECD-Soc-Sec-Contributions, Last accessed: 09.03.2023)

[834] For a definition of social spending, see https://tinyurl.com/OECD-Social-Spending-Public, (Last accessed: 09.03.2023)

[835] AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, s. 19; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7; AYM, E. 2009/19, K. 2011/4, T. 06.01.2011, RG 12.04.2011, s. 6; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2009/93, K. 2011/73, T. 28.04.2011, RG 15.10.2011, s. 2; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2011/42, K. 2013/60, T. 09.05.2013, RG 25.07.2014, s. 12; AYM, E. 2013/74, K. 2013/143, T. 28.11.2013, RG 09.05.2014, s. 3; AYM, E. 2013/111, K. 2014/195, T. 25.12.2014, RG 07.01.2015, s. 4; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §10 and §9 in the dissenting opinion of Osman

Nordheim and Martinussen's study suggests that although the majority of the types of social spending have a significant impact on SWB (e.g., SWB in the OECD is positively impacted by *social spending related to poverty and health care*), aggregate social spending seems to be uncorrelated with the SWB; thus, the real effect of the social spending on happiness depends on the analysis of the social spending with respect to underlying branches.[836]On the other hand, the same study underlines that the available literature has provided evidence that in advanced industrialized economies, higher total social expenditure levels have a positive impact on individuals' levels of life satisfaction.[837]Accordingly, it is underlined that the larger the state's footprint in the economy, as seen by the share in the economy it spends on social services *per se,* or simply the amount it "*consumes*" for its overall operations, the more satisfied people are inclined to be with life, other things being equal, and "The best way to promote *happiness* is to limit *the power of the market*…"[838]

Before closing the discussion under the third subgroup, **the TCC's claim** regarding the link between the provision of sufficient health services for people's benefit and happiness[839]should be examined.

Alifeyyaz Paksüt; AYM, E. 2017/117, K. 2018/28, T. 28.02.2018, RG 04.04.2018, §43; AYM, E. 2019/5, K. 2019/24, T. 11.04.2019, RG 30.05.2019, §9; AYM, E. 2022/51, K. 2022/94, T. 20.07.2022, RG 09.08.2022, §16. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

[836] p. 1, and p. 17.

[837] Nordheim and Martinussen, p. 19.

[838] Radcliff, p. 123.

[839] AYM, E. 2006/21, K. 2006/38, T. 13.03.2006, RG 11.12.2007, s. 5; AYM, E. 2004/114, K. 2007/85, T. 22.11.2007, RG 24.12.2007, s. 3; AYM, E. 2005/10, K. 2008/63, T. 21.02.2008, RG 07.11.2008, s. 8; AYM, E. 2012/103, K. 2013/105, T. 03.10.2013, RG 17.12.2014, s. 8 and s. 17; AYM, E. 2014/61, K. 2014/166, T. 07.11.2014, RG 19.06.2015, s. 36; AYM, E. 2015/17, K. 2015/20, T. 05.03.2015, RG 19.06.2015, s. 3; AYM, E. 2016/125, K. 2017/143, T. 28.09.2017, RG 23.01.2018, §65; AYM, E. 2016/181, K. 2018/111, T. 20.12.2018, RG 05.04.2019, §108; AYM, E. 2019/13, K. 2021/31, T. 29.04.2021, RG 02.07.2021, §30. (https://tinyurl.com/Karar-Bilgi-Bank-Norm-Denetimi, Last accessed: 07.06.2023)

The right to health is provided by a significant number of human rights documents[840]such as Art. 12 of the International Covenant on Economic, Social and Cultural Rights.[841]In the Turkish Constitution, the right to health is provided by Art. 56 among the social rights.[842]Although the right to health is predominantly included in the type of positive status rights in Turkish law, it also has a negative dimension.[843]

"Fact Sheet No. 31 on the right to health prepared by the OHCHR and WHO takes the right to health as an inclusive right comprising freedoms (such as freedom from *torture* and other forms of *cruel*, *inhuman*, or *degrading treatment* or *punishment*), entitlements (such as the *right* to a *health protection* system which gives everyone an equal chance to enjoy *the highest attainable* health level), non-discriminatory health services, goods and facilities, and an available, accessible, acceptable, and of good quality health-care facilities; thus, the right to health extends beyond *access to health-care* and *the building of hospitals*, and contains various factors including *safe drinking water and adequate sanitation*, *safe food*, *adequate nutrition and housing*, *healthy working and environmental conditions*, *health-related education and information*, and *gender equality*."[844]This approach is compatible with the holistically-grasped human rights model taking rights interdependently and indivisibly, meaning that '*the value* of *each right* is substantially increased by the

[840] Ertan, İ.M.: Ulusalüstü İnsan Hakları Hukukunda Sağlık Hakkı ve Etkinleştirilmesi, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, Doktora Tezi, İstanbul 2012, s. 208, available at: https://tinyurl.com/Ertan-Doktora-IU-2012, (Last accessed: 02.12.2022)
[841] https://tinyurl.com/OHCHR-Int-Cov-ESC-Rights, (Last accessed: 02.12.2022). For more details, see Ertan's dissertation.
[842] Şahbaz, İ.: *Bir Sosyal Hak Olarak Sağlık Hakkı*, TBB Dergisi, S. 86, 2009, s. 405, available at: https://tinyurl.com/Sahbaz-Article, (Last accessed: 02.12.2022)
[843] Temiz, Ö.: *Türk Hukukunda Bir Temel Hak Olarak Sağlık Hakkı*, Ankara Üniversitesi SBF Dergisi, C. 69, No. 1, 2014, s. 170, available at: https://tinyurl.com/Temiz-Article, (Last accessed: 02.12.2022)
[844] OHCHR and the WHO: The Right to Health, Fact Sheet No. 31, pp. 3-4, available at: https://tinyurl.com/OHCHR-WHO-Right-to-Health, (Last accessed: 02.12.2022)

existence of numerous others.'[845]as adopted by Para. 5 of the Vienna Declaration and Programme of Action (25 Jun. 1993).[846][847]

The TCC examined the right to health in association with the right to live in both the period of 1961 and the period of 1982 Constitutions and developed the interpretation that Art. 17 should be taken into account along with Art. 56 of the 1982 Constitution; hence, the right to health is closely linked with the right to life and the right to protect and improve people's corporeal and spiritual existence, and this link is not only with respect to the right to health; it is also valid in terms of health services and, accordingly, social security services.[848]

The dimension of the right to health which imposes positive responsibilities on the state needs to be analyzed for the sake of the verification of the TCC's happiness jurisprudence highlighting the fact that the social state can ensure the happiness of people by means of the provision of sufficient health services for the benefit of

[845] Donnelly, J.: Universal Human Rights in Theory and Practise, 3rd Edition, Cornell University Press, Ithaca, and London, 1989, p. 39.
[846] https://tinyurl.com/Vienna-Declaration-1993, (Last accessed: 02.12.2022)
[847] For this logic chain regarding the right to health, see Temiz's paper s. 171.
[848] Temiz, s. 182.

people.[849][850]Therefore, among the state's responsibilities of the respect, protection, and fulfillment of the right to health[851], especially the last one may be prioritized. One of the fundamental obligations of the state regarding the right to health is to allocate reasonable and significant resources for health services in the state budget because access to healthcare necessitates prerequisites that the state needs to make investments, carry out actions and take measures to provide health services.[852]

Statistics show that *countries that score high on the quality and accessibility* of health care, often free of charge, usually *all score high on the happiness index*.[853]Universal health coverage, which has high quality and provides a mechanism against bankrupting a family who benefits from it, will increase well-

[849] There are also the Turkish Council of State's judgments, which have referred to the relationship between health services and happiness. This referral might be found in the judgments as a part of the Council of State Prosecutor's opinion, as a part of defense arguments, or as a part of the Court's legal assessment. "With Art.s 2, 5, 17, and 56 of the Constitution, individuals have been granted the right to life, right to protect and improve their corporeal and spiritual existence, right to lead a healthy life physically and mentally, while the state has been assigned a duty to provide necessary conditions for everyone to improve their corporeal and spiritual existence, to ensure that people lead their lives in physical and mental health. **The fundamental condition for people to improve their corporeal and spiritual existence and to be happy and peaceful is to have access to health services when they need them and to benefit from these services as much as they need.** In the realization of this aim, which is a duty for the state and the right for individuals, any regulation, which makes it difficult for this right to be exercised or weakens the conditions to enjoy from this right, is unconstitutional." (Danıştay 2. Daire, E. 2017/137, K. 2020/3282, T. 10.11.2020; Danıştay 2. Daire, E. 2017/1544, K. 2021/773, T. 23.03.2021). For a very similar judgment without referral to Art. 2 of the Turkish Constitution, see Danıştay 10. Daire, E. 2019/11781, K. 2021/2192, T. 29.04.2021. To observe the bolded part of the above judgment as a part of defense arguments, see Danıştay 15. Daire Başkanlığı, E. 2016/9615, K. 2018/6472, T. 26.09.2018. (https://tinyurl.com/Danistay-Karar-Arama-2, Last accessed: 23.07.2022)

[850] Turkish Council of State has also referred to the TCC's decision: "The Constitutional Court in its decisions has also emphasized that social state governed by the rule of law is the state which ensures that individuals benefit from health services sufficiently, and it is the consequence of being a state which respects human rights and freedoms, guarantees individual peace, well-being, and happiness, is able to strike a fair balance between individual and society, realizes social justice by protecting the weak against the strong." (Danıştay 2. Daire, E. 2017/137, K. 2020/3282, T. 10.11.2020; Danıştay 2. Daire, E. 2017/1544, K. 2021/773, T. 23.03.2021), (https://tinyurl.com/Danistay-Karar-Arama-2, Last accessed: 23.07.2022)

[851] Zengin, N.: *"Sağlık Hakkı" ve Sağlık Hizmetlerinin Sunumu*, Sağlıkta Performans ve Kalite Dergisi, C. 1, S. 1, 2010, ss. 47-48, available at: https://tinyurl.com/Zengin-Article-Saglik-Hakki, (Last accessed: 02.12.2022)

[852] Ertan, s. 94 ve s. 96. See, especially Art. 56/3-4 of the 1982 Constitution.

[853] https://www.lenstore.co.uk/research/global-health-vs-happiness-index/, (Last accessed: 07.07.2023)

being.[854]Countries with some form of universal health care score relatively high in happiness, life expectancy, and health, and the relatively poor performance of the U.S. on these measures can be attributed, at least in part, to the absence of universal health care.[855]

According to a 2014 Gallup poll, one in three Americans says that they have put off receiving medical treatment that they or their family members need because of cost[856], which could result in a relatively lower level of individual happiness in the country because *well-being research* by WHR *and others* suggests that *subjective evaluations* of life are *to be lower for* people in *poor health*.[857]Additionally, a study conducted in China shows a significant positive relationship between public health investments and the SWB of residents; in particular, public health investments have a greater impact on the well-being of low and middle-income residents than high-income residents.[858]

[854] Health and Happiness Are Connected Through Politics, Benjamin Radcliff, https://tinyurl.com/Radcliff-Health-and-Happiness, (Last accessed: 23.07.2022)
[855] https://tinyurl.com/Radcliff-Health-and-Happiness, (Last accessed: 23.07.2022)
[856] Cost Still a Barrier Between Americans and Medical Care, https://tinyurl.com/News-Gallup-Americans-Med-Care, (Last accessed: 23.07.2022)
[857] Helliwell, J. F., Wang, S., Huang, H., Norton, M.: *Happiness, Benevolence, and Trust During COVID-19 and Beyond*, in WHR 2022, Eds. J. F. Helliwell, R. Layard, J. D. Sachs, J. E. De Neve, L. B. Aknın, S. Wang, p. 34, available at: https://tinyurl.com/WHR-2022-Report, (Last accessed: 23.07.2022)
[858] Yang, Y., Zhao, L., Cui, F.: *How Does Public Health Investment Affect Subjective Well-Being? Empirical Evidence from China*, International Journal of Environmental Research and Public Health, 2022 Apr 21; 19 (9), available at: https://tinyurl.com/Yang-Et-Al-Article, (Last accessed: 06.07.2022)

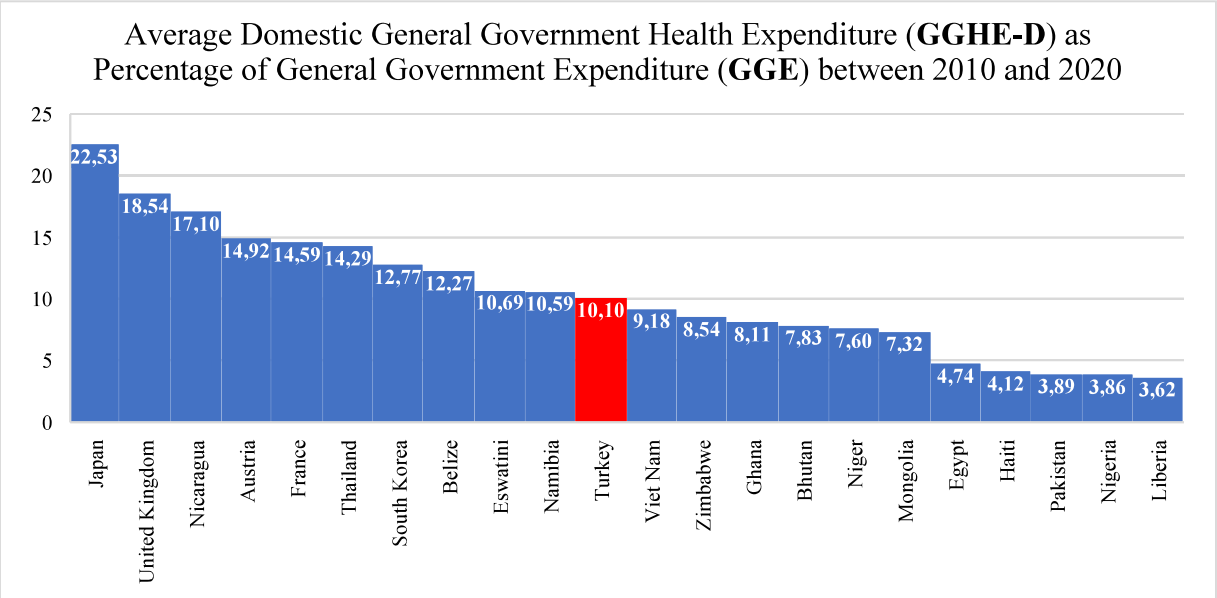


Figure 20: Average GGHE-D as a Percentage of GGE in the Happy Constitution Countries between 2010 and 2020, (%), WHO[859]

When Figure 15 and Figure 20 are analyzed together, countries that make more room for health expenditures in the government budget are generally those with relatively higher levels of happiness[860]although counterexamples can also be found. Hence, if a larger share of the government budget for health expenditures can be attributed to greater adequacy and quality in health care for the benefit of individuals, then the TCC's assumption that providing individuals with adequate health care[861]may lead to happiness can be validated to some extent by the data.

[859] Data is collected from: https://tinyurl.com/WHO-GGHE-D-As-Perc-of-GGE, on 02.07.2023, and calculated by the author of this thesis. (Last accessed: 02.07.2023). For detailed information, see government compulsory health spending as a percentage of GDP for OECD countries. (https://tinyurl.com/OECD-Health-Spending, Last accessed: 09.03.2023). For the *Rationale* behind this indicator, see https://tinyurl.com/WHO-Metadata-GGHE-D, (Last accessed: 09.03.2023)

[860] Nicaragua's rank and ratio should not be underestimated in this statistic, as the country's relatively higher level of happiness can be attributed to it since it performs poorly on some other statistics as seen above.

[861] For more information regarding 'adequate health care', see also: "According to the Committee on Economic, Social and Cultural Rights (**CESCR**) General Comment No. 14 regarding *the right to the highest attainable standard of health*, the state party's obligation, *inter alia*, includes the *availability* of *trained medical* and *professional* workforces who are paid *domestically competitive salaries*; in addition to that, 'states must guarantee that *doctors* and *other medical* professionals receive the proper *training*', and lastly the Committee prioritizes, *inter alia*, the obligation of the provision of the proper *training for health personnel, including education on health* and *human rights*." (CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second

Ultimately, the TCC's approach regarding the right to social security and health services in its case law is largely in line with the statistics covered, although exhausting more statistics may affect the validity of this conclusion.

In brief, the TCC's happiness jurisprudence and all the above distinctions regarding this jurisprudence can be summarized as follows: "Understanding of the contemporary state requires the establishment and operation of the social state governed by the rule of law with all institutions and rules in accordance with the essence and spirit of the constitution, thus ensuring the welfare, peace, and happiness of individuals."[862]

In light of all this information and discussion, it may be useful to finally look at Turkey's happiness status comparatively to see the overall happiness situation in the country empirically.

D. Comparative Happiness Status of Turkey by Years and Other Countries

Figure 21 illustrates the average happiness scores of the happy constitution countries without Turkey, the rest of the world, and Turkey separately. According to

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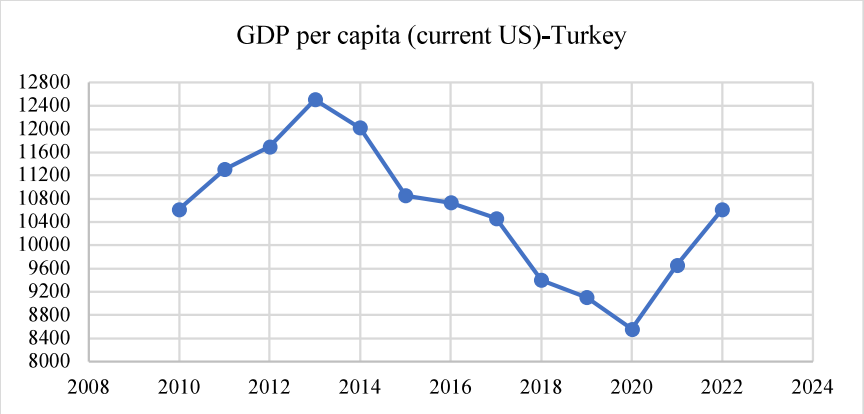
Session of the CESCR, on 11 Aug. 2000 (Contained in Document E/C.12/2000/4), §12, 36, and 44, available at: https://tinyurl.com/CESCR-General-Comment-No-14, Last accessed: 12.02.2022. See also, Ertan, s. 84; Zengin, ss. 49-51; Temiz, s. 180.)

[862] AYM, E. 2006/111, K. 2006/112, T. 15.12.2006, RG 30.12.2006, s. 32; AYM, E. 2005/52, K. 2007/35, T. 03.04.2007, RG 18.03.2008, ss. 19-20; AYM, E. 2006/101, K. 2008/126, T. 19.06.2008, RG 19.11.2008, s. 3; AYM, E. 2006/158, K. 2008/150, T. 24.09.2008, RG 29.01.2009, s. 3; AYM, E. 2007/64, K. 2008/154, T. 31.10.2008, RG 29.01.2009, s. 10; AYM, E. 2006/95, K. 2009/144, T. 15.10.2009, RG 08.01.2010, s. 6; AYM, E. 2008/57, K. 2010/26, T. 04.02.2010, RG 22.10.2010, s. 7 and s. 16; AYM, E. 2007/65, K. 2010/43, T. 25.02.2010, RG 21.06.2010, s. 3; AYM, E. 2008/15, K. 2011/57, T. 30.03.2011, RG 28.12.2011, s. 3; AYM, E. 2008/56, K. 2011/58, T. 30.03.2011, RG 28.12.2011, s. 26; AYM, E. 2010/93, K. 2012/20, T. 09.02.2012, RG 26.07.2013, s. 12; AYM, E. 2012/33, K. 2012/174, T. 08.11.2012, RG 21.09.2013, s. 7; AYM, E. 2012/102, K. 2012/207, T. 27.12.2012, RG 02.04.2013, s. 22; AYM, E. 2012/97, K. 2013/51, T. 03.04.2013, RG 31.12.2013, s. 9; AYM, E. 2014/177, K. 2015/49, T. 14.05.2015, RG 11.06.2015, s. 30; AYM, E. 2015/67, K. 2016/21, T. 16.03.2016, RG 15.04.2016, §12; AYM, E. 2015/105, K. 2016/133, T. 14.07.2016, RG 11.10.2016, §18; AYM, E. 2016/141, K. 2018/27, T. 28.02.2018, RG 29.03.2018, §9 in the dissenting opinion of Osman Alifeyyaz Paksüt. For a version of this jurisprudence that does not include expressions of well-being, peace, and happiness, see earlier decisions of the TCC: AYM, E. 2000/26, K. 2000/48, T. 16.11.2000, RG 15.03.2002, s. 3; AYM, E. 2000/77, K. 2000/49, T. 21.11.2000, RG 15.03.2002, s. 4; AYM, E. 1999/50, K. 2001/67, T. 03.04.2001, RG 07.11.2001, s. 5; AYM, E. 2001/479, K. 2005/1, T. 06.01.2005, RG 18.10.2005, s. 3.

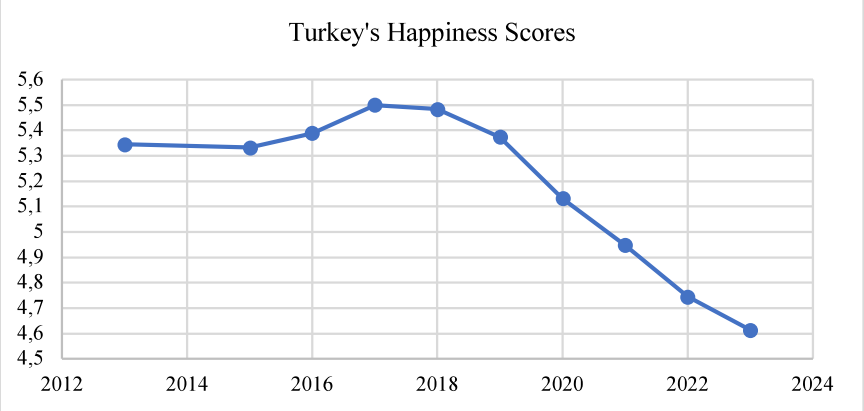
Figure 21, Turkey's level of happiness in 2013 is slightly behind both happy constitution countries and the rest of the world. However, when Turkey reached its peak, it was able to surpass both, 2 years in a row (both 2017 and 2018). On the other hand, starting from 2018, the level of happiness in Turkey has been decreasing continuously until 2023[863]. It has started to plummet very drastically since 2019 and the country has been negatively separated from both happy constitution countries and the rest of the World. To understand the underlying reasons behind this decline[864], it

[863] For the related TURKSTAT survey, which exhibits a similar pattern, see https://tinyurl.com/TURKSTAT-Life-Sat-Survey, (Last accessed: 06.07.2022)

[864] One of the underlying reasons for this may be the decrease in GDP per capita since 2013 (except for 2021 and 2022). According to a study, although the income effect on happiness went down as the Turkish economy grew over time during the 2003-2017 period there is a statistically significant relationship between household income and the happiness of individuals in Turkey, which is in line with previous findings, as in richer countries this effect is nearly eliminated, while in poorer countries the effect of income is higher. (Ugur, Z.B.: *Does Money Buy Happiness in Turkey?*, Applied Research Quality Life, 2021, 16, pp. 1073–1096, available at: https://tinyurl.com/Ugur-Money-Happiness-Turkey).
See the charts below for findings that support this study:



https://tinyurl.com/World-Bank-Turk-GDP-Per-Capita, (Last accessed: 02.07.2023)



(WHRs 2013-2023)

may be helpful to grasp the elements of the TCC happiness jurisprudence stemming from the rule of law and social state principles.

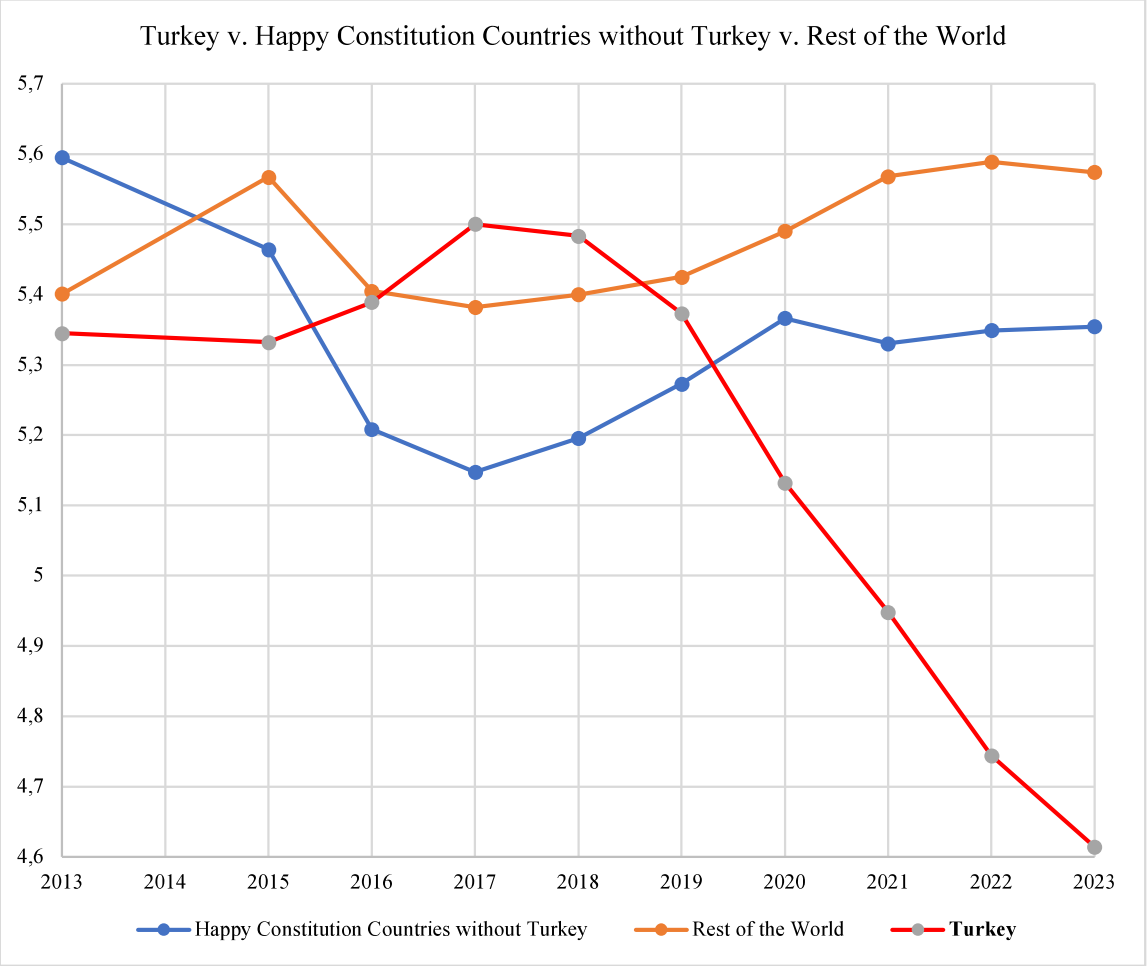


Figure 21: Average Cantril Ladder Scores of Turkey, the Happy Constitution Countries without Turkey, and the Rest of the World[865]

It should be noted that the decline in happiness scores and the entry into force of the constitutional amendments of 2017[866]having introduced a *sui generis*

[865] The chart was created by the author of this thesis based on data from the 2013-2023 WHRs. For all reports, see https://tinyurl.com/Happiness-Reports-Archive, (Last accessed: 20.03.2023)

[866] For the unofficial translation of the amendments to the constitution, see European Commission for Democracy through Law (Venice Commission), Opinion No. 875/2017, Strasbourg, 6 February 2017, available at: https://tinyurl.com/Unof-Trans-Amend-To-Cons, (Last accessed: 18.12.2022). For the comparative evaluation of the former and latter versions of the constitutional provisions in Turkish by the Union of Turkish Bar Associations, see https://tinyurl.com/TBB-Anayasa-Deg-Karsilastirma, (Last accessed: 18.12.2022). See also https://tinyurl.com/ILO-Act-No-6771-Amend-Cons, (Last accessed: 18.12.2022)

presidential system[867]with major changes in the operation and powers of the government following the relatively long-lived parliamentary practice have coincided with very similar times[868], and it is a phenomenon that needs to be studied in detail, especially in terms of the concentration of powers in favor of the executive with a weakened control mechanism[869], given the TCC's emphasis on the relationship between the rule of law and happiness (as seen in the Rule of Law Index results of the WJP, Turkey's overall index score has dropped 0.4 points from 0.46 to 0.42 since 2015[870]).

[867] For the duties and powers of the President, see https://tinyurl.com/TCCB-Duties-and-Powers, (Last accessed: 18.12.2022). For the analysis of the amendments, see European Commission for Democracy through Law: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and To Be Submitted to a National Referendum on 16 Apr. 2017, Opinion No. 875/2017, Strasbourg, 13 Mar. 2017, available at: https://tinyurl.com/Venice-CoE-Opinion-No-875-2017, (Last accessed: 18.12.2022)

[868] For the date of the amendments coming into force, see Provisional Art. 18 in the Turkish Constitution (*Provisions of the Act No.6771, dated January 21, 2017*), available at: https://tinyurl.com/Constitute-Pro-1982-Tur-Cons, (Last accessed: 18.12.2022). For the Turkish version, see also https://tinyurl.com/Mevzuat-TC-Anayasa, (Last accessed: 18.12.2022). "The 2017 referendum's changes…became effective in *July 2018*…" (Yapp, M.E., Dewdney, J.C.: "*Turkey*", Encyclopedia Britannica, 11 Dec. 2022, available at: https://tinyurl.com/Britannica-Turk-Cons-Frame, available at: 18.12.2022)

[869] For *the Venice Commission*'s conclusion about the amendments regarding the executive power concentration in the President and the weakened parliamentary control of this power, see European Commission for Democracy through Law: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and To Be Submitted to a National Referendum on 16 Apr. 2017, Opinion No. 875/2017, Strasbourg, 13 Mar. 2017, § 47. In the same direction, "…*The 2017 constitutional amendments*, *which grafted a hypertrophic presidency onto the traditional parliamentary system…brought a massive concentration of executive power in the hands of the state president and significantly weakened all constitutional counterweights*…" (Göztepe, E., von Steinsdorff, S., Tombuş, E.: *A Matter of Pragmatism rather than Principle: How to Restore Constitutional Democracy in Turkey*, Verfassungsblog, available at: https://tinyurl.com/Verfassungsblog-Goztepe-Et-Al, Last accessed: 18.12.2022). For a "*Turkish-style Presidential System*", see also Yokuş, S.: Elections and the Presidential System in Turkey: Is a Return to Democratisation Possible in this New Period?, Democratic Progress Institute, First Published, London 2018, p. 44, available at: https://tinyurl.com/Yokus-DPI-Presidential-System, (Last accessed: 18.12.2022). See also, "…*It produces a system of "winners-take-all losers-lose-all" without checks and balances.*" (Şirin, T.: *New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy*, Verfassungsblog, available at: https://tinyurl.com/Verfassungsblog-Sirin, Last accessed: 18.12.2022). For the *lack of separation of powers* and the *consolidation of powers*, see also Çelik Ulusoy, D.: *Measuring the Presidential Powers: New Governmental Design in Turkey*, Ankara Üniversitesi Hukuk Fakültesi Dergisi, Vol. 70, Iss. 3, 2021, pp. 1049-1050, available at: https://tinyurl.com/Celik-Ulusoy-Article, (Last accessed: 18.12.2022)

[870] https://tinyurl.com/WJP-Turkey-RoL, (Last accessed: 18.12.2022)

Finally, it might be useful to see Turkey's happiness performance[871] side by side with the happiest and unhappiest countries for the period 2013-2023 in the WHRs because, in this way, it can be possible to make a comparative analysis of the country within the framework of current trends. In the chart below, the utopia country represents the country with the highest happiness score[872], while the dystopia country represents the country with the lowest happiness score[873].[874]

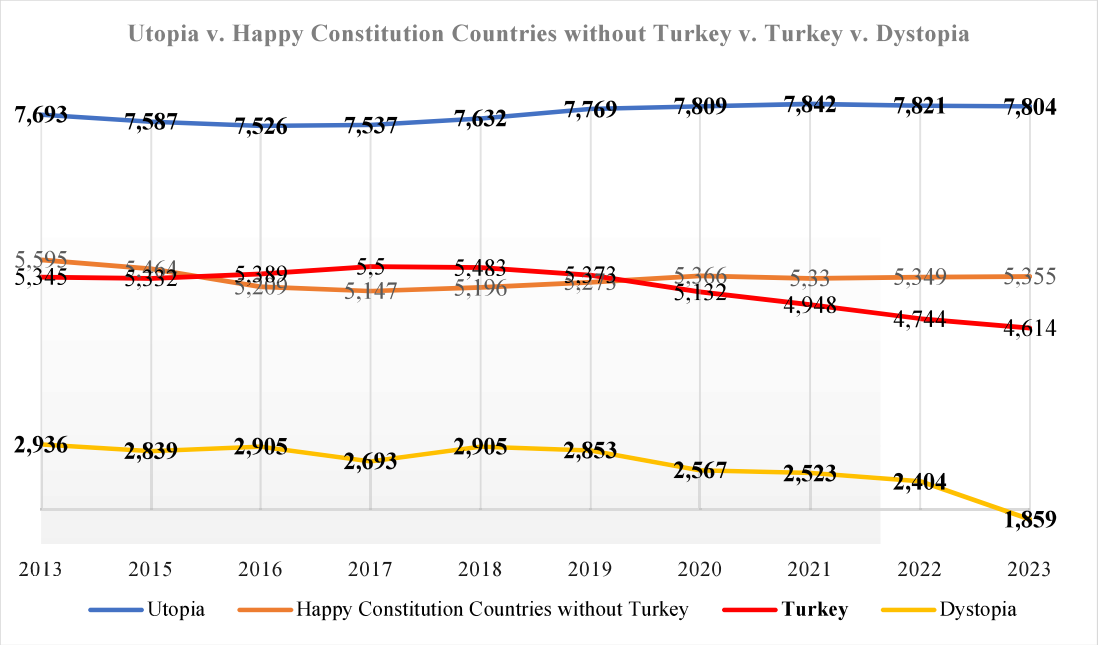


Figure 22: Average Cantril Ladder Score of Utopia, the Happy Constitution Countries without Turkey, Turkey, and Dystopia[875]

[871] For the determinants of happiness for Turkey, see Kıroğlu, B.S., Yıldırım, K.: *Mutluluk ve Belirleyicileri: Türkiye İçin Bir Analiz*, Journal of Emerging Economies and Policy, 7(2), 2022, pp. 50-70, available at: https://tinyurl.com/Kiroglu-Yildirim-Article, (Last accessed: 18.12.2022). See also Yinanç, A., Kırcı Çevik, N., Kantar, G.: *Türkiye'de Sosyal Göstergelerin Mutluluk ile İlişkisi*, Journal of Emerging Economies and Policy, 5(2), 2020, pp. 50-60, available at: https://tinyurl.com/Yinanc-Et-Al-Article, (Last accessed: 18.12.2022)

[872] Countries are respectively: Denmark (2013), Switzerland (2015), Denmark (2016), Norway (2017), Finland (2018), Finland (2019), Finland (2020), Finland (2021), Finland (2022), and Finland (2023)

[873] Countries are respectively: Togo (2013), Togo (2015), Burundi (2016), Central African Republic (2017), Burundi (2018), South Sudan (2019), Afghanistan (2020), Afghanistan (2021), Afghanistan (2022), and Afghanistan (2023).

[874] For the terminology regarding utopia and dystopia, see the WHRs 2015-2023: https://tinyurl.com/Happiness-Reports-Archive, (Last accessed: 20.03.2023). See also, Giray Yakut, S., Bacaksız, N.E., Camkıran, C.: *Socio-demographic Determinants of Happiness in Turkey*, Business & Management Studies: An International Journal, Vol. 9, No. 2, 2021, pp. 561-578, available at: https://tinyurl.com/Giray-Yakut-Et-Al-Article, (Last accessed: 18.12.2022)

[875] The chart was created by the author of this thesis based on the data from the 2013-2023 WHRs.

This figure depicts that Turkey's scores have been converging to the lowest benchmark and diverging from the highest benchmark, especially for the last few years. It may also be detected that Turkey with its recent performance has started to become one of the negative outliers in the league of happy constitution countries. The key to reversing this trend lies in the dual combination of the TCC's happiness jurisprudence: the rule of law and the social state. In this respect, a detailed analysis of the policies adopted in the happiest and the unhappiest countries regarding the rule of law and social state principles can be an important starting point in determining the strategies to be implemented in terms of which policies have positive effects and which have negative effects. The formula for decent social and individual happiness may be a harmonious combination of the rule of law respecting human rights and a well-functioning social state eliminating social injustices.

CONCLUSION

The proposition that the 'proper goal of the good government and/or state is the happiness of its citizens' can be traced back even in the early philosophical texts. In Aristotle's moral philosophy, it is expressed as the happiness of its people is the state's *highest* goal, and the well-being of the *whole* depends on the well-being of the *individuals* who make up the whole.[876]Thus, one of the central arguments of Aristotle's *Politics* might be "The true purpose of the *polis* is *its citizens*' *happiness*, and the true mission of the *science of politics* is to *perfect* them by giving them ***a just political order*** manifested in ***a constitution and laws***."[877]

According to Aristotle's constitutional theory, the best constitution will serve the common interest with respect to increasing the happiness of every citizen, the ends of some members of the polis should not be furthered at the expense of others; hence, the ends of the governed ought not to be sacrificed for the benefit of the governors.[878]"…While *happiness* is *the highest good*, as the *realization* and *perfect practice of virtue*, that some people could achieve, however, others have a bit or no possession of, the *various* traits of people are evidently the cause of the existence of *various* types of *states* and numerous *forms of government*, because different people pursue happiness *in different ways* and *by different means*, and thus create for themselves *different* styles of living and government forms."[879]At the risk of

[876] Zeller, E.: Aristotle and the Earlier Peripatetics: Being a Translation from Zeller's 'Philosophy of the Greeks' Vol. II, Trans. Costelloe, B.F.C., Muirhead, J.H., Longmans, Green and Co., London 1897, p. 225.
[877] Miller, F.D.: Nature, Justice, and Rights in Aristotle's Politics, Clarendon Press, 1995 Oxford, p. 14.
[878] Miller, p. 16.
[879] Aristotle: Politics, Trans. by Benjamin Jowett, Batoche Books, Kitchener 1999, p. 163, available at: https://tinyurl.com/Aristotle-Politics-Book, (Last accessed: 20.12.2022)

exaggeration, it may be claimed that this entire thesis might be a footnote to the approach of Aristotle in the sense of its results and the questions asked.

As may be followed throughout the first Chapter, although the laconic pursuit of happiness, one of Jefferson's aphoristic self-evident truths, has become a popular topic of legal discussion because of the fame of the Declaration of Independence, the intellectual foundations of the idea in a legal sense had already been laid by many influential political and legal thinkers of their times, including Aristotle, Locke, and Blackstone. Therefore, the American founding fathers did not pull this term out of thin air but rather inherited it from the already-established Western conception of happiness. Nevertheless, their positive contribution to the everlasting discussion of happiness as an ultimate goal of government during and after the revolutionary era is undeniable. For example, in Federalist No. 1, Hamilton associated the adoption of the new constitution with the happiness of the people and advised his countrymen to adopt it for their own interest since it is the best option for their *liberty*, *dignity*, and *happiness*.[880]

When it comes to incorporating the idea of happiness into a constitution, it is, actually, a very old phenomenon in the history of constitutional law. As far as the findings of this thesis are concerned, the word "happiness" was mentioned in a constitution for the first time with the Act of Settlement (1701), one of the constitutional documents that establish Britain's unwritten constitution.[881]Since this

[880] The Federalist Papers: No. 1, Hamilton: General Introduction for the Independent Journal, available at: https://tinyurl.com/Federalist-Papers-No-1, (Last accessed: 20.12.2022)

[881] For more information about the unwritten character of the British Constitution, see https://tinyurl.com/BL-Britain-Unwritten-Con, (Last accessed: 29.08.2022). For more details, see also Turpin, C., Tomkins, A.: British Government and the Constitution, Cambridge University Press, 2007. E.g., regarding ***the Act of Settlement 1701*** as a *constitutional statute*, see p. 28. See also https://tinyurl.com/Royal-UK-Act-of-Settlement, (Last accessed: 20.12.2022). For the Constitution of the UK, see also Oxford Dictionary of Law, p. 108.

time, the word repeatedly appeared in a wide range of historical[882]and contemporary[883]constitutions or significant constitutional documents.[884]

Currently[885], 27 constitutions contain happiness clauses, along with a number of functions and places ascribed to them in the legal texts in which they exist. One of them is the Turkish Constitution of 1982. In this constitutional period, the TCC developed its happiness jurisprudence and manifested what ought to be understood by constitutional happiness. Therefore, the outcomes of a thesis such as this one having taken the concept of constitutional happiness at its center in a comparative sense with a particular emphasis on the TCC's jurisprudence might need to be understood by analyzing both the decisions of the TCC regarding happiness and a mixture of happiness clauses codified in different constitutions around the world.

The research on the happiness clauses in constitutions, the holdings of the courts with the highest competence in their jurisdictions, and the studies in the legal literature conducted by numerous eminent scholars have demonstrated that the meaning and duty attributed to this concept vary from the constitution to the constitution. Happiness and/or pursuit of happiness is recognized as an individual right in some constitutions, such as the current Japanese Constitution as in the American Declaration of Independence, while in some others, such as current Nigeria's Constitution, it is one of the fundamental objectives and directive principles of state policy whose justiciability in the court of law is in the great controversy. In some other constitutions, particularly in the preambles, the concept is mentioned either

[882] E.g., the 1791 Polish-Lithuanian Commonwealth Constitution and Turkey's Constitution of 1924.
[883] E.g., Japan's Constitution of 1946 and Thailand's Constitution of 2017.
[884] E.g., the 1776 U.S. Declaration of Independence and the 1789 Declaration of Human and Civic Rights.
[885] As of 01.07.2023, according to 'constitute project' web page (https://tinyurl.com/Constitute-Project), (Last accessed: 01.07.2023)

rhetorically or haphazardly, which makes its legal analysis rather intricate. Hence, the concept of constitutional happiness can be considered as an umbrella term[886]that brings different meanings and broad functions together rather than a term with a single definition.

Current developments in the field indicate that the concept of constitutional happiness has gradually started to become not only a part of the legal texts but also an actual life, especially with the emergence of the GNH notion in Bhutan at the beginning of the 1970s, and the considerably rapid spread of the happiness-related expressions at the constitutional level around many countries since the last quarter of the 20th century.

One of the last links in this chain of developments is the unanimously adopted UN General Assembly RES., which *inter alia* "Urges *member states* to create *additional measures* which *better* depict the significance of pursuing *happiness* and *well-being* in *development* to guide their *public policies*…"[887], and the WHRs having begun to be published annually about *March 20th as part of the International Day of Happiness* (A/RES/66/281, RES. adopted by the General Assembly on 28 Jun. 2012[888]) *celebration*[889]since 2012. The most significant impact of these developments might be the internationalization of the concept of happiness as a soft law at the UN level.

[886] For the choice of word, see Yılmaz, Z.: "Thesis Meeting: Personal Communication", 2022, İhsan Doğramacı Bilkent University, Zoom meeting. See also https://tinyurl.com/Collins-Umbrella-Term, (Last accessed: 01.09.2022)
[887] A/RES/65/309, RES. adopted by the General Assembly on 19 July 2011, available at: https://tinyurl.com/UN-A-RES-65-309-Happiness, (Last accessed: 20.12.2022)
[888] https://tinyurl.com/A-RES-66-281-Happ-Day, (Last accessed: 29.03.2023)
[889] https://tinyurl.com/Foreword-WHR-2022, (Last accessed: 20.12.2022)

Thanks to the contribution of the WHRs, the happiness scores of many countries have become measurable and comparable, which has created the opportunity to compare **the happy constitution countries** and **the rest of the world** in terms of their happiness performances. The result of this comparison illustrates that although happy constitution countries achieved higher average happiness scores compared to the rest of the world in 2013 and 2015, the rest of the world in the remaining 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023 has averaged higher scores than the happy constitution countries. Therefore, *ceteris paribus*, the mere presence of the happiness clause in constitutions may not result in achieving higher happiness scores; on the contrary, the opposite result has been reached for the significant part of the years compared.

Another result in the parallel direction has been obtained when the average happiness scores are compared before and after happiness clauses in the constitutions of certain countries. Accordingly, in the years when there was no happiness clause in the Constitutions of Zimbabwe and Thailand, both countries had higher average happiness scores than the years with the happiness clause in their constitutions. Only Egypt performed slightly better in terms of average happiness scores in years with a happiness clause than in years without a clause in its constitution. Hence, the fact that the constitutions include the provisions of the happiness clauses may not directly reflect the happiness statistics in real life.

However, such examples as these do not necessarily trivialize the presence of the happiness clauses in the constitutions, either as fundamental objectives and directive principles of state policy, or as a fundamental right to pursue, or as a random tool of the mediocre rhetoric, nor necessitate the abolition of such clauses from the

constitutions. On the contrary, these clauses need to be supported by some other principles, concepts, or mechanisms, and as for the present thesis, it is none other than the principle of the rule of law and the principle of the social state, which is emphasized by both the TCC's happiness jurisprudence and the legal literature emerged synchronously with the development of the concept of happiness.

In line with the jurisprudence of the TCC on happiness, a social state governed by the rule of law is a state in which individual peace, well-being, and happiness are guaranteed. Therefore, from the Court's viewpoint, individual happiness can only be secured by the harmonic synthesis of the principle of the social state and the principle of the rule of law. The Court does not content itself with this definition, instead, it regularly repeats what ought to be understood from these two principles in its case law. In this thesis, the elements related to these principles fall into 2 separate categories: 1- Elements of the TCC's happiness jurisprudence arising from the rule of law principle and 2- Elements of the TCC's happiness jurisprudence arising from the social state principle.

According to the Court, the elements in the first category can be listed as follows: "The principle of the rule of law can ensure the happiness of the individuals by means of 1) the basis of human rights, 2) the adjustment of the balance between individual rights and the interest of the society, and 3) the foundation and the continuation of the just legal order." Therefore, individual happiness depends on the presence and quality of human rights and freedoms and a just legal system in each country.

As stated by the Court, the elements in the second category can be listed as follows: "The social state principle can guarantee the happiness of people via 1) the

protection of workers by improving working life and taking economic measures, enabling them to pursue a life in accordance with human dignity, 2) the prevention of unemployment, 3) the fair distribution of national income through necessary measures, 4) the lookout of social justice and social balances by protecting the weak against the strong, 5) the implementation of the right to social security, 6) the provision of sufficient health services for the benefit of people." Hence, individual happiness can only be achieved with the existence of social rights and a well-functioning social state.

In the thesis, the scientific legitimacy of the TCC's jurisprudence on happiness has been checked by applying different indices, indicators, and statistics that may reflect the mentioned elements, which the Court has held in its case law. As a result of these checks, it has been determined that various studies in the scientific literature and data obtained from the field can confirm and support the happiness jurisprudence of the TCC up to a certain point. Thus, it can be claimed that some of the happy constitution countries such as Austria, the UK, and France have a relatively higher average level of happiness than other happy constitution countries, thanks to the functioning welfare state and the rule of law operating above a certain level. However, different correlations may be obtained depending on the results of the different indicators and/or studies, and although some countries may not perform relatively well on some of these indicators, still their happiness results may reflect the other way around. Therefore, each country constitutes a separate entity, so it must be studied and evaluated under its unique conditions. Furthermore, a holistic approach to the performances of countries in statistics may be more inclusive and realistic than an approach that takes results individually and evaluates them separately, so that a complete portrait and perception of the countries' overall situations can be easily

grasped. Namely, it should be underlined that for a country to achieve a higher average happiness, each element listed in the TCC's happiness jurisprudence regarding the principles of the rule of law and the social state must be provided as a whole.

Moreover, although the existence of a well-functioning rule of law is indispensable up to a certain point to reach a higher level of happiness in a country, it is not a sufficient condition, and this principle needs to be complemented by an excellent social state. Therefore, although the first step for a society consisting of happier individuals is to raise the level of the rule of law in a country above certain standards; nevertheless, this alone will not be enough, and it will definitely be necessary to advance this with a well-functioning social state principle.

If Turkey can be analyzed separately, it should first be noted the reminder that limited financial resources should be considered while fulfilling the obligations of the state in the social and economic fields, which is included in Art. 65 of the Constitution, needs to be interpreted in accordance with Art.s 2 and 5 of the Constitution.

In Art. 5 of the Constitution, the duty of securing the happiness of individuals and society is assigned to the state, and according to the jurisprudence of the TCC, happiness can be achieved with the existence of a social state governed by the rule of law. Therefore, the minimum standards necessary for the existence of happy individuals in a social state governed by the rule of law will determine the limits of the government's discretion in social and economic fields within the capacity of its financial resources specified in Art. 65 of the Constitution. While determining these social and economic minimum standards, it may be useful to refer to economic indicators, available data, and scientific literature that is benefitted in the thesis. This analysis needs to be renewed every time with the most up-to-date data and studies

available because only then can these three provisions in the Constitution coexist in a meaningful way. Although the last suggestion may raise some eyebrows among the originalist circles and could lead to some criticism, such as judicial activism and living constitutionalism[890], such objections could be withstood as long as the construction of Art.s 2, 5, and 65 is reasonable as in the Witcraft of Scalia[891], and the happiness of Turkish society is upheld by a harmonical application of these three articles.

Lastly, Turkey's happiness performance in the WHRs should be addressed. It can be noticed that Turkey's happiness scores trend has been downwards since 2018 and has been negatively diverged from happy constitution countries and the rest of the world since 2020.

One of the most crucial milestones coinciding with a similar period in Turkish political and legal life, *ceteris paribus*, is that the 2017 Constitutional Amendments came fully into force with all the provisions as of 9 July 2018, having resulted in the abolishment of the parliamentary practice, and the introduction of the brand-new Turkish presidential system, which concentrated the power in the executive with the reduced checks and balances, according to the legal scholars studying in the constitutional law sphere, and some international bodies such as Venice Commission. Given the TCC's emphasis on the relationship between the rule of law and happiness,

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[890] For more information regarding originalism, judicial activism, and living constitutionalism, see https://tinyurl.com/Cornell-Originalism, (Last accessed: 21.12.2022); Roosevelt, K.: "*judicial activism*", Encyclopedia Britannica, Oct. 16, 2019, available at: https://tinyurl.com/Britannica-Judicial-Activism, (Last accessed: 21.12.2022); see Strauss, D.A.: *The Living Constitution*, Sep. 2010, available at: https://tinyurl.com/Chicago-Living-Constitution, (Last accessed: 21.12.2022): "*A living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended…*"

[891] Scalia, A.: A Matter of Interpretation: Federal Courts and the Law, An Essay by Antonin Scalia with Commentary by Amy Gutmann, Gordon S. Wood, Laurence H. Tribe, Mary Ann Glendon, Ronald Dworkin, Princeton University Press, 1997 New Jersey, p. 38.

the rather simultaneous occurrence of these two phenomena may need to be explored in detail in future studies.

However, for now, the author of this thesis might claim that it is achievable to change this trend and improve the happiness scores of Turkey by establishing and advancing a well-functioning social state governed by the rule of law. While doing this, it may be useful to consider the following areas of law, which the Court frequently focuses on in its happiness jurisprudence: social security laws, health, and health system-related laws, laws on laborers and their rights, and laws regarding taxation.

Well, "*It is always important to know when something has reached its end. Closing circles, shutting doors, finishing chapters*…"[892]just as this thesis. Unlike Samwell Tarly's laconic utterance "…*There are no happy endings.*"[893], this ends rather happily.

[892] Coelho, P.: The Zahir: A Novel of Obsession, Harper Collins, 2006, p. 161.
[893] Martin, G.R.R.: A Feast for Crows: A Song of Ice and Fire Book IV, Bantam Books, 2007, p. 317.

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