

**Assoc. Prof. Erman BENLİ**

**Non-Judicial Divorce as an Alternative  
Exit from the Marriage Market**  
Regulatory and Quantitative Perspective  
from Türkiye and Germany



**FİLİZ KİTABEVİ**  
**İSTANBUL**  
**2026**



Filiz Kitabevi Basım Yayın Dağıtım  
Petrol Ürünleri San. ve Tic. Ltd. Şti.  
Genel Yayın No | General Publication Number: 1292  
Sertifika no | Certificate Number: 77398

Filiz Kitabevi  
Yayın No | Publication Number: 2026/41

Kitap Adı: Evlilik Piyasasından Alternatif Çıkış Olarak Yargı Dışı Boşanma: Regülatif ve  
Nicel Perspektiften Türkiye ve Almanya  
Book Title: Non-Judicial Divorce as an Alternative Exit from the Marriage Market Regulatory and  
Quantitative Perspective from Türkiye and Germany  
ISBN: 978-625-8585-42-1  
DOI: doi.org/10.64161/filiz.9786258585421

Yazar(lar) | Author(s): Assoc. Prof. Erman BENLİ | orcid.org/000-0002-2277-2832  
Kurum | Institution: Ankara Sosyal Bilimler Üniversitesi | Social Sciences University of Ankara

Konu Kategorisi | Subject Categories: Aile Hukuku | Family Law

Yayın Türü | Publication Type: Kitap | Book - Monograph  
Yayın Dili | Language: Türkçe | Turkish  
Ebat | Dimensions: 16 x 23 cm  
Baskı Sayısı | Edition: 1  
Sayfa Sayısı | Pages: 102

Yayın Tarihi | Publication Date: Nisan 2026 | April 2026  
Yayın Yeri | Place of Publication: İstanbul, Türkiye  
Mizanpaj ve Kapak | Layout and Cover Design: Vildan YAVUZ / Özge DANE  
Baskı ve Cilt | Printing and Binding: Filiz Kitabevi Basım Yayın Dağıtım  
Petrol Ürünleri San. ve Tic. Ltd. Şti.  
(Sertifika no: 77398)

© All rights reserved | Filiz Kitabevi Basım Yayın Dağıtım Petrol Ürünleri  
San. ve Tic. Ltd. Şti.



Filiz Kitabevi Basım Yayın Dağıtım  
Petrol Ürünleri San. ve Tic. Ltd. Şti.  
Mollahüsrev Mah. Cemalyener Tosyalı Cad. No: 57A  
Vefa-Fatih / İstanbul • Tel: +90 (212) 527 07 18  
www.filizkitabevi.com • bilgi@filizkitabevi.com

*To Fenerbahçe*



# TABLE OF CONTENTS

---

TABLE OF CONTENTS .....	V
LIST OF FIGURES, TABLES AND CHARTS.....	IX
LIST OF ABBREVIATIONS .....	XI
ÖZET.....	XIII
ABSTRACT .....	XIII
INTRODUCTION.....	1

## CHAPTER 1

### ENTER INTO THE MARRIAGE MARKET

1 Entry Regulations of Marriage Market.....	3
1.1 Turkey .....	3
1.1.1 Capacity to marry .....	4
1.1.1.1 Capacity of judgement .....	4
1.1.1.2 Age.....	4
1.1.1.3 Consent of legal representatives for the person of limited incapacity ..	5
1.1.2 Marriage impediments .....	5
1.1.3 Form requirements .....	7
1.2 Germany.....	9
1.2.1 Capacity to marry .....	9
1.2.2 Impediments to marriage .....	10
1.2.3 Form requirements.....	10
2 Market Failures in the Marriage Market.....	11

2.1 Bilateral Monopoly .....	11
2.2 Externalities .....	13
2.3 Opportunistic Behavior .....	14
3 Legal Responses to Market Failures in the Marriage Market .....	15
3.1 Rights and Obligations of the Spouses in General .....	15
3.1.1 Rights of spouses .....	15
3.1.1.1 The right to manage the marital union .....	15
3.1.1.2 The right to choose shared housing (family dwelling) .....	16
3.1.1.3 The right to represent the marital union .....	16
3.1.1.4 The right to choose a job or profession .....	17
3.1.2 Obligations of spouses .....	18
3.1.2.1 The obligation to ensure the happiness of the marital union.....	18
3.1.2.2 The obligation of fidelity .....	18
3.1.2.3 The obligation of assistance and solidarity .....	18
3.1.2.4 The obligation to care, educate and supervise children.....	19
3.1.2.5 The obligation to live together .....	19
3.1.2.6 The obligation to manage the household.....	19
3.2 Court Intervention to Marital Union .....	21

## CHAPTER 2

### EXIT FROM THE MARRIAGE MARKET

4 Divorce .....	29
4.1 Principles in Divorce.....	29
4.1.1 General .....	29
4.1.2 Fault principle.....	30
4.1.3 Principle of irretrievable breakdown of the marital union .....	32
4.1.4 Principle of limited will .....	32
4.2 Types of Divorce.....	34
4.2.1 Judicial divorce.....	34
4.2.1.1 Türkiye.....	34
4.2.1.1.1 Grounds for divorce.....	34

4.2.1.1.2	Divorce case .....	42
4.2.1.1.3	Legal consequences of judicial divorce .....	43
4.2.1.1.3.1	The legal consequences of judicial divorce for spouses .....	44
4.2.1.1.3.1.1	Personel consequences .....	44
4.2.1.1.3.1.2	Financial consequences .....	45
4.2.1.1.3.2	The consequences of judicial divorce for children .....	51
4.2.1.2	Germany.....	52
4.2.1.2.1	Grounds of divorce .....	52
4.2.1.2.2	Legal consequences of divorce .....	52
4.2.1.2.2.1	Pension rights adjustment or pension splitting .....	53
4.2.1.2.2.2	Child custody and personal relationship .....	56
4.2.1.2.2.3	Maintenance claim after divorce .....	57
4.2.1.2.2.4	Matrimonial property claims .....	62
4.2.1.2.2.5	Household effects and the family home .....	64
4.2.2	Non-judicial divorce .....	65

### **CHAPTER 3**

#### **QUANTITATIVE RESEARCH AND REGULATORY IMPACT ASSESSMENT**

1	Performance of Turkish and German Family Courts in Judicial Divorce Cases .....	71
2	Regulatory Impact Assessment.....	77
	CONCLUSION .....	79
	APPENDIX A .....	81
	REFERENCES.....	87



## **LIST OF FIGURES, TABLES AND CHARTS**

---

Figure 1 : Bilateral monopoly

Table 1 : CR in Turkish Family Courts (2014-2023)

Table 2 : CR in German Family Courts (2014-2023)

Table 3 : DT in Turkish Family Courts (2022-2024)

Table 4 : DT in German Family Courts (2014-2023)

Chart 1 : CR in Turkish Family Courts (2014-2023)

Chart 2 : CR in German Family Courts (2014-2023)

Chart 3 : DT in Turkish Family Courts (2022-2024)

Chart 4 : DT in German Family Courts (2014-2023)



## LIST OF ABBREVIATIONS

---

§	: Section
Art.	: Article
BGB	: Bürgerliches Gesetzbuch
CEPEJ	: European Commission for the Efficiency of Justice
CR	: Clearance rate
D	: Demand
DT	: Disposition time
E	: Equilibrium
et al.	: et alia
etc.	: et cetera
EU	: European Union
FamFG	: Gesetz über des Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit
fn.	: footnote
Gew SchG	: Gewaltschutzgesetz
MR	: Marginal revenue
No.	: Number
p	: page
P	: Price
PEFL	: Principles of European Family Law
pp	: pages
Q	: Quantity
RIA	: Regulatory impact assessment
S	: Supply
SCC	: Swiss Civil Code

## XII

StGB	: Strafgesetzbuch
SWOT	: Strengths, weaknesses, opportunities, threats
TCC	: Turkish Civil Code No. 4721
TL	: Turkish Lira
UK	: United Kingdom
USA	: United States of America
VAG	: Gesetz über den Verorgungsausgleichsgesetz (VerAusglG)

# NON-JUDICIAL DIVORCE AS AN ALTERNATIVE EXIT FROM THE MARRIAGE MARKET: REGULATORY AND QUANTITATIVE PERSPECTIVE FROM TÜRKİYE AND GERMANY

## ÖZET

Bu çalışma, yargı dışı boşanmayı evlilik piyasasından alternatif bir çıkış mekanizması olarak piyasa ve devlet başarısızlığı teorileri çerçevesinde incelemektedir. Türkiye ve Almanya karşılaştırması üzerinden, yargısal boşanmaya dayalı sistemin hukuki katılık, verimsizlik ve özellikle zayıf taraflar açısından refah kaybı yarattığı ileri sürülmektedir. Evlilik piyasası düzenlenmiş bir ikili tekel olarak kavramsallaştırılmakta ve yargısal boşanma, kaynak tahsisini bozan ve çatışmaları uzatan temel bir çıkış engeli olarak tanımlanmaktadır.

Düzenleyici iktisat ve CEPEJ verilerine dayanan analiz, yargı dışı boşanma mekanizmalarının işlem maliyetlerini düşürerek, pazarlık dengesini yeniden kurarak ve refahı artırarak etkinliği geliştirdiğini göstermektedir. Olası riskler idari güvencelerle azaltılabilir. Sonuç olarak, yargı dışı boşanma, tahsis etkinliğini ve bireysel özerkliği güçlendiren yapısal bir düzenleyici yenilik olup daha esnek ve insani bir aile hukuku modeline geçişi desteklemektedir.

**Anahtar Kelimeler:** Boşanma, CEPEJ, evlilik piyasası, etkinlik, regülasyon.

## ABSTRACT

This study examines non-judicial divorce as an alternative exit mechanism from the marriage market through the lenses of market and state failure. Comparing Türkiye and Germany, it argues that reliance on judicial divorce creates legal rigidity, inefficiency, and welfare loss, particularly for weaker parties. Conceptualizing marriage as a regulated bilateral monopoly, the study identifies judicial divorce as a key exit barrier that distorts resource allocation and prolongs conflict.

Drawing on regulatory economics and CEPEJ data, the analysis shows that facilitating exit through non-judicial mechanisms improves efficiency by reducing transaction costs, restoring bargaining balance, and enhancing welfare. While potential risks exist, they can be mitigated through administrative safeguards. The study concludes that non-judicial divorce is a structural regulatory innovation that promotes allocative efficiency and individual autonomy, supporting a shift toward a more flexible and humane family law framework.

**Keywords:** Divorce, CEPEJ, marriage market, efficiency, regulation.