DISCUSSIONS SURROUNDING THE PRINCIPLE OF MINORITY SHAREHOLDER PROTECTION[*]

AZINLIK PAY SAHİPLERİNİN KORUNMASI İLKESİNE YÖNELİK TARTIŞMALAR

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ÖZET

Bu makale, azınlık pay sahiplerinin menfaatlerini korumak için onlara tanınan hakların gerekliliğine ilişkin öğretide yer alan farklı tartışmalara yer vermektedir. Öncelikle azınlık hissedarların korunmasının gerekliliğine karşı geliştirilen argümanlara yer verilecek sonrasında ise karşıt görüş olarak azınlıkların korunması gerektiğini savunan görüşler ve gerekçeleri sunulacaktır. Çoğunluk paylara sahip olan pay sahipleri şirkette sahip oldukları yüksek oy oranı ve bu kapsamda sahip oldukları yetkiler ile azınlık hissedarların haklarını göz ardı edebilmektedir ve bu durum azınlık pay sahipleri üzerinde olumsuz sonuçlar doğurmaktadır. Hatta geniş çerçevede düşünüldüğünde bu durumun ülke ekonomisine bile olumsuz yansımaları olabilmektedir. İşte bu olumsuz etkileri bertaraf edebilmek için azınlık pay sahiplerine kapsamlı bir koruma sağlanmaktadır.

Ancak, sadece azınlıkların koruması yeterli olmayıp, şirkette payların çoğunluğuna sahip olan çoğunluk pay sahiplerinin de şirketteki yetkilerini kötüye kullanmalarının önüne geçmek için düzenlemeler yapılması gerekmektedir. Bu makalede, azınlık pay sahiplerinin karşılaşabileceği benzer sorunlara farklı hukuk sistemlerinde nasıl çözümler bulduğunu görmek için azınlık hissedarların korunması ilkesi Türk şirketler hukuku ve İngiliz şirketler hukuku kapsamında ele alınacaktır.

Anahtar Kelimeler: *azınlık pay sahiplerinin korunması, çoğunluk pay sahipleri, Türk Ticaret Kanunu, 2006 İngiliz Şirketler Kanun*u.

ABSTRACT

This article analyses the arguments of those who do not necessarily agree with certain rights to be granted to the minority shareholders in companies to protect their interests. Following the presentation of those arguments, the attention will be given on opposite views in this regard to understand the necessity of the existence of minority shareholder protection. Since majority shareholders have higher percentage of the capital, so that the voting powers, their approach unfortunately ignores the rights of minority shareholders in most cases. This abusive approach of majority shareholders affects the interests of minority shareholders and companies in a negative way. In addition, whole national economy is adversely affected from this situation. To find a solution for this problem, inclusive protection is provided to minority shareholders.

With regard to this situation, while inclusive protection is provided for minority shareholders to gain an adequate remedy, there should nevertheless be a legal framework which prevents majority shareholders' misuse of their corporate powers. In this article, the principle of minority shareholder protection will also be considered in the light of Turkish and English company law to see how different jurisdictions found the solutions for similar problems regarding minority shareholders.

Keywords: *minority shareholder protection, majority shareholders, Turkish Commercial Code, UK Companies Act of 2006.*

[*] (Araştırma Makalesi, Geliş Tarihi: 28.05.2020 / Kabul Tarihi: 30.11.2020).

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INTRODUCTION

Globally, thousands of companies go into operation every year[1] and all these have shareholders whose aim is to make a profit. The relationship between the shareholders themselves, between them and the management, is of crucial importance because it can affect the company's performance. A minority shareholder is a holder who does not have a capacity to control the affairs of the company by voting (alone or in association with others)".[2] There can be special share or vote requirements to define a minority shareholder as is the case in Turkey. According to the Turkish Commercial Code (TCC), in order to be considered as a minority shareholder and use minority shareholding rights and remedies a shareholder needs to represent at least 10 per cent of the share capital for non-public companies.[3] As for majority-controlling shareholders, their control of the majority of the votes constitutes an important power over the company.

With this power, majority shareholders can control the board of directors and the general meetings that manage the company's business. Conflicts of interest between minority and majority shareholders are inevitable in most companies. This is because sometimes the most important thing for the majority shareholders can be keeping the company's profits for themselves rather than distribute them to minority shareholders.[4] The weakness of the judicial system has allowed majority shareholders to abuse the rights of minority shareholders and oppress them.[5]

This article is concerned with the position of minority shareholders when the controllers of companies oppress them due to their more powerful position. The scholars have different approaches to protecting minority shareholders. Discussions on granting the minority shareholders more protection or limiting the majority shareholders' power will be analysed in this study. Besides, one aim of the study is to explore the protection of minority shareholders under Turkish law. A further aim is to discuss how UK law deals with the issue of minority shareholder protection.

The first part of the paper provides arguments against providing protection for minority shareholders, whereas the second part deals with the arguments that show the need to provide protection for minority shareholders. Turkish and English jurisdictions are analysed regarding minority shareholder protection in order to recognise how different jurisdictions found the solutions for similar problems of minority shareholders.

I. ARGUMENTS AGAINST PROTECTING THE RIGHTS OF MINORITY SHAREHOLDERS

According to the traditional principles of company law, it is not easy for shareholders to go to court and bring a corporate litigation on behalf of the company under the proper plaintiff rule. Therefore, according to the decision in *Foss v Harbottle*,[6] a cor-

[1] For example, during 2017 and 2018, there were 620,285 incorporations in the United Kingdom. See 'Companies Register Activities 2017 to 2018' (GOV.UK, 2018) <https://www.gov.uk/government/publications/companies-register-activities-statistical-release-2017-to-2018/companies-register-activities-2017-to-2018> accessed 07 May 2020.

[2] For another definition please see; **Sharar**, Zain (2010), 2Minority Shareholders' Remedies in Public Shareholding Companies: Comparing the State of Qatar and Australia2 Corporate Governance e-Journal, 3.

[3] Article 411/1 of Turkish Commercial Code No. 6102.

[4] This point was expressed by Lord Davey in the well-known English case of **Burland v Earle**. According to Lord Davey, the majority shareholders were trying to have for themselves the company`s money, property and advantages at the expense of other shareholders. See **Burland v Earle** (1902), AC 83.

[5] **Cheffins,** Brian (2000), 'Minority Shareholders and Corporate Governance', Company Lawyer, V:21, p. 41.

[6] **Foss v Harbottle** [1843], 67 ER 189.

poration is a legal person separate from its shareholders and owners with separate legal personality.[7]

Foss v Harbottle's rule is divided into two main principles: the proper claimant principle and the internal management principle.[8] The meaning of 'proper plaintiff is that if a company has suffered harm, or there has been a breach of duty owed to a corporation, then the proper plaintiff in those circumstances is the company itself (which reinforces the idea that a company is a separate legal entity). As a result of the proper claimant rule, even if there is a wrong done against the company and it affects a shareholder's financial or judicial position, the shareholders cannot bring an action against the offending legal entity. Only the company has the right to sue.[9] This situation is unfair for minority shareholders because the authority to decide whether or not to sue someone is for the management of the company. This is especially problematic when a majority shareholder has done a wrong to the company, for which he will obviously not want the company's management to decide to bring an action against him. This and similar problems bring us to the reason for the existence of the remedies of minority shareholders under English law.[10]

However, there are some scholars who do not want to recognise very broad rights for minority shareholders.[11] Payne argues that the remedies for minority shareholders have been designed intentionally to be 'complex and obscure'.[12] Payne also states that when the law allows a shareholder to litigate on the company's behalf, this may result in company money being wasted.[13] Pettet has a similar argument and claims that unless jurisdictions deliberately limit minority shareholder litigation, there will be many litigations which the courts will be unable to cope with.[14] As a response to these two views, it can be claimed that an increase in the volume of litigation should not prevent the legal protection of the minority shareholders. Because of the cases could be monitored in order to avoid absurd claims that wastes company money and court time. Minority shareholders should not simply be left vulnerable against the oppression of majority shareholders and abuse from majority shareholders.

In 1997, the UK's Law Commission recognised three main problems with the ability of a shareholder to bring an action on behalf of his company.[15] Firstly, the Commission criticised shareholders' litigation as being 'complex and obscure'. The Law Commission also observed the limitations of the former derivative action and recommended a new statutory derivative action.[16] The other problem was the efficiency of the 'unfairly prejudicial conduct'[17] in Sections 459-461 of the Companies Act 1985. This remedy is now found in Section 994 of UK Companies Act 2006 which is one of the best known minority shareholder remedies.[18] It is used by shareholders in the event of breaches of articles of association or

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7 This means that companies are capable of having legal rights and duties within a specific legal system, such as to enter into contracts as a party, to sue another legal entity, and to be sued for breach of its organ's legal duties. In other words, a company is independent of its shareholders. Even if a shareholder holds all the shares of the company, he still cannot fully own the company, and his interests and obligations are separate from the company`s legal entity.

8 See **Edwards v Halliwell** [1950], 2, All ER 1064, and Lord Davey in **Burland v Earle** [1902], AC 83.

9 **Kershaw**, David (2015), 'The Rule in Foss v Harbottle is Dead: Long Live the Rule in Foss v Harbottle', Journal of Business Law, p. 274.

10 **Kershaw**, p. 274.

11 **Payne**, Jennifer (2005), `Sections 459–461 Companies Act 1985 in Flux: The Future of Shareholder Protection', The Cambridge Law Journal V:64, p.658; **Pettet,** Ben (2005), Company Law, 2. Edition, London, Pearson Education Limited, p. 213.

12 **Payne**, p. 658.

13 ibid.

14 **Pettet**, p. 213.

15 Law Commission, 'Shareholder Remedies' (Law Com. No. 246, Cm. 3769, 1997), para. 1.4.

16 **Law Commission**, 'Shareholder Remedies' (Law Com. No. 246, Cm. 3769, 1997), para. 1.4.

17 Companies Act 2006: section 994.

18 **Law Commission**, 'Shareholder Remedies' (Law Com. No. 246, Cm. 3769, 1997), para. 1.7.

exclusion from management in circumstances where there is a legitimate expectation of participation. In practice, it is the shareholders of small companies, in which there is no market for the shares such as non-public companies, who mostly apply this remedy.[19] Nevertheless, when a shareholder brings an unfair prejudice petition to the court it generally has high costs and results in burdensome litigation because of the complex proceedings of the petition which includes a factual investigation. In small companies, most of the shareholders participate in the management and they are destined to bring the company down if they spend large amounts of time on litigation rather than running the business.[20]

Some scholars also have different opinions on the value of strong minority shareholder protection. Leuz et al claim that having a strong system for minority shareholder protection is likely to encourage majority shareholders to hide their control benefits when they have a claim brought against them, such as higher penalties.[21] However, even when there is protection for minority shareholders, unfair situations related to majority actions will always be seen in companies so it would be better to provide legal protections and remedies for minority shareholders to fight expropriation and such wrongdoings of majority shareholders. Besides, studies and statistics have shown that if there is a strong protection for minority shareholders, majority shareholders are less abusive and oppressive against minority shareholders.[22]

One of the significant arguments against the remedies for minority shareholders is that a shareholder normally does not have the right to go to court directly on behalf of a company in English law, according to the rule of *Foss v Harbottle*. The petitioner in an unfair prejudice petition is, generally, looking for a personal relief. The 'fraud on the minority' exemption of the rule of *Foss v Harbottle* allows some or all of the shareholders to pursue a derivative action in particular (highly limited) circumstances which are defined under Section 260 of the Companies Act 2006. The main problem with bringing a derivative action is the costs in the form of costs of litigation and company losses and so on. When the minority shareholders pursue such an action on behalf of the company, they may expect to have their costs paid by the company. In such cases, however, the Companies Act does not make provisions concerning indemnity for such costs.[23] On the other hand, under the Civil Procedure Rules 1998, r 19.9(7), it is stated that:[24]

(7) Where notifying the company of the permission application would be likely to frustrate some party of the remedy sought, the court may, on application by the claimant, order that the company need not be notified for such period after the issue of the claim form as the court directs.

This means that the company must indemnify a claimant shareholder against any responsibility regarding costs arising from the claim.[25]

As another approach for this discussion, it is claimed by some Turkish scholars in that the issue of protection for minority shareholders can easily be solved by applying freedom of contract theory in company law. The shareholders can make some

[19] **Tan,** Zhong Xing (2014), 'Unfair Prejudice from Beyond, Beyond Unfair Prejudice: Amplifying Minority Protection in Corporate Group Structures', Journal of Corporate Law Studies, V:14, p. 368.

[20] **Law Commission**, 'Shareholder Remedies' (Law Com. No. 246, Cm. 3769, 1997), para. 1.7.

[21] **Leuz,** Christian (2003), 'Dhananjay Nanda and Peter D Wysocki, 'Earnings Management and Investor Protection: An International Comparison', Journal of Financial Economics, V:69, p. 505-527.

[22] This has been found and claimed by La Porta et al. in their article Law and Finance. (**La Porta,** Rafael& **Lopez-de-Silanes**, Florencio& **Shleifer,** Andrei & **Vishny,** Robert W. (1998), 'Law and Finance', Journal of Political Economy, V:106, p.1116.

[23] **Dignam,** Alan (2011), Andrew Hicks and S.H. Goo, Hicks & Goo's Cases and Materials on Company Law, 7. Edition, Oxford, Oxford University Press, p. 436.

[24] Civil Procedure Rules 1998, r.19.9 (7).

[25] **Dignam**, p.436.

arrangements in the articles of association in order to protect minority shareholders.[26]

Finally, it can be claimed that majority shareholders should not be given the ultimate power in order to use them in an unlimited manner in companies. Although there are arguments against the need for protection of minority shareholders, as it will be explained below there is an obvious need to protect rights of minority shareholders in companies, even though the volume of litigation created is high and there are increased costs. As stated above, to avoid time and money being wasted in minority shareholders' litigations, the cases can be monitored and litigation can be controlled by the court. It should be stated that minority shareholder protection should rely on legal remedies. An important question for each shareholder is: When can shareholders bring proceedings to enforce their rights or the company's rights? The protections should cover all dimensions in order to safeguard all the rights and interests of the minority shareholder and the legal protection should be provided for minority shareholders to go to court. Thus, the protection of minority shareholders will be effective and comprehensive. The next part will analyse the need to protect minority shareholders' rights.

II. ARGUMENTS THAT SHOW THE NEED TO PROVIDE PROTECTION FOR MINORITY SHAREHOLDERS

It should be highlighted why minority shareholders should receive protection and what the ultimate purpose of this protection should be before analysing what the rights of minority shareholders are. There are a number of reasons that justify minority shareholder protection, and these are generally based on the grounds of economics and justice and fairness.

The first is that weak protection of minority shareholders negatively impacts the average capital of a company regarding competition with other companies. The second is that when a country introduces a mechanism into the legal system to protect the rights of minority shareholders and promote litigation, this increases investors' confidence in that country.[27]

These protection mechanisms encourage foreign investors to invest in that country. Legal mechanisms to protect shareholders affect the ability of companies to increase the capital needed to develop, innovate, expand and compete. It should be noted that foreign investors are generally also minority shareholders in the companies.[28] Without minority shareholder protection, stock markets in the countries cannot flourish and banks become the main source of economic activity for the companies. This situation causes a resource inadequacy in the markets. Because of that, economies with dynamic capital markets perform better in protecting minority investors.[29] Legal protection for minority shareholders is thought to be the best way to reach foreign investors and encourage investment in the capital market. Lazarides supports this, stating that there is a correlation between strong legal company law and the protection of rights and interests of minority shareholders.[30]

A third reason is that countries have a common purpose in developing the credibility of the

[26] **Pulaşlı,** Hasan (2018), Şirketler Hukuku Şerhi, 3. Edition, Ankara, Adalet Press, p. 2005.

[27] **Ararat,** Melsa&**Uğur,** Mehmet (2003), `Corporate Governance in Turkey: An Overview and Some Policy Recommendations` Corporate Governance*:* The International Journal of Business in Society, V:3, p. 59.

[28] **Raja,** Khurram Parvez (2012), 'Corporate Governance and Minority Shareholders' Rights and Interests in Pakistan: A Case for Reform' International Company and Commercial Law Review, V:23, I:10, p. 370.

[29] **Dahya,** Jay& **Dimitrov** Orlin& **McConnell** John J. (2008), 'Dominant Shareholders, Corporate Boards, and Corporate Value: A Cross-Country Analysis', Journal of Financial Economics V:87, p. 75.

[30] **Lazarides,** Themistokles G. (2010), 'Minority Shareholder Choices and Rights in the New Market Environment', The IUP Journal of Corporate and Securities Law, V:7, p. 12.

market, and the choice and final design of the different provisions to protect minority shareholders certainly depends on the overall regulatory framework and the national legal system. In the presence of such effective protection, companies use resources more efficiently because capital costs are lower and this supports growth in the company.[31]

In recent years, big financial scandals have been seen across the world. Companies at the centre of these crises have been trusted and strong companies, such as Enron,[32] WorldCom and Metallgesellschaft.[33] When analysed, it will be seen that all of these company scandals generally relate to transparency and disclosure, control and accountability. Due to the fraud and failures in big companies, the system of corporate governance has come to public attention. In other words, company crises have undermined the confidence of investors operating in financial markets, so the term corporate governance has become appealing for both companies and governments.[34]

Since the financial crisis of 2008, corporate governance has gained importance and this importance has created a need for new rules regarding minority shareholder protection.[35] Good corporate governance now requires a favourable board structure and independence, company transparency and disclosure, and the rights of shareholders being upheld relative to management and the board of directors.[36] As can be seen from the above, it is important to protect minority shareholders in company law. In this context, discussions about increasing legal protections for minority shareholders and legal mechanisms to protect minority shareholders' rights gain importance.[37]

Indeed, conflicts of interest between minority and majority shareholders decrease the overall value of shares and cause an increase in the expropriation of minority shareholders. Even if shareholder contracts can provide protection for minority shareholders, a certain degree of protection must be provided for the status of minority shareholders to be kept to a certain extent. If a conflict arises after the shareholder agreement enters into force, remedies may be available. However, placing trust solely in shareholder contracts and giving all authority to majority shareholders to protect minority shareholders' interest should be avoided. In other words, to protect the rights of minority shareholders, it is not appropriate to expect that only a company with majority shareholders will be allowed to submit articles without a legal protection mechanism. The situation can be more problematic as explained

31 Organisation for Economic Co-Operation and Development (OECD), (2015), 'OECD Principles of Corporate Governance' <www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> accessed 07 May 2020.

32 Enron was one of the biggest companies in the United States. The company was supplying wholesale assistance, transportation, retail energy and broadband services. Nevertheless, Enron is famous around the world because of its failures. It seems that these failures emerged from the weaknesses and poor activity of Enron's corporate governance. With the Enron crisis, a new period started around the world, which included changes in the approach to corporate governance and a focus on law reforms, designed to protect company law from the new corporate crisis. See **Brown** Richard E (2005), 'Enron/Andersen: Crisis in U.S. Accounting and Lessons for Government', Public Budgeting & Finance, V:25, 20-32.

33 **Kılınç**, Pınar Buket (2012), 'Development of Corporate Governance, the Corporate Governance Approach of the Banking Sector, and the Effects of Corporate Governance on the Financial Structure of the Banking Sector's Companies: Research on the ISE 100 Index and the ISE Corporate Governance Index (XKURY)' (Masters, University of Hamburg, 2012).

34 **Tuzcu,** Arcan (2004), 'The Corporate Governance Approach of Istanbul Stock Exchange Companies' The Turkish Yearbook of International Relations, V:35, p. 146.

35 **Kirkpatrick,** Grant (2009), 'The Corporate Governance Lessons from the Financial Crisis', (Oecd.org) <https://www.oecd.org/finance/financial-markets/42229620.pdf> accessed 07 May 2020.

36 World Bank Group, 'Why It Matters' (2014) <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors/why-matters> accessed 07 May 2020.

37 **Briano-Turrent**, Guadalupe del Carmen& **Rodríguez-Ariza,** Lázaro (2016), 'Corporate Governance Ratings on Listed Companies: An Institutional Perspective in Latin America', European Journal of Management and Business Economics, V:25, p. 63-75.

below if there is a controlling shareholder in the company. In principle, the minority shareholders are obliged to comply with the decision of the majority shareholder and at the same time must have knowledge of the legitimate use of shareholders who hold a greater number of shares. In such circumstances, company law must provide remedies for the minority shareholders if the majority members misuse their power in the company. Therefore, a balance between the rights of the minority and majority shareholders should be found because the majority shareholder needs to be empowered to run the company and it is a primary requirement to give remedies to minority members so they can defend their rights and interests. The role of company law is to provide mandatory rules to solve disputes between different shareholders.[38] The principal doctrines of company law are separate legal personality and majority rule.

The majority rule was introduced in *Foss v Harbottle* in English Law.[39] This means that the decisions and choices of the majority will always be prioritized and preferred against the choices of the minority.[40] This rule has gained its place because of its utility in increasing the profits of the company. Nevertheless, the lesson learned from financial problems, especially from the financial crisis, teaches that protecting minority shareholders' rights is also crucial for a stable and reliable commercial life. According to the separate legal entity rule that is recognized in the case of *Salomon v AC Salomon*,[41] a company is a separate legal entity from its members and thus a legal 'person' in the eyes of the law. When damage is done to a company, only that company has the right to take legal action. Thus, the rule is clear that minority shareholders have no way individually to fix these wrongs if the damage was caused by the directors' action and accepted by majority shareholders. It can be said that when the decisions are usually taken at the general assembly, the company is mostly managed by the majority shareholders.[42]

The main concern here is that the effect of majority shareholders can have negative consequences for the business of the company as it is unable to seek any remedy.[43] The concept of the protection of minority shareholders, therefore, originated in company law. In addition to establishing minority shareholders' rights and remedies, it is also essential to adopt a robust system of corporate governance which create mechanisms to supervise the company. In this context, an adequate protection system should provide different regulations, laws, institutions and implementation mechanisms as protective systems to ensure that a company is managed adequately in pursuit of its objective.

III. ESTABLISHMENT OF PROTECTION MECHANISMS FOR MINORITY SHAREHOLDERS

The regulations should treat all shareholders equally regardless of the amount of shareholdings. The majority shareholder should not be the controller of the company with unlimited freedom over the company. Moreover, majority shareholders should not be able to directly or indirectly make individual gains at the expense of the minority shareholders. Countries have used different approaches and concepts to shape their protection mechanism for minority shareholders, originating from their history, social and political culture, and local traditions. In this context, the main aim of protecting minority shareholders is to be sure that enough powers are also given to the majority shareholders in order to

38 **Dignam**, p. 137.

39 **Foss v Harbottle** [1843], 67 ER 189.

40 **Dignam**, p. 186.

41 **Salomon v Salomon & Co Ltd** [1897], AC 22.

42 **Reisberg**, Arad (2007), Derivative Actions and Corporate Governance, 2. Edition, Oxford University Press, Oxford, p. 76.

43 **Mayson,** Stephen W& **French** Derek & **Ryan** Christopher (2007), Mayson, French & Ryan On Company Law, 24. Edition, Oxford University Press, Oxford, p. 515.

reach shareholder democracy across different types of companies. A fair protection system should allow minority shareholders to join the company's management so that accountability and responsibilities are shared among all shareholders.[44] Two mechanisms should provide a high level of protection for the minority shareholders, the preventive and the remedial tools. An adequate minority shareholder protection system requires full consideration of the interests and rights of stakeholders, especially minority shareholders. The legislature, policymakers, and courts should also provide legal mechanisms for remedying any wrongdoing or injustice committed by the company's controllers.[45]

While each shareholder's rights and interests cannot be listed in detail in commercial law, governments must at least provide a list of the most fundamental rights and interests of shareholders so that each shareholder may recognise their rights. Furthermore, such rights and remedies should provide knowledge to the courts so that judges become aware of the rights and interests of all of the shareholders, thus increasing the chances of justice being done. Accordingly, ideal company law should demonstrate to the shareholders all the rights that come with their particular share amount – in the general meeting, voting rights, access to information – and limiting the majority shareholders and power of directors by holding them responsible for their oppression and misconduct. The company codes of both Turkey and the UK have identified the importance of minority shareholder protection. As such, there are rights and remedies provided for minority shareholders in both which will be shown below.

IV. CURRENT POSITION FOR LEGAL PROTECTION OF RIGHTS OF MINORITY SHAREHOLDERS IN TURKEY

When investors invest in developing countries, they are gambling on the economy's ability to sustain growth.[46] Because of global uncertainty and the slowdown in capital movements, expectations in the economy for the future have been adversely affected. This has resulted in a decrease in investments and a corresponding contraction of the economy.[47] To improve investments and bring about economic recovery, the countries must offer a legal protection mechanism for shareholders especially for minority shareholders in companies.

In recent years there has been a focus on minority shareholder protection in Turkey due to this requirement but also because business needs to gain the attention of investment. In addition, there is a general need to develop shareholder democracy in companies. It is assumed that increasing the applicability of the corporate governance principles will increase development in terms of the protection of minority shareholders in Turkey. The new Turkish Commercial Code (No: 6102) came into force on 1 July 2012. The existing code was significantly amended and renewed by it. The rights of minority shareholders are one of the issues which are considered by the new TCC. Even though the rights of minority shareholders were already stipulated in the previous code, Turkey has been strengthening its law and regulatory practices on minority shareholders` protection with the Turkish Commercial Code No 6102.

[44] **La Porta& Lopez-de-Silanes& Shleifer& W. Vishny,** p. 1113.

[45] **Jeeballah,** A Abubaker (2016), 'To What Extent Does The Libyan Shareholder Protection Regime Offer Equivalent Protection To That Found In Similar Selected Corporate Law Systems?', Ph.D thesis, Lancaster University.

[46] **Engin**, Cem&**Golluce**, Esra (2016), 'Küresel Finans Krizi ve Türkiye Üzerine Yansımaları / The Global Financial Crisis in 2008 and Its Reflections on Turkey' Kahramanmaraş Sütçü İmam Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi, V:1, p.27-40.

[47] **Uygur** Ercan (2010), 'The Global Crisis and the Turkish Economy' <http://www.tek.org.tr/dosyalar/TURKEY-UYGUR-FF.pdf> accessed 07 May 2020.

Company management in Turkey is based on the majority rule. Under the TCC, the decisions at general assembly meetings are principally taken by simple majority unless there is an exceptional rule that requires a higher majority. This places the company's future in the hands of its majority shareholders. As a result of implementing existing voting procedures and corporate democracy, the majority shareholder is legitimately empowered to control the company. This is achieved through Article 366 TCC which provides that the members of the board of directors should be appointed by the articles of association or elected by the general assembly.[48] Therefore, in order to prevent abuse by the majority in the management of the company, the Turkish legislator has made some regulations to protect minority shareholders against the danger of misuse of the majority principle.

Accordingly, in Turkey, the main rights of minority shareholders are regulated in the TCC. TCC grants fundamental rights to each shareholder which cannot be affected by the company's controllers by using the power of the company's board of directors or general assembly. With these rights, every shareholder of the company has the right to participate in company management..[49] While the legislator granted some shareholding rights to all of the shareholders in the company, some rights and remedies were only granted to the minority shareholders who have shares representing at least 10 percent of the paid-in stock capital of a non-public company.[50] It should be noted that under Article 385[51] any right of a shareholder that emerges from the law or the articles of association of the company establishes the personal right of such a shareholder. This cannot be suspended or changed, unless it is permitted by law, and cannot be done without the prior consent of such a shareholder if the articles of association give such rights.

Specifically, minority shareholder protection under the Turkish Commercial Code was discussed concerning the rights and mechanisms that prevent or decrease the possibility of abusive behaviour by controllers (in most cases majority shareholders). The fundamental rights granted to all shareholders can be listed as follows: to receive dividends from the company, not to have claims made against them for the return of the dividends announced, liability claims, getting involve in company's liquidation, and to challenge the decisions of the general meeting before a commercial court in the event such decisions are passed in breach of law, the articles of association of the company or the decisions of the general meeting. Apart from the fundamental rights granted to each shareholder, there are also special rights granted to minority shareholders who have a certain percentage of the shares in the company.[52]

One of the rights in companies for minority shareholders under current Turkish law is permission to request delay in the deliberations of the financial tables for one month. For this delay, there is no need for a decision of the general meeting.[53] The minority shareholders have the right during a general meeting to ask for the appointment of an auditor independent from the general meeting if there is a need to clarify some issues.[54] The minority shareholders are also

48 Article 366 of Turkish Commercial Code No. 6102.

49 **Ulusoy**, Erol (2016), Anonim Şirketlerde Bireysel ve Azınlık Pay Sahibi Hakları, 2. Edition, Bilge Press, İstanbul, p. 66.

50 For publicly held companies, minority rights shall apply to the holders of a minimum of 5 percent of the shares.

51 Article 385 of Turkish Commercial Code No. 6102.

52 **Ulusoy**, p. 68.

53 Under Article 420 of TCC, minority shareholders are entitled to request a 'procrastination' in the deliberations of the financial statements and related subjects of one month after the decision of the president of the meeting. There is no need to have a decision by the general meeting upon the request of shareholders with one-tenth of the capital in publicly-closed companies and one-twentieth in public companies.

54 According to Article 439 of the Turkish Commercial Code, the minority shareholders who hold 10 percent of the capital (or 5 percent of the capital in a public company) may apply to the court within three months in order to appoint an independent auditor. The legislator extended the meaning of minority shareholder in Article 439 so that shareholders whose share value is at least one million Turkish liras may also use this right

granted a right to call a general meeting and add issues to its agenda.[55] In so doing they are able to play an active role in the company's decisions, especially where the board of directors is under the control of the majority shareholders. Additionally, the Turkish Commercial Code provides that if a general meeting is held contrary to the law or to the provisions of the articles of association, each shareholder is allowed to ask the court to cancel its decisions.[56] The shareholders also have the right to request issuance of shares[57] and obtain information about companies including financial statements,[58] consolidated financial statements, and annual reports, audit reports and profit distribution proposals of the board of directors.[59]

Furthermore, there are two important remedies for minority shareholders under the TCC which are liability claim and dissolution of the company for just causes. In the absence of the provision of dissolution of the company for just causes before the new TCC, a liability claim was crucial for minority shareholders who suffered at the hands of directors. Under Articles 553-555 TCC,[60] every shareholder may bring an action against the company's directors if the company fails to do so where they have breached duties or not performed their duties adequately on behalf of the company. Under this remedy, when the company or shareholders are damaged by the directors, the shareholders have the opportunity to bring the action to the court against the directors.[61] Article 533 states that members of the board of directors in a joint stock company have liability to the company, shareholders and creditors for damages arising from any negligent breach of their obligations prescribed by law and the articles of association. The shareholders, and if there is a bankruptcy the creditors, can also bring an action against directors because of the damage caused to the company under the provisions of Article 555 and 556. In contrast with the former law, in Article 341 of the Turkish Commercial Code No 6762, it was necessary to seek the decision of the general meeting as a condition for the liability claim brought by the company to the directors. Furthermore, in the same article it was regulated that to bring a liability claim against general meeting decisions and cancellation of decisions the shareholders needed to have at least 10 per cent of the capital share in joint stock companies. However, under the current Turkish Commercial Code (Articles 553-555), there is no specific requirement to be able to apply to the court for a liability claim regarding damage against the members of the board by the company. This right is one of the most important remedial tools for minority shareholders in case of disputes in the company.[62]

as a minority shareholder. See Article 439 of Turkish Commercial Code No. 6102.

55 Under Article 411 of the Turkish Commercial Code, a minority shareholder who holds at least 10 percent of the share capital in a non-public joint stock company (or 20 percent of the shares for publicly-held companies) is directly eligible to request a general meeting or where a general meeting has already been called a minority can add a current item which he or she wishes to discuss to the agenda for the general meeting, provided a reason is given. This right aims to prevent the controllers from discussing any issue that was not listed on the agenda and provide an opportunity for minority shareholders to discuss the issues they wish. It can be recognised by the shareholders in the company's articles of association that even if a shareholder has fewer shares, he can call a general meeting and add an item.

56 Article 445 of Turkish Commercial Code No. 6102.

57 Article 486/3 of Turkish Commercial Code No. 6102.

58 According to Article 437 of TCC, each shareholder (without the requirement of percentage) has the right to access information about the company's financial statements, consolidated financial statements, the annual report of the board of directors, audit reports and profit distribution proposal of the board of directors.

59 Article 437 of Turkish Commercial Code No. 6102.

60 Articles 553-555 of Turkish Commercial Code No. 6102.

61 **Çamoglu,** Ersin (2010), Anonim Ortaklık Yönetim Kurulu Üyelerinin Hukuki Sorumluluğu / The Liability of Directors in Joint Stock Companies, 1. Edition, Vedat Press, İstanbul, p. 9-10.

62 Turkish company law does not require a court to give permission for a shareholder to continue with legal proceedings against directors as long as the relief obtained goes to the company.

The second remedy for minority shareholders is dissolution of the company for just causes which is regulated under Article 531 TCC.[63] An important remedial tool for protection of minority shareholders is dissolution of the company for just causes. This can be found in Article 531 of the TCC.[64] Prior to the new Code entering into force, aggrieved minority shareholders did not have a remedy of dissolution of a company for just causes. Before the new TCC No 6102 entered into force, the minority shareholder did not have the remedy of the dissolution of a company for just causes. While former Commercial Code No 6762 allowed shareholders to bring an action for dissolution if there were just causes in a private company, there was no such a provision for shareholders for joint stock companies.[65]

As per Article 531,[66] in the presence of just causes, holders of shares representing at least one-tenth of the capital in a joint stock company (or one-twentieth in a publicly-held company) may request the court to decide on the dissolution of a company. However, it does not detail what these just causes might be; this is to be done on a case-by-case basis. Minority shareholders intent on doing this must approach the court in whose jurisdiction the place of incorporation is under.[67] As per the final sentence of Article 531,[68] when a minority shareholder requests the termination of a corporation from a court based on valid reasons, the court may decide either that the applicant shareholders should have their shares bought for their real value or that an acceptable and reasonable resolution is reached.[69]

In conclusion, Turkey is aware of the significance of protection of minority shareholder for the strong performance of the financial markets and for commercial development. The new Turkish Commercial Code No. 6102 accomplished radical reforms to shareholder rights, emphasising shareholder democracy. The Code set out as one if its primary aims to improve shareholder rights and especially equal treatment of shareholders. This formed the basis for a strong voice for all shareholders in the management which improves the situation in companies for minority shareholders. It appears that the rights and remedies granted to minority shareholders in Turkish Commercial Code No 6102 are suitable for providing better protection of shareholders' rights.

V. CURRENT POSITION FOR LEGAL PROTECTION OF RIGHTS OF MINORITY SHAREHOLDERS IN THE UNITED KINGDOM

In the United Kingdom, the daily work of the company is managed by its directors (subject to its articles of association) and relevant legal rules. Nevertheless, some decisions may need consent from shareholders by either a simple majority or a 75 per cent majority to be passed. In this way, the interests and rights of minority shareholders may be violated by the majority shareholders through decisions taken through the board of directors or at shareholder meetings. The majority of shareholders can appoint managers they choose to work with, with authority given, and manage the company's business activities as they wish.[70] Additionally, the

63 Article 531 of Turkish Commercial Code No. 6102.

64 The term 'dissolution of the company for just causes' is used for 'anonim şirkette haklı sebeple fesih' in Turkish law.

65 **Tekinalp,** Ünal (1974), 'Türk Ticaret Kanunundaki Boşluk: Anonim Ortaklığın Feshi, Çoğunluk Gücünün Kötüye Kullanılmasına Karşı Etkili Bir Araç' İktisat ve Maliye Dergisi, V:21, p. 321, 325.

66 Article 531 of Turkish Commercial Code No. 6102.

67 **Erdem**, Nuri (2019), Anonim Ortaklığın Haklı Sebeple Feshi, 2. Edition, Vedat Press, İstanbul, p. 251.

68 Article 531 of Turkish Commercial Code No. 6102.

69 The aim is to balance the rights of majority and minority shareholders. See; Tekinalp, Ünal (2013), 'Anonim Ortaklıgın Haklı Sebeplerle Feshi Davasının Bazı Usulî Sorunları', Ersin Çamoglu'na Armağan, 1. Edition, Vedat Press, İstanbul, p. 214.

70 **Kim,** Kenneth A.& **Kitsabunnarat-Chatjuthamard** P and **Nofsinger,** John R. (2007), 'Large Shareholders, Board In-

majority shareholders may elect managers who feel a similar way of thinking if they intend to abuse minority shareholders or advance their rights. A typical scenario is that majority shareholders prevent minority shareholders from taking legal action to correct the company's controller's mistakes. In most cases, minority shareholders do not reach the required majority to obtain permission to sue in court.[71]

It should be stated that the protection of minority shareholders in the UK relies heavily upon judicial protection. However, it should be noted that within the scope of the UK Companies Act 2006, each shareholder has certain legal rights that provide some kind of safeguarding to minority shareholders under English law, so it is worth mentioning these rights briefly.

These rights exist for any shareholder that are for instance; shareholder's right to ask the court to call a general meeting,[72] the right to receive notice of any general meeting,[73] the right to have a copy of the annual account[74], the right to inspect the register of members and index of members' name with no charge[75] and the right to require a copy of the register of shareholders within 10 days of the ask for subject to charge.[76] Additionally, besides these rights granted to each shareholder, there are some other rights granted to shareholders to have a certain share rate. For example, shareholders who represent at least 10 per cent of the voting rights (this rate reduces 5 per cent if there is no shareholders' meeting holding for more than 12 months) have a right to call a general meeting,[77] also shareholders with 5 per cent of the voting rights have a right to circulate a written statement,[78] in addition, shareholders who has more than 10 per cent of the voting rights have a right to have the company's annual accounts audited.[79] Last but not least, shareholders who represent more than 25 per cent of shares have a right to block a special resolution,[80] such a resolution is need, for instance, to make changes in a company's articles of association.[81]

In the UK, the protection mechanisms are provided for rights of minority shareholders as follows. First, a minority shareholder can bring a 'personal action' if his personal rights have been violated.[82] The second mechanism is the derivative action, which is granted to minority shareholders to apply to the court for permission to continue a derivative action on behalf of a company where there is a wrong to the company.[83] The aim of the UK Government in creating a statutory derivative action in the UK Companies Act 2006 was to provide a protection for shareholders who wish to bring valid claims and avoid unnecessary litigation. According to section 260 of the Companies Act 2006, a member of the company may bring an action regarding a cause of action vested in the company, where the aim of the member is to seek relief on the company's behalf and for its benefit.[84] The new

dependence, and Minority Shareholder Rights: Evidence from Europe', Journal of Corporate Finance, V:13, p. 862.

71 **Sarkar**, Prabirjit (2017), `Common law vs. Civil law: which system provides more protection to shareholders and promotes financial development? `, Journal of Advanced Research in Law and Economics, V:2, p. 151.

72 Section 306 of the UK Companies Act 2006

73 Section 310 of the UK Companies Act 2006

74 Section 431 of the UK Companies Act 2006

75 Section 116/2 of the UK Companies Act 2006

76 Section 116/2 of the UK Companies Act 2006

77 Section 303 of the UK Companies Act 2006

78 Section 314 of the UK Companies Act 2006

79 Section 306 of the UK Companies Act 2006

80 Section 283 of the UK Companies Act 2006

81 It can be noted here regarding this issue in the United Kingdom the Department of Trade has right to appoint auditors to investigate the affairs of the company and report on them in the events if an application is made by not less than 200 members or members holding at least 10% of the issued share capital.

82 See Smith v Croft No 2 [1988], Ch. 114, and Prudential Assurance Co. Ltd v Newman Industries Ltd (No.2), [1982], Ch. 204.

83 Section 260-264 of the UK Companies Act 2006.

84 Section 260(3) of the UK Companies Act 2006.

statutory rule extends the causes of application of derivative actions.[85] As it was stressed in section 260(3) of the Companies Act, it is possible for the cause of action to be against the director or any other person or both of them. The circumstances of the action may have emerged from an actual or proposed act or omission including negligence, default, breach of duty or breach of trust by a former[86] or actual director or a shadow director[87] of the company.[88]

To continue a derivative claim, an applicant should show that he has a prima facie case and the court must be satisfied with the evidence.[89] Therefore, if the court determines that the application and the evidence provided by the applicant are not enough for a prima facie case to allow the proceeding of the derivative suit, the court must reject the application.[90] In this context, a prima facie case was confirmed in *Cullen Investment Ltd v Brown*[91] and permission was given and allowed to continue to the derivative action. Conversely, the court in *Bridge v Daley*[92] rejected to permit to proceed derivative action because there was no prima facie case. Furthermore, the claimant shareholder was requested to pay the litigation costs.[93]

Although the new approach in derivative actions has more flexibility and is less restrictive, it also has some critical problems for minority shareholders in terms of access to relief. Even if it is understandable for company law to give discretion to the courts over whether to allow a derivative claim to protect the business of the company, it is also arguably because of this that the rule is unpredictable and uncertain. To sum up, it is possible to find different ways to protect minority shareholders but when compared with other solutions, even if the new derivative action has some weak points, it is a powerful way to protect minority rights especially if there is a corporate wrong.

Third, the unfair prejudice petition is designed for minority shareholders to deal with the issues when their interests are harmed in the capacity as shareholders. The court may order the removal of the petitioner shareholder with the purchase of his shares at fair value.[94] Any shareholder can bring an unfair prejudice action for an order on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its shareholders generally or of some of its shareholders (including at least himself).[95] The most common applications of this are where a minority shareholder has been excluded from participation in the management of the company or there has been excessive remuneration paid to the majority by the company.

The expansion of the scope of the unfair prejudice petition has created a dilemma in English law for shareholders in choosing the right remedy to make a claim in a court. Through studies and cases about statutory remedies of the minority shareholders, it was clarified that the unfair prejudice petition should be considered a personal remedy and a derivative action should be accepted as a corporate reme-

85 **Joffe,** Victor (2008), Minority Shareholders, 1. Edition, Oxford University Press, Oxford, p. 34.

86 Section 260(5)(a) of the UK Companies Act 2006.

87 Section 260(5)(b) of the UK Companies Act 2006.

88 Section 260 of the UK Companies Act 2006.

89 As J **David** Richards stressed in the case of Abouraya v Sigmund: "A prima facie case is a higher test than a seriously arguably case and I take it to mean a case that, in the absence of an answer by the defendant, would entitle the defendant to judgment." See Abouraya v Sigmund [2014], EWHC 277 at [53].

90 **Keay**, Andrew & **Loughrey**, Joan (2010), 'Derivative Proceedings in a Brave New World for Company Management and Shareholders', Journal of Business Law, V:3, p. 153.

91 **Cullen Investment Ltd v Brown** [2015], EWHC 473 (Ch).

92 **Bridge v Daley** [2015], EWHC 2121 (Ch).

93 **Milman**, David (2015), 'Shareholder Law: Recent Developments in Practice' Company Law Newsletter, V:378, p. 3.

94 Section 994 of the UK Companies Act 2006.

95 Section 994 of the UK Companies Act 2006.

dy.[96] However, unfair prejudice is given a wide understanding to include relief for corporate wrongs. In *Clark v Cutland*[97] it was held that relief in relation to corporate wrong can be obtained under section 994. In *Clark v Cutland*, the court held that corporate problems could also be claimed by shareholders and discussed under an unfair prejudice petition if the case meets all the conditions. In *Mumbray v Lapper*[98] the court refused permission to continue a derivative claim. The court ruled that it would be more accurate to proceed with an unfair prejudice petition or a winding up on just and equitable grounds as opposed to a derivative claim.[99]

Determining the differences between derivative action and unfair prejudice petition has importance for minority shareholders and practitioners. At first glance, there is no big difference between them and, as Hannigan points out, these two remedies overlap with each other and if the law do not address the differences between them, the overlap between two remedies will remain to be an issue.[100]

Fourth, minority shareholders may apply to the court for a winding-up order[101] when it is just and equitable to do so.[102] The best-known case concerning just and equitable winding up is surely *Ebrahimi v Westbourne Galleries Ltd.*[103]

In conclusion, some scholars have argued that there is no perfect model of minority shareholder protection.[104] Each one is effective in its own way and the corporate governance structure specific to a country is difficult to transfer to another country.[105] It is seen that while, English law has a long history and considerable experience in minority shareholder protection, Turkey also has a strong protection mechanism for minority shareholders.

VI. CONCLUSION

In order to highlight the importance of the protection of minority shareholders, some criticisms and suggestions were addressed in this article. This article started with an explanation of the definition of a minority shareholder in two different jurisdictions, Turkey and United Kingdom. The limited position and weak remedies for minority shareholders were also explained in companies. To show the need of minority shareholder protection, the conflict between minority and majority shareholders was explained. It was claimed that the majority shareholders do not generally tend to consider the rights of minority shareholders and consider their own more when exercising their control of the com-

96 **Keay** Andrew (2015), 'Assessing and Rethinking the Statutory Scheme for Derivative Actions under the Companies Act 2006', Journal of Corporate Law Studies, V:16, p. 43.

97 **Clark v Cutland** | [2003] OPLR 343

98 **Mumbray v Lapper** [2005], EWHC 1152 (Ch).

99 **Keay**, p. 469.

100 **Hannigan**, Brenda (2009), 'Drawing boundaries between derivative claims and unfairly prejudicial petitions', Journal of Business Law, V:6, p. 617.

101 When looking at the practice, it will be seen that generally the respondent side of a petition offers to purchase a petitioner's shares at fair value and then petitioner stop the attempt to wind up under section 122(1) of the Insolvency Act 1986. An unfair prejudice petition is sometimes a factor that brings about a winding up It is difficult for the claimant to persuade the court that he was acting honestly in requesting to have the company wound up instead of seeking another remedy. The claimant must show that there is no other remedy available and it is just and equitable to wind up this entity, whereas granting a relief under UK Companies Act 2006 Section 994 depends on whether the claimant shows that unfair prejudice conduct occurred. See; Hallington, Robin (2007), 'Oppression of Minority Shareholders: Reflections on Blisset v Daniel', Denning Law Journal, V:19, p. 8.

102 Section 122(1)(g) of the Insolvency Act 1986.

103 **Ebrahimi v Westbourne Galleries** Ltd [1973], AC 360.

104 **Ungureanu,** Mihaela (2012), 'Models and Practices of Corporate Governance Worldwide' (Ceswp.uaic.ro) <http://ceswp.uaic.ro/articles/CESWP2012_IV3a_UNG.pdf> accessed 07 May 2020.

105 Furthermore, the results of the research by Siems show that the protection of shareholders in common law countries is relatively similar, but there is no similarity between the German and French civil law families. This argument shows that there is not a common practice in minority shareholders protection in civil law countries which can be taken as a role model. See Siems, Mathias M (2008), 'Shareholder Protection around the World ('Leximetric II')', University of Cambridge, CBR Working Paper, V:359, p. 144. This article is an analysis of the development of shareholder protection in 20 countries from 1995 to 2005.

pany's affairs. So, concerning the issue of minority shareholders, the majority shareholders should not be given the ultimate power and freedom in order to use them in an unlimited manner in companies. In addition, the main aim of protecting minority shareholders is to be sure that enough powers are also given to the majority shareholders in order to reach shareholder democracy across different types of companies. A fair protection system should allow minority shareholders to join the company's management so that accountability and responsibilities are shared among all shareholders. When minority shareholders encounter any problem regarding the company, they should apply to the court and seek to obtain a remedy. At the same time, shareholders should avoid unnecessary claims and help the company to continue its business and make profits. Moreover, company management should be able to be provided by shareholders without any problems and the company must continue to make profits.

The preventive tool and the remedial tools are two mechanisms to provide a high level of protection for the minority shareholders. An adequate minority shareholder protection system requires that all stakeholders' interests and rights, particularly minority shareholders, are fully considered. Also, there is a commitment on the legislature, policymakers, and courts to furnish legal mechanisms to remedy any wrongdoing or unfairness done by the company's controllers.

As seen from examples in Turkish law and English law, countries have used different approaches and concepts to shape their protection mechanism for minority shareholders which are originating from their history, social and political culture, and local traditions. In recent years, there has been a focus on minority shareholder protection in both countries. Even if those two countries have different approaches on this issue, it is seen that the fundamental preventive and remedial mechanisms have been provided for minority shareholders to protect their rights and interests.

KAYNAKÇA

Ararat, Melsa&**Uğur,** Mehmet (2003), `Corporate Governance in Turkey: An Overview and Some Policy Recommendations` Corporate Governance: The International Journal of Business in Society, V:3.

Briano-Turrent, Guadalupe del Carmen& **Rodríguez-Ariza,** Lázaro (2016), 'Corporate Governance Ratings on Listed Companies: An Institutional Perspective in Latin America', European Journal of Management and Business Economics, V:25.

Brown Richard E (2005), 'Enron/Andersen: Crisis in U.S. Accounting and Lessons for Government', Public Budgeting & Finance, V:25.

Çamoglu, Ersin (2010), Anonim Ortaklık Yönetim Kurulu Üyelerinin Hukuki Sorumluluğu / The Liability of Directors in Joint Stock Companies, 1. Edition, Vedat Press, İstanbul.

Cheffins, Brian (2000) 'Minority Shareholders and Corporate Governance' Company Lawyer, V:21, p. 41.

Dahya, Jay& **Dimitrov** Orlin& **McConnell** John J. (2008), 'Dominant Shareholders, Corporate Boards, and Corporate Value: A Cross-Country Analysis', Journal of Financial Economics V:87.

Dignam, Alan (2011), Andrew Hicks and S.H. Goo, Hicks & Goo's Cases and Materials on Company Law, 7. Edition, Oxford, Oxford University Press.

Engin, Cem&**Golluce,** Esra (2016), 'Küresel Finans Krizi ve Türkiye Üzerine Yansımaları / The Global Financial Crisis in 2008 and Its Reflections on Turkey' Kahramanmaraş Sütçü İmam Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi, V:1.

Erdem, Nuri (2019), Anonim Ortaklığın Haklı Sebeple Feshi, 2. Edition, Vedat Press, İstanbul.

Hallington, Robin (2007), 'Oppression of Minority Shareholders: Reflections on Blisset v Daniel', Denning Law Journal, V:19.

Hannigan, Brenda (2009), 'Drawing boundaries between derivative claims and unfairly prejudicial petitions', Journal of Business Law, V:6.

Jeeballah, A Abubaker (2016)., 'To What Extent Does The Libyan Shareholder Protection Regime Offer Equivalent Protection To That Found In Similar Selected Corporate Law Systems?', Ph.D thesis, Lancaster University.

Joffe, Victor (2008), Minority Shareholders, 1. Edition, Oxford University Press, Oxford.

Keay Andrew (2015), 'Assessing and Rethinking the Statutory Scheme for Derivative Actions under the Companies Act 2006', Journal of Corporate Law Studies, V:16.

Keay, Andrew & **Loughrey**, Joan (2010), 'Derivative Proceedings in a Brave New World for Company Management and Shareholders', Journal of Business Law, V:3.

Kershaw, David (2015), 'The Rule in Foss v Harbottle is Dead: Long Live the Rule in Foss v Harbottle', Journal of Business Law.

Kılınç, Pınar Buket (2012), 'Development of Corporate Governance, the Corporate Governance Approach of the Banking Sector, and the Effects of Corporate Governance on the Financial Structure of the Banking Sector's Companies: Research on the ISE 100 Index and the ISE Corporate Governance Index (XKURY)' (Masters, University of Hamburg, 2012).

Kim, Kenneth A.& **Kitsabunnarat-Chatjuthamard** P & **Nofsinger** John R. (2007), 'Large Shareholders, Board Independence, and Minority Shareholder Rights: Evidence from Europe', Journal of Corporate Finance, V:13.

La Porta, Rafael& **Lopez-de-Silanes**, Florencio& **Shleifer,** Andrei & **Vishny,** Robert W. (1998), 'Law and Finance', Journal of Political Economy, V:106.

Lazarides, Themistokles G. (2010), 'Minority Shareholder Choices and Rights in the New Market Environment', The IUP Journal of Corporate and Securities Law, V:7.

Leuz, Christian (2003), 'Dhananjay Nanda and Peter D Wysocki, 'Earnings Management and Investor Protection: An International Comparison', Journal of Financial Economics, V:69.

Mayson, Stephen W& **French** Derek & **Ryan** Christopher (2007), Mayson, French & Ryan On Company Law, 24. Edition, Oxford University Press, Oxford.

Milman, David (2015), 'Shareholder Law: Recent Developments in Practice' Company Law Newsletter, V:378.

Payne, Jennifer (2005), `Sections 459–461 Companies Act 1985 in Flux: The Future of Shareholder Protection', The Cambridge Law Journal V:64.

Pettet, Ben (2005), Company Law, 2. Edition, London, Pearson Education Limited.

Pulaşlı, Hasan (2018), Şirketler Hukuku Şerhi, 3. Edition, Ankara, Adalet Press.

Raja, Khurram Parvez (2012), 'Corporate Governance and Minority Shareholders' Rights and Interests in Pakistan: A Case for Reform' International Company and Commercial Law Review, V:23, I:10.

Reisberg, Arad (2007), Derivative Actions and Corporate Governance, 2. Edition, Oxford University Press, Oxford.

Sarkar, Prabirjit (2017), `Common law vs. Civil law: which system provides more protection to shareholders and promotes financial development?`, Journal of Advanced Research in Law and Economics, V:2.

Sharar, Zain (2010) 2Minority Shareholders' Remedies in Public Shareholding Companies: Comparing the State of Qatar and Australia2 Corporate Governance e-Journal, 3.

Siems, Mathias M (2008), 'Shareholder Protection around the World ('Leximetric II')', University of Cambridge, CBR Working Paper, V:359.

Tan, Zhong Xing (2014), 'Unfair Prejudice from Beyond, Beyond Unfair Prejudice: Amplifying Minority Protection in Corporate Group Structures', Journal of Corporate Law Studies, V:14.

Tekinalp, Ünal (1974), 'Türk Ticaret Kanunundaki Boşluk: Anonim Ortaklığın Feshi, Çoğunluk Gücünün Kötüye Kullanılmasına Karşı Etkili Bir Araç' İktisat ve Maliye Dergisi, V:21.

Tekinalp, Ünal (2013), 'Anonim Ortaklıgın Haklı Sebeplerle Feshi Davasının Bazı Usulî Sorunları', Ersin Çamoglu'na Armağan, 1. Edition, Vedat Press, İstanbul.

Tuzcu, Arcan (2004), 'The Corporate Governance Approach of Istanbul Stock Exchange Companies' The Turkish Yearbook of International Relations, V:35.

Ulusoy, Erol (2016), Anonim Şirketlerde Bireysel ve Azınlık Pay Sahibi Hakları, 2. Edition, Bilge Press, İstanbul.

UK Cases

Abouraya v Sigmund [2014], EWHC 277 at [53].

Bridge v Daley [2015], EWHC 2121 (Ch).

Burland v Earle [1902] AC 83.

Clark v Cutland | [2003] OPLR 343

Cullen Investment Ltd v Brown [2015], EWHC 473 (Ch).

Ebrahimi v Westbourne Galleries Ltd [1973], AC 360.

Foss v Harbottle [1843] 67 ER 189.

Mumbray v Lapper [2005], EWHC 1152 (Ch).

Salomon v Salomon & Co Ltd [1897] AC 22.

Smith v Croft No 2 [1988] Ch 114.

Prudential Assurance Co Ltd v Newman Industries Ltd (No 2) [1982] Ch 204.

Codes

Civil Procedure Rules 1998, r.19.9 (7).

The UK Companies Act 2006.

Turkish Commercial Code No. 6102.

UK Insolvency Act 1986.

Web References

'Companies Register Activities 2017 To 2018' (*GOV.UK*, 2018) <https://www.gov.uk/government/publications/companies-register-activities-statistical-release-2017-to-2018/companies-register-activities-2017-to-2018> accessed 07/05/2020.

Kirkpatrick, Grant (2009), 'The Corporate Governance Lessons from the Financial Crisis' (Oecd.org) <https://www.oecd.org/finance/financial-markets/42229620.pdf> accessed 07 May 2020.

Organisation for Economic Co- Operation and Development (OECD), 'OECD Principles of Corporate Governance' (2004) http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf. accessed 07/05/2020.

Ungureanu, Mihaela (2012), 'Models and Practices of Corporate Governance Worldwide' (*Ceswp.uaic.ro*) <http://ceswp.uaic.ro/articles/CESWP2012_IV3a_UNG.pdf> accessed 07 May 2020.

Uygur Ercan (2010), 'The Global Crisis and the Turkish Economy' <http://www.tek.org.tr/dosyalar/TURKEY-UYGUR-FF.pdf> accessed 07 May 2020.

World Bank Group (2014), 'Why It Matters' <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors/why-matters> accessed 07 May 2020.

Reports and Consultation Papers

Law Commission, "Shareholder Remedies" (Law Com. No 246, Cm. 3769, 1997).