A COMPARATIVE LEGAL, ECONOMIC AND STRUCTURAL ANALYSIS OF CHALLENGING SHAREHOLDERS' RESOLUTIONS UNDER TURKISH AND ENGLISH LEGAL SYSTEMS(*)

Yavuz Selim GÜNAY(**)

ABSTRACT

English law system and Turkish law systems have different approaches to protection of shareholders and challenging shareholder resolutions. These differences have important historical, economic background reasons and also economic and legal outcomes. In order to understand reasons for these differences an economic as well as a legal and cultural analysis should be conducted. Difference in the corporate ownership structures of these legal systems is the primary underlying reason; effective ex ante contractual minority protection mechanisms under English legal system is the second reason, and finally differences in legal nature of shareholder rights under these law systems is the third reason for the different approaches of these legal systems towards challenging shareholder resolutions. It is also important to analyze the legal and economic efficiency of the two legal systems in terms of challenging shareholders resolutions. Considering applicable legal institutions regarding challenging shareholders resolutions, it is possible to say that the English legal system is economically more efficient however due to the uncertainties and complexities involved, the English legal system can be characterized as legally less efficient.

Keywords

Shareholder's Resolutions, Minority Protection, Agency Conflict, Corporate Ownership Structure, Shareholder Litigation, Economic Analysis of Law, Shareholder Rights.

(*) **DOI:** 10.33432/ybuhukuk.1267056 - **Geliş Tarihi:** 17.03.2023 - **Kabul Tarihi:** 27.05.2023.

(**) Avukat; Ankara Hacı Bayram Veli Üniversitesi, Özel Hukuk Anabilim Dalı, Doktora Öğrencisi, Ankara-Türkiye,
E-posta: yselimgunay@gmail.com; Orcid Id: https://orcid.org/0009-0000-2960-2134.

TÜRK VE İNGİLİZ HUKUK SİSTEMLERİ ÇERÇEVESİNDE GENEL KURUL KARARLARININ İPTALİ DAVASININ HUKUKİ, EKONOMİK VE YAPISAL ÖZELLİKLERİNİN KARŞILAŞTIRMALI ANALİZİ

ÖZET

Anonim şirketlerde azlık pay sahiplerinin korunması ve genel kurul kararlarının iptali bakımından İngiliz ve Türk hukuk sistemleri farklı yaklaşımlara sahiptir. Bu farklılıkların tarih, ekonomi gibi önemli yapısal sebepleri olmakla birlikte hem şirketler hem de hukuk sistemleri bakımından önemli ekonomik ve hukuki sonuçlar doğurmaktadır. Türk ve İngiliz hukuk sistemleri arasındaki bu farklılıkların anlaşılabilmesi için bu kurumlara ilişkin hukuki analizin yanı sıra ekonomik ve kültürel analizin de gerçekleşleştirilmesi gerekmektedir. Genel kurul kararlarının iptali bakımından Türk hukuku ile İngiliz hukuku arasındaki farklılıkların temel sebebi olarak bu ülkelerde kurulmuş olan şirketlerin pay sahipliği yapısı ön plana çıkmaktadır. İngiliz hukukunda tarihsel olarak yer alan azlığın sözleşmesel yöntemlerle korunması ile ilgili hukuki kurumlar ve pay sahipliğinin hukuki niteliğine ilişkin olarak her iki hukuk sistemi arasındaki yaklaşım farkı ise ön plana çıkan diğer bir sebeptir. Genel kurul kararlarının iptali davaları bakımından her iki hukuk sistemi arasındaki farkların hukuki ve ekonomik etkinlik analizlerinin gerçekleştirilmesi de önem arz etmektedir. İngiliz hukuk sisteminin genel kurul iptâli davalarının neticeleri bakımından ekonomik olarak daha etkin olduğunu söylemek mümkündür. Bununla birlikte, içerdiği belirsizlikler ve karmaşıklıklar dolayısıyla İngiliz hukuk sistemi genel kurul kararlarının iptâli davalarının hukuki etkinliği bakımından daha az etkin olarak nitelendirilebilecektir.

Anahtar Kelimeler

Genel Kurul Kararı, Azlığın Korunması, Menfaat Çatışması, Pay Sahipliği Yapısı, Hissedarlık Davaları, Pay Sahipliği Hakları, Hukukun Ekonomik Analizi.

INTRODUCTION

The basic division of power within a company is that the management power is vested in the board of directors while shareholders keep very limited powers[1]. However, powers/decisions of shareholders have a vital function for the management of the company.[2] These powers include but are not limited to the right to alter the articles of association, increase or reduce the share capital, appoint directors or approve certain transactions[3].

In terms of the democracy of corporate capitalism, majority shareholders have a legitimate right to exercise management power over the company[4]. However, domination or more provocatively '*tyranny of the majority*'[5] is a source of concern for the minority shareholders[6]. There are many ways[7] for the majority to exploit/oppress the minority[8].

Accordingly, all these possibilities show that there is an agency conflict between the minority and the controlling shareholders[9] and addressing this

---

1 **Hannigan, Brenda** (2016) Company Law, Oxford University Press, USA, p. 418.

2 **Davies, Paul. L./Worthington, Sarah/Micheler, Eva** (2012) Gower and Davies' Principles of Modern Company Law (Vol. 20088), London, Sweet & Maxwell, p. 435.

3 **Hannigan** (2016), p. 418.

4 **Barker, Roger/Chiu, Iris H-Y.** (2015) "Protecting Minority Shareholders in Blockholder-Controlled Companies: Evaluating the UK's Enhanced Listing Regime in Comparison with Investor Protection Regimes in New York and Hong Kong", Capital Markets Law Journal, Vol: 10, No: 1, p. 101.

5 **Barker/Chiu**, p. 101.

6 **Kaya, Mustafa İsmail** (2014) "Pay Sahiplerinin Anonim Şirket Genel Kurulunda Temsil Edilmesi", Banka ve Ticaret Hukuku Dergisi, V: 30, N: 4, p. 47.

7 Amending the articles of association of the company, changing the expectations of the minority about their position in the management of the company, providing excessive financial benefits to directors, related party transactions, compulsory transfer of the minority shareholder' shares, merger and acquisition transactions with unfair conditions to the detriment of the minority can be listed as examples of abuse of the majority.

8 **Kershaw, David** (2012) Company Law in Context: Text and Materials, Oxford University Press, p. 583-585; **O'Neal, F. Hodge** (1987) "Oppression of Minority Shareholders: Protecting Minority Rights", Clev. St. L. Rev, Vol: 35, p. 121.

9 **Kraakman, Reinier/Armour, John/Davies, Paul/Enriques, Luca/Hansmann, Henry/Hertig, Gerard/Hopt, Klaus/Kanda, Hideki/Rock, Edward** (2017) The Anatomy of Corporate Law:

conflict (protection of the minority) has key importance in terms of long-term existence and development of a company[10]. A law system that provides inadequate protection for minority shareholders cannot create an attractive investment environment because inadequate protection will directly damage enthusiasm of investors to invest[11]. Except for investors and creditors, well-functioning companies are important for employees, governments, and societies. There are various legal and economic tools for protection of minority shareholders in each jurisdiction. The right to convene shareholder's meeting, to propose or amend the agenda of the meeting, the right to information, the right to appoint special auditor/supervisor, the right to request dissolution of the company could be listed as examples of minority protection tools which are deemed as necessary for modern companies' law.

In addition to foregoing, challenging shareholders' resolutions is another important minority protection mechanism. Also challenging shareholders' resolution is an important 'shareholder right' which allows shareholders to enforce their rights before courts. It constitutes the judicial enforcement scheme of minority/shareholder right with other intra-corporate lawsuits such as derivative claims, winding up of the company etc.

In this article, I will examine English and Turkish legal systems regarding shareholder's remedies especially with regard to challenging shareholders' resolutions. In the first part of this article, I will provide brief descriptions of the foregoing legal systems and highlight differences and similarities between these systems. In the second part, legal, historical, and economic reasons behind similarities and differences between these jurisdictions will be analyzed. In the last part, a legal and economic efficiency analysis of these legal systems will be made.

A Comparative and Functional Approach, 3. edn, Oxford University Press, pp. 79-102; **Göktürk, Kürşat** (2017) "Anonim Şirket Pay Sahipliği Haklarının Kullanılmasında Muhalefet Şartı", İnönü Üniversitesi Hukuk Fakültesi Dergisi, V: 8, N: 2, p. 55.

[10] **Yong, Cheng** (2012) "On Protection of Rights and Interests of Minority Shareholders in Listed Company", International Journal of Business Administration, Vol: 3, I: 2, p. 54.

[11] **Yong,** pp. 54-55.

I. COMPARATIVE DESCRIPTION OF SHAREHOLDER REMEDIES UNDER ENGLISH AND TURKISH LAW SYSTEMS

A. ENGLISH LEGAL SYSTEM

Shareholder remedies and protection of the minority shareholders are among the most controversial issues under English company law. Unsurprisingly English law system has a different legal and practical character from legal systems in Continental Europe. As a starting point it could be said that judicial control of voting rights is quite rare and limited under English law because voting rights are seen as property rights[12]. Gower & Davies spelt out the proprietary nature of voting rights as '*the holder may exercise in his or her own selfish interest even if these are opposed to those of the company*'[13]. This nature of the voting rights is well presented in the case law, most remarkably in Northern Countries Securities Ltd v Jackson & Steeple Ltd[14].

Under English law system directors' powers have fiduciary character, and directors have to exercise their powers in accordance with the interest of the company and other stakeholders (other shareholders, creditors etc.). However, shareholders of a company do not have that kind of fiduciary obligation[15].

For a systematic analysis of shareholder remedies, both common law and statutory law should be reviewed under the English legal system[16].

1. Common Law Regulation

Under common law, the only two grounds for limiting power of shareholders to adopt resolutions are as follows; (i) shareholders' decisions

---

12 **Grundmann, Stefan** (2011) European Company Law, Organization, Finance and Capital Markets, 2. edn, Intersentia Press, p. 259.

13 **Davies/Worthington/Micheler**, p. 691.

14 [1974] 1 WLR 1133 (Chancery Division). Also in Halton International Inc. (Holdings) Sarl v Guernroy Ltd [2005] EWHC 1968 (Ch).

15 **Davies/Worthington/Micheler**, p. 692.

16 **Austin, Robert P./Ramsay, Ian M./Ford, Harold Arthur John** (2013) Ford's Principles of Corporations Law, 15. edn, LexisNexis, p. 636.

approving breaches of duty of directors, and (ii) amendments to articles of association of the company especially amendments regarding the compulsory transfer (expropriation) of shares[17]. Although, theoretically these are the limits on general meeting resolutions at common law system, it is quite rare for courts to intervene in the internal affairs of a company and invalidate and annul these resolutions[18].

a. Ratification of Breaches of Duties of Directors

At common law, there are limits imposed by courts on the conflicted majority to ratify breaches of duties of directors in general assembly meetings. The leading case regarding this issue is North West Transportation Company Limited v Beatty of Privy Council[19]. This judgment clearly states that:

> '*A director of a company is precluded from dealing, on behalf of the company, with himself, and from entering into engagements in which he has a personal interest conflicting, or which possibly may conflict, with the interest of those whom he is bounded by fiduciary duty to protect... Any such dealing or engagement may, however, be affirmed or adopted by the company, provided such affirmance or adoption is not brought about by unfair or improper means, and is not illegal or fraudulent or oppressive those shareholders who oppose it...*'

Therefore, with regard to the ratification of breaches of duties of directors, the limit on general meeting is that the ratification cannot be illegal or fraudulent or oppressive towards the minority[20]. An illegal or oppressive resolution in this regard would be invalidated by the court.

---

17 **Kershaw**, pp. 587-603; **Davies/Worthington/Micheler,** pp. 691-700.

18 **Kershaw,** p. 587; **Rajak, Harry** (1972) "The Oppression of Minority Shareholders", The Modern Law Review, Vol: 35, No: 2, p.156.

19 (1987) 12 App Cas 589.

20 **Kershaw**, p. 589.

b. Amending the Articles of Association

According to the Section 21-22 of CA 2006, articles of association of a company can be altered by a 'special quorum' provided that a higher threshold does not exist in the constitution[21]. However, the threshold is not the only legal constraint on shareholders' power to amend the articles of association. Pursuant to Allen v Gold Reefs of West Africa case[22], power of amending the articles of association must be exercised '*bona fide for the benefit of the company as a whole*', otherwise the minority shareholder who objected to amendment can initiate a lawsuit to invalidate the resolution[23]. Although there is no consensus on the meaning of '*bona fide for the benefit of the company as a whole*', it explicitly constitutes a restriction on the decision-making power of the shareholders[24]. In this context, the '*bona fide*' standard states that the amendment to the articles of association is made for the benefit of the company and not against or for the benefit of one or some of the shareholders.

It should also be noted that the court would apply a low threshold for its review of amendments in line with the '*bona fide*' standard[25]. As Kershaw notes, '*in most instances a good reason explaining a general meeting decision will be available to comply with the standard*'[26]. Therefore, the complaining shareholder is under a heavy burden to prove that the shareholders' power to amend articles of association has not been exercised in good faith[27]. Furthermore, the notable Shuttleworth v Cox Bros Ltd[28] case established an objective standard for the '*benefit of the company*' by considering it from the '*reasonable men*' point of

21 **Kershaw**, p. 590.

22 [1900] 1 Ch.656, CA.

23 **Joffe, Victor/ Drake, David/ Richardson, Giles/ Lightman, Daniel/ Collingwood, Timothy** (2015) Minority Shareholders: Law, Practice and Procedure, 4. edn, Oxford University Press, p. 101.

24 **Kershaw**, p. 593.

25 **Kershaw**, p. 601.

26 **Kershaw**, p. 601.

27 **Joffe / Drake / Richardson / Lightman / Collingwood**, p. 104.

28 [1926] All ER Rep 498.

view. However, in the case that the amendments create explicit, direct discrimination between the majority and minority shareholders, it is highly likely that it will be annulled[29].

Especially, amendments introducing compulsory transfer of shareholders' shares are quite controversial. At common law it is clear that compulsory transfer clauses introduced into the articles of association are valid and enforceable[30]. However, the case law suggests that compulsory transfer clauses could only be valid if they are adopted *bona fide* in the interest of the company not only majority shareholders[31]. Brown v British Abrasive Wheel Co,[32] Allen v Gold Reefs, Sidebottom v Kershaw, Leese & Co Ltd[33], and Dafen Tinplate Co Ltd v Llanelly Steel Co Ltd[34] are the most notable cases in this matter. All of these cases suggest that amendment of articles of association which make shares of the minority subject to compulsory transfer will only be valid if the resolution is in the interest of the company[35] Moreover, comparing to the other amendments, these amendments would be subject to more intense and detailed scrutiny by the courts. As an additional requirement, amendments providing compulsory transfer will be valid only if shareholder(s) in question adversely affects the company[36].

---

29 Greenhalgh v Arderne Cinemas [1951] Ch 286; **Kershaw**, p. 602.

30 **Mukwiri, Jonathan** (2013) "Takeovers and Incidental Protection of Shareholders", European Company & Financial Law Review, Vol: 10, No: 3, p. 432; **Davies/Worthington/Micheler**, p. 693; Phillips v Manufacturers' Securities Ltd (1917) 86 LJ Ch 305, 116 LT 290.

31 **Davies/Worthington/Micheler**, p. 693.

32 [1919] 1 Ch. 290.

33 [1920] 1 Ch. 154, CA.

34 [1920] 2 Ch. 124.

35 **Davies/Worthington/Micheler**, p. 693.

36 **Hannigan, Brenda** (2007) "Altering the Articles to Allow for Compulsory Transfer - Dragging Minority Shareholders to a Reluctant Exit", Journal of Business Law, p. 471.

2. Statutory Regulation

Save for the amendment of articles of association, 'patchy'[37] common law does not provide an effective protection to the minority against oppression of the majority. In order to soften this attitude of common law and strengthen the minority protection regime, some statutory mechanisms are introduced to English Law.

The most important statutory mechanism in this regard is 'unfair prejudice remedy' which is introduced by Companies Act 1980 and repeated in the Companies Act 2006[38]. Section 994 of CA 2006 provides that:

> "*A member of a company may apply to the court by petition for an order under this Part on the ground-*
>
> *(a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
>
> *(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.*"

Conduct of company' affairs, unfair prejudice and members' interests are the three most important elements of the UPR and all of these three elements are inter-related and connected to each other. In order to resort to this remedy, all of these elements must be satisfied[39]. Before analyzing these elements, it should first be clarified that the UPR is not a tool for courts to '*review corporate actions according to judiciary's view of what is fair to company's shareholders*[40].'

---

37 **Davies/Worthington/Micheler**, p. 719.

38 **Kershaw**, p. 608.

39 **Hollington, Robin** (2013) Hollington on Shareholders' Rights, 7. edn, Sweet & Maxwell, p. 225.

40 **Kershaw**, p. 617.

a. Element 1: Conduct of the Company's Affairs

Conduct of the company's affairs can be any corporate action taken by or on behalf of the company including but not limited to amendment of articles of association, appointment or removal of directors, agreements concluded by the company[41]. Therefore, for any action to fall into this category, it should be taken by shareholder, board of directors, or any person on behalf of the company with delegated power[42]. The UPR may address voting powers of shareholders and management powers of directors and delegated persons[43]. However, corporate conduct requirement is a critical issue and applied strictly in many cases[44]. For example, a member's private dealing with his share is not a corporate conduct[45].

b. Element 2: Interest as a Member

For resorting to the UPR, a petitioner has to demonstrate his interest as member. However, Interest as a member is a wider concept than the statutory or contractual rights of the members[46]. In order to have interest as a member, capacity as a shareholder is not necessary, an interest that is sufficiently connected with the shareholding will be enough for resorting to the UPR[47]. Members' interest covers interests of the beneficial owner of the shares, even though they do not have capacity as a member[48]. In case law, members' interest is given a wide interpretation by the courts and it could be said that it is quite uncommon for a petition to be rejected on this ground[49].

---

41 **Kershaw**, p. 616.

42 **Kershaw**, p. 616.

43 **Davies/Worthington/Micheler,** p. 720.

44 Astec (BSR) Plc, Re [1998] 2 B.C.L.C. 556; **Hollington**, pp. 228-231.

45 **Hollington**, p. 232.

46 Re a Company [1986] BCLC 376.

47 **French, Derek/ Mayson, Stephen/ Ryan, Christopher** (1973) Mayson, French & Ryan on Company Law, 29. edn, Oxford University Press, pp. 578-579; Westbourne Galleries Ltd, Re [1973] A.C. 360.

48 **French/Mayson /Ryan**, p. 578.

49 **Hollington**, p. 237.

c. Element 3: Unfair Prejudice

Unfair prejudice is the central and contentious element of the UPR. Re Saul Harrison and Sons Plc[50] is one of the most notable cases for the development and formulation of unfair prejudice concept as an element of the UPR. In this case, Neill LJ stated that '*the conduct (being complained of) must be both prejudicial (in the sense of causing prejudice or harm to the relevant interest) and also unfairly...*' Also in the same case, Hoffman LJ noted that '*fairness is being used in the context of commercial relationship*' and '*trivial or technical infringements of the articles were not intended to give rise to petitions*'. Accordingly, for resorting to the remedy, the conduct must be unfair, prejudicial, significant and must be engaged in a commercial sense[51]. Also, in O'Neill v Phillips[52], Lord Hoffman underlined that '*the concept of fairness must be applied judicially and the content which is given by the courts must be based upon rational principles.*'

Legitimate expectation is also a significant concept for the UPR. Under certain circumstances it is recognized by the courts that a member has a '*fundamental understanding (legitimate expectation)*[53]' which is not regulated in articles of association or any other document of the company. Failure to run the company in line with the legitimate expectations of the member would constitute an unfair prejudice. In line with the foregoing, we can say that Section 994 of CA 2006 protects 'legitimate' expectations of the members in addition to their rights[54]. J Parker explained legitimate expectation as '*a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former*[55].' Also, Lord Hoffman in O'Neill v Phillips

---

50 [1995] 1 BCLC 14.

51 **Kershaw**, 619; **French/Mayson /Ryan**, p. 579; Re Unisoft Group Ltd [1994] 1 BCLC 609.

52 [1999] 1 WLR 1092.

53 **Davies/Worthington/Micheler**, p. 725.

54 **Davies/Worthington/Micheler**, p. 725.

55 Astec (BSR) Plc, Re [1998] 2 B.C.L.C. 556.

approved the above-mentioned statement and emphasized that personal hopes or beliefs of members are not within the scope of legitimate expectation[56].

d. Examples of Unfair Prejudicial Conduct[57]

Examples of unfair prejudicial conduct can be listed as follows; majority shareholders' taking financial benefits from minority[58], bad management by the company's managing director and principal shareholder (managing director used financial assets of the company for himself and for his family)[59], conducting company's affairs in breach of criminal law[60], unfair prejudicial conduct of affairs of one of the companies within a group[61], improper removal of auditor from office[62].

e. Available Remedies

Section 996 of the CA 2006 sets out available remedies with regard to the UPR, however this list is not exhaustive and courts can grant any other remedy they seem appropriate[63]. Under Section 996 the court can;

(a) '*regulate the conduct of the company's affairs in the future;*

(b) *require the company to refrain from doing or continuing an act complained of, or to do an act that the petitioner has complained it has omitted to do;*

(c) *authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;*

(d) *require the company not to make any, or any specified, alterations in its articles without the leave of the court;*

---

56 **French/Mayson /Ryan**, p. 581.

57 **French/Mayson /Ryan**, pp. 582-587.

58 Re London School of Electronics Ltd [1986] Ch 211.

59 Re Elgindata Ltd [1991] BCLC 959.

60 Bermuda Cablevision Ltd v Colica Trust Co Ltd [1998] AC 198.

61 Re Grandactual Ltd [2005] EWHC 1415 (Ch).

62 **French/Mayson /Ryan**, p. 586.

63 **Kershaw**, p. 631.

(e) *provide for the purchase of the shares of any members of the company by other members or by the company itself.*'

In addition to the above-mentioned remedies, the court can resort to any other remedy that it deems appropriate such as ordering payment of compensation to the petitioner[64]. Share purchase orders are the most common orders issued by courts under S 994[65]. In this case, the company, majority shareholders or any shareholder would be ordered to buy shares of the petitioner. In exceptional cases, the court may order the majority to sell its shares to the petitioner[66].

f. Procedural Issues

The UPR is a general and expansive remedy for all shareholders. Any shareholder can apply to the court on the grounds of unfair prejudice[67]. However, considering the power that majority possesses over the management of the company, it would be almost impossible for majority to be subject to unfair prejudice[68]. Therefore, by the virtue of S 994 (1) and (2) any shareholder including a person to whom shares in the company have been transferred or transmitted by operation of law although he is not a member of the company can be a petitioner under S 994. Also, there is no time limitation for petitioning under S 994[69], however the court has discretion to reject petition in the case that the event transpired a long time ago[70].

Moreover, although arbitrability of unfair prejudice remedy is quite controversial[71], the latest case law[72] demonstrated English Courts' willingness to

---

64 **Kershaw**, p. 632.

65 **Kershaw**, p. 632; **French/Mayson /Ryan**, p. 590; **Hollington**, p. 331.

66 Re Brenfield Squash Racquets Club Ltd [1996] 2 BCLC 184.

67 **Davies/Worthington/Micheler**, p. 720; **Kershaw**, pp. 615-616.

68 **Davies/Worthington/Micheler**, p. 720; **Kershaw**, p. 615.

69 **French/Mayson /Ryan**, p. 576.

70 Re Grandactual Ltd [2005] EWHC 1415 (Ch).

71 **Griffin, Stephen** (2011) "Case Comment: The Primacy Afforded to an Arbitration Agreement in the Context of a Petition Against Unfairly Prejudicial Conduct", Sweet and Maxwell's Company Law Newsletter, No: 305, pp. 1-4.

72 Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855.

accept arbitration clauses' effectiveness within the context of shareholder disputes including the UPR[73].

B. TURKISH LAW SYSTEMS

Unlike English law system, with regard to controlling voting rights of shareholders, and invalidating shareholder resolutions Turkish Law system is much more straightforward. Turkish Commercial Code (TCC) contain specific and different provisions for nullity and annullability of resolutions[74]. For nullity or annulment of resolutions, in most cases a difference between private and public companies does not exist[75].

1. Nullity of Resolutions

In line with the Article 447 of Turkish Commercial Code numbered 6102 ("TCC"), resolutions violating or limiting or abolishing inalienable rights of shareholders such as voting right in the general meeting or the right to information, and resolutions inconsistent with basic principles of company law including capital maintenance principle and protection of creditors are accepted as *ipso iure* null and void under Turkish legal systems[76]. It should also be noted that the issues listed here are not exhaustive, Article 477 of TCC lists some elements by way of illustration, and these examples can be expanded. The court would declare the resolution as null

---

[73] **Wendy, Kennet** (2013) "Arbitration of Intra-Corporate Disputes", International Journal of Law and Management, Vol: 55, No: 5, p. 333.

[74] Article 445 of TCC regulates grounds for annulment lawsuits; Article 446 of TCC regulates persons who can file annulment lawsuits; Article 447 of TCC regulates nullity of shareholders resolutions, Article 448 regulates some special procedures for announcement and collateral; Article 449 regulates stay of execution of annulment decisions; Article 450 of TCC regulates effects of annulment decisions; Article 451 of TCC regulates liability arising from predatory lawsuits.

[75] For detailed information: **Manavgat, Çağlar** (2016) Hukuki Bakımdan Halka Açık Anonim Ortaklıklar ve Halka Arz, Ankara, Banka ve Ticaret Hukuku Araştırma Enstitüsü.

[76] **Tekinalp, Ünal/Poroy, Reha/Çamoğlu, Ersin** (2014) Ortaklıklar Hukuku I: Giriş, Adi Ortaklık, Ticaret Ortaklıklarına İlişkin Genel Hükümler, Kollektif, Komandit, Anonim, Halka Açık Anonim Şirketler, İstanbul, Vedat Kitapçılık, pp. 527-528. **Ergün, Mevci** (2021) Anonim Şirketler Hukuku, Ankara, Yetkin Yayınları, p. 602 vd.

and void upon initiation of a declaratory lawsuit[77]. This lawsuit can be initiated by anyone who shows interest against the company, and it must be taken into consideration by the court ex officio since it is related to public order[78].

2. Annulment Lawsuits

Historically, legally[79] and practically annulment lawsuits have a more substantial place in Turkish legal system[80] and they are more widespread. Violations of law, and articles of association of the company are the two grounds for challenging a resolution under Turkish law systems[81]. A shareholder's exercise of his voting rights in line with his or any other person's individual benefits at the expense of the company or other shareholders; and violation of right to information provided that the information is essential for the exercise of voting rights, violation of the 'good faith principle' is also another additional ground for challenging the resolutions under the Article 445 of TCC.

As a last note, for the irregularities in the announcement/organization of the general assembly meetings, Turkish law recognizes a limited application of the test of relevance[82]. For example, an irregularity in the invitation to the general assembly meeting is not in itself a ground for annulment; if the shareholder attends the general assembly meeting and does not object, the irregularity is deemed to have disappeared[83].

---

77 **Tekinalp/Poroy/Çamoğlu,** p. 543; **Moroğlu, Erdoğan** (2017) Anonim Ortaklıkta Genel Kurul Kararlarının Hükümsüzlüğü, İstanbul, On İki Levha Yayıncılık, p. 185.

78 **Pulaşlı, H.** (2022) Şirketler Hukuku Genel Esaslar, Ankara, Adalet Yayınevi, p. 357.

79 In terms of the security of legal transactions, it is accepted that the nullity should be limited and the general assembly resolution should be cancelled in cases of doubt.

80 **Ayhan, R., Çağlar, H., Özdamar, M.** (2023) Şirketler Hukuku Genel Esaslar, Yetkin Yayınevi, Ankara, p. 268; **Pulaşlı, H.** (2022) Şirketler Hukuku Şerhi Cilt II, Ankara, Adalet Yayınevi, p. 1034; **Grundmann**, p. 258; **Kersting, Christian** (2015) "The Role of Shareholders in Public Companies in Germany" in Holger Fleischer, Jesper Lau Hansen, Wolf -Geroger Ringe (eds) German and Nordic Perspectives on Company Law and Capital Markets Law, Mohr Siebeck.

81 Article 445 of TCC.

82 A resolution will be annulled in case the violation has an influence on the result of the voting.

83 **Pulaşlı, H.** (2022), p. 364.

3. Procedural Issues

Under Turkish law, annulment lawsuits must be initiated within three months following the adoption of the resolution.

Under Turkish legal system, (i) each shareholder[84] who is present at the shareholders' meeting and lodges his dissents in the minutes[85]; (ii) each shareholder whether or not they were present at the meeting or not, whether or not they voted negatively or not, claiming that the invitation was not duly made, the agenda was not properly announced, persons or their representatives who are not authorized to attend the general assembly meeting attended and voted at the meeting[86]; (iii) board of directors, and (iv) each member of the board of directors if by executing the resolution would be liable for damages can initiate the annulment lawsuit[87].

Also, due to its public nature, under Turkish legal system intra-corporate disputes are not arbitrable and the lawsuit must be filed to the court of the region where the company has its registered office[88].

The lawsuit must be initiated against the company not against the shareholders[89], and the company is represented by board of directors. Also, in line with the Article 448/(1) of the TCC, the board of directors has to announce the initiation of the lawsuit and developments regarding the lawsuit in company's website, and in the public disclosure platform if it is a listed

---

84 The claimant has to carry shareholders status during the lawsuit. Turkish Court of Cassation 11th Law Chamber, E: 2019/5331, K: 2020/3709, T: 30.09.2020; Turkish Court of Cassation 11th Law Chamber, E: 2015/8587, K: 2016/3001, T: 22.06.2015.

85 Turkish Court of Cassation 11th Law Chamber, E: 2014/9351, K:2014/18769, T: 02.12.2014; Turkish Court of Cassation 11th Law Chamber, E: 2020/537, K: 2020/5167, T: 18.11.2020.

86 There is no such a condition in Article 245 of the GSCA.

87 **Tekinalp/Poroy/Çamoğlu,** p. 539. Turkish Court of Cassation 11th Law Chamber, E: 2014/9351, K: 2014/18769, T: 02.12.2014; Turkish Court of Cassation 11th Law Chamber, E: 2013/13768, K: 2014/15745, T: 16.10.2014.

88 **Wirth, Gerhard/Arnold, Michael/Morshauser, Ralf** (2010) Corporate Law in Germany, Verlag C. H. Beck, München, p. 160.

89 Turkish Court of Cassation 11th Law Chamber, E: 2015/8514, K: 2016/5320, T: 11.05.2016.

company. Under Turkish law, the initiation of the lawsuit does not stop implementation of the resolution unless the court grants a provisional injunction regarding it.

II. ANALYZING LEGAL DIFFERENCES AND SIMILARITIES BETWEEN JURISDICTIONS

As descripted in the first part, there are profound differences between English and Turkish legal systems. Understanding reasons for these similarities and differences are important for an economic, cultural and legal efficiency analysis.

In this study, three hypotheses set out as the reasons for differences and similarities. As put forward in the literature the first hypothesis is that differences between corporate ownership structures of these countries is the primary underlying reason for the differences, secondly unlike Turkish law system, *ex ante* contractual minority protection mechanisms are legally and historically more effective under English legal system, and finally legal nature of shareholder rights are different under these law systems.

A. DIFFERENCES IN CORPORATE OWNERSHIP STRUCTURES AND FOCUS OF THE LEGAL SYSTEM

Corporate law and corporate governance in particular aim to control and minimize 'conflict of interest' between corporate actors[90] which is conceptualized as '*agency problem*' or '*principal-agent problem*' by economy scholars[91]. There are three forms of agency problems in joint stock companies[92]. The first form is the conflict between shareholders (as principals) and managers (as agents), the second one is between controlling shareholders (as principals) and minority shareholders (as agents), finally the third one is between the company (including shareholders and managers) and other parties such as creditors, employees etc.

---

90 **Kraakman and Others**, p. 29.

91 **Kraakman and Others**, pp. 29-30.

92 **Kraakman and Others**, pp. 29-30.

The third form of agency problem, the agency conflict between the company and third parties, is likely to arise in all jurisdictions regardless of its legal, economic, and social structure. However, the first and second form of agency problems are more of a consequence of the legal, economic and social structure in the jurisdiction.

Ownership structure of companies is an important indicator of the most common agency problem in a jurisdiction. While dispersed ownership structure leads to first form of agency problems, concentrated ownership structure leads to second form of agency problems[93]. In companies with dispersed ownership structure, shareholders do not have effective mechanisms to control managers and the company accordingly, this prompts managers to exploit their powers and as a result, conflict of interest between shareholders and managers arises[94]. However, in companies with concentrated ownership structure, minority shareholders (generally) do not have enough power to affect controlling shareholders and management of the company, and this enables and motivates the majority to oppress the minority.

In consideration of the foregoing, company law/corporate governance system of a jurisdiction could be described as a response to the most common agency problems in the jurisdiction. Some scholars[95] claim that dispersed ownership structure is a result of developed minority protection regime, and if there is a strong minority protection regime, widely held companies will become more widespread. However, I believe that legal system is a response produced by economic and social infrastructure of the country. In other words, '*the choice of some corporate rules depends on the existing pattern of ownership*'[96] There is no

---

[93] **Vetoruzzo, Marco/Conac, Pierre-Henri/Goto, Gen/ Mock, Sebastian/Notari, Mario/Reisberg, Arad.** (2015) Comparative Corporate Law, West Academic, p. 32; **Berle, Adolf A./ C. Means, Gardiner** (1933) The Modern Corporation and Private Property, Macmillan Co. New York; **Kraakman and Others**, p. 29.

[94] **Kraakman and Others**, p. 29-30.

[95] **Porta, Rafael La/Lopez-De-Silanes, Florencio/Shleifer, Andrei** (1999) "Corporate Ownership Around the World", LIV the Journal of Finance, p. 471.

[96] **Bebchuk, Lucian Arye/ Roe, Mark J.** (1999) "A Theory of Path Dependence in Corporate Ownership and Governance", Stanford Law Review, Vol: 52, p. 166.

doubt that, ownership structure is not the only determinant of the legal system[97], political, historical, social reasons are also important[98].

In jurisdictions where companies have dispersed ownership structure, company law aims to mitigate agency problems between managers and shareholders and addresses these issues more dominantly, whereas if the concentrated ownership is prevalent, the legal system is more likely to address agency problems between the majority and the minority preponderantly. Therefore, company law system of a country could be described as legal strategy responsive to economic, social structure of a country and problems associated with this structure. In this manner, company law has a '*legitimizing and perpetuating function of the ownership system*[99].'

At this point, I must state that this study does not analyze differences between minority protection regimes of the above-mentioned jurisdictions. The main focus of this study is lawsuits against shareholder resolutions. Although some scholars state that English legal system provides a better minority protection regime than continental European jurisdictions[100], Turkish law provides a more rigid and precise legal mechanism against shareholders' resolutions. Under English law system, there is no statutory mechanism for challenging a resolution. The UPR is a statutory mechanism protecting the minority against all kinds of abuse of the majority, the board and any other organ/person. The UPR is not necessarily a mechanism for challenging shareholders' resolution, although annulment of a resolution is among available

---

97 **Vetoruzzo, Marco/Conac, Pierre-Henri/Goto, Gen/ Mock, Sebastian/Notari, Mario/Reisberg, Arad,** p. 32. **Roe, Mark J.** (2004) "Modern Politics and Ownership Separation", Gordon, Jeffrey N/Roe, Mark J. (eds.), Convergence and Persistence in Corporate Governance, Cambridge University Press, pp. 269-270.

98 **Roe, Mark J.** (2003) Political Determinants of Corporate Governance: Political Context, Corporate Impact, Oxford University Press, on Demand. pp. 2-15.

99 **Sáez, Maria Isabel/ Riaño, Damaso** (2013) "Corporate Governance and the Shareholders' Meeting: Voting and Litigation", European Business Organization Law Review (EBOR), Vol: 14 No: 3. p. 352.

100 **Sáez /Riaño,** p. 362.

remedies. At common law it is almost impossible to invalidate/annul a resolution through a lawsuit, and invalidation of a resolution is an exceptional remedy for English courts. However, in Türkiye, lawsuits against shareholders' resolutions are fairly common, and invalidating the resolution is the only available remedy for the courts if the conditions have been met. In this regard, without making an effectiveness analysis, Turkish law could be described as more detailed and stronger with regard to challenging shareholders' resolutions.

In the UK, vast majority of companies have dispersed ownership structure and it is quite rare for investors to hold large equities[101]. Moreover, since the 1960s institutional ownership has become more widespread in the UK[102] which is an important reason for dispersed ownership structure because institutional investors generally hold small equity stakes and do not exercise management rights actively[103]. Therefore, due to its high level of dispersed corporate ownership structure, most of the English companies do not have a controlling shareholder.

By contrast, in Continental European countries including Germany, concentrated ownership is the common form of corporate ownership[104]. Like other Continental European countries, both in closed and listed companies, ownership is substantially concentrated in Germany[105]. As an empirical study, database prepared by La Porta et al.[106] is quite helpful for a comparative

---

[101] **Khan, Tehmina** (2006) Company Dividends and Ownership Structure: Evidence from UK Panel Data", The Economic Journal, Vol: 116, No: 510, p. C172.

[102] **Gedajlovic, Eric R./Shapiro, Daniel M.** (1998) "Management and Ownership Effects: Evidence from Five Countries', Strategic Management Journal, Vol: 19, No: 6, p. 549; **Davies/Worthington/ Micheler**, p. 448.

[103] **Khan**, p. C172; **Davies/Worthington/ Micheler**, p. 448.

[104] **Kirchmaier, Thomas/Grant, Jeremy** (2005) "Corporate Ownership Structure and Performance in Europe" European Management Review, Vol: 2, No: 3, p. 232.

[105] **Wymeersch, Eddy/Baums, Theodor** (1969) Shareholder Voting Rights and Practices in Europe and The United States, Kluwer Law.

[106] **La Porta, Rafael/Lopez-De-Silanes, Florencio/Shleifer, Andrei** (1999) "Corporate Ownership Around the World", LIV the Journal of Finance, Vol: 54, No: 2, pp. 492-496.

comparison of ownership structures. The database is prepared relying on voting rights rather than cash flows. Although there are six forms of ownership according to ultimate ownership in the database, for the purpose of this study, I divided companies into two groups as widely held companies and controlled companies. In the following table, if a shareholder holds at least 20 percent of shares of the company, the company is recognized as controlled company.

Country	Widely Held	Controlled
Table A. Control of Large Publicly Traded Companies in the UK and Germany		
UK	100%	0%
Germany	50%	50%
Table B. Control of Medium Sized Publicly Traded Companies in the UK and Germany		
UK	60%	40%
Germany	10%	90%

Turkish companies are also highly concentrated[107]. Families are in the center of corporate life and they directly or indirectly, own 80 percent of the shares of the listed companies[108]. In his paper analyzing 257 Turkish listed companies Yurtoğlu states that '*the majority of these firms are ultimately owned and controlled by families who organize a large number of companies under a pyramidal ownership structure*[109].' Accordingly, ownership concentration in Turkish companies is even higher than German companies.

Additionally, while considering agency problems, private benefits of the control should also be taken into consideration. Gilson and Schwartz define private benefit as '*a pecuniary or nonpecuniary gain that the controlling shareholder acquires by virtue of its position, and does not share with minority*

[107] **Gürsoy, Güner/Aydoğan, Kürşat** (2002) "Equity Ownership Structure, Risk-Taking and Performance: An Empirical Investigation in Turkish Companies", Emerging Markets, Finance & Trade, Vol: 38, p. 4.

[108] **Yurtoğlu, B. Burçin** (2003) "Corporate Governance and Implications for Minority Shareholders in Turkey", Turkish Economic Association Discussion Paper 2003/7, p. 1.

[109] **Yurtoğlu, B. Burçin** (2000) "Ownership, Control and Performance of Turkish Listed Firms", Emprica No: 27, p. 216.

shareholders[110].' Influence over management of the company, '*use of a company's money to pay for perquisites*[111]' can be shown as examples of private benefits. There are substantial differences between private benefits of control in our three sample jurisdictions. According to Dyck and Zingales, value of private benefits constitutes 2% (negligible) of the value of the company in the UK, 10% (average) in Germany and 30% (high) in Türkiye[112]. In addition to other variables such as accounting standards, tax compliance, competition, etc., it is clear that ownership structure is an important determinant of private benefits of control, and concentrated ownership structure provides important private benefits[113]. Therefore, company law system can also be defined as a balancing mechanism within the context of its responsive nature.

B. CONTRACTUAL PROTECTION OF THE MINORITY (SELF-HELP)

Another important reason behind the differences between English and Turkish systems is the traditionally different approaches of these systems to contractual protection of minority rights. Shareholders' Agreements (SHA) are among the most widespread type of these agreements. It must be noted that SHAs are not appropriate for listed companies, and practically it is generally executed in closely held companies[114].

In the simplest term, SHAs are '*contracts among some (or sometimes all) shareholders regulating their relationship or the exercise of their rights*[115]'. In addition

---

[110] **Gilson, Ronald J/Schwartz, Alan** (2012) "Contracting About Private Benefits of Control", Columbia University Center for Law & Economics Studies Law & Economics Research Paper No: 436, p. 3.

[111] **Dyck, Alexander/ Zingales, Luigi** (2002) "Private Benefits of Control: An International Comparison", NBRA Working Paper Series, Working Paper 8711, p. 7.

[112] **Dyck/ Zingales,** p. 45.

[113] **Nenova, Tatiana** (2003) "The Value of Corporate Voting Rights and Control: A Cross-Country Analysis", Journal of Financial Economics, Vol: 68, No: 3, pp. 327-329.

[114] **Dowson, Ian J./Stephenson, IS** (1993) The Protection of Minority Shareholders, Tolley Publishing, pp. 1-2.

[115] **Vetoruzzo/Conac /Got /Mock /Notari /Reisberg**, p. 425.

to its other functions, SHAs have a vital function for protection of the minority[116]. This function of the SHA is explained as '*some well-drawn stockholders` agreement entered into contemporaneously with the formation of a corporation is the most effective means of protecting the minority shareholder*' in Blount v Taft[117]. It is widely accepted that minority shareholders have a bargaining power over contractual mechanisms thanks to their investment into the company[118].

It should be noted that SHAs and articles of association of company are different. While SHAs are governed by contract law and are enforceable according to contractual principles[119], articles of association are subject of company law and regulated by statutes[120].

Historically, English legal system is quite lenient with SHAs, and its use is '*a standard practice*' for close companies[121]. Like any other contract, a SHA may be enforced by injunction[122]. In British Murac Sndicate Ltd v Alperton Rubber Co Ltd[123], the court granted an injunction to restrain amendment of the articles of association which would violate contractual rights of the parties. Although, binding effect of a SHA on company is controversial[124], it could be claimed that SHAs have a historical function for protection of minority in English Law.

---

116 **Okutan-Nilsson, Gül** (2003) Anonim Ortaklıklarda Paysahipleri Sözleşmeleri, Çağa Hukuk Vakfı Yayınları, p. 77.

117 Blount v Taft 246 S.E.2d 763 at 769 (1978) (Supreme Court of North Carolina).

118 **Davies/Worthington/ Micheler**, p. 711.

119 **Okutan-Nilsson**, p. 79. **Esin, İsmail G.** (2020) Birleşme ve Devralmalar, İstanbul, On İki Levha Yayıncılık, p. 286-292; **Kerem, Bilge** (2017) Pay Sahipleri Sözleşmesi Kapsamında Anonim Şirketlerde Pay Devrinin Kısıtlanması, İstanbul, On İki Levha Yayıncılık, p. 3-4; **Demirkol, Berk** (2012) Pay Sahipleri Sözleşmesi ile Getirilen Pay Devir Kısıtlamaları, Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, Özel Sayı: Prof. Dr. Duygun Yarsuvat'a Armağan, V: IX, N: 2, p. 851-883.

120 **FitzGerald, Sean/Muth, Graham** (2012) Shareholders' Agreements, Sweet & Maxwell, p. 3.

121 **Davies/Worthington/Micheler**, p. 244-245.

122 **Mantysaari, Petri** (2005) Comparative Corporate Governance: Shareholders as Rule Maker, Springer Science & Business Media, p. 146.

123 [1915] 2 Ch. 186.

124 Welton v Saffery [1897] AC 229; Southern Foundries (1926) Ltd v Shirlaw [1940] AC 70.

Unlike English law system, Turkish law system could be described as more resistant or 'not-familiar' to protection of minority shareholders by SHAs until the middle of 20th century[125]. Under current legal system as a basic agreement, theoretically, it is binding and valid among shareholders. However, it does not have an effect on the company, and its enforcement by an injunction is quite difficult[126]. In practice, a petitioner cannot request specific performance of a SHA, but he can only request his damages due to the breach of SHA. It could be said that under both English and Turkish law systems, shareholder's freedom of contract in terms of SHA and enforceability of SHAs are not legally crystal clear[127].

In line with the foregoing, I believe that different historical and legal approaches of those systems to contractual mechanisms between shareholders are both a result of and reason for differences between judicial review of shareholders' resolutions. Since English law historically allows operation of contractual protection mechanisms, it has produced a more non-interventionist approach towards shareholders' resolutions.

C. LEGAL CHARACTER OF SHAREHOLDER RIGHTS/POWERS

Legal characterization of shareholder rights by the legal systems can be mentioned as another reason for the difference between English and Turkish law systems regarding the challenging shareholder resolutions. As explained in the first part, under English law voting rights are property rights and powers of shareholder do not have fiduciary character[128], therefore, ownership in a company has more of an investment (contractual) nature than public

---

[125] **Kulms, Rainer** (2001) "A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany", European Business Organization Law Review (EBOR), Vol: 2, No: 3-4, p. 685.

[126] **Mantysaari, Petri**, p. 306; **Okutan-Nilsson**, p. 277.

[127] **Kulms, Rainer,** pp. 685-686; **Erdoğan, Ersin** (2017) "Yapma Borçlarının İcrası ve Bazı Temel Sorunlar", Ankara Barosu Dergisi, Vol: 75, No: 2, pp. 145-175, Turkish Court of Cassation 11th Law Chamber, E: 2019/4971, K: 2020/2971, T: 17.06.2020.

[128] **Davies/Worthington/Micheler**, p. 691-692.

nature. However, under Turkish law systems shareholders are not mere investors[129], and challenging shareholders' resolution has a special function for protecting public interest and securing justice in addition to protection of the minority[130].

Moreover, company itself has a different legal nature under English and Turkish law systems. Under English law system, the company could be described as '*the nexus of contractual relationships between shareholders and between the shareholders and the company*[131].' Although mandatory provisions of the CA 2006 have a regulatory nature[132], overall English corporate law system has more of a contractarian nature than regulatory comparing to Turkish system. Because of mandatory structure of Turkish company law system[133], it could be described as regulatory rather than contractual.

Apart from challenging shareholders' resolution, another repercussion of the differences between contractarian/regulatory nature of these systems can be seen in their approach to arbitrability of intra-corporate disputes. English law system recognizes arbitrability of intra-corporate disputes[134] as a result of their contractual nature. But Turkish law system is more conventional and does not accept submission of corporative disputes to arbitration due to its public consequences, and gives exclusive jurisdiction to a court for settlement of the

---

129 **Kersting**, p. 120.

130 **Tekinalp, Ünal** (2013) "Emredici Hükümler Açısından Genel Kurul Kararlarının İptali ve Butlanı Sorunu", Galatasaray Üniversitesi Hukuk Fakültesi Dergisi, N: 2013/2, p. 13-18.

131 **Lee, Joseph** (2015) "Intra-Corporate Dispute Arbitration and Minority Shareholder Protection: A Corporate Governance Perspective", Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, Vol: 83, No: 1, p. 2.

132 **Moore, Marc T.** (2014) "Private Ordering and Public Policy: The Paradoxical Foundations of Corporate 'Contractarianism", Oxford Journal of Legal Studies, Vol: 34, No: 4, p. 725-726.

133 Article 23/5 of GSCA, and Article 340 of TCC; **Karasu, Rauf** (2014) "6102 Sayılı Türk Ticaret Kanunu'na Göre Anonim Şirketlerde Emredici Hükümler İlkesi", Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, Vol: 18, No: 2, p. 311-332.

134 Fulham Football Club (n 80); Wendy Kennet (n 77); **Blackaby, Nigel/Partasides, Constantine/ Redfern, Alan/ Hunter, Martin** (2015) Redfern and Hunter on International Arbitration, 6. edn, Oxford University Press, p. 123.

corporative disputes[135]. Therefore, different legal characterization of intra-corporate disputes by these legal systems has a significant effect on their structure of challenging shareholders' resolutions.

D. EFFICIENCY ANALYSIS FROM A LEGAL AND ECONOMIC PERSPECTIVE

General meetings, shareholders' resolution and challenging these resolutions could be described as 'regulatory' areas of company law both under English and Turkish legal systems[136]. The law needs to intervene in the market and functioning of the company generally in favor of minority shareholders.

For an economic and legal efficiency analysis of this intervention two questions should be answered as to whether the intervention is unavoidable, and whether the instruments used are appropriate, effective and proportional[137]. A detailed indispensability analysis of challenging shareholder resolution is not subject of this paper but in this part, an efficiency analysis from a legal and economic point of view is tried to be made. It could be claimed that while there are some common legal and economic drawbacks of both English and Turkish law systems, Turkish law system is economically less efficient and creates an opportunity for the minority to exploit the company via these lawsuits.

1. Common Problem of English and Turkish Law Systems: Legal Ambiguity and Complexity

Challenging shareholders' resolution or substitute remedies are complex, ambiguous, and create an economically and legally burdensome process in both

---

[135] Article 246/3 of GSCA, and Article 445 of TCC. For detail: **Ayoğlu, Tolga** (2018) "Sermaye Şirketleri Özelinde Şirketler Hukuku Uyuşmazlıklarının Çözümünde Tahkim", İstanbul, On İki Levha Yayıncılık; **Yüksel, Sinan. H.** (2018) "Pay Sahipleri Sözleşmesinden Kaynaklanan Uyuşmazlıkların Çözümünde Tahkim", Akıncı, Z./ Yasan Tepetaş (Editörler), Şirketler Hukuku Uyuşmazlıkları ve Tahkim, İstanbul, On İki Levha Yayıncılık, p. 141-168.

[136] **Sáez / Riaño,** p. 348.

[137] **Spindler, Gerald/Jaenig, Ronny** (2010) "Informing Shareholders and Investors: A Behavioral and Economics Approach from a German Company Law Perspective", The Journal of Interdisciplinary Economics, Vol: 22, No:1-2, p. 89.

English and Turkish law systems. However, English legal system is much more complex and onerous comparing to Turkish legal system.

Setting common law regulation aside due to its limited and well-established application, S 994 of CA 2006 confers '*extensive discretion*[138]' to the courts and its '*general wording*'[139] creates legal ambiguity for the courts, the company and shareholders. The court exercises a wide discretion over both the relief to be granted and the scope of the UPR. As Lord Hoffman stated in O'Neill v Phillips, fairness as a criterion is deliberately chosen to '*free the court from technical considerations of legal right and confer a wide power to do whatever the individual judge happens to think fair*'[140].

Although share purchase orders are the most common remedy granted by the courts, the courts remain entirely free to grant any other remedy they deem appropriate. The width of application of the UPR, and the complete discretion that the court uses creates adverse effects on the company, and shareholders. As noted in the Consultation Paper[141], the sweeping wording of the UPR makes it impossible to predict which facts and incidents would constitute unfair prejudice. That leads claimants to bring all kinds of facts before the court which are unnecessary and do not have connection with the main claim. As a result, a '*complex, often historical, factual investigations and costly, cumbersome*'[142] and '*destructive*[143]' litigation arises from '*notoriously burdensome nature*[144]' of the UPR. Re Macro (Ipswich) Ltd[145] is a representative example of this situation in

---

[138] **Roberts, Pauline/Poole, Jill** (1999) "Shareholder Remedies-Efficient Litigation and Unfair Prejudice Remedy", Journal of Business Law, Vol: Jan, p. 38.

[139] **The Great Britain Law Commission** (1996) Shareholder Remedies: A Consultation Paper (Law Com No 142), para 18.2.

[140] [1999] 1 WLR 1092.

[141] **The Great Britain Law Commission,** para 20.5.

[142] **The Great Britain Law Commission,** para 14.5.

[143] **Lowry, John** (2003) "Mapping the Boundaries of Unfair Prejudice", The Reform of United Kingdom Company Law. Ed. Lacy, John de, Cavendish Publishing.

[144] Re Saul D Harrison & Sons plc.

[145] [1994] 2 B.C.L.C. 354.

which the court examined management of the company for a 40-year process[146]. Litigation cost of the UPR has a particular importance because it often exceeds the value of disputed shareholding[147]. As the Commission[148] cites in Re Elgindata Ltd[149] total cost of litigation was £320.000 although the value of shareholding was £24,600[150].

Findings of the Report of the Law Commission[151] demonstrates that generally shareholders in small and close companies resort to the UPR. Apart from adverse effects of costly, long, unpredicted litigation, these small companies are also financially affected due to management and time loss[152]. Considering the owner-manager structure of these companies, loss of managerial distraction, time and confidence between shareholders will financially deteriorate the company. Moreover, from a behavioral perspective, this exhaustive process will damage the relationship between shareholders and make maintenance of the relationship psychologically impossible. The Report asserts that the most common reason for resorting to the UPR is a shareholder's exclusion from management where he has such an expectation[153]. Accordingly, it could be claimed that uncertainty and complexity of the Section 994 creates an inclination for shareholders to provoke disputes among themselves.

Although it is not as apparent as it is in English law system, Turkish law system also harbors a considerable legal uncertainty and complexity. Violation of good faith principle constitutes an important block of legal grounds for challenging a shareholder resolution in addition to breach of law and the articles of association. These grounds for invalidity are result of fiduciary character of

---

146 **Roberts /Poole**, p. 38.

147 **Talbot, Lorraine** (2008) Critical Company Law, Routledge Cavendish, p. 209.

148 **The Great Britain Law Commission,** para 3.

149 [1991] BCLC 959.

150 **Talbot, Lorraine**, p. 209.

151 **The Great Britain Law Commission,** para 1.5.

152 **Roberts /Poole**, p. 38.

153 **Roberts /Poole**, p. 38.

voting rights in these law systems. Good faith principle is the most important building block of these law systems, and the private law system of these countries '*might be taken as a mere embodiment of the principle*[154].' Therefore, this uncertainty arising from the good faith principle is actually the core character of the law system. Additionally, unlike English courts, courts in Türkiye have a limited discretion over evaluation of the facts and no discretion over the remedy at all. The only available remedy is invalidation of the resolution if all substantial and procedural requirements are met. As the court decides on a case-by-case basis, its interpretation of good faith has an outstanding importance. In Türkiye, we can say that courts try to limit the scope of good faith by application of '*objective good faith*'[155].

Eventually, although it provides flexibility for a case-by-case basis application of related rules[156], legal uncertainty and complexity of the mechanisms against shareholders' resolutions damage the company, the shareholders and economy. It also creates an incentive for members to initiate litigation and reduce the willingness to obey the rules[157].

2. Abuse of Right to Challenge Shareholders' Resolutions: Professional/Predatory Shareholders

As described in the first part, each and every shareholder, even with one share, retains a right to challenge shareholders' resolutions and this lawsuit has a potential to block operation of the resolution. It should be noted that in line

---

[154] **Schlechtriem, Peter** (1997) "Good Faith in German Law and in International Uniform Laws", En Saggi, Conferenze e Seminari, Vol: 24, Roma, Centro di Studi e Richerche di Diritto Comparato e Straniero.

[155] Turkish Court of Cassation 11th Law Chamber, E: 1995/8154, K: 1995/9165, T: 11.12.1995; Turkish Court of Cassation 11th Law Chamber, E: 2003/13751, K: 2004/10029, T: 19.10.2004.

[156] O'Neill v Phillips. For a more general view on advantages of legal uncertainty see **Feldman, Yuval/Lifshitz, Shahar** (2011) "Behind the Veil of Legal Uncertainty", Law and Contemporary Problems, 74, p. 133.

[157] **Feldman, Yuval/Harel, Alon** (2008) "Social Norms, Self-Interest and Ambiguity of Legal Norms: An Experimental Analysis of the Rule vs. Standard Dilemma", Review of Law and Economics, Vol: 4, No: 1, pp. 81-126.

with Article 449 of the TCC, the initiation of a lawsuit does not automatically suspend the execution of the general assembly resolution; the court must also issue an injunction to suspend the execution of the resolution. However, under German legal system, initiation of the lawsuit automatically suspends the execution of the resolution, and accordingly may endanger important company transactions[158].

Considering all, we can claim that all shareholders' having a right to challenge shareholders' resolution unlocked potential of abuse in Turkish legal system and created a new shareholder type which could be defined as predatory[159] or professional[160] shareholders. Predatory shareholders attend general meetings, and deliberately object to decisions and try to find out or create procedural or substantial mistakes in order to create reasons for challenging the resolution[161].

Under Continental European legal system including Germany, some people acquire shares (mostly only one share) in listed companies in order to gain economic leverage by exploiting their shareholder rights. The basic mechanism for this exploitation is deliberately sabotaging general meetings and challenging the resolutions before the courts. Additionally, sometimes minority shareholders challenge resolutions to achieve their nonmonetary aims in the company or to force majority to act according to their will. According to some studies, an estimated 72 per cent of lawsuits against shareholders' resolutions are initiated by professional shareholders in Germany[162]. Although there is no empirical study in Türkiye regarding the professional shareholders, their existence and activities come to be known in the practice.

---

158 **Günther, Konstantin/Roth, Barbara** (2005) "Why Germany Needs Shareholders Reform", International Financial Law Review, Vol: 24, p. 17.

159 **Kersting**, pp. 121-122.

160 **Günther/Roth,** p. 17.

161 **Kersting**, p. 121.

162 **Cahn, Andreas/Donald David C.** (2010) Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA, Cambridge University Press, p. 606.

In order to tackle this problem, some statutory measures such as imposing penalty on professional shareholders[163] or not suspending implementation of the resolutions without an injunction or giving exclusive jurisdiction to Higher Regional Court[164] have been introduced. However, the nature of the legal system which allows each and every shareholder to challenge resolutions creates incentive for professional shareholders to abuse these rights.

3. An Economic and Behavioral Appraisal of Challenging Shareholders' Resolution

A general economic analysis of these lawsuits posits that the shareholder will initiate a lawsuit only if the cost of the lawsuit is less than the expected benefits[165]. Both cost and benefits of the lawsuits have private and social constituents.

Theoretically, the only private benefit of the lawsuits is protection of the minority against the abuse of the majority. These lawsuits do not aim to compensate damages of shareholders arising from acts/actions/decisions of the majority. On the other hand, protection of the investors and creating an effective and strong investment atmosphere are the social benefits of the lawsuits as a part of overall shareholder protection scheme.

Under Turkish legal systems, the plaintiff aims to invalidate the resolution since it's the only available remedy, and it does not have a direct correlation with protection of the shareholder. Without using shareholders' resolutions, the controlling shareholders still have the power to abuse the minority through acts of other organs/persons. Accordingly, invalidating shareholders' resolutions is not a sufficient mechanism to protect minority shareholders by itself, and private and social benefits of the lawsuits under Turkish legal systems are remarkably limited.

---

[163] Article 451 of the TCC.

[164] Article 246a the GSCA.

[165] **Kaplow, Louis/Shavell, Steven** (2002) "Economic Analysis of Law" in Auerbach, Alan J./Feldstein, and Martin (eds) Handbook of Public Economics, Vol: 3, Elsevier. p. 1722.

Under English law system, invalidation of resolutions is not a popular remedy, there is a very limited 'invalidation' practice at common law. Regarding the UPR, courts may grant any remedy they deem appropriate, but the most frequent remedy is share purchase orders. Besides, grounds for the UPR do not have to be related to shareholders' resolutions. Any kind of oppression on the shareholders may constitute a valid ground for resorting to the remedy. While flexibility and uncertainty of the UPR are severely disadvantageous from a legal perspective, they are obviously advantageous from an economic perspective. The UPR functions as a true shareholder protection mechanism and provides remarkable private and social benefits.

Private cost of the lawsuits consists of litigation costs of the plaintiff which is fairly easy to calculate. However, social cost has a more complex nature. It includes litigation cost of the defendant (the company), burden of the litigation on judicial system, damages caused to reputation of companies[166] and decrease in stock price and market value of the company accordingly (especially in listed companies) as well as financial and managerial distress (especially in close companies).

Moreover, these lawsuits destroy confidence/trust among shareholders and the company[167]. Considering un-institutionalized and family based/concentrated structure of companies in Türkiye, also partly in the UK, these lawsuits exacerbate disputes among shareholders, trigger an era of shareholder disputes and provoke/accelerate collapse of companies in the end. Akkök Holding[168], Uzel Makina[169], Dörtel Tekstil[170], KarstadtQuelle[171] either collapsed or financially

---

166 **Roberts /Poole**, p. 38.

167 **Davies/Worthington/Micheler,** p. 740.

168 'Dev Şirkette Kardeş Kavgası Büyüyor' (*Milliyet*, 2 May 2016) <http://www.milliyet.com.tr/dev-sirkette-kardes-kavgasi-buyuyor/ekonomi/detay/2238056/default.htm > l.a.d. 13 March 2023.

169 'Aile Kavgası Uzel'i Bitirdi' (*Sabah*, 13 July 2012) <http://www.sabah.com.tr/ekonomi/2012/07/13/aile-kavgasi-uzeli-bitirdi > l.a.d. 10 March 2023.

170 Nurettin Kurt, 'Paylaşım Kavgası Bir Şirketi Böyle Bitirdi' (*Hürriyet*, 21 September 2006) <http://www.hurriyet.com.tr/paylasim-kavgasi-bir-sirketi-boyle-bitirdi-5122356> l.a.d. 13 March 2023.

deteriorated because of the 'war' between shareholders. These lawsuits create fragile companies and a flagging economy, deteriorate investment atmosphere in the country. All in all, when social-private cost and benefits of these lawsuits are considered separately, an overall assessment demonstrates that there is a divergence between sum of cost and benefits. The cost-benefit balance in Turkish legal system is completely distorted to the detriment of benefits. On the other hand, English legal system provides a comprehensive investor protection regime notwithstanding the enormous cost it creates.

CONCLUSION

Shareholders' meetings have crucial function for the company as it is the main decision-making body of shareholders[172]. Just as resolutions passed in general meetings are substantially important, challenging these resolutions is also dramatically important for governance of the company and protection of minority/shareholders.

As analyzed in the first part, with regard to challenging shareholders' resolution a radical difference exists between English and Turkish legal systems. It is a major shareholder right and judicial minority protection tool under Turkish legal systems. In addition to its theoretical importance, it is one of the most common intra-corporate lawsuits in practice. However, under English legal system invalidating/annulling shareholders' resolution is not a frequent remedy. Although, there is a very limited practice of these lawsuits at common law, a direct statutory mechanism for challenging shareholders' resolutions does not exist. Theoretically, courts can annul a resolution within the context of a UPR case, however in practice it is quite uncommon.

Pursuant to the foregoing, two important questions, which form the core of this study, need to be addressed. What are the reasons for the radically different approaches of these legal systems, and which legal system is more efficient from a legal and economic perspective?

---

[171] **Günther/Roth**, p. 17.

[172] **Cahn/Donald,** p. 546.

For the first question, my assertion is that different ownership structures of companies in these jurisdictions have affected company law in general and approaches of these legal systems towards challenging shareholders' resolutions in particular. Additionally, characterization of shareholder rights/powers, and different approaches towards contractual shareholder protection mechanisms have an important effect on structuring of these legal rules.

With regard to the second question, English legal system, especially the UPR[173], is legally ineffective because of its harboring considerable complexity and uncertainty. Despite several reform attempts[174], it remained 'burdensome' in nature throughout its introduction. However, it provides a comprehensive protection to the minority against abuse of the majority or any other power in the company. Although Turkish legal system could be described as less complex and uncertain comparing to English law, it is economically less efficient. Although it has a nature to create financial, managerial reputational distress over the company, it does not provide an effective protection in return.

As a last note, both legal systems need a detailed reform regarding the minority protection mechanisms and challenging shareholder resolutions. Traditionally and structurally, it is impossible to abolish challenging shareholders' resolution mechanism in Türkiye, however introduction of a '*reformed*' unfair prejudice remedy would provide a better protection for shareholders and dramatically lessen the burden of companies by easing their management.

[173] Due to its very limited application I did not make an analysis for the common law.

[174] **The Great Britain Law Commission,** para 14.1-16.51.

BIBLIOGRAPHY

Austin, Robert P./Ramsay, Ian M./Ford, Harold Arthur John (2013) Ford's Principles of Corporations Law, 15. edn, LexisNexis.

Ayhan, R., Çağlar, H., Özdamar, M. (2023) Şirketler Hukuku Genel Esaslar, Yetkin Yayınevi, Ankara.

Ayoğlu, Tolga (2018) Sermaye Şirketleri Özelinde Şirketler Hukuku Uyuşmazlıklarının Çözümünde Tahkim, İstanbul, On İki Levha Yayıncılık.

Barker, Roger/Chiu, Iris H-Y. (2015) "Protecting Minority Shareholders in Blockholder-Controlled Companies: Evaluating the UK's Enhanced Listing Regime in Comparison with Investor Protection Regimes in New York and Hong Kong", Capital Markets Law Journal, Vol: 10, No: 1, pp. 98-132.

Bebchuk, Lucian Arye/ Roe, Mark J. (1999) "A Theory of Path Dependence in Corporate Ownership and Governance", Stanford Law Review, Vol: 52, pp. 127-170.

Berle, Adolf A./ C. Means, Gardiner (1933) The Modern Corporation and Private Property, Macmillan Co. New York.

Blackaby, Nigel/ Partasides, Constantine/ Redfern, Alan/ Hunter, Martin (2015) Redfern and Hunter on International Arbitration, 6. edn, Oxford University Press.

Cahn, Andreas/ Donald/ David C. (2010) Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA, Cambridge University Press.

Davies, Paul. L./Worthington, Sarah/ Micheler, Eva (2012) Gower and Davies' Principles of Modern Company Law, Vol: 20088, Sweet & Maxwell, London.

Demirkol, Berk (2012) "Pay Sahipleri Sözleşmesi ile Getirilen Pay Devir Kısıtlamaları", Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, Özel Sayı: Prof. Dr. Duygun Yarsuvat'a Armağan, İstanbul, V: IX, N: 2, p. 851-883.

Dowson, Ian J./Stephenson, IS (1993) The Protection of Minority Shareholders, Tolley Publishing.

Dyck, Alexander/ Zingales, Luigi (2002) "Private Benefits of Control: An International Comparison", NBRA Working Paper Series, Working Paper 8711.

Esin, İsmail G. (2020) Birleşme ve Devralmalar, İstanbul, On İki Levha Yayıncılık.

Erdoğan, Ersin (2017) "Yapma Borçlarının İcrası ve Bazı Temel Sorunlar", Ankara Barosu Dergisi, Vol: 77, No: 52, pp. 145-175.

Ergün, Mevci (2021) Anonim Şirketler Hukuku, Ankara, Yetkin Yayınları.

Feldman, Yuval/ Harel, Alon (2008) "Social Norms, Self-Interest and Ambiguity of Legal Norms: An Experimental Analysis of the Rule vs. Standard Dilemma", Review of Law and Economics, Vol: 4, No: 1, pp. 81-126.

Feldman, Yuval/ Lifshitz, Shahar (2011) "Behind the Veil of Legal Uncertainty", Law and Contemporary Problems, 74.

French, Derek/ Mayson, Stephen/ Ryan, Christopher (1973) Mayson, French & Ryan on Company Law, 29. edn, Oxford University Press.

FitzGerald, Sean/ Muth, Graham (2012) Shareholders' Agreements, Sweet & Maxwell.

Gedajlovic, Eric R./Shapiro, Daniel M. (1998) "Management and Ownership Effects: Evidence from Five Countries', Strategic Management Journal, Vol: 19, No: 6, pp. 533-553.

Gilson, Ronald J/Schwartz, Alan (2012) "Contracting About Private Benefits of Control", Columbia University Center for Law & Economics Studies Law & Economics Research Paper No: 436.

Göktürk, Kürşat (2017) "Anonim Şirket Pay Sahipliği Haklarının Kullanılmasında Muhalefet Şartı", İnönü Üniversitesi Hukuk Fakültesi Dergisi, V: 8 N: 2, p. 53-78.

Griffin, Stephen (2011) "Case Comment: The Primacy Afforded to an Arbitration Agreement in the Context of a Petition Against Unfairly Prejudicial Conduct", Sweet and Maxwell's Company Law Newsletter, No: 305, pp. 1-4.

Grundmann, Stefan (2011) European Company Law, Organization, Finance and Capital Markets, 2. edn, Intersentia Press.

Günther, Konstantin/Roth, Barbara (2005) "Why Germany Needs Shareholders Reform", International Financial Law Review, Vol: 24, pp. 17.

Gürsoy, Güner/Aydoğan, Kürşat (2002) "Equity Ownership Structure, Risk-Taking and Performance: An Empirical Investigation in Turkish Companies", Emerging Markets, Finance & Trade, Vol: 38, No: 6, p. 6-6.

Hannigan, Brenda (2007) "Altering the Articles to Allow for Compulsory Transfer - Dragging Minority Shareholders to a Reluctant Exit", Journal of Business Law, pp. 471-501.

Hannigan, Brenda (2016) Company Law, Oxford University Press, USA.

Hollington, Robin (2013) Hollington on Shareholders' Rights, 7. edn, Sweet & Maxwell.

Joffe, Victor/ Drake, David/ Richardson, Giles/ Lightman, Daniel/ Collingwood, Timothy (2015) Minority Shareholders: Law, Practice and Procedure, 4. edn, Oxford University Press.

Karasu, Rauf (2014) "6102 sayılı Türk Ticaret Kanunu'na Göre Anonim Şirketlerde Emredici Hükümler İlkesi", Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, Vol: 18, No: 2, pp. 311-332.

Kaya, Mustafa İsmail (2014) "Pay Sahiplerinin Anonim Şirket Genel Kurulunda Temsil Edilmesi", Banka ve Ticaret Hukuku Dergisi, V: 30, N: 4, p. 45-95.

Kerem, Bilge (2017) Pay Sahipleri Sözleşmesi Kapsamında Anonim Şirketlerde Pay Devrinin Kısıtlanması, İstanbul, On İki Levha Yayıncılık.

Kershaw, David (2012) Company Law in Context: Text and Materials, Oxford University Press.

Kersting, Christian (2015) "The Role of Shareholders in Public Companies in Germany" in Holger Fleischer, Jesper Lau Hansen, Wolf -Geroger Ringe (eds) German and Nordic Perspectives on Company Law and Capital Markets Law, Mohr Siebeck.

Khan, Tehmina (2006) "Company Dividends and Ownership Structure: Evidence from UK Panel Data", The Economic Journal, Vol: 116, No: 510, pp. C172-C189.

Kirchmaier, Thomas/Grant, Jeremy (2005) "Corporate Ownership Structure and Performance in Europe", European Management Review, Vol: 2, No: 3, pp. 231-245.

Kraakman, Reinier/Armour, John/Davies, Paul/Enriques, Luca/Hansmann, Henry/Hertig, Gerard/Hopt, Klaus/Kanda, Hideki/Rock, Edward (2017) The Anatomy of Corporate Law: A Comparative and Functional Approach, 3. edn, Oxford University Press.

Kulms, Rainer (2001) "A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany", European Business Organization Law Review, (EBOR), Vol: 2, No: 3-4, p. 685.

La Porta, Rafael/Lopez-De-Silanes, Florencio/Shleifer, Andrei. (1999) "Corporate Ownership Around the World", LIV the Journal of Finance, Vol: 54, No: 2, pp. 471-517.

Lee, Joseph (2015) "Intra-corporate Dispute Arbitration and Minority Shareholder Protection: A Corporate Governance Perspective", Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, Vol: 83, No: 1.

Lowry, John (2003) "Mapping the Boundaries of Unfair Prejudice", The Reform of United Kingdom Company Law. Ed. Lacy, John de, Cavendish Publishing.

Manavgat, Çağlar (2016) Hukuki Bakımdan Halka Açık Anonim Ortaklıklar ve Halka Arz, Ankara, Banka ve Ticaret Hukuku Araştırma Enstitüsü.

Mantysaari, Petri (2005) Comparative Corporate Governance: Shareholders as Rule Maker, Springer Science & Business Media.

Moore, Marc T. (2014) "Private Ordering and Public Policy: The Paradoxical Foundations of Corporate 'Contractarianism", Oxford Journal of Legal Studies, Vol: 34, No: 4, pp. 693-728.

Moroğlu, Erdoğan (2017) Anonim Ortaklıkta Genel Kurul Kararlarının Hükümsüzlüğü, İstanbul, On İki Levha Yayıncılık.

Mukwiri, Jonathan (2013) "Takeovers and Incidental Protection of Shareholders", European Company & Financial Law Review, Vol: 10, No: 3, pp. 432-460.

Nenova, Tatiana (2003) "The Value of Corporate Voting Rights and Control: A Cross-Country Analysis", Journal of Financial Economics, Vol: 68, No: 3, pp. 325-351.

Okutan-Nilsson, Gül (2003) Anonim Ortaklıklarda Paysahipleri Sözleşmeleri, Çağa Hukuk Vakfı Yayınları.

O'Neal, F. Hodge (1987) "Oppression of Minority Shareholders: Protecting Minority Rights.", Clev. St. L. Rev, Vol: 35, pp. 121.

Porta, Rafael La/ Lopez-De-Silanes, Florencio/ Shleifer, Andrei (1999) "Corporate Ownership Around the World", LIV the Journal of Finance, pp. 471-517.

Pulaşlı, Hasan (2022) Şirketler Hukuku Genel Esaslar, Ankara, Adalet Yayınevi.

Pulaşlı, Hasan (2022) Şirketler Hukuku Şerhi Cilt II. Ankara, Adalet Yayınevi.

Rajak, Harry (1972) "The Oppression of Minority Shareholders", The Modern Law Review, Vol: 35, No: 2, pp. 156.

Roberts, Pauline/Poole, Jill (1999) "Shareholder Remedies-Efficient Litigation and Unfair Prejudice Remedy", Journal of Business Law, Vol: Jan, pp. 38.

Roe, Mark J. (2003) Political Determinants of Corporate Governance: Political Context, Corporate Impact, Oxford University Press.

Roe, Mark J. (2004) "Modern Politics and Ownership Separation": Gordon, Jeffrey N/Roe, Mark J. (eds.) Convergence and Persistence in Corporate Governance, Cambridge University Press.

Sáez, Maria Isabel/ Riaño, Damaso (2013) Corporate Governance and the Shareholders' Meeting: Voting and Litigation, European Business Organization Law Review (EBOR), Vol: 14, No: 3, pp. 343-399.

Schlechtriem, Peter (1997) "Good Faith in German Law and in International Uniform Laws", En Saggi, Conferenze e Seminari, Vol: 24, Roma, Centro di Studi e Richerche di Diritto Comparato e Straniero.

Spindler, Gerald/Jaenig, Ronny (2010) "Informing Shareholders and Investors: A Behavioral and Economics Approach from a German Company Law Perspective", The Journal of Interdisciplinary Economics, Vol: 22, No: 1-2, pp. 89.

Talbot, Lorraine (2008) Critical Company Law, Routledge Cavendish.

Tekinalp, Ünal (2013) "Emredici Hükümler Açısından Genel Kurul Kararlarının İptali ve Butlanı Sorunu", Galatasaray Üniversitesi Hukuk Fakültesi Dergisi, N: 2013/2, s.13-18.

Poroy, Reha/Tekinalp, Ünal/ /Çamoğlu, Ersin (2014) Ortaklıklar Hukuku I: Giriş, Adi Ortaklık, Ticaret Ortaklıklarına İlişkin Genel Hükümler, Kollektif, Komandit, Anonim, Halka Açık Anonim Şirketler, İstanbul, Vedat Kitapçılık.

The Great Britain Law Commission (1996) Shareholder Remedies: A Consultation Paper (Law Com No 142).

Vetoruzzo, Marco/Conac, Pierre-Henri/Goto, Gen/ Mock, Sebastian/Notari, Mario/Reisberg, Arad (2015) Comparative Corporate Law, West Academic.

Yong, Cheng (2012) "On Protection of Rights and Interests of Minority Shareholders in Listed Company", International Journal of Business Administration, Vol: 3, I: 2, pp. 54-58.

Yurtoğlu, B. Burçin (2000) "Ownership, Control and Performance of Turkish Listed Firms", Emprica 27, pp. 193-222.

Yurtoğlu, B. Burçin (2003) "Corporate Governance and Implications for Minority Shareholders in Turkey", Turkish Economic Association Discussion Paper 2003/7.

Yüksel, Sinan H. (2018) "Pay Sahipleri Sözleşmesinden Kaynaklanan Uyuşmazlıkların Çözümünde Tahkim", Akıncı, Z./ Yasan Tepetaş, C. (Editörler), Şirketler Hukuku Uyuşmazlıkları ve Tahkim, İstanbul, On İki Levha Yayıncılık, pp. 141-168.

Wendy, Kennet (2013) "Arbitration of Intra-Corporate Disputes", International Journal of Law and Management, Vol: 55, No: 5, pp. 333-360.

Wirth, Gerhard/ Arnold, Michael/ Morshauser, Ralf (2010) Corporate Law in Germany, Verlag C. H. Beck, München.

Wymeersch, Eddy/Baums, Theodor (1969) Shareholder Voting Rights and Practices in Europe and The United States, Kluwer Law.

Court Decisions

Turkish Court of Cassation 11th Law Chamber, E: 1995/8154, K: 1995/9165, T: 11.12.1995.

Turkish Court of Cassation 11th Law Chamber, E: 2003/13751, K: 2004/10029, T: 19.10.2004.

Turkish Court of Cassation 11th Law Chamber, E: 2013/13768, K: 2014/15745, T: 16.10.2014.

Turkish Court of Cassation 11th Law Chamber, E: 2013/7332, K: 2014/14131, T: 16.04.2013.

Turkish Court of Cassation 11th Law Chamber, E: 2014/12658, K: 2014/19476, T: 11.12.2014.

Turkish Court of Cassation 11th Law Chamber, E: 2014/9351, K: 2014/18769, T: 02.12.2014.

Turkish Court of Cassation 11th Law Chamber, E: 2015/8514, K: 2016/5320, T: 11.05.2016.

Turkish Court of Cassation 11th Law Chamber, E: 2015/14626, K: 2016/6507, T: 13.06.2016.

Turkish Court of Cassation 11th Law Chamber, E: 2015/8587, K: 2016/3001, T: 22.06.2015.

Turkish Court of Cassation 11th Law Chamber, E: 2019/5331, K: 2020/3709, T: 30.09.2020.

Turkish Court of Cassation 11th Law Chamber, E: 2019/4971, K: 2020/2971, T: 17.06.2020.

Turkish Court of Cassation 11th Law Chamber, E: 2020/537, K: 2020/5167, T: 18.11.2020.

[1897] Welton v Saffery AC 229.

[1900] 1 Ch.656, CA.

[1915] 2 Ch. 186.

[1917] Phillips v Manufacturers' Securities Ltd 86 LJ Ch 305, 116 LT 290.

[1919] 1 Ch. 290.

[1920] 1 Ch. 154, CA.

[1920] 2 Ch. 124.

[1926] All ER Rep 498.

[1926] Southern Foundries Ltd v Shirlaw [1940] AC 70.

[1951] Greenhalgh v Arderne Cinemas Ch 286.

[1973] Westbourne Galleries Ltd, Re A.C.360.

[1974] 1 WLR 1133 (Chancery Division).

[1978] Blount v Taft 246 S.E.2d 763 at 769 (Supreme Court of North Carolina).

[1986] Re a Company BCLC 376.

[1986] Re London School of Electronics Ltd Ch 211.

[1987] 12 App Cas 589.

[1991] Re Elgindata Ltd BCLC 959.

[1991] BCLC 959.

[1994] Re Unisoft Group Ltd 1 BCLC 609.

[1994] Re Saul D Harrison & Sons plc [1995] 1 BCLC 14, BCC 475.

[1994] 2 B.C.L.C. 354.

[1995] 1 BCLC 14.

[1996] Re Brenfield Squash Racquets Club Ltd 2 BCLC 184.

[1998] Astec (BSR) Plc, Re 2 B.C.L.C. 556.

[1998] Bermuda Cablevision Ltd v Colica Trust Co Ltd AC 198.

[2005] Re Grandactual Ltd EWHC 1415 (Ch).

[2005] Re Grandactual Ltd EWHC 1415 (Ch).

[2005] Halton International Inc. (Holdings) Sarl v Guernroy Ltd.

[2011] Fulham Football Club (1987) Ltd v Richards EWCA Civ 855.

Internet Resources

'Aile Kavgası Uzel'i Bitirdi' (*Sabah*, 13 July 2012) <http://www.sabah.com.tr/ekonomi/2012/07/13/aile-kavgasi-uzeli-bitirdi > l.a.d. 10 March 2023.

'Dev Şirkette Kardeş Kavgası Büyüyor' (*Milliyet*, 2 May 2016) <http://www.milliyet.com.tr/dev-sirkette-kardes-kavgasi-buyuyor/ekonomi/detay/2238056/default.htm > l.a.d. 13 March 2023.

Nurettin Kurt, 'Paylaşım Kavgası Bir Şirketi Böyle Bitirdi' (*Hürriyet*, 21 September 2006) <http://www.hurriyet.com.tr/paylasim-kavgasi-bir-sirketi-boyle-bitirdi-5122356> l.a.d. 13 March 2023.