NOTION OF PROTECTION OF MINORITY SHAREHOLDERS; THEORETICAL FRAMEWORK

Meltem KARATEPE KAYA[1]

ABSTRACT

This article analyses the preferred specific theoretical frameworks of corporate governance and minority shareholder protection. To have better understanding on the issue, the meaning of minority shareholder and majority shareholder will also be given in this paper. The main question in this chapter is: How were the theoretical foundations established for protecting minority shareholders? To answer this question, the article analyses the explanation of theories of corporate governance on minority shareholder protection. Accordingly, this paper will address the theories for development of minority shareholder protection and models corporate governance. Furthermore, the study will examine theoretical foundation of protection of minority shareholders in Turkish law context.

Keywords: *minority shareholder protection, majority shareholders, agency conflict, corporate governance*

AZINLIK HİSSEDARLARININ KORUNMASI KAVRAMI; TEORİK ÇERÇEVE

ÖZET

Bu makale, kurumsal yönetim kapsamında azınlık pay sahiplerinin korunması kavramını teorik çerçevede analiz etmektedir. Konuyu daha iyi analiz edebilmek adına azınlık hissedarı ve çoğunluk hissedarının anlamı da bu makalede sunulacaktır. Bu makalede ele alınan temel soru şudur: Azınlık pay sahipleri korumak için teorik temeller nasıl kurulmuştur? Bu soruyu cevaplamak için bu yazıda, kurumsal yönetim teorilerinin azınlık hissedarlarının korunmasına ilişkin gerekçelendirme ve açıklamaları analiz edilecektir. Buna göre, bu makale, azınlık pay sahiplerinin korunmasına yönelik teorilere değinecek ve kurumsal yönetim için model oluşturacaktır. Ayrıca çalışma, Türk hukuku

[1] Dr., İstanbul Medeniyet Üniversitesi Hukuk Fakültesi, Ticaret Hukuku Öğretim Görevlisi, (ORCID: 0000-0003-3428-0293), meltemkaratepe.kaya@medeniyet.edu.tr
Yayın Kuruluna Ulaştığı Tarih: 12.07.2020
Yayınlanmasının Uygun Görüldüğü Tarih: 24.08.2020

bağlamında azınlık pay sahiplerinin korunmasının teorik temelini de ayrıca inceleyecektir.

Anahtar Kelimeler: *azınlık pay sahiplerinin koruması, çoğunluk hissedarlar, temsilcilik çatışması, kurumsal yönetim*

INTRODUCTION

In recent years, problems concerning the protection of minority shareholders` rights have grown in importance, and there are many legal, political and economic discussions on this topic happening around the world. The most notable issue is the agency conflict, which refers to a conflict of interests between managers and shareholders. This conflict has caused many problems in publicly held companies. The agency conflict is derived from the agency theory and concentrates on the relationship between two groups: shareholders, and the directors who manage a corporation. The common belief supports the idea that the members of the company hope that its managers will always aim to make the best decisions in the interests of owners on their behalf. Nevertheless, in practice, managers generally have a tendency to show their opportunistic nature and will look to maximise their personal benefits and selfish private interests to the loss of shareholders.[2]

It is possible to observe two kinds of oppression of minority shareholders in the companies.[3] One of them is the oppression by the directors based on the doctrine of separation of ownership and management;[4] and other one is the oppression by the majority shareholders under the doctrine of majority rule.[5] The majority rule was introduced in *Foss v Harbottle*.[6] This means that the decisions and choices of the majority will always be prioritized and preferred against the choices of the minority.[7] 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.[8] To overcome issues related to protection of minority shareholders, theorists have developed some theories to address the corporate governance. Therefore, to minimise the potential oppression of minority shareholders, two doctrine gain

[2] Kathleen M. Eisenhardt, 'Agency Theory: An Assessment and Review' (1989) 14 The Academy of Management Review. 57-74, 58.
[3] Adolf A Berle and Gardiner C Means, *The Modern Corporation And Private Property* (Macmillan Co 1933) 6.
[4] Ibid 244
[5] Foss v Harbottle (1843), 67 ER 189.
[6] Ibid.
[7] Alan J. Dignam and John P. Lowry, *Company Law* (8th edn, Oxford University Press 2014), 186.
[8] Meltem Karatepe Kaya, `Shareholder`s rights and remedies related to corporate governance principles` (2019) Corporate Governance: Search for the Advanced Practices, 48-51.

importance which are the doctrine of business judgment rule[9] and fiduciary duties on majority shareholders.[10]

Therefore, this study mainly will focus on two types of shareholders, minority and majority (controlling) shareholders, in considering minority shareholder protection. A minority shareholder is a shareholder who does not exert control over a company. 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. In addition, if the company is a public company with a registered capital market, it is sufficient to have 5 per cent shareholding to be a minority shareholder. It should be noted, though, that even holding a majority of common shares does not necessarily mean control of the company. Even when holding a small amount of shares, a shareholder can be considered as a majority shareholder, and majority shareholders have the power to elect managers and control the affairs of the company.[11] In addition to general notion of minority shareholder protection, this article will also focus on preferred specific theoretical frameworks of corporate governance to have better understanding of the protection of shareholders. Last but not least, theoretical foundation of protection of minority shareholders in Turkey will be analysed in this article. This analyse will help of understanding the issues of minority shareholder protection and emerging of the solutions for the minority shareholders problems by corporate governance mechanisms.

1. The Nature of the Protection of Minority Shareholders

The principle of shareholder democracy is well-known in corporate law. One of the instruments of democracy is majority rule, which was established in the United Kingdom (UK) case of *Foss v Harbottle*.[12] Majority rule signifies that the decisions and choices of the majority will always prevail over those of minorities.[13] It is understandable that shareholders who provide the majority of the capital to the company and spend more time and effort on the company should have higher authority and power, and that their

[9] Mohammed Hemraj, 'The Business Judgment Rule in Corporate Law' (2004) 15(6) ICCLR 192 and Branson Douglas, 'The Rule that Isn't a Rule-the Business Judgment Rule' (2002) 36 Valparaiso University Law Review 631.

[10] Zhu Ciyun, 'A Critical Analysis of the Majority Rule Principle and Controlling Shareholders Fiduciary Duties: A Chinese Perspective (2004) 16 Australian Journal of Corporate Law 256.

[11] The meanings of 'control' and 'minority shareholder' will be explained in detail in later.

[12] Foss v Harbottle (1843), 67 ER 189.

[13] Majority rule meaning in 'The Cambridge English Dictionary' (*Dictionary.cambridge.org*, 2018) <http://dictionary.cambridge.org/dictionary/english/majority-rule> accessed 20 November 2018.

interests and rights in the company's decisions be favoured.[14] However, the technical implementation of the majority rule and granting the majority shareholders a broad authority and significant power without taking into account minority shareholders' rights and interests may negatively affect not only the company's progress but also other shareholders and even the economy of the country. It may cause abuse of the interests of minority shareholders and prevent cases being brought against the controllers of the companies. These places and keeps the minority in a weak position in the company where they cannot protect their interests.[15]

The balance between minority and majority shareholders can be compared to a pendulum. While the law provides protection to minority shareholders, the interests of the majority shareholders should also be considered for the benefit of the company. On the one hand, it is clear that it should be provided by law that the minority shareholders can bring an action if there is conduct which is prejudicial either to the minority shareholders' interests in the company or to the interests of the company itself.[16] On the other hand, the law should put in place mechanisms for majority shareholders to manage the company without obstructive procedures.

Lazarides makes the point that where there is weak protection for minority shareholders in a country, potential minority shareholders, especially investors, will hesitate to invest in companies in that country. In the absence of legal provisions to safeguard their investment, majority shareholders can easily take advantage of the company and escape liability.[17] As Leuz et al[18] stated, 'weak legal protection appears to result in poor-quality financial reporting, which likely undermines the development of arm's length financial markets.'

Based on these considerations, this research aimed to understand the extent to theoretical background of minority shareholder protection system.

2. Defining to the Majority and Minority Shareholders

To be able to determine the framework of the minority shareholders protection, majority and minority shareholders should be defined and the concept of control that reveals this separation should be disclosed.

---

[14] Kenneth A. Kim, P. Kitsabunnarat-Chatjuthamard and John R. Nofsinger, 'Large Shareholders, Board Independence, and Minority Shareholder Rights: Evidence from Europe' (2007) 13 *Journal of Corporate Finance* 859, 862.

[15] Prabirjit Sarkar, `Common law vs. Civil law: which system provides more protection to shareholders and promotes financial development?` (2017) 2 *Journal of Advanced Research in Law and Economics* 143, 151.

[16] M. Zahir, *Company and Securities Law* (3rd edn, The University Press Limited 2000), 182.

[17] Themistokles G. Lazarides, `Minority Shareholder Choices and Rights in the New Market Environment` (2010) 7 *The IUP Journal of Corporate and Securities Law* 7, 10.

[18] Christian Leuz, Dhananjay Nanda and Peter D. Wysocki, 'Earnings Management and Investor Protection: An International Comparison' (2003) 69 *Journal of Financial Economics* 505, 508.

2.1 The definition of 'control'

It is a fact that there are many companies in different countries in which controlling shareholders who have control over the company as he owns a majority of shares are usually seen. It means that cash flow rights and voting rights are commonly aligned in these companies. Furthermore, when a shareholder uses an important percentage of voting rights even if he holds a small percentage of equity, it is still possible to define him as a controlling shareholder.[19]

To recognise the concept of "minority shareholders", the meaning of "control" and the concepts of "control", "minority shareholders" and "controlling shareholders" need to be considered.

There is no common view regarding defining the level of ownership that effectively controls a company. However, as can be seen in recent studies, two criteria can be used to explain the concept of "control": one of them is a specific threshold of voting shares, and the other is a substantial degree of control or authority over the administration.

La Porta *et al.* aimed to carry out research covering the corporate ownership structures of companies from different countries in the article; "*Corporate Ownership around the World*".[20] They measured the relationship between concentration of ownership and protection of minority shareholder. While they measure, they use voting rights of the shareholders instead of shareholders' cash flow rights, as a sign. In order to gain a better understanding on the link between ownership and control, they analyse the ownership structures of the 20 largest listed companies in 27 different countries.[21] They specifically focussed on minority shareholders who directly and indirectly have over 20 percent of the voting shares in a corporation.[22]

On the other hand, Fama and Jensen set the concept of control of a company as part of the corporate decision-making process, inclusive of the following four notions: initiation, ratification, implementation and monitoring. [23] In recent studies, several scholars have claimed that controlling ownerships are not the exception, but the structure of concentrated ownership is the rule in a large number of countries around the world. Different examples can be found to support these studies: for instance, the families who are shareholders in most of

[19] Lucian Arye Bebchuk, Reinier H. Kraakman and George G. Triantis, 'Stock Pyramids, Cross-Ownership, And Dual Class Equity: The Creation And Agency Costs Of Separating Control From Cash Flow Rights' SSRN Electronic Journal, 1.
[20] Rafael La Porta, Florencio Lopez de Silanes and Andrei Shleifer, 'Corporate Ownership Around the World' (1999) 54 The Journal of Finance, 472.
[21] Ibid 472.
[22] Ibid 476.
[23] Eugene F Fama and Michael Jensen, 'Separation of Ownership and Control' (1983) 26 *Journal of Law and Economics* 301, 303.

the civil law countries hold 45 percent of publicly traded Western European firms. 37 percent of these companies were found to be widely-held, and the 13 largest of these widely held companies are in the UK and Ireland. [24]

The criterion used in many studies to define power over a company when regarding whether a firm is controlled by majority shareholders or management is ownership percentage of shareholders in a corporation. Some scholars claim that in publicly held corporations, where the shares are widely dispersed, there is a threshold between minority shareholders and control of management which is 'roughly at 20 percent' of the voting stocks.[25] Similarly, La Porta *et al.* defined controlling shareholders as those who directly or indirectly hold over 20 percent of the right to vote in a corporation.[26] However, some scholars have disagreed with using the stock percentage to explain the meaning of control.[27]

The minimal percentage used in determining the threshold for minority shareholders varies in each country based on its own specific conditions. In some circumstances, especially in concentrated ownership companies, a shareholder may have to hold more than 35-40 percent of voting stocks to control the company. On the other hand, ownership of 10-20 percent of the shares can be adequate to control voting stocks of a company where ownership is concentrated, particularly in developing countries. However, there is an important point here that shouldn't be overlooked. Considering Cubbin's and Leech's analysis[28], the first of the critical dimensions used by them to define the separation of control and ownership is the position of control either inside or outside a company's management, and the second is the degree of control. The level of control is not considered to be independent from the location of control. So, if the controllers are inside a company, they are likely to have a higher degree of control than other shareholders outside the corporation.

2.2 The meaning of 'majority(controlling) shareholders' and 'minority shareholders' in the United Kingdom

In the UK, the definition of "controlling shareholder" is found in the listing rules.[29] The definition gives that "a controlling shareholder" means "*any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30 percent or more of the votes able to be formed on all or substantially all matters at general meetings of the company*". It means

[24] Kurt A. Desender, 'The Relationship Between the Ownership Structure and Board Effectiveness' SSRN Electronic Journal 2.
[25] Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Macmillan Co 1933) 93.
[26] La Porta, Lopez-De-Silanes and Shleifer (n 19) 476.
[27] John Cubbin and Dennis Leech, 'The Effect of Shareholding Dispersion on the Degree of Control in British Companies: Theory and Measurement' (1983) 93 *The Economic Journal* 351.
[28] Ibid 351.
[29] London Stock Exchange, 'The Listing Rules' (The Yellow Book) (London, The Stock Exchange, 1993).

that if one shareholder individually or a group of shareholders together control the votes of 30 percent or more of the shares of the corporation, it is possible to define him or them as a 'controlling-majority- shareholder' in the company. [30]

Moreover, there is not a threshold to identify who is the minority shareholder and a minority shareholder is formulated as a shareholder who does not exert control over a company in the UK. With regard of this, the minority shareholders -individually or together- even control 80 percent of the shares, they cannot be entitled as a controlling -majority- shareholder. Relatively they may not have enough votes to act as majority shareholders. It must be however noted here, in the companies that have dispersed ownership structure with absence or limited control; it might be that all of the shareholders are assumed as a minority shareholder.

In the UK, there is a need to meet a certain threshold of shares for shareholders to use some of their minority rights, such as under Section 303 of the Companies Act 2006[31] where a shareholder should have at least 5 per cent of share capital to request the calling of a general meeting, and in the case a company does not have share capital, members who represent at least 5% of the total voting rights of all the members have a right to vote at general meetings. However, for the application of most of the rights and remedies, there is no need to have a certain capital share in UK companies. For example, there is no threshold requirement to apply to the court for permission to bring a derivative claim[32] or to inspect certain types of company information.[33] Thus, the minority shareholder is formulated as a shareholder with no control over a company in the UK.[34]

Moreover, there is no threshold requirement for one another important remedy of minority shareholders which is the unfair prejudice petition. According to the section 994\1 "only members" may bring an action to the court by applying this petition. The definition of "member" is given in Section 994\2 of Company Act.[35] The meaning of shareholders who may use this petition is extended to include persons whom shares have been transferred and transmitted by operation of law as they apply to a member of a company. This expression even covers

---

[30] Ibid.
[31] Section 303 of the UK Companies Act 2006.
[32] Section 260 of the UK Companies Act 2006.
[33] Ibid.
[34] Accordingly, a shareholder does not need to have a certain amount of percentage to bring an action to the court on the grounds of an "unfair prejudice petition" under Section 994 of the Companies Act 2006[34], which is one of the most important remedies for minority shareholders in the UK. According to Section 994\1, "only members" may bring an action to the court by applying this petition. The definition of "member" is given in Section 994\2 of the Companies Act. The meaning of shareholders who may use this petition is extended to include persons to whom shares have been transferred and transmitted by action of law as they apply to a member of a company. This reflects that there is not a threshold of percentage which can be applied to this remedy as a minority shareholder. *See* Section 994.
[35] Ibid.

nominee shareholders.[36] It means that there is not a threshold of percentage to apply this remedy as a minority shareholder.

Even a controlling-majority- shareholder- may go to court and claim unfair prejudice remedy. Nevertheless, for a petition to be taken seriously by the court there must have been a conduct which is unfairly prejudicial to the interest of some or whole of the members of the company containing the interests of the petitioner. Even though the majority shareholders go to court by this petition, the expectation of the court from controlling shareholders to stop the unfair conduct by using their control into the company.[37]

2.3 The meaning of "controlling-majority- shareholders" and "minority shareholders" in Turkey

In Turkey, legal responsibility of controlling shareholders has been examined under provisions of TCC No 6102[38] and Banking Law No. 5411.[39] Regulations relating to the legal responsibility of controlling shareholders of companies assume to put into practice the functions like equilibrating, protection of shareholders, maintenance of capital, prevention and guarantee.

Article 3 of Banking Law No. 5411[40] gives a definition of controlling shareholders. It defines a controlling shareholder as a somebody or legal entity that holds the majority of voting rights and has the right to ensure election of a certain number of directors that will have the decision-making majority, acquisition of the majority of voting rights either independently or with other shareholders or partners through a contract (pool agreements). Besides its own voting rights or manage and direct the company as required by a contract subject to the Code of Obligations (control contracts). According to the Turkish law, it is not required to have 50% of shares of the company to be a controlling(dominant) shareholder. It means that in companies, the shareholder who does not have majority shares can be the controlling shareholder in the firm. In this context, the controlling shareholders may be a real person or legal entity such as companies or it can be a single person or a group of dominant shareholders.

On the contrary to this, there is a threshold requirement in Turkish law for classifying shareholders in a company as minority shareholders. Under Article 411(1) TCC,[41] to be considered a minority shareholder a shareholder should hold

---

[36] Brightview Ltd, Re [2004] BCC 542.
[37] Brenda Hannigan, Company Law (3rd edn. Oxford University Press 2012) 388.
[38]'Mevzuat Bilgi Sistemi' (*Mevzuat.gov.tr*, 2016) <http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.6102&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=6102> accessed 20 September 2016.
[39](*Bankacılık Düzenleme ve Denetleme Kurumu (BDDK)*, 2016) <https://www.bddk.org.tr/websitesi/turkce/Mevzuat/Bankacilik_Kanunu/15405411_sayili_bankacilik_kanunu.pdf> accessed 20 September 2016.
[40] Ibid.
[41] Article 411/1 of Turkish Commercial Code No. 6102.

at least 10 per cent of the share capital for non-public companies.[42] For public companies, minority rights shall apply to holders of a minimum of 5 per cent of the shares. As Poroy stated, it is not important to have a certain number of shareholders; it can be just one shareholder who holds 10 per cent of the shares.[43] Shareholders can also use minority rights together with other shareholders if they do not reach the required percentage on their own.[44]

There are some discussions on the threshold requirement for minority shareholders in Turkish company law. The main issue discussed by Turkish scholars is whether it is possible to make a change in the threshold of shares in the articles of association or not.[45] Rather than increasing the threshold, the discussion is generally about whether it is possible to reduce the required threshold with a shareholder agreement.[46] According to the preamble of the TCC,[47] it is acceptable to reduce this threshold with the company's articles of association. In contrast, the legislator concluded that it cannot be changed by the personal agreement of shareholders between themselves without the company's approval.[48] Demirkapı and Bilgili also claim that this threshold distinguishes minority rights from individual shareholder rights and makes it difficult to exercise minority rights.[49]

Therefore, after analysing the meaning of control in these two countries, it can be seen that as suggested by Cubbin and Leech,[50] the shareholding percentage to

---

[42] Erol Ulusoy, Anonim Şirketlerde Bireysel ve Azınlık Pay Sahibi Hakları / Minority shareholders` rights in joint stock companies (2nd edn, Bilge Press 2016) 19.

[43] Reha Poroy, Unal Tekinalp and Ersin Camoglu, Ortaklıklar Hukuku / Company Law (13th edn, Beta Press 2014) 753.

[44] Because of the thresholds for defining somebody as a minority shareholder, it is not common for minority shareholders to use shareholding remedies against the power of controlling shareholders in companies. Compared with the situation in the UK, the minority shareholders very rarely apply to the court in Turkey.

[45] Füsun Nomer Ertan, `Anonim Ortaklığın Haklı Sebeple Feshi Davası - TTK m. 531 Üzerine Düşünceler / Dissolution for Just Causes in Joint Stock Companies – Considerations of Article 531 of Turkish Commercial Code No. 6102' (2015) 23 *Istanbul Universitesi Hukuk Fakultesi Dergisi*, 423.

[46] Hasan Pulaşlı, *Şirketler Hukuku / Company Law* (4th edn, Adalet Press 2016), 52.

[47] 6102 Sayılı Türk Ticaret Kanunu Gerekçesi (Preamble of Turkish Commercial Code No. 6102) <http://www.basbakanlik.gov.tr/docs/kkgm/kanuntasarilari/TURK%20TICARET/madde%20gerekc e.doc> accessed 08 January 2017.

[48] The Republic of Turkey Turkish Commercial Code Law No. 6102 (31 January 2011), <http://www.tbmm.gov.tr/kanunlar/k6102.html> accessed 25 October 2018.

[49] Fatih Bilgili and Ertan Demirkapı, *Şirketler Hukuku Dersleri / Company Law* (6th edn, Dora Press 2018), 302; For some rights of shareholders such as bringing a liability claim, the legislator does not seek a threshold requirement to prevent misuse of the threshold requirement. There is no doubt that this threshold requirement is limited to the use of minority shareholders rights and remedies in Turkey. For example, to bring an action based on the dissolution of a joint stock company for the just causes remedy in Article 531, a shareholder needs to have at least 10 percent of the shares of the company. Even if a shareholder has justifiable reasons to apply to the court, he cannot apply without the required threshold. This makes the remedy useless in some cases.

[50] Cubbin and Leech (n 26) 351.

be separated between controlling(majority) and minority shareholders is not used in deciding who is a controlling shareholder. Therefore, who is regarded as a minority shareholder, but mainly relies on whether a shareholder has a form of control over a company. The controlling shareholders almost always have full control over the corporation such as its management, its directors, and so on. However, it is also possible to find companies that are controlled only by shareholders holding 40 percent, 20 percent or less. These shareholders also use absolute control over the company, as the rest of the shares are divided among other shareholders, with each has a minimum percentage being unable to collect some shares which is similar to those of the controlling shareholders.[51]

To provide a more complete understanding of the concept of minority shareholders' protection, related theories for development of minority shareholders' protection will be analysed in next section.

3. The Role of Theories of Corporate Governance on Minority Shareholders' Rights Protection

3.1 Overview

Numerous theories of corporate management systems have been introduced by academics to set out corporate governance best practice. Some theories have arisen as a response to managerial powers in a company, responsibilities of directors and abuse of the rights of shareholders. The point of contention is always on the position of managers in the company. Should managers focus on maximising the interests of shareholders without thinking of anything else? Alternatively, should they consider all stakeholders who are affected by the actions of the company such as employees, customers, suppliers and creditors? Another problem that arises here is that what will happen if the managers consider their interests more than those of all others? Hence, some theories have been created to address these issues. Even though these theories are Western, in recent years the theories have spread around the world to respond to the emerging needs of company law. The theories have different implications for corporate governance, for example, while agency theory gives particular importance to improving the financial growth of the corporation, shareholder theory concentrates on enhancing the welfare of the shareholders.[52]

Corporate governance is concerned with different fields, such as the economics, finance, law, governance, policy and organisational behaviour,[53] but in this section only the theories related to minority shareholder protection will be analysed. The fundamental theories of minority shareholder protection are based on the discussion of issues arising from the inadequate protection of minority

[51] Ulusoy (n 41) 126.
[52] Jili Solomon, *Corporate Governance and Accountability* (2nd edn, John Wiley 2007), 26.
[53] Lucian A. Bebchuk and Michael S. Weisbach, 'The State of Corporate Governance Research' (2009) 23 *The Review of Financial Studies* 939-961, 941.

shareholder rights. The issues related to the inadequate protection of shareholders' rights are relevant to many different theories, including an analysis of the protection of minority shareholder rights. However, the effects of each theory based on the protection of minority shareholder rights depend on the different perspectives of the theories which have originated from different study disciplines. In the section that follows, the agency, shareholder and stakeholder theories will be analysed to illuminate the concept of minority shareholder protection.

3.2 Shareholder Theory

Who owns a company? The answer to this question is often given as 'the shareholders'. Accordingly, the company assets belonging to the shareholders are managed by the board of directors on behalf of the shareholders. The board of directors is also elected by the shareholders of the company.

The shareholder theory was introduced in 1970 by Nobel-prize winner Milton Friedman who claimed that the only 'social responsibility of business is to increase its profits'.[54] A shareholder may own shares in more than one company or they could have their own business. Even though shareholders would like to manage a company, they need experience and knowledge to control that company, especially if it is a big and public company. For this and similar reasons, shareholders cannot be expected to direct the company themselves. Managers are hired as agents of shareholders to run the corporation for the shareholders' benefit.

The managers are considered successful when they increase the profits of the company and make more money for shareholders. However, after the recent global corporate crisis, it seems that there are some disadvantages to focusing entirely on the interests of shareholders. Sole focus on shareholders' interests encourages short-termism and results in high risks for the company. Analyses of failures of big companies have shown that shareholder theory has an importance for corporate governance. Thus, the pressure on managers to increase the incomes of shareholders has led them to manipulate accounts at the companies mentioned above.[55]

The importance of shareholder theory increased suddenly in the 20th century. Protection of shareholders' rights is the aim of most corporate governance and so shareholders' rights are protected under this theory. However, the crucial point here is that all shareholders, including minority shareholders, should have equal access to the remedies provided in company law when unfairly

[54] Milton Friedman, `The Social Responsibility of Business is to Increase its Profits` (1970), New York Times Magazine, September 13, 126.
[55] Steve Letza, Xiuping Sun and James Kirkbride, 'Shareholding versus Stakeholding: A Critical Review of Corporate Governance' (2004) 12 *Corporate Governance: An International Review* 242, 242.

disadvantaged in their shareholdings. The OECD Principles also state that not only should majority shareholders' rights be protected and promoted but also minority shareholders should be protected.[56]

3.3 Stakeholder Theory

The origins of the stakeholder theory were in the 19th century but it became popular after it was described as a significant aspect of corporate social responsibility (CSR) by Edwards Freeman.[57] Edwards Freeman saw the approach as opposing the theory that managers of the company are only accountable to the shareholders of that company. According to his view, managers of the company should be concerned with all stakeholders' interests, even if this is against shareholders' short-term maximum value.[58] Stakeholder relations contribute to the protection of minority shareholder rights and interests because these support the sustainability of maximising long-term shareholder wealth.

Edwards Freeman described a stakeholder in his article as 'any group or individual who is affected by or can affect the achievement of an organization's objectives'.[59] Accordingly, stakeholder theory may provide an explanation for the protection of minority shareholder rights because stakeholders are the individuals or groups who are legitimately interested in the performance of the company and are affected by the success or failure of the company.[60] According to this explanation, the minority shareholders are the stakeholders of a company because they carry the financial and legitimate shareholding of the company shares.[61]

The development of stakeholder relations supports minority shareholder activism to reduce the conflict of interest between managers and small investors in order to distribute the increased wealth and value provided by a company. Accordingly, in Turkey, to reduce the conflict of interest between managers and small investors, Articles 553 and 555 TCC[62] indicate that stakeholder theory has been applied for shareholder protection as the right to bring a liability claim to the court against directors' actions is also granted to the creditors, not just the company and shareholders.

---

[56]OECD, 'OECD Principles of Corporate Governance' (oecd.org, 2004) <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> accessed 17 November 2016.

[57] R. Edwards Freeman, 'Stakeholder Theory of the Modern Corporation' (2004), *General Issues in Business Ethics 144, 145.*

[58] Ibıd 40.

[59] ibid 42.

[60] Thomas Donaldson and Lee E. Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 The *Academy of Management Review* 65-91, 71.

[61] Andrei Shleifer and Robert W. Vishny, 'A Survey of Corporate Governance' (1997) 52 *The Journal of Finance* 737, 738.

[62] Articles 553 and 555 of Turkish Commercial Code No. 6102.

3.4 Agency Theory

Agency theory which deals with agent-principal relationships in organisations was first introduced by Eisenhardt.[63] In general, it tries to give an explanation about the relationship between shareholders and management of the company; in this way it is seeking the benefits of directors and shareholders with the mechanisms of corporate governance.[64] The theory tries to explain the relations of two people whose intentions and interests[65] are different from each other.[66]

In corporate law, the agency problem relates to the conflict of interest between a company's management (agents) and the company's shareholders (principals). Therefore, the mechanism of corporate governance tries to determine the circumstances in which the principal and agent are likely to have conflicting aims and then defining the governance mechanisms that restrict the agent's self-serving conducts.[67] Particularly in large enterprises, professional managers have decision-making control over corporations so each shareholder can be addressed as a minority shareholder. Although these shareholders can even present their views on the management of the company, this does not mean they have control over it.[68]

The separation of ownership and control requires the protection of minority shareholder rights because modern companies promote the opening of companies to general public finance to increase funds from foreign investors.[69] In this way, minority shareholders' rights become even more important as when companies provide protection mechanisms to a minority shareholder they give them the protection to invest in them and so companies can attract more investors.

However, while discussing the agency problem, the first thing that needs to be identified is who are the principal and agent. In companies, there is a contract between shareholders and managers that shareholders (principals) will hire managers (agents) to act on the shareholders' behalf. Therefore, they can be identified by the ownership structure of the company. It will be seen that when looking at the company structures, dispersed ownership is widespread in the UK

---

[63] Eisenhardt (n 1) 59.
[64] Alexsandro Broede Lopes and Martin Walker, 'Asset Revaluations, Future Firm Performance and Firm-Level Corporate Governance Arrangements: New Evidence from Brazil' (2012) 44 *The British Accounting Review* 53-67, 64.
[65] Peter Wright, Ananda Mukherji and Mark J. Kroll, 'A Reexamination of Agency Theory Assumptions: Extensions and Extrapolations' (2001) 30 *The Journal of Socio-Economics* 413-429, 415.
[66] Ihsan Yigit, 'Ownership Structure, Executive Structure And Firm Performance: Evidence From Turkey' (2014), 36 Marmara Üniversitesi İ.İ.B. Dergisi, 354.
[67] Eisenhardt (n 1) 59.
[68] Berle and Means (n 2) 154.
[69] ibid.

and US,[70] so in these two countries the agency problem refers to the separation of control and ownership, as clarified by Berle and Means.[71] They argue that a modern corporation is an organisation where the management role has shifted away from shareholders to directors or administrators.[72] In an agency relationship, one party, the agent, works on behalf of another party, the principal.[73]

In a good agency relationship, the agents control the company successfully and maximise the principal's profits. The shareholders require a return on what they invested, in the form of dividends, as well as an increase in the value of their shares.[74] This part of the manager's ability is regarded as one of the advantages of incorporation.[75] However, the risk starts when the actions and interests of the directors are not aligned with the interests of shareholders.

Jensen and Meckling,[76] after Berle and Means, detailed the agency theory to clarify the relationship between directors and shareholders in a company. They considered that sometimes managers tend to promote their self-interests.[77] To prevent risk arising from agency problems, the shareholders should be alert to this risk and seek to find a consensus between the owners and managers. Even though it imposes significant costs on shareholders, they should take some measures. They should do this by monitoring the shareholders should monitor the activities of the managers.[78] The agency problem and the dispersed ownership structure are typical in Anglo-Saxon countries, where the countries are industrialised and have developed markets, and the ownership and control of enterprises has been separated. However, this is not the case throughout the world. Most of the corporate governance analyses assume that, in most controlling shareholder structures, a large shareholder controls a company by holding the majority of shares.[79] Thus, agency conflict between the majority-controlling shareholders and minority shareholders will be analysed in the next part.

---

[70] Tom Kirchmaier and Jeremy Grant, 'Who Governs? Corporate Ownership and Control Structures in Europe' (2004) <http://papers.ssrn.com/paper.taf?abstract_id=192414> accessed 19 June 2017.
[71] Berle and Means (n 2) 154.
[72] ibid.
[73] Susan P. Shapiro, 'Agency Theory' (2005) 31 *Annual Review of Sociology*, 263.
[74] Berle and Means (n 2) 154.
[75] Paul L. Davies, *Gower and Davies: Principles of Modern Company Law* (8th edn, Sweet & Maxwell 2008), 682.
[76] J Michael C. Jensen and William H. Meckling, 'Theory Of The Firm: Managerial Behavior, Agency Costs And Ownership Structure' SSRN Electronic Journal, 308.
[77] ibid.
[78] David Kershaw, *Company Law in Context* (Oxford University Press 2012), 25.
[79] Kirchmaier and Grant (n 69).

3.5 Agency Conflict between Majority and Minority Shareholders

There is a difference between companies governed by controlling shareholders and dispersed shareholders. As the aforementioned explanations indicate, in companies which have concentrated ownership structure there is a conflict between majority shareholders and minority shareholders.[80] It is therefore possible to say that contrary to common belief the agency problem arises between the controlling-majority shareholders (agents) and the minority or non-controlling shareholders (principals) rather than between shareholders and managers.[81] In this type of company, controlling shareholders can monitor the managers more effectively than small owners so they can control the management easily. Monitoring costs can be lower than in dispersed ownerships, and majorities have a strong voting power to direct company decisions.[82]

3.6. As an example; Parmalat case

Parmalat case can be an important and convincing example of agency problem in the companies which have concentrated ownership structures.[83] The difference between the crisis like Enron or Worldcom and Parmalat is clear. Enron and Worldcom had dispersed ownership structure and the agency problem was arising between managers and shareholders.

In generally, the key corporate governance problem of companies in the UK and US is that there are strong managers and weak owners. However, weakness of corporate governance systems in other countries like Italy is `weak managers; strong block holders and unprotected minority shareholders`.[84] The case of Parmalat is a typical example of this form of corporate governance, with controlling shareholders from Tanzi family directing recourses of company illegally to themselves, the interest of minority shareholders.[85]

Most of the Italian listed corporations are distinguished by a high level of concentration and governed by controlling shareholders such as families or groups of majority shareholders who want to use power over the company. Parmalat was a complex group of companies which was one of the Italy's biggest food company. It is possible to express that Parmalat has a complicated pyramid ownership structure since Tanzi family owned 51 percent of Parmalat`s

---

[80] Porta, Lopez-de-Silanes, Shleifer and W.Vishny (n 19) 1119.
[81] B. Burcin Yurtoglu, 'Ownership, Control and Performance Of Turkish Listed Firms' (2000) 27 Kluwer Academic Publishers 194.
[82] Mine Uğurlu, 'Agency Costs and Corporate Control Devices in the Turkish Manufacturing Industry' (2000) 27 *Journal of Economic Studies* 566*,* 570.
[83] Ceren Ayça Göçen, 'Kurumsal Yönetim, Iç Kontrol Ve Bağimsiz Denetim: Parmalat Vakasi Corporate Governance, Internal Audit And Independent Audit: Parmalat Case' (2010) 97 Mali Cozum, 110.
[84] Solomon (n 51) 45.
[85] Andrea Melis, 'Corporate Governance Failures. To What Extent Is Parmalat A Particularly Italian Case?' SSRN Electronic Journal, 479.

equity as a black holder. When it was first established its main business was in dairy products but in recent years it drummed up business and it turned into a big corporation which had a part into TV business, football business and tourism business.

Calisto Tanzi founded Parmalat in 1961. Mr Tanzi concentrated his business on expanding his father's sausage and cheese shop. In following years the company began to grow in different areas. For example, Parmalat bought some football teams such as Parma Calcio, Palmeiras and Audax Italiano. Also, the company joined tourism sector. The company was listed on Milan Stock Exchange and eighth largest manufacturing group and provided to 0.8% of the country's GDP. It turned into an international business. Parmalat employed about 36000 workers and 6000 dairy farms depended on the company.[86]

Moreover, at one point the wheels have come off and Parmalat announced in 2003 that the expiring bond of €150 million could not be paid back by the company. After that, Bank of America which Parmalat deserved it deposited €4 billion cash to, told that it did have any exceptional cash from Parmalat and that the account was forged. It was later noticed that CFO Tonna had forged the bank account document using a scanner, scissors and glue. After all these negative developments, Parmalat declared bankruptcy and Tanzi arrested.[87]

After these scandals, at the same month, Enrico Bondi was selected as a special administrator of the company. Parmalat shares once operating a stock market value of 1.8 billion euros mean less by the end of 2004. However, Parmalat remained the crisis and it managed to make pre-tax earnings of 77 million euros in 2005, unlike Enron.

Andrea Melis[88] observes major considerable corporate governance failures that led to the crisis of Parmalat. First of all, as understood afterwards, the non-executive director who is working in Parmalat since 1963 was not independent.[89] This factor actually seems like one of the problems faced by corporate governance. When the executive directors are dominant across the non-executive directors, it makes non-executive directors independence and so ineffective on corporate management. This factor arises in a lack of monitoring of the executive directors. Similarly, in Enron crisis, the executive was dominant over the non-executive directors and the non-executive directors were controlled by him.

The second issue is that the chief executive and chairman of the company was Mr Tanzi. Therefore the positions were not separated. Thirdly, it is emphasised

[86] Lorenzo Segato, 'A Comparative Analysis Of Shareholder Protections In Italy And The United States: Parmalat As A Case Study' (2005) 26 Northwestern Journal of International Law & Business, 375.
[87] Melis (n 84) 479.
[88] Ibid.
[89] Solomon (n 51) 46.

in the Corporate Governance Code[90] in Italy that when a company is controlled by a group of shareholders, some directors should be independent of the controlling shareholders. Although this rule was not implied by Parmalat, the company also did not give enough explanation for this lack of situation.[91]

Although Enron and Parmalat cases were characterising from different jurisdictions-US and Italy- and corporate governance systems, both cases prove that corporate governance weaknesses are similar in nature regarding the fraudulent actions of the audit firms of the companies.[92] One other similarity in both cases is that the companies in different corporate governance systems began to set up checking and monitoring structures with more attention after these two crises.

In summary, it has been shown from this review that Parmalat case shows that failures of corporate governance can be seen in the countries like Italy which its company law system is mostly shaping with controlling shareholders such as families. Whereas the agency problem is seen between salaried managers and shareholders in dispersed ownership companies, in the companies like Parmalat there is a conflict between majority-controlling- shareholders and minority shareholders. The controlling shareholder generally plays an active role in the management of the company and directly takes executive positions. This conflict can be seen come in different examples.[93] Particularly, in these companies, minority shareholders should protect from controlling shareholders without affecting the company's business. Therefore, finding a means to increase minority protection is a core issue in the countries which have mostly controlling shareholders in the companies. It is possible for minority shareholders to protect their own interests either by participating in the corporate management if possible or by starting claims as remedies.

Parmalat case has an importance for Civil Law countries regarding with the controlling shareholders and corporate governance framework of these countries. This case is very popular amongst civil law countries and it is known as an example of agency problem in the corporations which have concentrated ownership structures. Although it is not exactly a case from Turkey, the case should be analysed to show how it will lead to problems if the shareholder rights are not protected.

4. Theoretical Foundation in Turkish Law Context

Several theories for the protection of minority shareholder rights were explained in previous sections. It should be stated that despite the case studies of the

[90]'CORPORATE GOVERNANCE CODE' (2016) <http://www.borsaitaliana.it/borsaitaliana/regolamenti/corporategovernance/code2015.en.pdf> accessed 10 October 2016.
[91] Solomon (n 51) 46.
[92] Solomon (n 51) 47.
[93] Yigit (n 65) 352.

corporate governance of many countries, it is striking that no single theory fully explains the corporate governance system in Turkey. Each of these theories may contribute to finding solutions for individual corporate governance issues in Turkey. For this reason, a combination of the assumptions of these theories may provide an understanding of corporate governance practices in Turkey. It is possible to see the effects of different theories on minority shareholder protection in Turkey.

Agency theory takes on a different form in Turkey. Most Turkish companies are distinguished by a high level of concentration and are governed by controlling shareholders such as families or groups of majority shareholders who want to exercise power over the company. When the Turkish company system is analysed, it can be seen that, whereas the agency problem is seen between salaried managers and shareholders in public listed companies, in the non-public companies there is a conflict between majority shareholders (controlling) and minority shareholders, not between shareholders and management as is known in most of the academic literature.[94] This agency problem is further intensified by fragile corporate governance mechanisms, a weak legal atmosphere, insufficient disclosures, ineffective auditing practices, absence of truly independent directors, insufficiency of the law on the books and burdensome court procedures. The controlling shareholder generally plays an active role in the management of the company and directly takes executive positions in non-public companies which are generally family firms. Thus, majority shareholders can control easily the general shareholders' meeting and the board of directors with their share rate and votes. Minority shareholders have almost no power over the management and are vulnerable to abuse from majority shareholders. The appearance of this expropriation may take different forms such as re-acquisition of profit, misappropriation of assets, price transfer and sales of shares below market value to other companies that are owned by majority shareholders.[95]

In particular, in these companies, minority shareholders should be protected from controlling shareholders without affecting the company's business. Therefore, finding a means to increase minority protection is a core issue in the countries which have mostly controlling shareholders in companies. It is possible for minority shareholders to protect their own interests either by participating in the corporate management if possible or by starting claims as remedies. In fact, it is important to establish a balance between the majority and the minorities, which is important for the efficient functioning of the companies. While establishing this balance, the aim should be to protect minority

[94] John Armour, Henry Hansmann and Reinier Kraakman, *Agency Problems And Legal Strategies*(Oxford University Press 2009).
[95] Porta, Lopez-de-Silanes, Shleifer and W.Vishny (n 19) 1114.

shareholders on the one hand, while maintaining the functioning of the company under the control of the controlling shareholders on the other.[96]

Moreover, the effects of stakeholder theory are also seen in Turkey. As mentioned above, the right to bring a liability claim to the court due to the actions of directors or founders of the company is granted to the creditors as well as the company and shareholders under Articles 553 and 555 TCC.[97] This proves that stakeholder theory has been applied for shareholder protection in Turkey.

Finally, the effects of shareholder theory are seen in minority shareholder protection in Turkish law. Thus, to protect minority shareholders, a new remedy has been regulated under Article 531 TCC,[98] which is the dissolution of the company for just causes. As per Article 531,[99] 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.

In conclusion, in Turkey each of these theories has contributed to finding solutions for corporate governance issues, and rights and remedies for minority shareholders have been shaped by the effects of these theories.

5. Models of Corporate Governance

There are many types of corporate governance models around the world. The difference between the models revolves around the focus on the relationship between a company and its members, the management structures involved, and the social responsibility of the companies. In line with recent developments, many recent studies have compared two different models of corporate governance: the Continental European model, which is also named the insider model, stakeholders model or the German model; and the Anglo-American[100] model, which is also known as the outsider model or shareholders model.[101] The Anglo-American model is classified as regarding investment strategies that involve equity, active markets for corporate control, dispersed ownership, and flexible labour markets.[102] This model positions the board of directors and shareholders as controlling parties, while the managers and chief officers ultimately have secondary authority. On the other hand, the Continental European model is characterised in terms of financial strategies that involve

[96] Yigit (n 65) 352.
[97] Articles 553 and 555 of Turkish Commercial Code No. 6102.
[98] Article 531 of Turkish Commercial Code No. 6102.
[99] ibid.
[100] The Anglo-US model governs corporations in the UK, the US, Australia, Canada, New Zealand and several other countries.
[101] Kose John and Anil K Makhija, *International Corporate Governance* (Emerald 2011); Alan J Dignam and Michael Galanis, *The Globalization Of Corporate Governance* (Ashgate 2009).
[102] Ruth V. Aguilera and Gregory Jackson, 'The Cross-National Diversity Of Corporate Governance: Dimensions And Determinants' (2003) 28 The Academy of Management Review.

long-term debt, ownership by large block holders, weak markets for corporate control, and rigid labour markets.[103] In this model, the corporate legal personality is seen as a coordinating organ between the different interest groups in a firm. The banks also play a large role economically and, in the decision, making process for companies, and specific legal protections are given to creditors, particularly politically connected creditors, in the continental model.

Each of these models of corporate governance differs according to the types of economic agents involved, and they have separate approaches which look at the issue of minority shareholders` protection from different perspectives. Corporate governance in the Anglo-Saxon model is dependent on the interests of shareholders, because this model caters for lots of small shareholders in dispersed ownerships. So, the aim of this model is to maximise the profits of a corporation.[104] Hence, there should be regulations on stock market transactions in order to protect foreign and native investors and support the functioning of efficient stock markets. On the other hand, in the Continental European model, the interests of other groups in the company, not only shareholders, are considered. The managers, employees, and business partners of a firm can be given as an example. Hence, corporations are mostly presumed to increase their finance in private. Therefore, companies are to a large extent regulated by the mandatory provisions of company law to protect the minority shareholders and creditors.[105]

In fact, determining Turkey's attitude to corporate governance is not easy. The corporate governance culture of Turkey looks closer to European countries. Moreover, the regulatory framework for Turkey to become a full member of the EU (European Union) has meant reforms have been made to make it compatible with EU rules. Under these circumstances, it may be considered that Turkey has implemented a European model of corporate governance. Nevertheless, the Anglo-American corporate governance model was initially applied as a result of OECD Principles in institutional management. Turkey shows no consistency in its corporate culture and the principles applied.

The corporate governance structure in Turkey can be categorised as an 'insider model'[106] structure which is mostly family-based due to the features of concentrated ownership, relation-based system, inadequate capital markets, pyramidal structures and multiple shares.[107] Most of the companies in Turkey are

[103] John and Makhija (n 100).
[104] Petri Mäntysaari, *Comparative Corporate Governance* (Springer 2005).
[105] Ibid.
[106] The insider system is considered by a few listed companies, a huge number of extensive share stakes, and huge inter-corporate shareholdings.
[107] Dennis C. Mueller, 'Corporate Governance and Economic Performance' (2006) 20(5) *International Review of Applied Economics* 623, 628.

owned by families and so Turkey's richest families are the dominant insiders.[108] When analysed, it will be seen that family members of those companies are generally appointed as top managers such as directors and even sometimes chief executive officers. Therefore, the controlling shareholders can control directors easily and force them to attend to their interests rather than those of the minority. In Turkey, because of this company structure, it is not easy for minority shareholders to sell their shares without prior consent of the controlling shareholder and this has made investors unwilling to invest in such companies in Turkey.[109] However, with the TCC, minority shareholders have been granted new rights and remedies which prevent their rights being abused by the majority. In particular, the liability claim[110] and dissolution of a joint stock company for just causes[111] have importance for minority shareholders in Turkey.

CONCLUSION

The notion of protection and theories and models of corporate governance related to minority shareholder protection was analysed in this article. Different theoretical bases are critically examined to understand corporate governance. In particular, shareholder theory, stakeholder theory and agency theory are discussed. The section focused on the various concepts of the agency theory in different legal systems. It was revealed with several examples, how this theory was perceived differently in different company structures. The findings have shown that it is not possible to say that one of these theories fully addresses the practice of minority shareholder protection in Turkey. Turkish practice on minority shareholder protection under the principles of corporate governance is based on a combination of these theories. Therefore, an integrated model was proposed for Turkey. Generally, it can be concluded that there is no 'one size fits all' type of legal protection mechanism for minority shareholders following a corporate governance model that fits every country and company. It is therefore up to each country to select its own model and associated mechanisms according to its particular requirements and circumstances as is the case with Turkey.

BIBLIOGRAPHY

Aguilera R and Jackson G, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants' (2003) 28 The Academy of Management Review.

Armour J, Hansmann H and Kraakman R, *Agency Problems and Legal Strategies* (Oxford University Press 2009).

[108] Mehmet Aygun, Suleyman Ic and Mustafa Sayim, 'The Effects Of Corporate Ownership Structure and Board Size on Earnings Management: Evidence From Turkey' (2014) 9 *International Journal of Business and Management* 123-132, 127.
[109] Yurtoglu (n 80) 195.
[110] Article 553 of Turkish Commercial Code No. 6102.
[111] Article 531 of Turkish Commercial Code No. 6102.

Aygun M, Ic S and Sayim M, 'The Effects Of Corporate Ownership Structure and Board Size on Earnings Management: Evidence From Turkey' (2014) 9 *International Journal of Business and Management* 123-132.

Bebchuk L, Kraakman R and Triantis G, 'Stock Pyramids, Cross-Ownership, And Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights', *Concentrated Corporate Ownership, NBER Chapters* (University of Chicago Press 2000).

Bilgili F and Demirkapı E, *Şirketler Hukuku Dersleri* / *Company Law* (6th edn, Dora Press 2018).

Berle A and Means G, *The Modern Corporation And Private Property* (Macmillan Co 1933).

Brightview Ltd, Re [2004] BCC 542.

Ciyun Z, 'A Critical Analysis of the Majority Rule Principle and Controlling Shareholders Fiduciary Duties: A Chinese Perspective (2004) 16 Australian Journal of Corporate Law 256.

Cubbin J and Leech D, 'The Effect Of Shareholding Dispersion On The Degree Of Control In British Companies: Theory And Measurement' (1983) 93 *The Economic Journal* 351.

Davies P L, *Gower and Davies: Principles of Modern Company Law* (8th edn, Sweet & Maxwell 2008).

Desender K, 'The Relationship Between The Ownership Structure And Board Effectiveness' SSRN Electronic Journal 3.

Dignam A and Galanis M, The Globalization of Corporate Governance (Ashgate 2009).

Donaldson T and Preston L, 'The Stakeholder Theory Of The Corporation: Concepts, Evidence, And Implications' (1995) 20 *The Academy of Management Review* 65-91.

Eisenhardt K, 'Agency Theory: An Assessment and Review.' (1989) 14 *Academy of Management Review* 57-74.

Fama E and Jensen M, 'Separation of Ownership and Control' (1983) 26 Journal of Law and Economics 301, 303.

Foss v Harbottle (1843), 67 ER 189.

Freeman R, 'Stakeholder Theory of the Modern Corporation' (2004), General Issues in Business Ethics 144, 145.

Friedman M, `The Social Responsibility of Business Is to Increase Its Profits`, (1970) *New York Times Magazine*, September 13.

Hannigan B, *Company Law* (3rd edn. Oxford University Press 2012).

Hemraj M, 'The Business Judgment Rule in Corporate Law' (2004) 15(6) ICCLR 192 and Branson Douglas, 'The Rule that Isn't a Rule-the Business Judgment Rule' (2002) 36 Valparaiso University Law Review.

Grant J and Kirchmaier T, 'Corporate Ownership Structure and Performance in Europe' (2005) 2 *European Management Review* 231.

Göçen C, 'Kurumsal Yönetim, Iç Kontrol Ve Bağimsiz Denetim: Parmalat Vakasi Corporate Governance, Internal Audit And Independent Audit: Parmalat Case' (2010) 97 Mali Cozum, 110.

Jensen M and Meckling W, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305.

John K and Makhija A, International Corporate Governance (Emerald 2011).

Karatepe Kaya, M., `Shareholder`s rights and remedies related to corporate governance principles` (2019) Corporate Governance: Search for the Advanced Practices, 48-51.

Kershaw D, *Company Law in Context* (Oxford University Press 2012).

Kim K, Kitsabunnarat-Chatjuthamard P, Nofsinger J, 'Large Shareholders, Board Independence, and Minority Shareholder Rights: Evidence From Europe' (2007) 13 *Journal of Corporate Finance* 859.

Letza S, Sun X and Kirkbride J, 'Shareholding Versus Stakeholding: A Critical Review Of Corporate Governance' (2004) 12 *Corporate Governance An International Review* 242.

La Porta R, Lopez-de-Silanes F and Shleifer A, 'Corporate Ownership Around The World' (1999) 54 *The Journal of Finance* 471-517.

La Porta R, Lopez-de-Silanes F, Shleifer A and Vishny R, 'Law And Finance' (1998) 106 *Journal of Political Economy* 1113.

Lazarides T.G, `Minority Shareholder Choices and Rights in the New Market Environment`, (2010) 7 *The IUP Journal of Corporate and Securities Law* 7.

Leuz C, Nanda D and Wysocki P, 'Earnings Management and Investor Protection: An International Comparison' (2003) 69 *Journal of Financial Economics* 505-527.

London Stock Exchange, 'The Listing Rules' (The Yellow Book) (London, The Stock Exchange, 1993).

Lopes A and Walker M, 'Asset Revaluations, Future Firm Performance And Firm-Level Corporate Governance Arrangements: New Evidence From Brazil' (2012) 44 *The British Accounting Review* 53-67.

Mäntysaari P, *Comparative Corporate Governance* (Springer 2005).

Majority Rule, | Meaning In the Cambridge English Dictionary' (Dictionary.cambridge.org, 2018) <http://dictionary.cambridge.org/dictionary/english/majority-rule> accessed 20/11/2018.

'Mevzuat Bilgi Sistemi' (Mevzuat.gov.tr, 2016) <http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.6102&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=6102> accessed 20 September 2016.

Melis A, 'Corporate Governance Failures. To What Extent Is Parmalat A Particularly Italian Case?' SSRN Electronic Journal.

Mueller D, 'Corporate Governance and Economic Performance' (2006) 20(5) *International Review of Applied Economics* 623, 628.

Nomer Ertan F, `Anonim Ortaklığın Haklı Sebeple Feshi Davası - TTK m. 531 Üzerine Düşünceler / Dissolution for Just Causes of Joint Stock Companies – Considerations of Article 531 of Turkish Commercial Code No. 6102' (2015) 23 *Istanbul University Law School Journal* 423.

OECD, 'OECD Principles of Corporate Governance' (oecd.org, 2004) <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> accessed 17 November 2016.

Pulaşlı H, *Şirketler Hukuku / Company Law* (4th edn, Adalet Press 2016).

Sarkar P, `Common law vs. Civil law: which system provides more protection to shareholders and promotes financial development`, (2017) 2 *Journal of Advanced Research in Law and Economics* 143.

Segato L, 'A Comparative Analysis Of Shareholder Protections In Italy And The United States: Parmalat As A Case Study' (2005) 26 Northwestern Journal of International Law & Business.

Shapiro S.P, 'Agency Theory' (2005) 31 *Annual Review of Sociology,* 263.

Solomon J, *Corporate Governance and Accountability* (2nd edn, John Wiley 2007).

The Republic of Turkey Turkish Commercial Code Law No. 6102 (31 January 2011), <http://www.tbmm.gov.tr/kanunlar/k6102.html> accessed 25 October 2018.UK Companies Act 2006.

Uğurlu M., 'Agency Costs and Corporate Control Devices in the Turkish Manufacturing Industry' (2000) 27 *Journal of Economic Studies* 566.

Ulusoy E, *Anonim Şirketlerde Bireysel ve Azınlık Pay Sahibi Hakları / Minority shareholders` rights in joint stock companies* (2nd edn, Bilge Press 2016).

Wright P, Mukherji A and Kroll M, 'A Reexamination Of Agency Theory Assumptions: Extensions And Extrapolations' (2001) 30 *The Journal of Socio-Economics* 413-429.

Yigit I, 'Ownership Structure, Executive Structure And Firm Performance: Evidence From Turkey' (2014), 36 *Marmara Üniversitesi İ.İ.B. Dergisi* 349-364.

Yurtoglu B, `Ownership, Control and Performance of Turkish Listed Firms` (2000) 27 *Kluwer Academic Publishers* 193–222.

Zahir M, *Company and Securities Law* (3rd edn, The University Press Limited 2000).

6102 Sayılı Türk Ticaret Kanunu Gerekçesi (Preamble of Turkish Commercial Code No. 6102)<http://www.basbakanlik.gov.tr/docs/kkgm/kanuntasarilari/TURK%20TICARET/madde%20gerekc e.doc> accessed 08 January 2017.

(Bankacılık Düzenleme ve Denetleme Kurumu (BDDK), 2016) <https://www.bddk.org.tr/websitesi/turkce/Mevzuat/Bankacilik_Kanunu/15405411_sayili_bankacilik_kanunu.pdf> accessed 20 September 2016.

'CORPORATE GOVERNANCE CODE' (2016) <http://www.borsaitaliana.it/borsaitaliana/regolamenti/corporategovernance/code2015.en.pdf> accessed 10 October 2016.