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Eskişehir Osmangazi Üniversitesi
Hukuk Fakültesi Dergisi

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Yayın Sahibi ve Temsilcisi

Eskişehir Osmangazi Üniversitesi
Prof. Dr. Kamil Çolak

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Arş. Gör. Safa Akalay

İletişim
Eskişehir Osmangazi Üniversitesi Hukuk Fakültesi Meşelik Kampüsü Büyükdere Mahallesi Prof. Dr. Nabi Avcı Bulvarı No: 4 Odunpazarı/Eskişehir
☏ +90 (222) 239 3750/4711
✉ periodicumiuris@gmail.com

Contact

Eskişehir Osmangazi Üniversitesi Hukuk Fakültesi Meşelik Kampüsü Büyükdere Mahallesi Prof. Dr. Nabi Avcı Bulvarı No: 4 Odunpazarı/Eskişehir

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Yayın Kurulu

Danışma Kurulu

Periodicum Iuris

Hakkında

Periodicum Iuris, ***uluslararası*** ve ***hakemli*** bir dergidir. Dergide, hukuk ve hukukla ilişkili alanlarda yazılmış, yerel ve evrensel literatüre yenilik katmak amacında olan, orijinal ve bilimsel çalışmalara yer verilir. Dergimiz, ocak ve temmuz aylarında olmak üzere yılda iki (2) sayı olarak elektronik ve basılı şekilde yayımlanır.
Dergiye gönderilen tüm çalışmalar, gerekli hâllerde yayın kurulunun da görüşü alınmak suretiyle Dergi Editoryası tarafından ön incelemeye tabi tutulur. Derginin bilimsel yayıncılık standartları gereğince uygun bulduğu makaleler ancak bu süreçten sonra hakem incelemesine gönderilir.

Etik İlkeler

Periodicum Iuris'te takip edilen makale kabul ve yayın süreçleri, bilginin tarafsız ve saygın bir şekilde gelişimine ve dağıtımına temel teşkil etmektedir. Bu doğrultuda uygulanan süreçler, yazarların ve yazarları destekleyen kurumların çalışmalarının kalitesine doğrudan yansımaktadır. Hakemli çalışmalar bilimsel yöntemi somutlaştıran ve destekleyen çalışmalardır. Bu noktada sürecin bütün paydaşlarının (yazarlar, okurlar ve araştırmacılar, yayıncı, hakemler ve editörler) etik ilkelere yönelik standartlara uyması önem taşımaktadır. Derginin yayın etiği kapsamında tüm paydaşlarının aşağıdaki etik sorumlulukları taşıması beklenmektedir. Aşağıda yer alan etik görev ve sorumluluklar oluşturulurken açık erişim olarak Committee on Publication Ethics (COPE) tarafından yayımlanan rehberler ve politikalar dikkate alınmıştır.

Yazarların Etik Sorumlulukları

Dergiye makale gönderen yazar(lar)ın aşağıdaki etik sorumluluklara uyması beklenmektedir:

- Yazar(lar)ın gönderdikleri çalışmaların özgün olması, yazar(lar)ın başka çalışmalardan yararlanmaları veya başka çalışmaları kullanmaları durumunda eksiksiz ve doğru bir biçimde atıfta bulunmaları ve/veya alıntı yapmaları gerekmektedir. Ayrıca yazar(lar) kör atıftan da kaçınmalıdırlar. Makaleler, derginin belirlemiş olduğu yazım kuralları ve kaynak gösterme biçimlerine uygun olarak hazırlanmalıdır. Bu çerçevede yazar(lar)ın gönderdikleri çalışmalar intihal, sahtecilik, çarpıtma gibi etik ihlallerden arınmış olmalı ve Yükseköğretim Kurumları Bilimsel Araştırma ve Yayın Etiği Yönergesi'ne uygun olmalıdır.
- Makalenin yazar(lar)ı eksiksiz ve doğru bir biçimde belirtilmelidir. Makalenin yazar(lar)ı olduğu belirtilen tüm kişilerin çalışmaya doğrudan ve "fikri" bir katkısı bulunmalıdır. Fikri katkı sunmadan çalışmaya başka şekillerde destek sağlayan kişilerin isimleri ve sundukları katkının niteliği çalışmada belirtilmelidir.
- Dergiye gönderilen yazılar, daha önce yayımlanmamış ve Periodicum Iuris dışında bir dergiye eş zamanlı olarak yayımlanmak üzere gönderilmemiş olmalıdır. Daha önce, ulusal ya da uluslararası kongre ya da sempozyumlarda sunulmuş ve özeti yayımlanmış çalışmalar, bu nitelikleri belirtilerek dergiye gönderilebilir.
- Yayımlanmak üzere gönderilen tüm çalışmaların varsa çıkar çatışması teşkil edebilecek durumları ve ilişkileri açıklanmalıdır.
- Yazar(lar)dan değerlendirme süreçleri çerçevesinde makalelerine ilişkin ham veri talep edilebilir, böyle bir durumda yazar(lar) beklenen veri ve bilgileri editörler kurulu ve bilim kuruluna sunmaya hazır olmalıdır.
- Yazar(lar) kullanılan verilerin kullanım haklarına, araştırma/analizlerle ilgili gerekli izinlere sahip olduğuna veya deney yapılan deneklere yönelik izin prosedürlerini gerçekleştirdiğini gösteren belgeye sahip olmalıdır.
- Yazar(lar)ın yayımlanmış, erken görünüm veya değerlendirme aşamasındaki çalışmasıyla ilgili bir yanlış ya da hatayı fark etmesi durumunda, dergi editörünü veya yayıncıyı bilgilendirme, düzeltme veya geri çekme işlemlerinde editörle iş birliği yapma yükümlülüğü bulunmaktadır.
- Yazarlar çalışmalarını aynı anda birden fazla derginin başvuru sürecinde bulunduramaz. Her bir başvuru, önceki başvurunun tamamlanmasını takiben başlatılabilir. Başka bir dergide yayımlanmış çalışma Periodicum Iuris'e gönderilemez.
- Değerlendirme süreci başlamış bir çalışmanın yazar sorumluluklarının değiştirilmesi (Yazar ekleme, yazar sırası değiştirme, yazar çıkartma gibi) teklif edilemez.

Etik kurallar çerçevesinde; dergide değerlendirilmesi için Etik Kurul İzni gerektiren araştırmalar aşağıdaki gibidir:

- Anket, mülakat, odak grup çalışması, gözlem, deney, görüşme teknikleri kullanılarak katılımcılardan veri toplanmasını gerektiren nitel ya da nicel yaklaşımlarla yürütülen her türlü araştırmalar,
- İnsan ve hayvanların (materyal/veriler dahil) deneysel ya da diğer bilimsel amaçlarla kullanılması,
- İnsanlar üzerinde yapılan klinik araştırmalar,

- Hayvanlar üzerinde yapılan araştırmalar,
- Kişisel verilerin korunması kanunu gereğince retrospektif çalışmalar.

Bu çerçevede dergimizde değerlendirmeye alınacak çalışmalarda;

- Olgu sunumlarında "Aydınlatılmış Onam Formu"nun alındığının belirtilmesi,
- Başkalarına ait ölçek, anket, fotoğrafların kullanımı için sahiplerinden izin alınması ve bunun belirtilmesi,
- Kullanılan fikir ve sanat eserleri için telif hakları düzenlemelerine uyulduğunun belirtilmesi gerekmektedir.

Editörün Etik Görev ve Sorumlulukları

Dergi editöryası, açık erişim olarak Committee on Publication Ethics (COPE) tarafından yayınlanan "COPE Code of Conduct and Best Practice Guidelines for Journal Editors" ve "COPE Best Practice Guidelines for Journal Editors" rehberleri temelinde aşağıdaki etik görev ve sorumluluklara sahip olmalıdır:

Genel Görev ve Sorumluluklar

Editörler, Dergide yayımlanan her yayından sorumludur. Bu sorumluluk bağlamında editörler, aşağıdaki rol ve yükümlülükleri taşımaktadır:

- Okuyucuların ve yazarların bilgi ihtiyaçlarını karşılamaya yönelik çaba sarf etme,
- Sürekli olarak derginin gelişimini sağlama,
- Dergide yayımlanan çalışmaların kalitesini geliştirmeye yönelik süreçleri yürütme,
- Düşünce özgürlüğünü destekleme,
- Akademik açıdan bütünlüğü sağlama,
- Fikri mülkiyet hakları ve etik standartlardan taviz vermeden iş süreçlerini devam ettirme,
- Düzeltme, açıklama gerektiren konularda yayın açısından açıklık ve şeffaflık gösterme,
- Aldıkları tüm kararlarda tarafsız ve adil davranma,
- Hakemlik veya yayın sürecine dair yaşanabilecek aksaklıkların önüne geçilebilmesi için gerekli koordinasyonu sağlama.

Okuyucu ile İlişkiler

- Editörler; tüm okuyucu, araştırmacı ve uygulayıcıların ihtiyaç duydukları bilgi, beceri ve deneyim beklentilerini dikkate alarak karar vermelidir.
- Yayımlanan çalışmaların okuyucuya, araştırmacıya, uygulayıcıya ve onların bilimsel alanlarına katkı sağlamasına ve özgün nitelikte olmasına dikkat etmelidir.
- Ayrıca editörler okuyucu, araştırmacı ve uygulayıcılardan gelen geri bildirimleri dikkate almak, açıklayıcı ve bilgilendirici geri bildirim vermekle yükümlüdür.

Yazarlar ile İlişkiler

Editörlerin yazarlara karşı görev ve sorumlulukları aşağıdaki şekildedir:

- Editörler, çalışmaların önemi, özgün değeri, geçerliliği, anlatımın açıklığı ve derginin amaç ve hedeflerine dayanarak olumlu ya da olumsuz karar vermelidir.
- Yayın kapsamına uygun olan çalışmaları haklı bir gerekçe olmadığı sürece ön değerlendirme aşamasına almalıdır.
- Editörler, çalışma ile ilgili haklı bir gerekçe olmadıkça, olumlu yöndeki hakem önerilerini göz ardı etmemelidir.
- Yeni editörler, çalışmalara yönelik olarak önceki editör(ler) tarafından verilen kararları haklı bir gerekçe olmadıkça değiştirmemelidir.
- "Görmez Hakemlik ve Değerlendirme Süreci" mutlaka yayımlanmalı ve editörler tanımlanan süreçlerde yaşanabilecek sapmaların önüne geçmelidir.
- Editörler yazarlar tarafından kendilerinden beklenecek her konuyu ayrıntılı olarak içeren bir "Yazar Rehberi" yayımlamalıdır. Bu rehberler belirli zaman aralıklarında güncellenmelidir.
- Yazarlara açıklayıcı ve bilgilendirici şekilde bildirim ve dönüş sağlanmalıdır.
- Yazarların hassas kişisel verileri ayrımcılık unsuru olarak kullanılmamalıdır.
- İntihal, sahtecilik, çarpıtma gibi araştırma usulsüzlüğünün meydana geldiği çalışma tespit edilmeli ve bunun yayımlanmasını önlemek için gereken tedbirler alınmalıdır. Hiçbir koşulda bu tür usulsüzlükler teşvik edilmemeli veya kasıtlı olarak bu tür usulsüzlüklerin gerçekleşmesine izin verilmemelidir.

Hakemler ile İlişkiler

Editörlerin hakemlere karşı görev ve sorumlulukları aşağıdaki şekildedir:

- Hakemleri çalışmanın konusuna uygun olarak belirlemelidir.
- Hakemlerin değerlendirme aşamasında ihtiyaç duyacakları bilgi ve rehberleri sağlamakla yükümlüdür.
- Yazarlar ve hakemler arasında çıkar çatışması olup olmadığını gözetmek durumundadır.
- Görmez hakemlik bağlamında hakemlerin kimlik bilgilerini gizli tutmalıdır.
- Hakemleri tarafsız, bilimsel ve nesnel bir dille çalışmayı değerlendirmeleri için teşvik etmelidir.

- Hakemleri zamanında dönüş ve performans gibi ölçütlerle değerlendirmelidir.
- Hakemlerin performansını artırıcı uygulama ve politikalar belirlemelidir.
- Hakem havuzunun sürekli ve dinamik şekilde güncellenmesi konusunda gerekli adımları atmalıdır.
- Nezaketsiz ve bilimsel olmayan değerlendirmeleri engellemelidir.
- Hakem havuzunun geniş bir yelpazeden oluşması için adımlar atmalıdır.

Danışma Kurulu ile İlişkiler

- Editör, tüm danışma kurulu üyelerinin süreçleri yayın politikaları ve yönergelere uygun ilerletmesini sağlamalıdır.
- Danışma kurulu üyelerini yayın politikaları hakkında bilgilendirmeli ve gelişmelerden haberdar etmelidir.
- Danışma kurulu üyelerinin çalışmaları tarafsız ve bağımsız olarak değerlendirmelerini sağlamalıdır.
- Yeni danışma kurulu üyelerini, katkı sağlayabilir ve uygun nitelikte belirlemelidir.
- Danışma kurulu üyelerinin uzmanlık alanına uygun çalışmaları değerlendirme için göndermelidir.
- Danışma kurulu ile düzenli olarak etkileşim içerisinde olmalıdır.
- Danışma kurulu ile belirli aralıklarla yayın politikalarının ve derginin gelişimi için toplantılar düzenlemelidir.

Dergi Sahibi ve Yayıncı ile İlişkiler

Editörler (baş editör ve bölüm editörleri) ve yayıncı arasındaki ilişki editoryal bağımsızlık ilkesine dayanmaktadır. Editörler ile yayıncı arasında yapılan yazılı sözleşme gereği, editörlerin alacağı tüm kararlar yayıncı ve dergi sahibinden bağımsızdır.

Editör ve Görmez Hakemlik Süreçleri

Editörler; dergi yayın politikalarında yer alan "Görmez Hakemlik ve Değerlendirme Süreci" politikalarını uygulamakla yükümlüdür. Bu bağlamda editörler her çalışmanın adil, tarafsız ve zamanında değerlendirme sürecinin tamamlanmasını sağlar.

Kalite Güvencesi

Editörler; dergide yayımlanan her makalenin, dergi yayın politikaları ve uluslararası standartlara uygun olarak yayımlanmasından sorumludur.

Kişisel Verilerin Korunması

Editörler; değerlendirilen çalışmalarda yer alan kişilere, deneklere veya görsellere ilişkin kişisel verilerin korunmasını sağlamakla yükümlüdür. Çalışmalarda kullanılan kişilerin açık rızası belgeli olmadığı sürece çalışmayı reddetmekle görevlidir. Ayrıca editörler; yazar, hakem ve okuyucuların kişisel verilerini korumakla yükümlüdür.

Etik Kurul, İnsan ve Hayvan Hakları

Editörler; değerlendirilen çalışmalarda insan ve hayvan haklarının korunmasını sağlamakla yükümlüdür. Çalışmalarda kullanılan deneklere ilişkin etik kurul onayı, deneysel araştırmalara ilişkin izinlerin olmadığı durumlarda çalışmayı reddetmekle yükümlüdür.

Olası Suiistimal ve Görevi Kötüye Kullanmaya Karşı Önlem

Editörler; olası suiistimal ve görevi kötüye kullanma işlemlerine karşı önlem almakla yükümlüdür. Bu duruma yönelik şikâyetlerin belirlenmesi ve değerlendirilmesi konusunda titiz ve nesnel bir soruşturma yapmanın yanı sıra, konuyla ilgili bulguların paylaşılması editörün sorumlulukları arasında yer almaktadır.

Akademik Yayın Bütünlüğünü Sağlamak

Editörler çalışmalarda yer alan hata, tutarsızlık ya da yanlış yönlendirme içeren yargıların hızlı bir şekilde düzeltilmesini sağlamalıdır.

Fikri Mülkiyet Haklarının Korunması

Editörler; yayımlanan tüm makalelerin fikri mülkiyet hakkını korumakla, olası ihlallerde derginin ve yazar(lar)ın haklarını savunmakla yükümlüdür.
Ayrıca editörler yayımlanan tüm makalelerdeki içeriklerin başka yayınların fikri mülkiyet haklarını ihlal etmemesi adına gerekli önlemleri almakla yükümlüdür.

Yapıcılık ve Tartışmaya Açıklık

Editörler; Dergide yayımlanan eserlere ilişkin ikna edici eleştirileri dikkate almalı ve bu eleştirilere yönelik yapıcı bir tutum sergilemelidir.
Eleştirilen çalışmaların yazar(lar)ına cevap hakkı tanımalıdır.
Olumsuz sonuçlar içeren çalışmaları göz ardı etmemeli ya da dışlamamalıdır.

Şikâyetler

Editörler; yazar, hakem veya okuyuculardan gelen şikâyetleri dikkatlice inceleyerek bunlara aydınlatıcı ve açıklayıcı bir şekilde yanıt vermekle yükümlüdür.

Politik ve Ticari Kaygılar

Dergi sahibi, yayıncı ve diğer hiçbir politik ve ticari unsur, editörlerin bağımsız karar almalarını etkilemez.

Çıkar Çatışmaları

Editörler; yazar(lar), hakemler ve diğer editörler arasındaki çıkar çatışmalarını göz önünde bulundurarak, çalışmaların yayın sürecinin bağımsız ve tarafsız bir şekilde tamamlamasını garanti eder.

Hakemlerin Etik Sorumlulukları

Tüm çalışmaların "Görmez Hakemlik" ile değerlendirilmesi yayın kalitesini doğrudan etkilemektedir. Bu süreç yayının nesnel ve bağımsız değerlendirilmesi ile güven sağlar. Dergi değerlendirme süreci çift taraflı görmez hakemlik ilkesiyle yürütülür. Hakemler yazarlar ile doğrudan iletişime geçemez, değerlendirme ve yorumlar dergi yönetim sistemi aracılığıyla iletilir. Bu süreçte değerlendirme formları ve tam metinler üzerindeki hakem yorumları editör aracılığıyla yazar(lar)a iletilir. Bu bağlamda Periodicum Iuris için çalışma değerlendiren hakemlerin aşağıdaki etik sorumluluklara sahip olması beklenmektedir:

- Hakemlik davetini kabul edip etmediğini makul bir süre içerisinde editöre bildirmelidir. Nitekim bu durum, yayın sürecinin gereksiz yere uzamasını engellemek açısından önem arz etmektedir.
- Sadece uzmanlık alanı ile ilgili çalışmaları değerlendirmeyi kabul etmelidir.
- Tarafsızlık ve gizlilik içerisinde değerlendirme yapmalıdır.
- Değerlendirme sürecinde çıkar çatışması ile karşı karşıya olduğunu düşünürse, çalışmayı incelemeyi reddederek, dergi editörünü bilgilendirmelidir.
- İlgili çalışmayı değerlendirmede kendini yetersiz hissettiğinde veya değerlendirmeyi verilen sürede tamamlamasının mümkün olamayacağını tespit ettiğinde; bu yöndeki tespitlerini dergi editörü ile paylaşmalı, gerekirse hakem değerlendirme sürecinden çekilmelidir.
- Gizlilik ilkesi gereği inceledikleri çalışmaları değerlendirme sürecinden sonra imha etmelidir. İnceledikleri çalışmaların sadece nihai versiyonlarını ancak yayımlandıktan sonra kullanabilir. Bu çerçevede hakem, değerlendirme sürecinde elde ettiği bilgileri kendisi veya bir başkası yararına yahut bir kişi veya kurumu avantajlı yahut dezavantajlı duruma düşürmek amacıyla kullanmaz.
- Değerlendirmeyi nesnel bir şekilde sadece çalışmanın içeriği ile ilgili olarak yapmalıdır. Bilimsel nitelik taşımayan değerlendirmelerden kaçınmalıdır. Milliyet, cinsiyet, dini inançlar, siyasal inançlar ve ticari kaygıların değerlendirmeye etki etmesine izin vermemelidir. Hakemin sayılan bu hususlara riayet etmediği tespit edildiği takdirde, kendisi ile iletişime geçilir ve yorumunu gözden geçirmesi ve düzeltmesi beklenir.
- Değerlendirmeyi yapıcı ve nazik bir dille yapmalıdır. Görüşlerini öneriler ile desteklemelidir. Düşmanlık, iftira ve hakaret içeren aşağılayıcı kişisel yorumlar yapmamalıdır.
- Değerlendirmeyi kabul ettikleri çalışmayı zamanında ve yukarıdaki etik sorumluluklarda gerçekleştirmelidir.
- Hakem, değerlendirdiği çalışma kapsamında telif hakkı ihlali ve intihalden haberdar olduğu veya bu durumdan şüphelendiği takdirde gecikmeksizin editöre durumu bildirmelidir.

Yayıncının Etik Sorumlukları

Dergiye gönderilen tüm makaleler gönderim sırasında intihal programı tarafından (IThenticate (http://www.ithenticate.com/), Turnitin (https://www.turnitin.com/) vb.) taranmaktadır. Benzerlik oranının dipnotlar, alıntılar ve kaynakça hariç olmak üzere %20'den az olması gereklidir. Bu oranı aşan makaleler ayrıntılı olarak incelenir ve gerekli görülürse gözden geçirilmesi ya da düzeltilmesi için yazarlara geri gönderilir. İntihal ya da etik dışı davranışlar tespit edilirse yayımlanması reddedilir. Ancak lisansüstü tezlerden türetilen makalelerle ilgili olarak söz konusu oranın aranmaması konusunda dergi editoryasının takdir yetkisi bulunmaktadır.

Derginin yayıncısı olan Eskişehir Osmangazi Üniversitesi Hukuk Fakültesi ve Baş Editör dergiyle ilgili aşağıdaki etik sorumlulukların bilinciyle hareket etmektedir:

- Dergide yayımlanmış her makalenin mülkiyet ve telif hakkını korur ve yayımlanmış her kopyanın kaydını saklama yükümlüğünü üstlenir.
- Editörlere ilişkin her türlü bilimsel suiistimal, atıf çeteciliği ve intihalle ilgili önlemleri alma sorumluluğuna sahiptir.

Etik Olmayan Bir Durumla Karşılaşılması Durumu

Dergide yukarıda bahsedilen etik sorumluluklar dışında etik olmayan bir davranış veya içerikle karşılaşırsanız lütfen periodicumiuris@gmail.com adresine e-posta yoluyla bildiriniz.

Yayın Politikası

- Periodicum Iuris, uluslararası ve hakemli bir dergidir. Ocak ve temmuz aylarında olmak üzere yılda iki (2) sayı olarak elektronik ve basılı şekilde yayımlanır. Dergide, hukuk ve hukukla ilişkili alanlarda Türkçe, İngilizce, Fransızca, İtalyanca ya da Almanca yazılmış, yerel ve evrensel literatüre yenilik katmak amacında olan, orijinal ve bilimsel çalışmalara yer verilir.
- Dergide yer alabilecek türdeki çalışmalar; araştırma makalesi, derleme makale, çeviri, yorum, teknik not, kitap değerlendirmesi türleridir.
- Dergiye gönderilen tüm çalışmalar, gerekli hallerde yayın kurulunun da görüşü alınmak suretiyle Dergi Editoryası tarafından bir ön incelemeye tabi tutulur. Dergiye gönderilen makaleler öncelikle şekil ve içerik yönünden ön incelemeye tabi tutulmaktadır. Şekil şartlarının ve gönderim sürecinin derginin koşullarına uygun olarak yerine getirilmesi gerekmektedir. Bunlara uymayan çalışmalar editoryal redde tabidir. Derginin bilimsel yayıncılık standartları gereğince uygun bulduğu makaleler ancak bu süreçten sonra hakem incelemesine gönderilir. Bu konudaki ön eleme ve nihai karar, yayın kurulunun da görüşünü alacak olan Dergi Editoryasının tasarrufundadır. Dergiye sunulan makaleler için hakemlik sürecine alınacağı garantisi verilmez. Buna ek olarak, makalelerin değerlendirme süresi için tarih verilmemektedir.
- Dergi, hakem sürecine kabul edilen çalışmaları en az iki 'görmez' hakeme yönlendirir. Hakem raporları arasında çatışma olması ve editörlerin gerekli gördüğü diğer durumlarda bir üçüncü hakem değerlendirmesine başvurulur. Hakem seçim ve süreci konusundaki her türlü yetki ve karar, editörlerin tasarrufundadır. Hakemlerin çalışmanın dahil olduğu uzmanlık alanına ve yayının dil koşuluna göre tayin edilmesi esastır. Hakemler kendilerine gönderilen eserleri, hakemler için düzenlenmiş esasları ele alan COPE ilkeleri doğrultusunda değerlendirir. (https://doi.org/10.24318/cope.2019.1.9)
- Değerlendirilmeye alınması istenen çalışmaların hangi sayı için uygun bulunabileceği, gönderim tarihleri esas alınmak üzere, hakem değerlendirmesinden gelecek sonuca göre şekillenir.
- Dergiye gönderilen çalışmalar daha önce başka bir yerde yayımlanmamış ya da eş zamanlı olarak başka dergilere yayımlanmak üzere gönderilmemiş olmalıdır. Yazar bu konuya ilişkin taahhüt formunu çalışmasıyla birlikte dergiye iletmekle yükümlüdür.
- Hakem değerlendirmesinde olan ve bu süreci tamamlamış olan çalışmaların, bu süreçten sonra yazar tarafından geri çekilmesinin imkânı yoktur. Kendisine tanınan süre içinde gerekli değişiklikleri yapmayı reddeden yazarların çalışmalarına ret işlemi uygulanır.
- Dergi, her yayın döneminde ancak yeterli nitelikte bulduğu sayıdaki çalışmayı yayımlar. Bu konudaki takdir Dergi Editoryasındadır.
- Yazarlar tarafından ya da ilişkide oldukları üçüncü kişiler tarafından hakem seçimleri ve hakemlik sürecine yönelik yapılabilecek müdahalelerin ve anonimliği gölgeleyecek davranışların saptanması halinde, çalışmalar hangi aşamada olduğuna bakılmaksızın dergi yönetimi tarafından reddedilir.

Ücret Politikası

Hiçbir ad altında yazar veya kurumundan ücret alınmaz. Yazarlara telif ücreti ödenmez. Hakemlere de herhangi bir ödemede bulunulmaz.

Periodicum Iuris

About

Periodicum Iuris is an ***international*** and ***peer-reviewed*** journal. The journal includes original and scientific studies written in the fields of law and law-related fields, aiming to add innovation to the local and universal literature. Our journal is published in two (2) issues per year, in January and July, in electronic and printed form.
All studies submitted to the journal are subjected to preliminary review by the Editors, if necessary, by taking the opinion of the Editorial Board. Articles deemed appropriate by the journal in accordance with scientific publishing standards are sent for peer review only after this process.

Ethical Principles

The manuscript acceptance and publication processes followed at Periodicum Iuris are the basis for the impartial and reputable development and dissemination of knowledge. The processes applied in this direction are directly reflected in the quality of the work of the authors and the institutions that support them. Peer-reviewed studies are studies that embody and support the scientific method. At this point, it is important that all stakeholders of the process (authors, readers, researchers, publishers, reviewers, and editors) comply with the standards for ethical principles. Within the scope of the journal's publication ethics, all stakeholders are expected to carry the following ethical responsibilities. Guidelines and policies published by the Committee on Publication Ethics (COPE) as open access were taken into consideration while creating the following ethical duties and responsibilities.

Ethical Responsibilities of Authors

The author(s) submitting an article to the journal are expected to comply with the following ethical responsibilities:

- The author(s) are required to ensure that the submitted work is original, and if the author(s) utilize other works or use other works, they must give full and correct attribution and/or citation. The author(s) should also avoid blind citation. The manuscripts should be prepared by the journal's drafting rules and referencing formats. Within this framework, the work submitted by the author(s) must be comply with the Directive on Scientific Research and Publication Ethics of Higher Education Institutions and must be free from ethical violations such as plagiarism, forgery, distortion.
- The author(s) of the article must be indicated completely and accurately. All persons listed as author(s) of the article must have made a direct and "intellectual" contribution to the study. The names of the persons who provided support to the study in other ways without making an intellectual contribution and the nature of their contribution should be indicated in the study.
- Manuscripts submitted to the journal should not have been previously published and should not have been submitted to a journal other than Periodicum Iuris for simultaneous publication. Studies that have been previously presented at national or international congresses or symposia and whose abstracts have been published can be submitted to the journal by specifying these qualifications.
- All manuscripts submitted for publication should disclose any conflicts of interest and relationships.
- The author(s) may be requested to provide raw data on their manuscripts within the framework of the evaluation processes, in such a case, the author(s) should be ready to present the expected data and information to the editorial board and scientific committee.
- The author(s) should have a document showing that he/she has the rights to use the data used, has the necessary permissions related to the research/analyses, or has carried out the permission procedures for the experimental subjects.
- If the author(s) becomes aware of an inaccuracy or error in the published, early view, or under review manuscript, the author(s) must notify the journal editor or publisher and cooperate with the editor in correcting or withdrawing the manuscript.
- Authors cannot have their work in the submission process of more than one journal at the same time. Each application can be started after the completion of the previous application. Work published in another journal cannot be submitted to Periodicum Iuris.
- It cannot be proposed to change the author responsibilities (such as adding an author, changing the author order, or removing an author) of a study whose evaluation process has started.

Within the framework of ethical rules; researches that require Ethics Committee Permission for evaluation in the journal are as follows:

- All kinds of research conducted with qualitative or quantitative approaches that require data collection from

participants using surveys, interviews, focus group studies, observations, experiments, interviews,
- Use of humans and animals (including materials/data) for experimental or other scientific purposes,
- Clinical trials in humans,
- Research on animals,
- Retrospective studies by the personal data protection law.

In this context, in the studies to be evaluated in our journal;
- Indication of receipt of the "Informed Consent Form" in case presentations,
- Obtaining permission from the owners for the use of scales, questionnaires, and photographs belonging to others and indicating this,
- For the intellectual and artistic works used, it must be stated that copyright regulations are complied with.

Ethical Duties and Responsibilities of the Editor

The journal editor should have the following ethical duties and responsibilities based on the "COPE Code of Conduct and Best Practice Guidelines for Journal Editors" and "COPE Best Practice Guidelines for Journal Editors" published by the Committee on Publication Ethics (COPE) in open access:

General Duties and Responsibilities

The editors are responsible for every publication in the Journal. In the context of this responsibility, the editors have the following roles and obligations:
- To strive to meet the information needs of readers and authors,
- Ensuring the continuous development of the journal,
- Carrying out processes to improve the quality of studies published in the journal,
- Supporting freedom of thought,
- Ensuring academic integrity,
- Maintaining business processes without compromising intellectual property rights and ethical standards,
- Demonstrating openness and transparency in terms of publication in matters requiring correction and clarification,
- Acting impartially and fairly in all decisions they make,
- Ensuring the necessary coordination to prevent any problems that may arise in the reviewing or publication process.

Relations with Readers

- Editors should make decisions by taking into account the expectations of knowledge, skills, and experience needed by all readers, researchers, and practitioners.
- They should pay attention that the published studies contribute to the reader, researcher, practitioner, and their scientific fields and that they are original.
- In addition, editors are obliged to take into account the feedback from readers, researchers, and practitioners and to provide explanatory and informative feedback.

Relations with Authors

The duties and responsibilities of editors towards authors are as follows:
- Editors should make a positive or negative decision based on the importance, original value, validity, clarity of expression, and the aims and objectives of the journal.
- Unless there is a justifiable reason, they should take the studies that are suitable for the scope of publication to the preliminary evaluation stage.
- Editors should not ignore reviewers' positive recommendations unless there is a justifiable justification for the study.
- New editors should not change the decisions made by the previous editor(s) unless there is a justified justification.
- "Reviewing and Evaluation Process" must be published and editors must prevent deviations that may occur in the defined processes.
- Editors should publish an "Author's Guide" that includes every issue expected from authors in detail. These guidelines should be updated at certain time intervals.
- Authors should be notified and returned in an explanatory and informative manner.
- Sensitive personal data of authors should not be used as an element of discrimination.
- The study in which research irregularities such as plagiarism, forgery, distortion, etc. occur should be identified and necessary measures should be taken to prevent its publication. Under no circumstances should such irregularities be encouraged or deliberately allowed to occur.

Relations with Reviewers

The duties and responsibilities of the editors towards the reviewers are as follows:
- Determine the reviewers by the subject of the study.
- They are obliged to provide the information and guidelines that the reviewers will need during the evaluation phase.

- He/she has to observe whether there is a conflict of interest between authors and reviewers.
- He/she should keep the identity information of the reviewer confidential in the context of reviewing.
- Encourage the reviewers to evaluate the manuscript in an impartial, scientific, and objective manner.
- Evaluate reviewers on criteria such as timeliness and performance.
- He/she should determine practices and policies to improve the performance of reviewers.
- Take the necessary steps to ensure that the reviewers pool is continuously and dynamically updated.
- Prevent unkind and unscientific evaluations.
- Take steps to ensure that the reviewer pool consists of a broad spectrum.

Relations with the Advisory Board

- The editor should ensure that all advisory board members carry out the processes following the publication policies and guidelines.
- The editor should inform the advisory board members about the publication policies and keep them informed of developments.
- Ensure that advisory board members evaluate the work impartially and independently.
- Identify new advisory board members who can contribute and are of appropriate quality.
- Send for evaluation studies appropriate to the expertise of advisory board members.
- Interact regularly with the advisory board.
- Organize periodic meetings with the advisory board for the development of publication policies and the journal.

Relations with the Journal Owner and Publisher

The relationship between editors (editor-in-chief and section editors) and the publisher is based on the principle of editorial independence. Following the written agreement between the editors and the publisher, all editorial decisions are independent of the publisher and the journal owner.

Editorial and Review Processes

Editors are obliged to implement the "Blind Reviewing and Evaluation Process" policies in the journal's publication policies. In this context, editors ensure that the evaluation process of each study is completed in a fair, impartial, and timely manner.

Quality Assurance

Editors are responsible for the publication of each article published in the journal in accordance with the journal's editorial policies and international standards.

Protection of Personal Data

Editors are obliged to ensure the protection of personal data regarding the people, subjects, or images in the evaluated studies. Unless the explicit consent of the people used in the studies is documented, they are responsible for rejecting the study. Editors are also responsible for protecting the personal data of authors, reviewers, and readers.

Ethics Committee, Human and Animal Rights

Editors are obliged to ensure the protection of human and animal rights in the evaluated studies. They are obliged to reject the study in the absence of ethics committee approval for the subjects used in the studies and permissions for experimental research.

Precautions Against Possible Abuse and Misconduct

Editors are obliged to take precautions against possible misconduct and malfeasance. In addition to conducting a rigorous and objective investigation in identifying and evaluating such complaints, it is among the editor's responsibilities to share the relevant findings.

Ensuring Academic Publication Integrity

Editors should ensure that errors, inconsistencies, or misleading judgments are corrected quickly.

Protection of Intellectual Property Rights

Editors are responsible for protecting the intellectual property rights of all published articles and defending the rights of the journal and the author(s) in case of possible violations.
In addition, editors are obliged to take the necessary measures to ensure that the contents of all published articles do not violate the intellectual property rights of other publications.

Constructivism and Openness to Discussion

Editors should take into account the convincing criticisms of the works published in the journal and show a constructive attitude towards these criticisms.
They should give the author(s) of the criticized studies the right to reply.

They should not ignore or exclude studies with negative results.

Complaints

Editors are obliged to carefully examine the complaints received from authors, reviewers, or readers and respond to them in an enlightening and explanatory manner.

Political and Commercial Concerns

The journal owner, publisher, and no other political or commercial considerations influence the independent judgment of the editors.

Conflicts of Interest

The editors guarantee the independent and impartial completion of the publication process, taking into account conflicts of interest between the author(s), reviewers, and other editors.

Ethical Responsibilities of Reviewers

The evaluation of all studies by "Blind Reviewing" directly affects the quality of the publication. This process provides confidence through objective and independent evaluation of the publication. The journal evaluation process is carried out with the principle of bilateral blind reviewing. Reviewers cannot communicate directly with the authors, evaluations, and comments are communicated through the journal management system. In this process, reviewer comments on evaluation forms and full texts are communicated to the author(s) through the editor. In this context, reviewers evaluating manuscripts for Periodicum Iuris are expected to have the following ethical responsibilities:

- They should inform the editor within a reasonable period whether or not they accept the invitation to review. Indeed, this is important to prevent unnecessary prolongation of the publication process.
- Agree to evaluate only studies related to his/her field of expertise.
- Evaluate with impartiality and confidentiality.
- If he/she thinks that he/she is faced with a conflict of interest during the evaluation process, he/she should refuse to review the study and inform the journal editor.
- When he/she feels inadequate in evaluating the relevant study or determines that it will not be possible to complete the evaluation within the given time; he/she should share his/her findings in this direction with the journal editor and, if necessary, withdraw from the peer review process.
- Due to the principle of confidentiality, they should destroy the manuscripts they have reviewed after the evaluation process. They can only use the final versions of the studies they have reviewed only after they are published. In this context, the reviewer shall not use the information obtained during the evaluation process for the benefit of himself/herself or someone else, or to advantage or disadvantage a person or institution.
- The evaluation should be made objectively only with respect to the content of the manuscript. Avoid evaluations that are not of a scientific nature. Not allow nationality, gender, religious beliefs, political beliefs and commercial concerns to influence the evaluation. If it is found that the reviewer does not comply with these points, he/she will be contacted and expected to revise and correct his/her comment.
- He/she should conduct the evaluation in a constructive and courteous manner. He/she should support his/her opinions with suggestions. They should not make derogatory personal comments containing hostility, slander and insults.
- They should carry out the work they accept for evaluation on time and with the above ethical responsibilities.
- If the reviewer is aware of or suspects copyright infringement or plagiarism in the manuscript, he/she should notify the editor without delay.

Ethical Responsibilities of the Publisher

All articles submitted to the journal are scanned by a plagiarism program (IThenticate (http://www.ithenticate.com/), Turnitin (https://www.turnitin.com/), etc.) at the time of submission. The similarity rate must be less than 20%, excluding footnotes, citations and bibliography. Articles exceeding this rate are reviewed in detail and, if deemed necessary, sent back to the authors for revision or correction. If plagiarism or unethical behavior is detected, publication is rejected. However, the editorial board of the journal has the discretion not to require the aforementioned ratio for articles derived from graduate theses.

As the publisher of the journal, Eskişehir Osmangazi University Faculty of Law and the Editor-in-Chief act with the awareness of the following ethical responsibilities regarding the journal:

- It protects the ownership and copyright of every article published in the journal and undertakes the obligation to keep a record of every published copy.
- He/she has the responsibility to take precautions against all forms of scientific misconduct, citation fraud and plagiarism related to editors.

In case of an Unethical Situation

If you encounter any unethical behavior or content in the journal other than the ethical responsibilities mentioned above, please report it via e-mail to periodicumiuris@gmail.com.

Publication Policy

- Periodicum Iuris is an international and peer-reviewed journal. It is published electronically and in printed form in two (2) issues per year, in January and July. The journal includes original and scientific studies written in Turkish, English, French, Italian or German in the fields of law and law-related fields, which aim to add innovation to the local and universal literature.
- The types of studies that can be included in the journal are research articles, review articles, translations, commentaries, technical notes and book reviews.
- All manuscripts submitted to the journal are subjected to a preliminary review by the Journal Editorial Board, with the opinion of the editorial board if necessary. Articles submitted to the journal are subjected to a preliminary review in terms of form and content. The formal requirements and the submission process must be fulfilled in accordance with the conditions of the journal. Studies that do not comply with these are subject to editorial rejection. Only after this process, articles that the journal deems appropriate in accordance with scientific publishing standards are sent for peer review. The preliminary screening and final decision on this issue is at the discretion of the Journal Editorial Board, which will also take the opinion of the Editorial Board. Articles submitted to the Journal are not guaranteed to be included in the peer review process. In addition, no date is given for the evaluation period of the manuscripts.
- The Journal refers accepted manuscripts to at least two 'blind' reviewers. In case of conflict between the review reports and in other cases deemed necessary by the editors, a third reviewer will be consulted. All authority and decisions regarding the reviewer selection and process are at the discretion of the editors. It is essential that reviewers are appointed according to the field of specialization in which the work is included and the language requirement of the publication. Reviewers evaluate the submitted manuscripts in accordance with the COPE guidelines, which address the guidelines for reviewers. (https://doi.org/10.24318/cope.2019.1.9)
- The number of issues for which the manuscripts requested to be considered will be shaped according to the results of the reviewer evaluation, based on the submission dates.
- The manuscripts submitted to the journal must not have been previously published elsewhere or sent to other journals for publication simultaneously. The author is obliged to submit the commitment form regarding this issue to the journal together with his/her work.
- It is not possible for the author to withdraw the manuscripts that are in the peer review process and have completed this process. Authors who refuse to make the necessary changes within the allotted time are subject to rejection.
- The Journal publishes only the number of manuscripts that it deems to be of sufficient quality in each publication period. This is at the discretion of the Journal Editorial Board.
- In the event that interventions by the authors or third parties with whom they are related to the selection of reviewers and the reviewing process and behaviors that may compromise anonymity are detected, the manuscripts will be rejected by the journal management regardless of the stage of the manuscript.

Fee Policy

No fee is charged to the author or his/her organization under any name. No royalties are paid to authors. No payment is made to the reviewers.

Yazım Kuralları

• Periodicum Iuris'e gönderilen çalışmalarda OSCOLA yazım stilinin 4. edisyonu esas alınmalıdır. Daha fazla bilgi için:

<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf> adresinden yardım alınabilir.

• Her sayıda bir yazara ait yalnızca bir çalışma yer alabilir.

• Yazar unvanını, görev yaptığı kurumu, haberleşme adresini, telefon numarasını ve e-posta adresini bildirmelidir. Yazar ayrıca, https://orcid.org/register adresi üzerinden alacağı bilimsel araştırmacı numarasını (ORCID bilgisini) iletmelidir.

• Dergiye çalışmasıyla katkıda bulunmak isteyen yazar çalışmasıyla birlikte,

- Telif Hakları Devir Sözleşmesi'ni,
- Etik kurallara uygun hareket edildiğine ilişkin taahhütnameyi,
- Çalışmasına ilişkin benzerlik oranını gösteren raporu sisteme yüklemelidir.

• Yazar, Periodicum Iuris'e gönderdiği çalışmanın bilimsel etik ilkelerine uygun hazırlandığını, çalışmasıyla birlikte göndereceği taahhütnameyle kabul eder. Bilimsel etik ilkelerine aykırılığı tespit edilen çalışmalar gecikmeksizin yayından kaldırılır.

• Yazar, Periodicum Iuris'e göndereceği taahhütname ile çalışmasının telif haklarını elinde bulundurduğunu ve bu hakları telif hakları devir sözleşmesiyle Eskişehir Osmangazi Üniversitesi'ne devrettiğini kabul eder.

• Periodicum Iuris'te değerlendirmeye alınacak olan bütün çalışmalar intihal programına tabi tutulacaktır. Kabul edilebilirlik için gerekli olan oran en fazla %20'dir.

• Periodicum Iuris'e gönderilen çalışmalarda aşağıdaki yazım kuralları dikkate alınmalıdır:

A. Sözcük Sınırı

Periodicum Iuris'e gönderilecek çalışmaların en az 150 en fazla 300 sözcükten oluşan Türkçe ve İngilizce bir özet içermesi gerekmektedir. Çalışmalarda Türkçe ve İngilizce 5 anahtar kelimeye yer verilmesi gerekmektedir.

B. Yazı tipi ve boyutu

1. Çalışmalar, ana metin Times New Roman 12 punto, tek satır aralığında; dipnotlar Times New Roman 10 punto, tek satır aralığında hazırlanmalıdır.
2. Metin içerisindeki başlıklar aşağıdaki şekilde düzenlenmelidir:

I. KALIN VE TÜMÜ BÜYÜK HARF

A. Kalın ve Sadece İlk Harfler Büyük

1. Kalın ve Sadece İlk Harfler Büyük

a. Normal ve Sadece İlk Harfler Büyük

aa. Normal ve Sadece İlk Harfler Büyük

C. Dipnot ve Kaynakça Kuralları

1. Mevzuata Yapılan Atıf

a. Türkiye Cumhuriyeti mevzuatına atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır:
Kanunun adı, Kanunun Numarası, Kanunun Kabul Tarihi, Resmî Gazete Tarihi/Resmî Gazete Sayısı.

Örnek:

Sınai Mülkiyet Kanunu, Kanun Numarası: 6769, Kabul Tarihi: 22.12.2016, RG 10.1.2017/29944.

b. Yabancı mevzuata yapılacak atıflar için bkz.:

<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf>

2. Yargı Kararlarına Atıf

a. Türkiye Cumhuriyeti mahkemelerine atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır:

Mahkeme adı, Esas numarası/Karar numarası, Karar Tarihi.

Örnekler:

Yargıtay 11 HD, 14074/12707, 2.7.2014.
Danıştay 9 D, 14074/12707, 2.7.2014.
Ankara 2 BİM, 2882/2138, 15.10.2018.
Ankara 4 İdare Mahkemesi 882/2138, 15.10.2018.

b. Yabancı mahkeme kararlarına yapılacak atıflar için bkz.:

<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf>

3. Kitaplara Atıf

a. Kitaplara atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, *Kitabın Adı* (Kaçıncı Bası Olduğu, Yayınevi Yılı) Atıf yapılan sayfanın numarası.

aa. İki yazarlı kitaplarda ilk yazar ile ikinci yazar arasında "ve" ibaresi bulunmalıdır. Çok yazarlı kitaplarda, son yazarın adından önce "ve" ibaresi bulunmalıdır.

bb. Birden fazla cildi bulunan kitaplara yapılan atıflarda, italik fontta yazılan kitap adından sonra virgül konularak, normal fontta cilt numarası yazılmalıdır.

Örnekler:

Fırat Öztan, *Fikir ve Sanat Eserleri Hukuku* (1. Bası, Turhan 2008) 274.
Kemal Oğuzman ve Turgut Öz, *Borçlar Hukuku Genel Hükümler, Cilt 2* (15. Bası, Vedat 2020) 63.
Gareth Jones, *Goff and Jones: The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009).
Julian V Roberts and Mike Hough, *Public Opinion and the Jury: An International Literature Review* (Ministry of Justice Research Series 1/09, 2009) 42.

4. Editörlü Kitaplara Atıf

a. Editörlü kitaplardaki yazarı olan bölümlere atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, 'Eser (Bölüm) Adı' in Editör(ler) Adı (ed / birden çok editör olması halinde eds), *Kitap Adı* (Yayınevi Yıl) Atıf yapılan sayfanın numarası.

aa. İki yazarlı kitaplarda ilk yazar ile ikinci yazar arasında "ve" ibaresi bulunmalıdır. Çok yazarlı kitaplarda, son yazarın adından önce "ve" ibaresi bulunmalıdır.

Örnekler:

Hamdi Yasaman, 'Marka Hukukuna İlişkin Temel Yenilikler' in Feyzan Hayal Şehirali Çelik (ed), *6769 sayılı Sınai Mülkiyet Kanunu Sempozyumu* (9-10 Mart 2017) (Yetkin 2006) 130.

Ergun Özsunay, 'Yaşamın sonu Aşamasında Tıbbi Tedaviye İlişkin Karara Hastanın Katılımı' in Hakan Hakeri ve Cahid Doğan (eds), *III. Uluslararası Tıp Hukuku Kongresi Bildirileri Kitabı* Cilt 1 (Adalet 2019) 542.

b. Yazarı olmayan eserlerin toplandığı editörlü kitaplara atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Editör Adı Soyadı (ed)/birden çok editör varsa (eds), *Kitap Adı* (Kaçıncı Bası Olduğu, Yayınevi Yılı) Sayfa Numarası.

Örnek:

Jeremy Horder (ed), *Oxford Essays in Jurisprudence: Fourth Series* (Oxford University Press 2000).

5. Basılı Dergilerde Yer Alan Makalelere Atıf

a. Basılı dergilerde yer alan makalelere atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, 'Makalenin Adı' (Yıl) Cilt (Sayı) Dergi Adı İlk Sayfa Numarası, Atıf Yapılan sayfanın numarası.

aa. İki yazarlı kitaplarda ilk yazar ile ikinci yazar arasında "ve" ibaresi bulunmalıdır. Çok yazarlı kitaplarda, son yazarın adından önce "ve" ibaresi bulunmalıdır.

Örnekler:

Kemal Şenocak, 'Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka Hakkının İhlali' (2009) 25(3) Batider 87, 130.

Kemal Şenocak ve Ali Yarayan, 'Kötü Niyetli Marka Tescili' (2015) 10(111) Terazi Hukuk Dergisi 99, 102.

6. Elektronik Dergilere Atıf

a. Elektronik ortamda yer alan eserlere atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, 'Eserin Adı' (Yıl) Cilt (Sayı) Dergi Adı <websitesi> Erişim Tarihi.

aa. İki yazarlı kitaplarda ilk yazar ile ikinci yazar arasında "ve" ibaresi bulunmalıdır. Çok yazarlı kitaplarda, son yazarın adından önce "ve" ibaresi bulunmalıdır.

Örnek:

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT <http://ejlt.org/article/view/17> 27 Temmuz 2010 tarihinde erişildi.

7. Web Sitelerinde ve Bloglarda Yer Alan Eserlere Atıf

a. Web sitelerinde ve bloglarda yer alan eserlere atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, 'Eserin Adı' (Web Sitesinin Adı, Eserin Yayın Tarihi) Erişim Tarihi

aa. İki yazarlı kitaplarda ilk yazar ile ikinci yazar arasında "ve" ibaresi bulunmalıdır. Çok yazarlı kitaplarda, son yazarın adından önce "ve" ibaresi bulunmalıdır.

Örnek:

Ali Paslı ve Mehmet Hamza Arslan, 'COVID-19 Salgını ve Patent Hukuku: Salgın Nedeniyle Patentli Buluş, Üçüncü Kişilerce Hak Sahibinin Rızası Olmaksızın Kullanılabilir Mi?' (IPR Gezgini, 28 Nisan 2020) <https://iprgezgini.org/2020/04/28/covid-19-salgini-ve-patent-hukuku> 13 Haziran 2021 tarihinde erişildi.

8. Aynı Esere Birden Fazla Atıf Yapılması

a. Aynı esere birden fazla atıf yapılması halinde, ilk dipnottaki atıf yukarıda belirtildiği şekilde yapılır; sonraki dipnotlarda ise yazarın/yazarların soyadından sonra ilk dipnot numarasına "(n …)" şeklinde referans verilir. İlk dipnot numarasına verilen referansın ardından atıf yapılan sayfanın numarası belirtilir.

b. Üst üste iki dipnotta aynı esere atıf yapılırsa, sonraki dipnotta "ibid" ifadesi kullanılır, ardından atıf yapılan sayfanın numarası belirtilir.

Örnek:

[15]Kemal Şenocak, 'Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka Hakkının İhlali' (2009) 25(3) Batider 87, 130.

...

[39]Şenocak (n 15) 120.

[40]ibid 124.

c. Aynı yazarın birden fazla eserine atıf yapılması halinde, sonraki atıflarda eser adları uygun bir biçimde kısaltılmalıdır.

Örnek:

[3]Kemal Şenocak, 'Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka Hakkının İhlali' (2009) 25(3) Batider, 87, 130.

…

[8]Kemal Şenocak, *Üçüncü Şahıs Lehine Hayat Sigortası Sözleşmesi* (1. Bası, Turhan 2009) 160.

…

[15]Şenocak, 'Domain Name' (n 3) 99.

…

[30]Şenocak, Hayat Sigortası Sözleşmesi (n 8) 140.

9. Çeviri Kitaplara Atıf

a. Çeviri kitaplara atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, *Kitap Adı* (Çevirenin Adı Soyadı (tr)/birden çok çevirmen varsa (trs), Kaçıncı Bası Olduğu, Yayınevi Yılı) Sayfa Numarası.

Örnek:

Malcolm N. Shaw, *Uluslararası Hukuk* (İbrahim Kaya (tr), 8, Cambridge University Press 2017). 235.

10. Yeni Basımı Olan Eski Kitaplara Atıf

a. Yeni basımı olan eski kitaplara atıf, aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, *Kitap Adı* (İlk basım tarihi, Yararlanılan kaynağın Kaçıncı Bası Olduğu Yayınevi Yılı) Sayfa Numarası.

Örnek:

Thomas Hobbes, *Leviathan* (1651, 23. Baskı YKY 2022) 268.

11. Yayımlanmamış Tezlere Atıf

a. Yayımlanmamış tezlere atıf aşağıda belirtildiği ve örneklendirildiği şekilde yapılmalıdır.

Yazarın Adı Soyadı, 'Tezin Adı' (Tezin türü, Üniversitenin adı Tamamlanma yılı).

Örnek:

Javan Herberg, 'Injunctive Relief for Wrongful Termination of Employment' (DPhil thesis, University of Oxford 1989).

12. Kaynakça Hazırlanması

a. Dipnot atıflarından farklı olarak kaynakçada, öncelikle yazarın soyadına daha sonra adının ilk harfine yer verilir. Makalelerde sayfa aralığı da belirtilmelidir.

b. Kaynakça yazarların soyadına göre, alfabetik olarak sıralanmalıdır.

c. Aynı yazarın birden fazla eserine atıflara ilişkin kaynakça kullanımında, ilk seferde genel kaynakça kuralları geçerliyken, devamında verilen atıflarda iki kere "em dash" işareti kullanılır. Aynı yazarın kitaplarında ortak yazar veya yazarlar olması durumunda ise ortak yazarın adı tekrarlanır.

Örnekler:

Öztan F, *Fikir ve Sanat Eserleri Hukuku* (1. Bası, Turhan 2008)

Şenocak K, 'Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka Hakkının İhlali' (2009) 25(3) Batider 87-141

—— 'İnsansız Hava Aracı (Drone) İşletenin Sorumluluğu ve Sigortalanması' (2020) 36(2) Banka ve Ticaret Hukuku Dergisi

—— ve Yarayan A, 'Kötü Niyetli Marka Tescili' (2015) 10(111) Terazi Hukuk Dergisi 99-107

—— ve Yarayan A, 'Das Markenrecht der Türkei nach dem neuen Gesetz über gewerbliche Schutzrechte' (2017) 19(11-12) MarkenR 514-519

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a. Normal and Initial Case

aa. Normal and Initial Case

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a. Citing legistation of the Republic of Turkey must be made as follows:

Name of the Act, Act No., Date of Adoption of the Act, Date of the Official Gazette of the Republic of Turkey/Issue No. of the Official Gazette.

Example:

Industrial Property Law, Act No.: 6769, Date of Adoption: 22.12.2016, RG 10.1.2017/29944.

b. For citations to other legislation, see;
<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf>

2. Citing Cases

a. Citing to court decisions of the Republic of Turkey must be made as follows:

Court Name, Case ID/Decision No., Judgement Date.

Examples:

Yargıtay 11 HD, 14074/12707, 2.7.2014.
Danıştay 9 D, 14074/12707, 2.7.2014.
İstanbul 16 BAM, 2882/2138, 15.10.2018.
Ankara 2 BİM, 2882/2138, 15.10.2018.
İstanbul 1 Sulh Mahkemesi 2882/2138, 15.10.2018.
Ankara 4 İdare Mahkemesi 882/2138, 15.10.2018.

b. For citations to other court decisions, see;
<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf>

3. Citing Books

a. Citation of books must be in accordance with OSCOLA reference style 4th edition, i.e. as follows;

Author, *Title* (Additional information, Edition, Publisher Year) Page/s.

aa. For two or more authors, all named authors must be included. There must be an 'and' before the last author's name.

bb. In citations to books with more than one volume, a comma must be placed after the book title in italic font and the volume number should be written in normal font.

Examples:

Fırat Öztan, *Fikir ve Sanat Eserleri Hukuku* (1. Bası, Turhan 2008) 274.
Kemal Oğuzman and Turgut Öz, *Borçlar Hukuku Genel Hükümler, Cilt 2* (15. Bası, Vedat 2020) 63.
Levent Yavuz, Türkay Alıca and Fethi Merdivan, *Fikir ve Sanat Eserleri Kanunu Yorumu, Cilt II* (49-91. Maddeler) (2. Bası, Seçkin 2014) 3021.
Timothy Endicott, *Administrative Law* (OUP 2009).
Gareth Jones, *Goff and Jones: The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009).
Julian V Roberts and Mike Hough, *Public Opinion and the Jury: An International Literature Review* (Ministry of Justice Research Series 1/09, 2009) 42.

4. Citing Edited Books

a. Citation of edited book chapters must be in accordance with OSCOLA reference style 4th edition, i.e. as follows;
Author, 'Title' in editor (ed), *Book title* (Additional information, Publisher Year) Page/s.

aa. For two or more authors, all named authors must be included. There must be an 'and' before the last author's name.

Examples:

Justine Pila, 'The Value of Authorship in the Digital Environment' in William H Dutton and Paul W Jeffreys (eds), *World Wide Research: Reshaping the Sciences and Humanities in the Century of Information* (MIT Press 2010).
John Cartwright, 'The Fiction of the "Reasonable Man"' in AG Castermans and others (eds), *Ex Libris Hans*

Nieuwenhuis (Kluwer 2009).

b. Edited books without an author must be cited as follows;

Editor/s (ed/eds), *Book title* (Additional information, Publisher Year) Page/s.

Example:

Jeremy Horder (ed), *Oxford Essays in Jurisprudence: Fourth Series* (Oxford University Press 2000).

5. Citing Articles in Published Journals

a. Citation to articles in published journals must be made as follows;

Author, 'Title' (Year) Volume (No) Journal Name or Abbreviation First Page of the Article Page.

aa. For two or more authors, all named authors must be included. There must be an 'and' before the last author's name.

Examples:

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440.
Alison L Young, 'In Defence of Due Deference' (2009) 72 MLR 554.

6. Citing Electronic Journals

a. Citation to journals that has published electronically must be made as follows;

Author, 'Title' (Year) or [Year] Volume/Issue Journal Name or Abbreviation <web adress> Date accessed.

aa. For two or more authors, all named authors must be included. There must be an 'and' before the last author's name.

Examples:

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT <http://ejlt.org/article/view/17> accessed 27 July 2010.

James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' 2004 Duke L & Tech Rev 0009 <www.law.duke.edu/journals/dltr/articles/2004dltr0009.html> accessed 18 November 2009.

7. Citing Websites and Blogs

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Author, 'Title' (Name of the Website or Blog, Publication Date) <web adress> Date of Access.

aa. For two or more authors, all named authors must be included. There must be an 'and' before the last author's name.

Example:

Sarah Cole, 'Virtual Friend Fires Employee' (*Naked Law,* 1 May 2009) <www.nakedlaw.com/2009/05/index.html> accessed 19 November 2009.

8. Further Citations to the Same Source

a. In further citations to the same source, citation to the first footnote must be made indicated as above; in following footnotes after the authors the first footnote number must be indicated as '(n …)'. After the citation of the first footnote, the number of the cited page must be indicated.

b. If two or more consecutive references are from the same source, then they are cited using ibid.

Example:

[1]Robert Stevens, *Torts and Rights* (OUP, Oxford 2007).

...

[6]Stevens, (n 1) 110.

[7]ibid 271-278.

c. In cases of citing more than one sources of the same author, subsequent footnotes must be used in proper abbreviations.

Example:

[3]Kemal Şenocak, 'Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka Hakkının İhlali' (2009) 25(3) Batider, 87, 130.

…

[8]Kemal Şenocak, *Üçüncü Şahıs Lehine Hayat Sigortası Sözleşmesi* (1. Bası, Turhan 2009) 160.

…

[15]Şenocak, 'Domain Name' (n 3) 99.

…

[30]Şenocak, *Hayat Sigortası Sözleşmesi* (n 8) 140.

9. Citing Translated Books

a. Citation to translated books must be made as follows;

Author, *Title* (Translator/s (tr/trs), Additional Information, Publisher Year) Page/s.

Example:

Malcolm N. Shaw*, Uluslararası Hukuk* (İbrahim Kaya (tr), 8, Cambridge University Press 2017) 235.

10. Citing Older Works

a. Citation the the older works must be made as follows;
Author, *Title* (First edition date, Number of edition of the used book Publisher) Page/s.

Example:

Thomas Hobbes, *Leviathan* (1651, 23th edn YKY 2022) 268.

11. Citing Unpublished Theses

a. Citation the unpublished theses must be made as follows;

Author, 'Title' (Type of Thesis, University Year of Completion).

Example:

Javan Herberg, 'Injunctive Relief for Wrongful Termination of Employment' (DPhil thesis, University of Oxford 1989).

12. Bibliographies

a. In bibliography unlike the citations, the author's surname should precede their initial(s), with no comma separating them, but a comma after the final initial. The page range must also be specified in the articles.

b. The bibliography must be listed alphabetically, according to the surnames of the authors.

c. In the use of bibliography when there are citations to more than one sources of the same author, general bibloigraphy ruled applies for the first one. Whilst in citations subsequent to the first one, double "em dash" must be used. If there are co-authors or other authors in the same author's books, the name of the joint author must be indicated.

Examples:

Fisher E, *Risk Regulation and Administrative Constitutionalism* (Hart Publishing 2007)
Hart HLA, *Law, Liberty and Morality* (OUP 1963)
—— 'Varieties of Responsibility' (1967) 83 LQR 346
—— *Punishment and Responsibility* (OUP 1968)
—— and Honoré AM, 'Causation in the Law' (1956) 72 LQR 58, 260, 398

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PROTECTING MINORITY SHAREHOLDER RIGHTS: EXAMPLES FROM TURKEY TO THE HORN OF AFRICA (*)

Azınlık Pay Sahipliği Haklarının Korunması: Türkiye'den Afrika Boynuzu'na Örnekler

Mohamed Hassan Jicsin (**)

ABSTRACT

This study aims to compare the law of the Horn of Africa countries (Somalia, Somaliland, Ethiopia, Kenya,) and Turkish law, focusing on protecting minority shareholders' rights in Joint Stock Companies. The study aims to identify gaps and concrete practices in the laws of these regions and provide recommendations to improve minority shareholder protection. The research methodology includes a review of primary and secondary sources such as corporate laws, regulations, court decisions, and academic literature.

The findings reveal that the Turkish Commercial Code (TCC) has relatively strong legal foundations to protect minority shareholders, while the Horn of Africa countries face significant challenges. While efforts have been made to enact legislation in the Horn of Africa, implementation and enforcement remain weak,

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(The article has been generated from the author's master thesis titled "Minority Rights in Joint Stock Companies: A Comparative Analysis of the Laws of the Horn of Africa" which, being part of the Erciyes University Institute of Social Science Master Programme, was defended in August, 2024).
** Attorney at Law, 4031430215@erciyes.edu.tr, ORCID: 0009-0000-0960-4343.

leaving minority shareholders vulnerable to abuse. The identified gaps in legal frameworks underscore the need for legal reforms and institutional strengthening.

The study recommendations include amending corporate laws, improving corporate governance practices, strengthening regulatory institutions, and encouraging shareholder activism. The findings and recommendations can guide policymakers, legal practitioners, and academics in creating a more transparent and fair business environment, enhancing investor confidence, and promoting sustainable economic development in the Horn of Africa and Turkey.

Keywords: Joint Stock Company, Minority Shareholders, Minority Shareholders' Rights, Law of the Countries of the Horn of Africa, Company Law.

ÖZET

Bu çalışma, özellikle azınlık hissedar haklarının korunmasına odaklanarak Afrika Boynuzu ülkeleri (Somali, Somaliland, Etiyopya, Kenya) ve Türk hukukunun karşılaştırmalı bir analizini yapmayı amaçlamaktadır. Çalışma, bu bölgelerin kanunlarında yer alan boşlukları ve somut uygulamaları belirlemeyi ve azınlık hissedarların korunmasını geliştirmek için öneriler sunmayı amaçlamaktadır. Araştırma metodolojisi, şirket kanunları, yönetmelikler, mahkeme kararları ve akademik literatür gibi birincil ve ikincil kaynakların incelenmesini içermektedir

Bulgular, Türk Ticaret Kanunu'nun azınlık hissedarlarını korumak için nispeten sağlam yasal dayanaklara sahip olduğunu, Afrika Boynuzu ülkelerinin ise bu alanda önemli zorluklarla karşılaştığını ortaya koymaktadır. Afrika Boynuzu ülkelerinde mevzuatın çıkarılması için çaba sarf edilmiş olsa da uygulama ve yaptırım zayıf kalmakta ve azınlık hissedarlarını suistimallere karşı savunmasız bırakmaktadır. Yasal çerçevelerde tespit edilen boşluklar, yasal reformlara ve kurumsal güçlendirmeye duyulan ihtiyacın altını çizmektedir. Türkiye'de ve diğer ülkelerde gözlemlenen en iyi uygulamalardan yola çıkan bu çalışma, Afrika Boynuzu ülkelerindeki eksikliklerin giderilmesi için tavsiyelerde bulunmaktadır. Bu öneriler arasında şirket kanunlarının değiştirilmesi, kurumsal yönetim uygulamalarının iyileştirilmesi, düzenleyici kurumların güçlendirilmesi ve hissedar aktivizminin teşvik edilmesi yer almaktadır. Bulgular ve tavsiyeler, politika yapıcılara, hukuk uygulayıcılarına ve akademisyenlere daha şeffaf ve adil bir iş ortamı yaratma, yatırımcı güvenini artırma ve Afrika Boynuzu ülkeleri ile Türkiye'de sürdürülebilir ekonomik kalkınmayı teşvik etme konularında yol gösterebilir.

Anahtar Kelimeler: Anonim Şirket, Azınlık Pay Sahipleri, Azınlık Pay Sahiplerinin Hakları, Afrika Boynuzu Ülkeleri Hukuku, Şirketler Hukuku

INTRODUCTION

Corporate governance no doubt reflects a country's legal underpinning, and proofs exist that there is a positive relationship between robust legal frameworks and effective corporate governance. Therefore, the protection of minority shareholders against the high-handed influence of the majority shareholders has remained a source of concern in developing and developed countries. Different legal systems often reveal that majority shareholders tend to view minority stakeholders as peripheral or burdensome[1]. The minority shareholders are stakeholders that do not have the voting power to control the entity's operations singly or collectively. Conversely, majority-voting shareholders, possessing a larger percentage of votes, wield significant influence and can exert control over both the board of directors and the general assembly. Friction between minority and majority shareholders is a common occurrence in many corporate situations. Such tensions mostly emanate from the tendencies of the majority shareholders to keep the company earnings to themselves without distributing them fairly among the minority shareholders[2].

The shortcomings in the legal system have allowed majority shareholders to misuse their power, often harming minority shareholders. These actions can impact not only the investors but also the company's interests and, ultimately, the national economy. To address these issues, it is crucial to offer strong protection for minority shareholders, ensuring they have proper remedies. Additionally, a solid legal framework is necessary to prevent majority shareholders from abusing their corporate powers.

A well-established framework of corporate governance requires impartial treatment of all shareholders, irrespective of the magnitude of their investment[3]. The concept of equality in joint-stock companies, which is a crucial legal principle aimed at safeguarding shareholders' rights, mandates that shareholders receive equal

1 TM Mocha, 'The Legal Protection of Minority Shareholders: A Comparative Analysis of The Regulatory Frameworks of Kenya and The United Kingdom' (Doctoral Dissertation, University of Nairobi 2014).

2 MK Kaya, 'Discussions Surrounding the Principle of Minority Shareholder Protection' (2020) 6 Ticaret ve Fikri Mulkiyet Hukuku Dergisi 265.

3 AN Licht, 'Stakeholder Impartiality: A New Classic Approach for the Objectives of the Corporation' [2019] European Corporate Governance Institute-Law Working Paper.

treatment under the same circumstances[4]. Consequently, this principle prevents any unjust domination by the majority over the minority. Drawing inspiration from German and Swiss legislation and in conjunction with European Union regulations, this principle has been recognized as a favourable legal standard[5]. Turkish law explicitly regulates this principle in Article 357 of the Turkish Commercial Code (TCC), thereby guaranteeing shareholders' right to equal treatment. Moreover, when this principle is applicable, it permits an examination of compliance with the principle of good faith.

Any company aiming for growth, research, diversification, and competitiveness must protect its shareholders. Safeguarding the rights of minority shareholders is essential for good corporate governance, as these rights could be easily overlooked if left solely to the majority. Without protection, this could lead to reduced investment, scattered ownership, lower dividends, a drop in market value, and fewer exit options and voting rights. As a result, the position of minority shareholders becomes weaker, making it crucial for them to stay informed and protect their interests. The concentration of power in the board of directors can also cause conflicts of interest and unethical practices, harming both the company and its shareholders. The company's success directly impacts the shareholders' wealth. With global economic uncertainty reducing investment activity, it's even more important for countries to implement strong legal protections for minority shareholders. By ensuring their rights are upheld in conflicts, these protections help attract smaller investors.

Recently, there has been notable progress among companies operating in the Horn of Africa nations, with a specific emphasis on ensuring the protection of minority shareholders, as the need to attract investment becomes increasingly imperative[6]. Additionally, there exists a more expansive drive toward augmenting shareholder democracy within corporations. It is posited that through the amplification of the adoption of corporate governance guidelines, the safeguarding of minority shareholders in the Horn of Africa countries will experience further enhancement[7].

We conducted this research using a variety of methodologies, including doctrinal research and a comparative approach between Turkey and the Horn of Africa, with

4 Necla Akdağ Güney, 'Anonim Şirketlerde Eşitlik İlkesi' (2014) 18 Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 115.

5 ibid.

6 G Munisi and T Randoy, 'Corporate Governance and Company Performance Across Sub-Saharan African Countries' (2013) 70 Journal of Economics and Business 92.

7 NM Waveru and NP Prot, 'Corporate Governance Compliance And Accrual Earnings Management İn Eastern Africa: Evidence From Kenya And Tanzania' (2018) 33 Managerial Auditing Journal 171.

a specific focus on the relevant countries. A legal researcher is typically required to differentiate, analyse, and synthesize legal content[8]. The researcher must also ascertain the authority and standing of legal doctrine. To succeed in this endeavour, the researcher must employ a doctrinal legal study. The researcher cannot critically assess the law or conduct an empirical study of its operation unless they are familiar with the status of the legal doctrine under analysis. This approach aims to categorize and delineate legal rules as primary legal resources, identify the fundamental issues in the Horn of Africa legislation impacting minority shareholders in company law, and, most importantly, uncover the deficiencies in both the law and its implementation that hinder the protection of minority shareholders in the Horn of Africa, particularly in the countries under study.

This paper uses a comparative approach to examine minority shareholder protection in various locations, focusing on lessons that Horn of Africa countries can learn from Turkey. It highlights both the similarities and differences in how different legal systems address similar issues. A comparative analysis offers a deeper understanding of the complexities and development of legal frameworks. The study aims to assist with legislation, law reform, legal tools, and the understanding of legal standards. One of its key benefits is the ability to find solutions to specific or new legal issues that have already been addressed in other countries.

Horn of African countries have diverse legal systems, including both common law and civil law, similar to those in Turkey. This diversity can help improve laws by drawing from different legal traditions and strengthen the protection of minority shareholder rights. Therefore, the research will primarily focus on examining statutory business legislation, rules, legal texts, and academic literature.

I. THE NATURE OF THE PROTECTION OF MINORITY SHAREHOLDERS

The protection of minority shareholders is a cornerstone of the corporate legal framework, firmly rooted in the principles of shareholder democracy. The doctrine of majority rule, as established in the landmark case of Foss v Harbottle in the United Kingdom, underscores the dominance of majority resolutions over those of the minority (the Foss v. Harbottle Doctrine). While it is reasonable for majority shareholders—who contribute more capital and resources—to hold greater authority, unchecked power can jeopardize the interests of minority shareholders,

[8] MK Kaya, *Minority Shareholder Protection: A Comparative Analysis between the UK and Turkey* (1st edn, Oniki Levha Yayınları 2021).

hinder the progress of the enterprise, and even negatively impact the national economy[9].

The relationship between majority and minority shareholders requires a careful balance to protect both parties. The legal system should maintain this balance by allowing minority shareholders to challenge unfair practices while ensuring that majority shareholders can still manage the company effectively. As Lazarides points out, insufficient protection for minority shareholders can harm a nation's investment climate, deterring potential investors who fear misconduct by majority shareholders [10]. Similarly, Leuz and colleagues argue that inadequate legal safeguards can compromise the quality of financial reporting, thereby obstructing the development of transparent and reliable financial markets[11]. Thus, the protection of minority shareholder rights is a complex issue that extends beyond their interests, carrying broader implications for corporate governance and a nation's economic well-being.

II. DEFINITION AND CLASSIFICATION OF MINORITY SHAREHOLDERS IN TURKEY AND HORN OF AFRICAN COUNTRIES

A. Defining Minority Shareholders in Türkiye

In typical joint-stock companies, the controlling shareholder is the one who owns at least 51 percent of the company's capital. Minority shareholders, on the other hand, own less than this percentage but still have certain rights granted by the company's regulations. In Turkey, the new Turkish Commercial Code (TCC) defines a minority shareholder as someone holding at least 10 percent of the capital in private companies or 5 percent in publicly held companies. (TCC, Art. 399/4-b, 411/1, 420/1, 439/1, 531/1, 559/1). The inability of shareholders to meet the required threshold outlined in TCC No. 6102 prevents them from fully exercising their rights. This threshold poses a significant challenge to minority shareholders, limiting their ability to assert their rights effectively. The issue of defining minority shareholders and the thresholds for their rights has sparked considerable debate in Turkish corporate law. Academics in Turkey have focused on the flexibility of adjusting these thresholds in

9 I Mesimeri, 'Why Is the Rule in Foss v Harbottle Such an Important One' [2018] Areti Charidemou.

10 T Lazarides, 'Minority Shareholders: Useful Idiots, Free Riders or the Achilles Heel of the Corporate Idea?' (2020) 10 Theoretical Economics Letters 488.

11 ibid.

a company's articles of association. The ability to modify the share threshold offers a way to balance maintaining corporate stability while democratizing governance[12].

The key issue is whether a shareholder agreement can lower the required threshold, rather than increasing the minority shareholder threshold. For instance, in a hypothetical Turkish joint-stock company where the articles of association set the threshold for exercising minority shareholder rights at 10%, these rights might include requesting a special auditor or calling an extraordinary general meeting. A group of shareholders holding 8% of the company's shares could form a shareholder agreement to pool their shares, allowing them to exceed the 10% threshold and exercise these rights. The Turkish Commercial Code (TCC), which governs corporate law in Turkey, recognizes shareholder agreements as legally valid, as long as they comply with mandatory corporate laws and good faith principles.

According to Demirkapi and Bilgili, this threshold differentiates minority rights from individual shareholder rights, creating challenges in exercising minority rights[13]. However, the TCC provides flexibility in governance by allowing the company's articles of association to lower the threshold. For instance, a company's governing documents could grant additional rights to shareholders with less than 10% ownership, such as those holding 5%. Furthermore, shareholder agreements can grant specific governance rights not explicitly outlined in the TCC or the company's articles, thereby enabling minority shareholders to exert influence beyond their shareholding.

B. Types of Minority shareholders in Turkey

In Turkish joint-stock companies, shareholders who own a smaller proportion of capital than the legal minority threshold can still receive specific rights, forming a group referred to as the "technical minority." Unlike the general understanding that a minority implies ownership of less than fifty percent of shares, the technical minority is a legal construct that bestows distinct entitlements to these shareholders[14]. To classify a group as a technical minority, they must possess legal rights that distinguish them from other shareholders, despite owning less than fifty

[12] A Barwari, L Saeed and M Aree, 'The Protection of Minority Shareholders within the Legal Framework: Conceptual Evidence from Turkey' (2018) 9 Journal of Advanced Research in Law and Economics 1884.

[13] İsmail Kayar, 'Anonim Şirketlerde Azınlık Hakları' (Yüksek Lisans Tezi, Marmara Üniversitesi 1989).

[14] Fatih Bilgili and Ertan Demirkapı, *Şirketler Hukuku Dersleri* (Dora Yayınları 2021).

percent of the share capital. This classification allows them to exercise certain privileges, even though they do not hold a controlling stake in the company.

Turkish corporate law introduces the concept of a proportional minority when it grants distinct legal rights to shareholders who hold a specific proportion of share capital—less than 50%. Art. 411 TCC defines minority shareholders as those who hold at least 10% of the share capital in closed joint-stock companies, and lowers this threshold to 5% in public joint-stock companies. Public companies typically have fluctuating ownership structures and a large number of shareholders, which necessitates a lower threshold. This reflects the need to make it easier for minority shareholders in publicly traded companies to exercise their rights, given the challenges associated with dispersed ownership. The nominal minority, as defined under Article 439 of the TCC No. 6102, pertains to shareholders who hold a minimum of one-tenth of the company's capital or shares valued at no less than one million Turkish Liras. Regardless of their presence or participation in voting sessions, their shareholding qualifies these shareholders as nominal minorities, allowing them to influence decisions ratified in the general assembly[15]. The classification of nominal minorities may, in some cases, result in a group holding a minority stake in the company being able to act as a de facto majority, depending on the level of shareholder participation in general assembly meetings[16].

The concept of the "actual minority" is another important classification in Turkish corporate law. This group includes shareholders whose capital share, though a minority, is strong enough to influence the company's decisions due to specific circumstances. The actual minority is not a fixed category and can change depending on factors such as the attendance of shareholders at meetings and the use of the cumulative voting system. The TCC tries to overcome this in its Article 360, which gives actual minorities the right to participate in the election of the board of directors. Therefore, under a cumulative voting system, the right to concentrate their votes on one candidate enhances the possibility of actual minorities influencing corporate governance decisions.

TCC applies the term "proportional majority" when granting rights of participation in governance to shareholders who own less than 50% of the share capital. This is the situation where the ownership threshold for minority shareholders in the company's articles of association allows them to significantly influence corporate

15 Erol Ulusoy, 'Anonim Şirketlerde Azınlık Pay Sahiplerinin Şirketten Çıkarılması' (2014) 9 Bahcesehir Universitesi Hukuk Fakultesi Dergisi 77.

16 ibid.

decisions. For instance, companies with dispersed shareholding may generate proportional majorities, despite not having a qualified majority. This kind of minority under the TCC is of special importance for public companies because the wide dispersion of shares makes it hard or impossible for one shareholder to have an absolute majority.

The de facto minority can be understood as shareholders whose ownership, though technically a minority, holds significant influence in practice. This influence may arise due to specific legal provisions or circumstances that grant them practical power during decisions, such as the election of the board of directors. Article 360 of the Turkish Commercial Code (TCC) recognizes the rights of such shareholders in board elections. The concept of a de facto minority is particularly relevant when companies use a cumulative voting system, allowing these shareholders to combine their voting power and exert more influence than their share of capital would indicate. Under Turkish corporate law, minority shareholders can fall into various classifications, including proportional, nominal, and actual minorities.

These classifications are not merely technical but have practical implications for corporate governance. Whether through legal thresholds or shareholder agreements, minority shareholders in Turkey can wield significant influence, even without holding a controlling stake. This flexibility in defining and empowering minority shareholders highlights the importance of corporate governance structures that accommodate both their rights and the operational needs of the company.

C. Defining Minority Shareholders in the Horn of African Countries

Our research article focuses on most Horn of Africa countries, where the definition of minority shareholders lacks absolute precision and universality due to the diverse origins of their company laws. These laws derive from various sources, including but not limited to Common Laws, French laws, and Italian laws. Additionally, some of the laws may bear resemblance to those in member countries of the Common Laws. Religious sources like Sharia, along with customary practices and other related matters, influence certain laws[17]. The prevailing perspective is that the individuals who possess 51% of the company's shares hold sway over decision-making processes, thereby constituting the dominant stakeholders who abide by all statutes about the Horn of Africa.

[17] F Battera and A Campo, 'The Evolution and Integration of Different Legal Systems in the Horn of Africa: The Case of Somaliland' (2001) 1 Global Jurist Topics.

1. Definition of Minority Shareholders in Ethiopia

In Ethiopia, the Joint-stock Corporation is a legally recognized entity with perpetual existence, as outlined by the law. Key characteristics of this structure include a separate legal personality, limited liability, transferable shares, and a management system where responsibilities are delegated through a board structure. Turkey's corporate classification categorizes the joint-stock corporation into two branches: closely held corporations and publicly held corporations[18]. The concept of majority and minority, though practiced widely in corporate governance, refers to the division between the people who hold the authority to decide on behalf of the company. We define a majority shareholder as someone who holds the majority of votes, while a minority shareholder lacks this privilege. However, it's important to understand that a majority share does not necessarily indicate ownership of the company. In reality, decision-making is the primary source of control. This means that in certain situations, shareholders or a group of shareholders who do not individually own more than half the shares can unite and take control of decision-making. In contrast, a higher majority requirement means that owning more than half the shares does not guarantee decision-making control.

The definition of a minority shareholder applies to a shareholder who, despite his amount of shareholding in the company, cannot have significant control within the company[19]. The key difference between majority and minority shareholders lies in the presence or absence of control. If a shareholder does not have control over the company's management, their shareholding or capital investment becomes insignificant. Even a shareholder owning fifty percent or more of the voting rights could be considered a minority shareholder, especially if another shareholder holds the majority power to appoint or remove most of the directors[20]. On the other hand, a shareholder who does not hold a majority shareholding could still be considered a majority shareholder if they possess the ability and strength to assert their control over the company.

Ethiopian company legislation does not provide a specific definition of a minority shareholder. However, certain provisions in the Commercial Code give insight into how minorities are understood in Ethiopia. The Commercial Code grants control to

18 G Walelgn, 'Exit Rights of Minority Shareholders in Closely Held Corporations: A Comparative Study of English, Germany and Ethiopian Laws' [2013] Germany and Ethiopian Laws 1.

19 B Ketsela, 'Evaluating the Concept of Minority in Corporate Group Context: A Specific Look at Minority Shareholders of the Subsidiary Company' [2011] Bahir Dar UJL 231.

20 ibid.

the shareholder who contributes a larger portion of the company's capital. Generally, the regular general assembly of shareholders passes binding resolutions with a simple majority of the voting shares represented, with each share carrying at least one vote[21]. The total number of votes that a share possesses is proportional to the amount of capital it represents, thereby adhering to the principle of control corresponding with capital. Consequently, the shareholder who contributes the largest share of the company's capital has the greatest number of votes and, therefore, is the majority shareholder. Put simply, every shareholder who disposes of less than fifty percent of the voting rights at the general meeting is a minority shareholder.

2. Definition of Minority Shareholders in Kenya

While the Companies Act in Kenya lacks a precise definition of the term "minority shareholder," various provisions establish statutory minorities to address specific situations. Section 3 of the Capital Markets Authority listing rules serves as a key example, requiring every issuer or listed company to reserve a minimum of 25% of its ordinary shares for local investors[22]. This provision effectively creates a statutory minority by ensuring that local stakeholders hold at least a quarter of a company's shares. This allocation not only gives local investors a voice but also provides them with potential influence in the company's decision-making processes. Although the term "minority shareholder" is not strictly defined, provisions like this serve to safeguard the interests of smaller shareholders in Kenyan companies.

In Kenya, a "majority shareholder" typically owns more than 50% of the shares in a company, giving them significant control over its operations. With their substantial shareholding, majority shareholders often have the primary influence in shaping the company's direction and making strategic decisions. However, the Kenyan legal framework strives to balance this power, particularly through provisions like the listing rules of the Capital Markets Authority, which safeguard the rights of minority shareholders. This helps create more equitable corporate governance by ensuring that even shareholders with a smaller stake in the company have rights and protections to participate in corporate decision-making.

Consultant firms such as Gannons Solicitors have emphasized that the Companies Act's provisions do not limit the rights of minority shareholders in Kenya[23]. A company's articles of association or shareholders' agreements can enhance these

[21] ibid.

[22] Mocha (n 1).

[23] J Smith, 'Ensuring Minority Shareholder Protections in East Africa' [2021] Horn of Africa Journa 1.

rights, providing flexibility and customization. While the Companies Act provides a baseline for shareholder rights, companies can agree upon additional protections or privileges for minority shareholders through these foundational documents. Kenya lacks a strict legal definition of a minority shareholder, allowing for a more flexible interpretation. The circumstances and agreements between shareholders often determine the specific rights and protections afforded to minority shareholders.

3. Definition of Minority Shareholders in Somaliland

The definition of minority shareholders in Somaliland is influenced by the Indian Companies Act of 1913, which was in effect when Somaliland was a British protectorate. Early company law in Somaliland was based on English common law principles, which, in theory, offered significant protection for shareholders, including minority shareholders[24]. Under the Indian Companies Act, a minority shareholder was defined as any individual or legal entity with a non-controlling interest in a company[25]. Their de jure and de facto control was lacking, so they could not appoint or remove company directors, a key corporate control mechanism. Traditionally, these shareholders had very limited rights, since judgment in the leading case of Foss v. Harbottle established a rule of the majority to decide an issue. However, over time, we have carved out exceptions to this majoritarian rule to safeguard minority shareholders from the majority's unjust decisions and to enhance fairness in corporate governance.

In 2004, Somaliland promulgated its company law under Law No. 25, purporting to bring the country's corporate governance framework into the modern setting (Somaliland, 2004). Notwithstanding this much-wanted legislative reform, the law nonetheless fell short of clearly defining who a minority shareholder is or of sharply distinguishing between minority and majority shareholders. While the 2004 law did include some provisions aimed at safeguarding the rights of minority shareholders, an explicit lack of definition still somehow created ambiguity in applying these so-called safeguards. The absence of this definition, among other things, means that the legal framework in Somaliland remained conventional, without a clear articulation of the rights and corresponding protections afforded to a minority shareholder.

In 2018, Somaliland introduced a new company law, Law No. 80/2018, aimed at modernizing its corporate governance system and promoting private sector growth.

[24] TS Protectorate and S Indian, 'Indian Companies Act 1913 as Amended up to the 1940s When It Was Extended to the Somaliland Protectorate in 1947' 1.

[25] ibid.

The law sought to align Somaliland's corporate regulations with international best practices, creating a more favourable environment for business operations. However, similar to its predecessor, Law No. 80/2018 did not clearly define the role or rights of minority shareholders. Due to the lack of clear distinction between the status of minority and majority shareholders, the legal framework in Somaliland did not make significant progress on this issue. While the new law facilitated business operations, it did not specifically address the concerns of minority shareholders.

III. MINORITY SHAREHOLDER RIGHTS AND PROTECTIVE MECHANISMS IN TURKEY AND THE HORN OF AFRICA

A. General Overview of Minority Shareholder Protection

Every year, a multitude of companies emerge on the global stage, each with a group of shareholders united by a shared goal: generating profits. These shareholders' relationships and dynamics, as well as their relations with management, are of utmost importance because they can affect the performance of the company directly. Protection of the rights of minority shareholders in modern-day globally interconnected business is one of the most crucial factors that may contribute to the development of trust and confidence in the corporate sector. Several conflicts exist in the context of joint-stock corporations. The prevalent practice of majority voting grants significant power to individuals or entities possessing at least 51% of the votes, affording them substantial influence over the corporation[26]. Unfortunately, the controlling group can sometimes wield this power to the detriment of minority shareholders[27]. Shareholders in joint stock corporations often possess varying goals and expectations, which can range from seeking a passive investment with hopes of favourable returns to desiring active participation or employment within the company[28]. These investors also span a spectrum of sophistication, with some having deep financial acumen and others investing for personal reasons.

In examining the protection of these diverse shareholders, several key issues come to the forefront, including the need for a voice in corporate decisions, access to information, the ability to influence control, expectations of returns on investment,

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26 AR Pinto, 'Protection of Close Corporation Minority Shareholders in the United States' (2014) 62 American Journal of Comparative Law 361.

27 ibid.

28 J Mukwiri and M Siems, 'The Financial Crisis: A Reason to Improve Shareholder Protection in the EU?' (2014) 41 Journal of Law and Society 51.

and the option to exit the company when needed[29]. Additionally, minority shareholders frequently harbor concerns that those in control may act opportunistically, exploiting their authority for personal gain[30]. Pre-existing contractual agreements that outline protective measures can effectively address these issues. However, in the absence of such contracts, it is essential to understand how default corporate law rules handle these issues ex-post, after conflicts have arisen.

In the complex realm of corporate governance, the distribution of power within a company is a fundamental aspect. Generally, the board of directors holds significant managerial authority, while shareholders have more limited influence over the company's day-to-day operations[31]. Nevertheless, the decisions and authority held by shareholders play a pivotal role in shaping a company's course. These rights encompass critical actions such as amending articles of association, adjusting share capital, appointing directors, and approving specific transactions. While majority shareholders rightfully exercise management control in the democratic context of corporate capitalism, minority shareholders express concerns due to the potential for the "tyranny of the majority"[32]. This concept underscores the risk of the majority exploiting or suppressing the minority, revealing a conflict of interest between these two groups[33]. Effectively addressing this conflict and safeguarding minority rights is paramount for the sustained growth and viability of a company.

A non-protective legal system would result in undermining the investment climate through lost investor confidence. Undue or insufficient protection deters investors, and this lack of investment would not only dampen shareholders, but also other stakeholders like employees, governments, and society in general. The legal mechanisms established in various jurisdictions try to meet this challenge by acknowledging the right to convene shareholders, propose or amend an agenda, request information, appoint special auditors, and even dissolve the company. One of the key ways that minority shareholders can protect themselves is by challenging

29 HS Barron and others, 'Managing Closely Held Corporations: A Legal Guidebook' (2003) 58 Business Lawyer publications 1077.

30 Pinto (n 26).

31 Z Chen, B Ke and Z Yang, 'Minority Shareholders' Control Rights and the Quality of Corporate Decisions in Weak Investor Protection Countries: A Natural Experiment from China' (2013) 88 The Accounting Review 1211.

32 LA Bebchuk and RJ Jackson, 'Corporate Political Speech: Who Decides?' (2010) 124 Harvard Law Review 83.

33 ibid.

shareholder resolutions with the relevant recognition of their rights through the courts.

B. Overview of Minority shareholder protection in Turkey and Horn of Africa

In recent years, there has been an increasing focus on minority shareholder interest protection in Turkey, both due to regulatory needs and to attract investment[34]. In this regard, shareholder democracy has gained importance, and the improvement of corporate governance in Turkey has taken a course of enhancing the protection of minority shareholders. The enactment of the new TCC No. 6102 on July 1, 2012, constituted a milestone in the development of these protections. Although minority rights were present in the previous code, the updated TCC explicitly addresses and enhances the legal framework for safeguarding minority shareholder rights, ensuring that these shareholders have more robust tools to protect their interests.

The principle of majority rule governs corporate governance in Turkey, as it does in most other countries[35]. In general assembly meetings, a majority of votes typically determine decisions, except for some special provisions that necessitate a higher threshold. With this arrangement, the majority shareholders control the direction of the company. But acknowledging the possibility of majority abuse, the Turkish legislators brought provisions to safeguard minority shareholders against the eventuality of such abuses. Article 366 of the TCC, for example, enumerates the relevant procedural matters for the appointment or election of members of the board of directors and does not exclude minority shareholders.

In contrast, the legal frameworks in Horn of Africa countries like Ethiopia, Kenya, Somaliland, and Somalia allow for different scopes of protection for minority shareholders. For instance, in the case of Ethiopia, there is no accurate definition of minority shareholders in its Commercial Code; therefore, there is limited scope to protect them under the code. Though the code contains all the provisions to protect minority shareholders, because of the vagueness of the classification, it cannot effectively function[36].

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[34] MK Kaya 'Notion of Protection of Minority Shareholders: Theoretical Framework' (2020) 5 İstanbul Medeniyet Universitesi Hukuk Fakultesi Dergisi 195.

[35] Kaya, 'Discussions Surrounding the Principle of Minority Shareholder Protection' (n 2).

[36] TW Shamana and MW Ossa, 'The Legal Protection of Minority Shareholders under Ethiopian Law: Comparative Analysis' [2019] JL Pol'y & Globalization.

So far, Kenya has done much in the protection of minority shareholders, particularly with the enactment of the Companies Act of 2015, replacing the old Companies Act. The act consolidates and brings into line present-day requirements for the law relating to the organization and operation of companies, giving increased protection for minority shareholders (Wycliffe, 2021). A variety of amendments to the act would show that Kenya is keen on improving corporate governance standards and offering better protection for investors. Reforms such as these make a country not only more competitive in the Sub-Saharan Africa region but also one of the best investment destinations in the area.

Somaliland has amended its company laws several times to provide equal protection to all shareholders, regardless of their share in the company. Somaliland allows any shareholder, regardless of the number of shares held, to file a case in court, demonstrating shareholder activism and enhancing protection for minority shareholders. This approach has led Somaliland to craft a policy and regulatory framework for business that is decent and transparent, in which all shareholders have an opportunity to meaningfully affect the corporate governance landscape.

On the other hand, Somalia has a legal environment that is considered highly retroactive when it comes to protecting the rights of minority shareholders. The current company law does not offer extensive protection for minority shareholders, leaving them vulnerable to potential abuses by the majority stakeholders. In Somalia, it is crucial to carefully examine the legal provisions to assess how the rights of minority shareholders are actually recognized and implemented in the corporate sector.

Appreciating the rights and protection mechanisms for minority shareholders in both Turkey and the Horn of Africa is important for emulating exemplary corporate governance. The Turkish experience in improving minority shareholder protection through legal reforms provides valuable lessons for the Horn of Africa, where such legal frameworks are still evolving. The analysis of Turkey will, therefore, provide the countries in the Horn of Africa with an area of improvement that needs attention in their corporate governance systems to protect minority shareholders and enhance investor confidence.

C. Minority Shareholder Rights in Turkey

In Turkey, minority shareholders play a vital role in corporate life, with legal provisions in place to protect their interests. These rights allow minority shareholders to challenge corporate decisions and safeguard their investments. In a

joint-stock company, shareholder rights are typically divided into three categories based on how they are exercised: individual, majority, and minority rights[37]. It is crucial to emphasize that each shareholder should not misconstrue minority rights as individual rights. When a majority, comprising multiple individuals, convenes, they have a duty to protect the minority's rights, which they can collectively exercise[38]. Conversely, if a single individual represents the aforementioned majority, they have the authority to individually exercise these rights. However, in the case of single-member joint-stock companies, where there is only one shareholder, the concept of minority rights becomes irrelevant, as there is no majority to protect or exercise these rights collectively.

Some key minority shareholder rights in Turkey include the ability to request a postponement of financial statement discussions, appoint an independent auditor, call for an extraordinary general assembly meeting, and request the addition of specific agenda items for general assembly meetings. Minority shareholders also have the right to challenge settlement and release decisions made by the board of directors and request the dissolution of the company under justifiable circumstances. Additionally, they can request the issuance of share certificates and may even have representation on the board of directors, depending on the company's articles of association.

We can broadly classify the minority rights delineated in the TCC into two categories: obligatory and relatively obligatory rights[39]. Although the regulations governing the exercise of minority rights are considered obligatory rules, TCC Art. 411/1, which establishes the thresholds for shareholders to be recognized as minorities, possess a relatively obligatory nature[40]. In other words, the articles of association explicitly mention and approve any deviation from the proportions specified in this article in favor of minority shareholders. This allows for the possibility of modifying the proportions for minority rights through a provision in the articles of association.

With these legal provisions, the minority shareholder becomes involved in corporate governance and can participate in important decisions made by the corporation. In

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37 Ebru Tüzemen Atik, 'An Overview of Minority Rights in the Joint Stock Company under the Provisions of the New Turkish Commercial Code' <https://core.ac.uk/download/pdf/159313722.pdf>.

38 ibid.

39 Cem Veziroğlu, 'Buy-Out of the Oppressed Minority's Shares in Joint Stock Companies: A Comparative Analysis of Turkish, Swiss and English Law' (2018) 19 European Business Organization Law Review 527.

40 ibid.

this regard, such laws can balance the interests of both majority and minority stakeholders in developing transparency, equity, and accountability in Turkish corporations. Throughout the life of joint-stock companies, from incorporation to dissolution, TCC minority rights endure, symbolizing the legally imbued and therefore inalienable rights of their shareholders. he articles of association can also grant additional minority rights, providing enhanced protection and increased opportunities for the minority to shape corporate governance.

1. Right to Request the Postponement of General Meetings

In Turkey, protecting the rights of minority shareholders plays a crucial role in corporate governance. One of the key mechanisms to safeguard their interests and promote transparency, accountability, and responsible governance in joint-stock companies is the right to request a postponement of general meetings. Article 420 of the Turkish Commercial Code (TCC) grants this right but differentiates between publicly traded and non-publicly traded companies. For minority shareholders in non-public companies, this right requires owning at least one-tenth of the total share capital, while for publicly traded companies, this ownership threshold does not apply[41].

To exercise this right, minority shareholders must submit a formal request to the chairman of the general assembly. The TCC mandates that the chairman cannot refuse this request if the required shareholding threshold is met[42]. This gives minority shareholders a dependable way to guarantee the resolution of their concerns. While the TCC doesn't explicitly list agenda items for postponement, the general consensus is that this right encompasses financial statement-related matters like auditor selection and dividend distribution[43]. This broader interpretation not only achieves the goal of enabling minority shareholders to scrutinize the financial data used for decision-making, but also more closely aligns with the representations of EU legislators.

Additionally, the TCC permits minority shareholders to request multiple postponements if their initial concerns have not been addressed. This provision encourages productive dialogue between minority shareholders and company management, fostering better communication and accountability. Minority

41 D Gilvenir, 'Minority Shareholders' Right to Request the Postponement of General Meetings of Joint Stock Companies in Turkish Law' (2022) 8 Athens JL 329.

42 ibid.

43 Abdurrahman Kayıklık, 'Anonim Şirkette Azınlığın Korunması: Kim Için, Neden ve Nasıl Bir Koruma?' (2022) 80 İstanbul Hukuk Mecmuası 407.

shareholders are granted a substantial legal right to postpone general meetings in situations involving serious concerns, even against the majority's preference. This framework ultimately strengthens shareholder democracy, improves corporate governance practices, and supports the long-term sustainability of joint-stock companies in Turkey.

2. Right to Dismissal of the Auditor for Just Cause

One of the newly granted rights to minority shareholders under the updated TCC is the ability to request the removal of an auditor for valid reasons and subsequently elect a new one through legal means. The fourth and fifth sections of Article 399 of the TCC authorize minority shareholders to seek the appointment of a new auditor through a judicial process when valid grounds are present. This marks an important development in empowering minority shareholders to ensure accountability and transparency within the company's audit process.

The enactment of Law No. 6102 abolished the previous system where auditors could be corporate entities. Independent auditors now conduct audits, and the TCC uses this autonomous audit system as its main framework (Zeren, 2010). Turkish law recognizes the relationship between the joint-stock company and the independent auditor as a form of employment agreement. Initially, the TCC required all joint-stock companies, regardless of size, to be audited by independent firms or certified public accountants[44]. However, the introduction of Law No. 6335 relaxed this requirement, subjecting only certain companies defined by the Council of Ministers to mandatory independent audits.

The current system prohibits the company from dismissing an auditor once the general assembly elects them (Article 399/II of the TCC). This regulation enshrines the principle of "auditor security," preventing the board of directors from arbitrarily terminating the auditor's contract[45]. The purpose of this provision is to safeguard auditors from potential dismissal, thereby enhancing their independence. However, Article 399/IV provides both the board of directors and minority shareholders the right to request the court to appoint a new auditor if valid reasons arise, safeguarding minority shareholders' interests against potential mismanagement or conflicts with the auditor.

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[44] S Dal and YE Çalış, 'Anonim Şirketlerde Bağımsız Denetim ve Bağımsız Denetçi' [2013] Financial Analysis/Mali Cozum Dergisi.

[45] BY Zeren, 'Anonim Ortaklikta Azinligin Ozel Denetci Atanmasini Talep Hakki' (Doctoral Dissertation, Ankara Üniversitesi SBE 2010).

The company's articles of association cannot expand these criteria, as the law specifies that only a limited group of individuals, including the board and minority shareholders, can initiate this legal process[46]. Upon election, the trade registry officially registers the auditor's appointment and publishes it in the Turkish Trade Registry Gazette (TTSG) and on the company's website. Within three weeks of the appointment's publication, minority shareholders can file for the auditor's removal[47]. This period acts as a statute of limitations, though some argue that it should begin when a legitimate reason for dismissal arises, as justifiable grounds may surface after the initial three-week window.

Unless a valid reason concerning the auditor's conduct emerges, shareholders cannot file for the auditor's dismissal after the court appoints them. In such cases, the court that appointed the auditor will review the issues and decide whether to remove them. For a minority shareholder to initiate legal action to remove an auditor, they must have voted against the appointment during the general assembly and recorded their dissent in the meeting minutes. Additionally, Article 399/V of the TCC states that the shareholder also needs to be at least in possession of shares for three months before the general meeting in question. In the lawsuit, the auditor becomes the defendant, and intervention by the company may take place if the company has a vested interest. The court will review the authority of the parties to bring the lawsuit and assess whether there are valid reasons to dismiss the auditor based on their character or actions. Differences of opinion or unsubstantiated doubts do not constitute valid reasons for dismissal. The court's decisions on the removal of an auditor and the appointment of a new one are binding.

3. Right to cancel decisions of General Meetings

In joint stock companies, the general meeting is a formal gathering of shareholders or their representatives to discuss and decide on specific agenda items. According to Article 445 of the TCC, shareholders who attended the general meeting and voted against a decision may file a lawsuit to annul the decision if it conflicts with the law or the company's articles[48]. More importantly, no threshold of ownership is required for shareholders to object to such decisions, meaning any shareholder can sue for

46 ibid.

47 ibid.

48 ARTICLE 445- (1) The persons referred to in Article 446, law or articles of association against general assembly resolutions that are contrary to the provisions of the general assembly and in particular the rule of honesty. Within three months from the date of the company's incorporation, at the commercial court of first instance in the place where the company's headquarters is located, they can file a lawsuit for annulment.

the avoidance of decisions reached in general meetings. This privilege is very instrumental in preventing arbitrary or abusive decisions by persons in a majority position since such acts may lead to significant detrimental effects on the shareholders of a company.

Article 446 of the TCC further articulates the right to contest the decisions made at general meetings and describes who may file a lawsuit. The shareholders who attended the meeting and voted against such a decision and recorded their objections in the minutes have the right to contest the decision. Moreover, shareholders who assert that they did not follow their legitimate procedure without attending the meeting have the right to contest the resolution. This includes anything from improper convocation of the general meeting, nondisclosed agenda, or lack of fairness in voting and participation. The members of the board of directors have the right to oppose decisions made during general meetings, especially in instances where following the decision would lead to personal liability on the part of the board members.

You must file an action challenging a general meeting decision within three months of the decision's date. Article 445 provides reasons for annulment, which include improper representation of the agenda of such meeting, unauthorized persons taking part in that meeting, and unequal treatment of shareholders as regards their voting rights. These are some of the major causes that may give rise to annulment; however, in light of specific facts and circumstances, the courts can consider other factors. This legal framework ensures that shareholders and board members can take action to protect their interests and uphold proper corporate governance practices.

4. Right to Access Information

Regardless of the number of shares held, every shareholder has the right to access key company documents, including the company's books of account, consolidated financial statements, the board of directors' annual activity report, audit reports, and the board's profit distribution proposal. According to Article 437 of the TCC, the company headquarters and its subsidiaries must make these documents available at least fifteen days before the general meeting. This right ensures that shareholders, particularly minority shareholders, are well-informed and able to exercise their rights effectively. No decision made by the board, nor any provision in the company’s articles, can limit or exclude this right.

The company can only deny shareholder requests for information if granting them would harm the company or expose its trade secrets. A shareholder may apply with the court if they receive an unjustifiable denial, postponement, or disregard of their information request. Article 437 states that, in case of refusal within ten days—or a reasonable period if no formal refusal has taken place— This provision gives shareholders, especially the minority, a legal opportunity to ensure judicial assistance in cases of infringement of their information rights.

These are provisions directed to protect the minority shareholders, who may not have the same amount of company information as the majority shareholders would, since they mostly have control or are in close contact with the management. Previous agreements, arrangements, and policies of the company cannot fetter the basic and inalienable right to receive information, as it is a matter of public policy. This would ensure greater transparency and accountability, thereby providing minority shareholders with tools for their protection in the company.

5. The Entitlement to Apply for the Issuance of Shares

Under Article 486 (3) of the TCC, a company has a responsibility for issuing registered share certificates and delivering them to the shareholders upon request, especially in the case of minority shareholders. The failure of the company to meet such an obligation may result in the minority shareholders' right to sue the company. Joint stock corporations may issue two kinds of shares: registered and bearer shares[49]. The company's memorandum and articles of association specify the kinds of shares that may be established during or after its organization and existence. The company must issue and provide certificates for bearer shares to the shareholders within three months of full payment. While the TCC does not mandate issuing certificates for registered shares, the law requires companies to issue them if minority shareholders request them.

Article 486 (3) grants minority shareholders in non-public companies the right to request the issuance of shares in their name. The company's board of directors must issue nominative shares and distribute them by the request[50]. However, the board does not have to issue such certificates unless the minority shareholders request it. The provision ensures that the minority shareholders have a mechanism of formalizing their shareholding through documented ownership, thereby enhancing their legal and financial status within the company. The law encourages the

[49] Y Akbulak, 'TTK Işığında Anonim Şirketlerde Pay Senetleri' (2016) 1 Ankara Barosu Dergisi 506.
[50] Soner Altaş, 'Anonim Şirketlerde Pay Senedi Bastırma Yükümlülüğü' [2014] Mali Çözüm Dergisi 105.

participation of minority shareholders in the management of the company and enhances the general stability of their investment by ensuring that it provides them with the right to request share certificates. All registered shareholders, including minority shareholders, have this prerogative, which allows them to demand written certificates from the board of directors.

6. The Entitlement to Apply to the Court for Dissolution of a Joint Stock Company for Just Causes

The dissolution of the corporation for good reason is a crucial corrective measure for the protection of minority shareholders. The TCC Article 531 imposed this right[51]. Before the new Code went into effect, minority shareholders who felt wronged had no way to get a corporation dissolved for good reason. Nonetheless, it was acknowledged that, according to doctrine, shareholders could exercise the right of termination included in the articles of company.

Kaya argued according to Article 531, a court may be asked to rule on a company's dissolution if there are reasonable grounds and shareholders own at least ten percent of the capital of a joint stock company or twenty percent of the capital in a publicly traded business[52]. It does not, however, specify what these just causes might be; this must be determined case-by-case. If minority shareholders choose to do this, they must go to the court that oversees the incorporation's location. According to the last sentence of Article 531, if a minority shareholder asks a court to dissolve a corporation for legitimate reasons, the court may determine that the applicant shareholders' shares should be purchased for their actual value or that a fair and reasonable solution has been found[53].

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[51] ARTICLE 531- (1) TCC No. 6102 In the presence of justified reasons, at least one-tenth of the capital and the public holders of shares representing one-twentieth of the shares in open companies are the shareholders of the company where the headquarters of the company is located and may request the Commercial Court of First Instance to decide on the dissolution of the company. Court Instead of termination, the plaintiff shareholders are entitled to receive a payment of their shares as of the date closest to the date of the decision. The value of the shares and the plaintiff shareholders are dismissed from the company, or the shareholders are dismissed from the company, or the plaintiff shareholders are dismissed from the company and may decide on another acceptable solution.

[52] Hayrettin Çağlar and Erdem Kaşak, 'Anonim Şirketin Haklı Sebeple Feshine İlişkin TTK m. 531 Hükmünün Zaman Bakımından Uygulanması' (2016) 65 Ankara Universitesi Hukuk Fakultesi Dergisi 659.

[53] Kaya (n 8).

7. Miscellaneous Provisions of Protection Minority Shareholder Rights under Capital Markets Law

To comprehend the framework for minority shareholder protection in Turkey, it is also essential to provide a comprehensive understanding of the safeguards granted to minority stakeholders under the Turkish Capital Markets Law. The Capital Markets Law's primary objective is to safeguard investors' interests, particularly about publicly traded corporations. This law encourages self-regulation among market participants while creating, preserving, and regulating honest and efficient securities markets. Furthermore, it is responsible for safeguarding the interests of investors and minority owners, a duty that supersedes conflicting legal requirements[54].

Turkish law offers a thorough framework for managing the basic rights of shareholders. For example, in publicly traded companies, stockholders with 5% of the capital are entitled to call general meetings and suggest agenda topics. Agendas, meeting materials, and notices are sent to shareholders promptly through online platforms. Furthermore, large corporate changes sometimes require a supermajority vote due to shareholders' broad right to scrutiny and prevention[55]. Even though Turkish law allows for varying degrees of voting rights, the organization's articles govern whether minority shareholders have cumulative voting rights.

As per the TCC, shareholders possess the right to initiate legal action against a board member on the grounds of alleged breaches of fiduciary or other duties to the firm. As long as they own 5% of the capital of publicly traded companies, general minority shareholders are entitled to exercise specific rights under the TCC. However, the provisions of the Capital Markets Law for publicly traded firms reinforce these rights even more. This Act grants shareholders the power to file information requests and use the legal system to contest decisions made at the company's general meetings. Share certificates are another benefit that shareholders can enjoy.

The Capital Market Board regulations allow publicly traded firms to establish an internal organization through the corporate governance committee. This internal body helps the board of directors and shareholders communicate. They must try and keep the records of shareholders as up-to-date and accurate as possible; when possible, consult them on matters relating to the firm that are not confidential; prepare materials required for the meeting; and give important public notices.

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54 Burak Adıgüzel, 'Türk Sermaye Piyasasinda Yeni Sermaye Piyasası Kanununun Getirdikleri' [2017] Proceedings of the Mediterranean International Conference 53.

55 Kaya (n 8).

D. Minority Shareholder Rights in the Horn of Africa

This would guarantee the fair and equitable execution of all operations by companies in the Horn of Africa, with the protection of minority shareholders' rights being a fundamental aspect of modern corporate governance concepts, as outlined in various countries' Companies Acts. The protection afforded has been very instrumental in balancing powers within corporate organizations, stemming abuses of their majority shareholders, and placing accountability and, to a certain extent, transparency within those corporations. Such protection is very important in the Horn of Africa, where market dynamics and corporate structures may be very different from elsewhere.

For instance, the Companies Act in Kenya has established a complex system of rights for general meetings, proxies, and financial reports, which serves to safeguard the interests of minority shareholders by providing them with information on corporate resolutions. These are fundamental methods by which minority shareholders can exercise oversight and participate in the management of their companies, primarily to prevent mismanagement or fraud by the majority. The Act grants access to basic information that the minority shareholders might use to secure their investment and make suitable decisions.

The Ethiopian Commercial Code of 1960 incorporates basic elements of corporate governance, including security in share registration and transfer, timely access to relevant information, participation in shareholder meetings, board member election and removal, and profit sharing. The control rights confer shareholders with the right to participate in the decision-making procedures; financial rights refer to profit and asset distribution. Both are essential for safeguarding a fair corporate environment.

The minority shareholder protections in countries like Somaliland and Somalia are remarkably similar to those in Kenya and Ethiopia, indicating the potential application of a regional approach to corporate governance. These countries prioritize the fundamental rights of secure share registration, access to clear and adequate corporate information, and participation in shareholder meetings. Additionally, in these countries, minority shareholders have the right to elect and remove board members, which would give them more say in the strategic orientation of the company. This also ties their financial interests to corporate success by giving them a share of the profits.

However, in practice, enforcing the rights of a minority shareholder can be challenging, if not impossible, as decisions made by the majority will always prevail.

The constraints of contractarian theory, which emphasizes freedom of contract over regulatory oversight, also present hurdles in ensuring effective corporate governance. These difficulties highlight the need for ongoing legislative and regulatory reforms to strengthen minority shareholder rights and ensure fair and inclusive corporate governance throughout the Horn of Africa. Some of the major minority shareholder rights in the Horn of Africa are listed below.

1. The Right to Convene General Shareholders' Meeting

One of the most important safeguards for minority shareholder owners in the Horn of Africa is the ability to call general shareholders' meetings[56]. Usually, an officer of the court, the directors, the auditors, or the liquidators summon these meetings. Shareholder meetings come in two flavors: special and general[57]. A significant occasion, the annual general meeting is where shareholders discuss business matters and decide on things like dividends, director compensation, and possible board member replacements.

Minority shareholders in nations like Ethiopia, however, have the right to ask the court to call a meeting if the directors decline to call one. For example, the court may designate an official to convene a meeting according to Ethiopia's commercial code (Article 391(2)) if shareholders representing at least one-tenth of the share capital indicate the necessity[58]. This clause is essential for shielding minority investors from possible wrongdoing by directors or majority owners.

Notwithstanding these provisions, difficulties exist. Minority shareholders, especially those in large, publicly traded companies, may find it burdensome to meet the requirement of owning 1/10 of the voting shares to call a meeting[59]. By classifying these stockholders as majorities, this criterion frequently weakens the protections meant for actual minorities. The law's uncertainty about the circumstances in which shareholders might ask a judge to convene a meeting creates additional obstacles. This ambiguity can spark debates and make it more difficult for minority shareholders to assert their rights.

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56 W Fentie, 'Strengthening Shareholders Control of Companies in Ethiopia: Minimizing Agency Cost' (2018) 2 Hawassa UJL.

57 Shamana and Ossa (n 36).

58 Fentie (n 56).

59 Shamana and Ossa (n 36).

2. The Right to Propose or Amend the Agenda of Shareholders' Meeting

From a broader perspective, a significant issue within the Horn of Africa region, which includes Ethiopia, pertains to the rights of minority shareholders to propose agenda items or resolutions during shareholder meetings. Most often, the board of directors or management runs an agenda for such meetings. While minority shareholders possess the right to vote, their ability to shape the agenda during meetings is often limited[60]. Company rules in many of these nations do not expressly give minority shareholders the authority to suggest items for the agenda at general shareholders' meetings[61]. Typically, the board of directors, the body convening the meeting, prepares the agenda, and company statutes often lack clear guidelines for minority shareholders to propose topics for debate. This restriction essentially denies minority shareholders a meaningful say in the decision-making process by keeping it in the hands of management or controlling shareholders.

3. The Right to Challenge the Resolutions Adopted at the General Meeting

In the Horn of Africa, including Ethiopia, commercial laws provide shareholders with the means to challenge resolutions passed at general meetings, particularly when they violate the law, the company's memorandum, or articles of association. However, the treatment of minority shareholder rights varies across these nations, especially regarding the ability to contest resolutions deemed unjust or discriminatory[62]. For instance, Article 416(2) of the Ethiopian Commercial Code allows shareholders to challenge a resolution within three months of its adoption or entry into the commercial register. In the case of *Melese Zergaw v. Atinet Trading Share Company*, the plaintiff successfully challenged a company decision, leading to the reversal of the contested resolution. The Ethiopian Commercial Code also guarantees that the general assembly or directors cannot alter certain fundamental shareholder rights.

Despite these protections, Ethiopia and other Horn of Africa nations face a legal gap in explicitly providing minority shareholders with the ability to contest decisions that unfairly harm their rights or the company's interests. The Ethiopian Commercial Code, for example, lacks clear preventative or remedial measures for minority

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60 M Beyene, 'Regulation of Group of Companies in Ethiopia: A Comparative Overview' (2023) 17 Mizan Law Review 197.

61 ibid.

62 FP Gebremeskel, 'Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications' (2010) 4 Mizan Law Review 1.

shareholders who may be mistreated by majority shareholders or company directors. Legal scholars such as Dagnaw Getahun and Fekadu Petros have pointed out this deficiency, emphasizing the need for clearer legal frameworks to safeguard minority shareholders from abuses of power within companies.

4. The Right to Appoint an Independent Audit

The right to appoint an independent auditor in the interest of minority shareholders is recognized within the Horn of Africa nations, including Ethiopia, but its success rate does vary. For example, Article 368 (2) of the Ethiopian Commercial Code permits shareholders holding at least 20% of the capital to designate an independent auditor[63]. This clause highlights a serious loophole in the protections afforded to minority shareholders by implying that those holding less than 20% of the shares do not have this privilege.

The Ethiopian Commercial Code does not specifically define what constitutes a minority shareholder or the amount of shares required to meet this requirement. According to Fekadu Petros's writings, owners who own 20% of the company may qualify as minority shareholders[64]. According to this understanding, only a small number of people would be able to use the power to designate an independent auditor—possibly even individuals with lesser shareholdings who would yet have substantial stakes in the business.

Moreover, Ethiopian law permits shareholders holding at least one-tenth of the company's shares to ask the Ministry of Trade to designate certified auditors to investigate and prepare a report on the company's financial situation[65]. Despite its intended safeguarding of minority shareholders, the 20% requirement for selecting an independent auditor is still considered high. Close situations are available in Kenya.

5. Access to Information and Voting Rights

In the Horn of Africa, timely and accurate information disclosure is crucial to protect minority shareholders from potentially unfair or biased decisions by the board of directors or majority shareholders. However, the commercial regulations in these nations often fall short in terms of the effectiveness and comprehensiveness of their

63 M Negash, 'Corporate Governance and Ownership Structure: The Case of Ethiopia' (2013) 5 Ethiopian E-Journal for Research and Innovation Foresight (Ee-JRIF).

64 Fentie (n 56).

65 Beyene (n 60).

information disclosure processes[66]. Commercial laws, which regulate the disclosure of information to shareholders, often overlook crucial details like voting protocols, meeting agendas, and crucial decisions at shareholder meetings. This omission becomes particularly problematic when significant modifications to the memorandum or articles of association, the issuance of new shares, or large-scale transactions involving company assets are on the table. Without full, accurate, and timely disclosure, minority shareholders are left without adequate protection, undermining their ability to make informed decisions and safeguard their interests[67].

Voting rights are another critical aspect of shareholder protection in the Horn of Africa. Voting rights allow shareholders to have their say in corporate matters and question the company during shareholder meetings. The Commercial Code of Ethiopia, 1960, has given shareholders the right to vote on important matters like the alteration of rights of shareholders, alteration of articles of association, and appointment and removal of directors and auditors[68].

Generally, we maintain the principle of "one share, one vote," albeit with some limitations. It restricts voting rights, and the shareholders themselves cannot vote in cases of conflict of interest[69]. Furthermore, the Commercial Code does not comprehensively address certain voting rights essential for protecting minority shareholders, such as the right to object to resolutions, ask management questions, or submit items for discussion at meetings.

Despite these voting rights, the Ethiopian Commercial Code and similar laws in other Horn of Africa nations do not provide for modern voting practices, such as electronic voting, which could greatly benefit shareholders who are unable to attend meetings in person. Most countries in the region rely on direct and proxy voting[70]. While direct voting grants shareholders the right to participate in meetings and to vote in person, this system is often impracticable or expensive for a minority shareholder, especially if located in another region. Proxy voting does provide a possible avenue in which shareholders can give their voting rights to a representative.

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66 OS Agyemang and others, 'Country-Level Corporate Governance and Foreign Direct Investment in Africa' (2019) 19 The International Journal of Business in Society 1133.

67 ibid.

68 E Ambo, 'The Gaps and Lessons of Ethiopian Share Company Governance in Light of International Company Model Laws' [2021] International Journal of African and Asian Studies 1.

69 Negash (n 63).

70 X Musango, 'Shareholder Protection and Shareholder Intervention in Kenya: A Study on Shareholder Activism' (Doctoral Dissertation, University of Nairobi 2016).

Moreover, the lack of cumulative voting systems in certain countries presents a significant challenge for minority shareholders. Cumulative voting enables the minority shareholders to concentrate their votes to enhance their influence, particularly in the election of directors, as it gives them a counterbalance against the power of the majority shareholders. Unfortunately, most countries from the Horn of Africa, including Ethiopia, do not recognize cumulative voting systems in their commercial laws[71]. In comparison, some countries have moved to more modern kinds of corporate governance practices, such as online voting, which greatly increases shareholder participation, especially for minority shareholders.

E. Challenges and Opportunities Facing Minority Shareholders in the Horn of Africa

1. Opportunities and Protections Available to Minority Shareholders

This section discusses critical opportunities and protections for minority shareholders in selected countries in the Horn of Africa. Legal frameworks based on both common law principles, statutory law, and administrative regulations provide opportunities and avenues that would afford the protection of interests and influence corporate governance by minority shareholders. These protections, through either national constitutions, the Capital Markets Act, or relevant Companies Acts, are open to a variety of interpretations. Recent legislative reforms, such as Kenya's 2014 Companies Bill, also point to a shifting trend in the development of mechanisms for the protection of minority shareholder rights across the region.

Legal frameworks similar to Kenya's Companies Act often serve as a model for statutory protections for minority shareholders in the Horn of Africa. These legal systems offer minority shareholders a chance to challenge unfair corporate actions through the courts. When they believe a company's actions are oppressive or unfairly detrimental to a particular group of shareholders, they can petition the courts for remedies. Under Section 211(2)(b) of the Companies Act, courts may dissolve the company on just and equitable grounds or provide alternative remedies to protect the minority from further harm without necessarily dissolving the company.

In practice, these protections allow minority shareholders to seek compensation or prevent harmful actions by majority shareholders or company directors. Courts have

[71] Fentie (n 56).

the power to issue orders that influence the company's future conduct, such as mandating the purchase of minority shares or directing changes in governance. This judicial authority ensures that minority shareholders can have their interests represented in corporate governance without causing undue disruption to the company's operations. Even in the Horn of Africa, the principle of majority rule, established in Foss v. Harbottle, not only grants majority shareholders the power to ratify the actions of directors but also provides safeguards for minority shareholders against unfair actions by the majority. These statutory remedies ensure that minority shareholders can challenge decisions that significantly affect them, preserving their rights by seeking judicial intervention when the majority seeks to dominate corporate decision-making.

The courts in this region exhibit significant flexibility in interpreting laws related to oppression, thereby providing a crucial avenue for minority shareholders. Cases like Scottish Co-operative Wholesale Society Ltd. v. Meyer indicate that the courts are ready to provide a just result for the minority shareholders once the oppression is located. Thus, this judicial discretion gives the minority shareholders the freedom to challenge unjust actions and guarantee the preservation of their interests.

In principle, judicial decision-making serves as a primary method to guarantee protection for the rights of minority shareholders. The courts in the Horn of Africa also play an important role in the resolution of corporate disputes, especially when the legal framework has failed to provide adequate protection for minority shareholders. Through the interpretation and administration of fair remedies in statutes, the courts afford much-needed protection to minority shareholders to challenge unfair treatment and hence achieve an equitable solution. Indeed, in most cases, minority shareholders might depend on the judiciary because other protection mechanisms, such as legislative reform, tend to be slow or inadequate. Therefore, judicial decisions offer a timely avenue to safeguard minority shareholders' rights and prevent the risks of majority rule. Such reliance on the judiciary will ensure that minority shareholders can play active roles in corporate governance and influence key decisions.

Apart from judicial remedies, administrative regulations provide minority shareholders with further avenues to protect their interests. Regulatory bodies, such as ministries of commerce, supervise corporate governance practices and make sure companies adhere to laws that protect minority shareholders. These administrative regulations are particularly important in sectors where statutory protections may not be comprehensive, such as in publicly traded companies or emerging markets.

2. Major Challenges in Protecting Minority Shareholder Rights

A vital component of corporate governance in the Horn of Africa is the protection of minority shareholders, but systemic problems make this difficult to achieve. The absence of shareholder activism is one of the main issues. Minority shareholders frequently lack the tools, knowledge, and legal assistance needed to properly defend their rights in many Horn of Africa nations[72]. Numerous issues, including inadequate legal frameworks, insufficient enforcement tools, poor corporate governance, information asymmetry, constrained market development, cultural and societal norms, and cross-border regulatory obstacles, contribute to this lack of engagement[73]. The majority of African minority shareholders face the major challenges listed below, which we observed during our research.

a. Regulation, Legislation, and Enforcement of Corporate Governance

Corporate governance encompasses rules and procedures that govern transactions that impact corporate decision-making. These rules include legal frameworks related to shareholders' rights, auditor selection, and guidelines concerned with the responsibilities of governmental entities that oversee corporate compliance. Good governance is critical in terms of preventing majority shareholders from taking advantage of minority shareholders. However, the majority of countries in the Horn of Africa lack robust legal frameworks, which results in inadequate protection for minority shareholders.

The effectiveness of investor protections, including the enforcement of corporate governance laws, plays a significant role in shaping the development of financial markets. Variations in legal structure and enforcement mechanisms—due to historical legal trends and enforcement efficiency—affect financial development in the region. Research shows that countries with common law systems tend to provide stronger shareholder protection than those with civil law systems[74]. In the Horn of Africa, primarily a common law jurisdiction, the legal structure still lacks adequate frameworks to protect minority shareholders.

Despite the adoption of corporate governance codes in the region, these codes, derived from common law jurisdictions, lack effective legal force and enforcement

[72] OW Alfayo, 'Legal Protections Accorded to Minority Shareholders in Kenya in Corporate Entities' (Doctoral Dissertation, Strathmore University 2021).

[73] Alfayo (n 78).

[74] CP Egri and DA Ralston, 'Corporate Responsibility: A Review of International Management Research from 1998 to 2007' (2008) 14 Journal of International Management 319.

mechanisms to meaningfully protect shareholders' interests[75]. Countries like Ethiopia, Somaliland, and Kenya should institute regulatory frameworks that provide a necessary balance between majority and minority investors, enabling transparent and accountable corporate governance.

b. Lack of Adequate Legal Enforcement and an Ineffective Judiciary System

The lack of adequate legal enforcement and an ineffective judiciary system in the Horn of Africa create significant challenges for minority shareholders seeking redress for unfair practices. In many countries, legal processes are slow and costly, discouraging minority shareholders from pursuing justice. Lengthy trial durations exacerbate the burden, leaving cases unresolved for years, during which minority shareholders remain vulnerable to exploitation by majority shareholders[76].

In addition to slow legal processes, the lack of specialized commercial courts in the region hinders the effective resolution of corporate disputes. Unlike countries such as Turkey, which have dedicated commercial courts for business-related cases, the Horn of Africa lacks such institutions. This forces minority shareholders to rely on general civil courts, which are often not equipped to handle complex corporate matters. Even if minority shareholders win court cases, there is no guarantee that the rulings will be enforced due to the lack of proper enforcement mechanisms. This undermines the credibility of the legal system and further diminishes trust in corporate governance.

c. Limited Company Classifications in the Horn of Africa

The limited range of company classifications in the Horn of Africa poses challenges for both entrepreneurs and investors. Sole proprietorships, partnerships, or limited liability companies (LLCs) form the majority of businesses in the region, providing limited flexibility for more complex corporate structures[77]. The absence of varied company classifications hinders innovation and foreign investment, as investors prefer environments with more adaptable legal frameworks[78]. Limited company classifications also impact minority shareholders. Without specialized legal

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75 Fentie (n 56).

76 OI Aderibigbe, 'Minority Shareholders' Rights and the Majority Rule under Corporate Governance: An Appraisal.' (2016) 3 Journal of Comparative Law in Africa 100.

77 RH Davidson, A Dey and AJ Smith, 'CEO Materialism and Corporate Social Responsibility' (2019) 94 The Accounting Review 101.

78 ibid.

structures, minority shareholders may find it difficult to exercise their rights or seek legal recourse against unfair practices[79] This narrow scope weakened the protection framework for minority shareholders in general, making them quite vulnerable to controlling shareholders or managerial exploitation.

d. Absent or Underdeveloped Monitoring Institutions

The absence of institutions monitoring corporate conduct poses a significant challenge for minority shareholders in the Horn of Africa. Institutions and their regulatory mechanisms have played a crucial role in monitoring corporate governance practices, and safeguarding the interests of shareholders. However, most countries lack these institutions, and those that do exist are often inadequately developed. For example, studies indicate that regional regulatory bodies lack the necessary resources, authority, and autonomy to regulate corporate governance effectively[80]. This lack of regulatory monitoring exposes minority shareholders to potential abuses of power by majority shareholders and company management. Without effective monitoring mechanisms, minority shareholders struggle to access critical information about corporate decisions, hindering their ability to protect their rights. The absence of proficient oversight also discourages potential investors, further stunting the growth of the region's financial markets[81].

IV. CONCLUSION AND RECCOMENDATIONS

The aim of this research is to explore the challenges faced by minority shareholders in joint-stock companies by conducting a comparative analysis of company laws in the Horn of Africa (Somalia, Somaliland, Ethiopia, and Kenya) and Turkey. The study also aims to examine the legal frameworks that protect minority shareholders, highlighting any gaps and weaknesses, and offering recommendations on best practices to enhance the protection of their rights. Utilizing a qualitative approach and secondary data sources such as company laws, regulations, court rulings, and academic literature, the research offers valuable insights into the implementation of minority shareholder protections and identifies areas that need improvement.

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79 AB Carroll and JA Brown, 'Corporate Social Responsibility: A Review of Current Concepts, Research, and Issues' [2018] Corporate Social Responsibility 39.

80 Agyemang and others (n 66).

81 SK Agyei and others, 'Country-Level Corporate Governance and Foreign Portfolio Investments in Sub-Saharan Africa: The Moderating Role of Institutional Quality' (2019) 10 Cogent Economics & Finance 2106636.

The research reveals that legal frameworks in the Horn of Africa are outdated and lack clarity in defining minority shareholder rights, making it difficult for these shareholders to exercise their rights effectively. On the other hand, while Turkey, under the TCC, provides more specific protection for minority shareholder rights, the Horn of Africa lacks specialized commercial courts and ambiguous company classifications. The Horn of Africa region, unlike Turkey, lacks a well-structured legal system that includes self-protective provisions such as challenging corporate decisions and participating in company governance. Moreover, the study found that, in contrast to Turkey, which has numerous research studies focused on enhancing the rights of minority shareholders, the Horn of Africa has relatively little research and activism on these rights.

Our conclusion and recommendations, based on these findings, serve as lessons for the Horn of Africa countries to learn from Turkey. The identified lessons below underline the harmonization of the legal frameworks and practices of the best states. Through the adoption of the following recommendations, the Horn of Africa countries will be in a position to enhance their corporate governance systems, improve the protections afforded minority shareholders, and establish a promising environment for investment and economic growth.

A. Lessons Horn of African Countries can Learn from Turkey's Laws and Institutions in Protecting Minority Shareholders in Joint-Stock Companies

In the Horn of Africa countries, protecting the rights of minority shareholders in joint-stock companies remains a significant challenge (Samora, 2019). These nations must undergo comprehensive restructuring to create a more attractive environment for foreign investors and ensure the continuity of companies. Comparative studies, particularly with Turkey, offer valuable insights on how to improve the protection of minority shareholders. This includes clearly defining who minority shareholders are, strengthening their rights, improving their representation, and enhancing the regulatory framework. Furthermore, there is a need to modernize their commercial codes, as many of these laws are outdated and fail to align with contemporary business practices.

Most commercial codes in the Horn of Africa countries are leftovers from the colonial era and have never been able to keep up with modern-day business dynamics. These outdated laws often lack the necessary provisions to adequately address contemporary issues such as e-commerce, intellectual property rights, and alternative dispute resolution methods, which are crucial for safeguarding the rights

of minority shareholders. We must revise and update these codes to align with global standards. All this is also crucial for offering a conducive climate for company growth and investment. To instill investor confidence and, thus, economic development, these countries shall establish policies leading to transparency, efficiency, and fairness in corporate activities. Additionally, these countries aim to achieve their goals by acquiring valuable information from countries like Turkey, which has successfully modernized its commercial legislation.

In addition, the establishment of specialized courts for commercial purposes, just like in Turkey, provides a focused approach toward conflict resolution associated with business. These courts are in a position to develop expertise in commercial law and may handle and dispose of complex disputes in less time. Conversely, the incorporation of business-related lawsuits into the overall civil court systems of the Horn of Africa nations frequently results in delays and inefficiencies due to the absence of specialized expertise and resources [82]. By establishing specialized commercial courts presided over by judges with expertise in commercial law, these nations can accelerate the settlement of conflicts, foster investor trust, and improve the entire legal framework for economic activities. The research on the system of specialized commercial courts in Turkey may prove instructive in developing an effective judicial framework that is relevant to modern business operations.

B. Redefining Criteria for Minority Shareholders

A proper and comprehensive definition of minority shareholders is a prerequisite to ensuring adequate protection of their rights in the joint stock businesses in the Horn of Africa. The definition should encompass individuals or entities who own shares in a corporation. In the new TCC of Turkey, the concept of a minority shareholder is defined as one possessing at least 10% of the capital, while 5% is sufficient in the case of publicly owned enterprises. Although the requirement has been subject to debate in Turkey to change it, it has nonetheless considerably enhanced the protection of minority shareholder rights in Turkish companies and provides a useful model for the Horn of Africa countries.

Furthermore, the introductory section of TCC grants a company the ability to modify the threshold through its articles of association. Companies can customize governance arrangements to enhance shareholder protection by treating minority shareholders with lower percentage ownership. For example, the company's statutes

[82] E Torgbor, 'Courts and the Effectiveness of Arbitration in Africa". Arbitration International' (2017) 33 Arbitration International 379.

can formally recognize other minority shareholders with less than 10%—such as 5%—and grant them special privileges within the statutory boundaries of the mandatory rules of the TCC.

On the contrary, the Horn of Africa currently defines majority shareholders as individuals or corporations that own more than 51% of shares, while minor shareholders have smaller ownership percentages. Often, these countries adopt the concept of majority rule as outlined in the Forbes Handbook, thereby disregarding the special rights and protections applicable to minority shareholders. In this regard, the countries of the Horn of Africa must reexamine their definition of a minority owner and align it with global standards to ensure equitable treatment and representation, thereby fostering a more inclusive and protective business environment.

C. Enhancing Minority Shareholder Rights

The Horn of Africa countries could potentially learn from the innovative approach of the TCC of Turkey in enhancing the rights of minority shareholders. Though the TCC extends general rights to all shareholders, it also provides special protection to minority shareholders. Thus, the TCC creates a complete system for protecting and strengthening the position of the minority shareholder by providing both general and special protection. In this regard, the Horn of Africa countries could benefit from taking useful initiatives to protect minority shareholder rights and, consequently, become more investment-friendly.

Some of the most important personal rights granted by the TCC to all shareholders, regardless of the size of ownership, are to receive information about the company, to attend and speak at general meetings, and to vote on key corporate decisions[83]. By fixing these rights under the law, Turkey affords transparency, accountability, and shareholder participation in corporate management. These rights constitute a sounder framework for effectively allowing shareholders, also from minorities, to participate in most corporate decision-making processes.

In addition to general rights, the TCC extends specific privileges to minority shareholders. Such provisions protect the minority owners from possible abuses of power by the majority shareholders, thus empowering them to have greater influence in the companies[84]. In these examples, a minority shareholder can request a delay in the consideration of financial statements, allowing them ample time to

[83] Tüzemen Atik (n 37).
[84] Tüzemen Atik (n 37).

scrutinize crucial financial data and make an informed decision. This approach allows the minority shareholder to fully engage in due diligence, fostering more informed and balanced corporate governance. The TCC also grants authority to the minority shareholders by way of appointing an independent auditor. This gives rise to additional oversight and assures integrity for the financial reporting processes. Allowing minority shareholders independently to verify that their financial data is correct reduces fraud or mismanagement; therefore, it provides more transparency and accountability within the company.

Another important right of minority shareholders is to call for a general meeting and propose the agenda items. Such a provision's underlying corporate governance ethos enables minority shareholders to voice their opinions, propose various initiatives, and foster accountability[85]. Additionally, minority shareholders can object to and request the nullity of resolutions passed during general meetings if they perceive these decisions to be detrimental to their interests. The right further upholds the proportionality of the principles of fairness and equity in corporate decisions and provides minority shareholders with a legal opportunity to safeguard their rights.

In such a case of grave corporate misbehaviour or fiduciary duty violation, minority shareholders have the right to petition the court for dissolution against the joint-stock company in Turkey. It is an ultimate choice that the minority shareholder can opt for when his rights are seriously threatened. In this context, the mentioned legal arrangement highlights Turkey's role in safeguarding shareholder interests and promoting ethical corporate management.

Another key provision in the TCC allows minority shareholders to have representation on the board of directors[86]. This would ensure that their views and interests are duly considered in corporate decision-making processes and thus promote inclusiveness and diversity in corporate leadership. Minority shareholders bring pluralistic perspectives and specialized expertise, which enhances the general effectiveness of governance.

Furthermore, the Capital Markets Law grants minority shareholders of a Publicly traded Joint Stock Company the right to request the company's dissolution for

[85] Özlem İlbasmış Hızlısoy, 'Anonim Şirket Yönetim Kurulunu Toplantıya Çağrıya Yetkili Olanlar Ve Yetkisiz Kişilerce Yapılan Çağrıyla Toplanan Yönetim Kurulunda Alınan Kararların Hukuki Akıbeti' (2022) 8 Ticaret ve Fikri Mülkiyet Hukuku Dergisi 115.

[86] Aydın Alber Yüce, 'The Legal Liability Of Shareholders İn Joint Stock Companies About Factual Managing Bodies' (2022) 9 Istanbul Medipol Universitesi Hukuk Fakultesi Dergisi 243.

justifiable reasons, including gross mismanagement, fiduciary relationship violations, or oppression of minority shareholders[87]. The legal framework in Turkey has provided activist shareholders with the necessary support to mobilize management and encourage greater respect for the interests of minority shareholders. This approach offers valuable lessons for Horn of Africa countries, as they can implement stronger protections to safeguard minority shareholders and uphold their interests in corporate governance practices.

D. Remedial Framework and Specialized Commercial Courts

The TCC has a robust remedial system aimed at the protection of minority shareholders in public joint-stock companies and therefore provides a comprehensive legal system for the redress of corporate wrongs committed by its directors and managers. One of the important elements of this system is that a minority shareholder may be entitled to make corporate directors account for their wrongful acts against such shareholders' fiduciary duties[88]. This legal right enables minority shareholders to sue the board of directors when their actions or actions have harmed the company or the shareholders. Through the enforcement of such provisions, the TCC makes sure that minority shareholders are effective in corporate governance to protect their interests.

The TCC outlines the criteria for culpability, such as the dissemination of erroneous information, failure to fulfil legal obligations, or misrepresentation of financial data[89]. These standards ensure transparent and impartial accountability of directors and managers. If minority shareholders successfully bring a liability claim, the framework provides compensation, mandating responsible directors or managers to reimburse both the company and individual shareholders for any losses caused by their misconduct[90]. Additionally, the TCC mandates that those held liable must also cover

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87 Mehmet Emin Bilge, 'Anonim Şirketin Sona Ermesi ve Tasfiyesi' (2012) 16 Erzincan Binali Yildirim Universitesi Hukuk Fakultesi Dergisi 261.

88 Article 552 of the TCC: "Minority shareholders representing one-tenth of the capital or shareholders holding at least one-tenth of the shares with voting rights may file a lawsuit against the board of directors for damages resulting from their actions or omissions. This lawsuit may also be filed against persons responsible for supervising the board of directors, such as auditors, liquidators, or board members who have acted in bad faith. However, the liability of the board members shall not relieve the persons responsible for supervision from liability."

89 Article 553: Directors are responsible for providing accurate information and complying with statutory requirements. They can be held liable for damages resulting from inaccurate information or breaches of disclosure and reporting obligations.

90 Article 556 of the TCC: "Directors or managers who are found liable for damages resulting from their actions or omissions shall be obliged to compensate the company and individual shareholders

all legal costs[91], ensuring that the litigation process does not financially burden minority shareholders. This provision is crucial in enabling minority shareholders to pursue legal remedies without facing prohibitive financial hardships. His provision is crucial in enabling minority shareholders to pursue legal remedies without facing prohibitive financial hardships.

Other countries, including those in the Horn of Africa, can use the TCC's remedial framework as a model to develop stronger shareholder protection mechanisms. By adopting Turkey's approach, these countries can improve their corporate governance, increase investor confidence, and enhance their reputation as credible financial markets. This could lead to more robust legal protections for minority shareholders and create a more attractive environment for both local and foreign investment.

Another important factor in reinforcing the rights of minority shareholders is the specialized commercial courts of Turkey. The TCC established these courts to handle commercial disputes related to corporate governance, business transactions, and minority shareholder protection[92]. The hierarchy of the Commercial Courts in Turkey begins with the Commercial Court of First Instance and extends to the Regional Commercial Court and the High Court of Appeals[93]. Typically, the Commercial Court of First Instance adjudicates most business disputes, including those affecting minority shareholders, and the higher courts hear appeals against these decisions.

The TCC defines the jurisdiction of commercial courts, specifying the types of business disputes they handle, including corporate law, intellectual property rights,

for any losses incurred. This compensation shall cover the full extent of the damages suffered by the company or individual shareholders as a result of the director's or manager's misconduct or negligence." The article ensures that directors or managers held responsible for causing harm to the company or its shareholders are obligated to provide compensation for the losses incurred. This provision aims to protect the interests of minority shareholders by holding accountable those responsible for breaches of fiduciary duties or other misconduct.

91 Article 557 of the TCC: "In cases where directors or managers are found liable for damages resulting from their actions or omissions, they shall be responsible for reimbursing all expenses related to the litigation. This includes legal fees, court expenses, and any other costs incurred by the company or individual shareholders in pursuing the liability claim. Additionally, directors or managers found liable may be subject to other remedies as determined by the court, including injunctive relief or restitution."

92 Nesibe Kurt Konca, 'Yeni Türk Ticaret Kanunu'na Gore Asliye Ticaret Mahkemeleri' (2013) 4 Türkiye Adalet Akademisi Dergisi.

93 Şerife Esra Kiraz, 'Türk Mahkemelerinde CISG'nin Uygulanmaması: Madde 2 (E) Bağlamında Bir Değerlendirme' [2023] Yıldırım Beyazıt Hukuk Dergisi 565.

and financial transactions[94]. These courts specialize in handling complex commercial issues, and ensuring efficient and fair resolution of disputes related to minority shareholder rights. Equipped with judges and legal experts who possess extensive knowledge in commercial law and corporate governance, these courts are well-positioned to address the intricate legal challenges that arise in such cases[95].

Despite the existence of a system of specialized courts in most countries in the Horn of Africa, general courts have greatly delayed and left many minority shareholder legal disputes undecided[96]. A lack of such specialization lengthens litigation and increases the cost of seeking legal redress from shareholders. This lack of specialization in commercial law may also result in an incoherent or improper outcome, which would weaken the confidence of market actors and undermine the integrity of the legal system.

Given these challenges, establishing specialized commercial courts in the Horn of Africa, focused on corporate governance and the rights of minority shareholders, would be highly beneficial. By drawing on Turkey's experience, the countries in the region could improve the efficiency of their judicial systems and increase investor confidence. These courts, with judges trained in corporate law and equipped with modern case management systems, could accelerate the resolution of business disputes and provide greater legal certainty. This would not only protect minority shareholders' rights more effectively but also contribute to a more stable and attractive business environment.

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