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SUPERVISION OF MEDIA COMPANIES BY PUBLIC AUTHORITY WITHIN THE FRAMEWORK OF THE TURKISH LAW SYSTEM: AN EXAMPLE OF A STRICT BUT IMPERFECT OVERSIGHT[1]

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Abstract

In terms of Turkish law, the public authority's supervision of media companies has a two-legged control mechanism. This mechanism includes the Radio and Television Supreme Board, which has administrative and financial autonomy, and the Ministry of Trade, an executive body element which has both administrative and political aspects. The legal bases of this multiple supervision mechanism of media companies are also different from each other. On the one hand, there exists Law No. 6112, which has a completely public law character, and on the other hand, Law No. 6102, which is essentially a part of Turkish private law, but also includes provisions that have a public law nature, constitute the legal regime regarding the supervision of media companies by the public authority. Although this supervision mechanism, which is implemented by more than one institution within the framework of more than one piece of legislation, seems to serve an ideal, such as media companies being subject to a stricter and more realistic control, it also contains handicaps that will lead to the failure of this ideal.

Keywords: *Media companies, Turkish media law, Supervision of media companies, Law on the Establishment and Broadcasting Services of Radio and Television, Radio and Television Supreme Board, Turkish Code of Commerce*

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1 INTRODUCTION

Considering their fields of activity, media companies are organizations that can be associated with goals that directly concern the public interest, such as creating a transparent society, enabling freedom of information, and contributing to the development of a sustainable democratic society, in addition to the aim of making a profit and benefitting shareholders. For these reasons, although they are established as private law legal entities in the nature of a joint-stock company within the framework of the provisions of the Turkish Code of Commerce No. 6102[3] (TCC), media companies are also subject to a legal regime consisting of regulations with a public law character. This legal regime particularly includes provisions specific to public authorities' direct and indirect control of media companies. Law on the Establishment and Broadcasting Services of Radio and Television No. 6112[4] (RTL) is a code that includes provisions regarding the supervision of media companies by public authorities, on behalf of the public with administrative and judicial sanctions, and is essentially a code with a public law character. The adoption of public interest motivations such as regulating the procedures and principles of radio, television, and on-demand broadcasting services with mandatory rules, and guaranteeing freedom of expression and access to information, as well as the establishment, organization, duties, powers, and responsibilities of Radio and Television Supreme Board (Supreme Board), a public institution, highlight the public law character of this law. Another fundamental code that media companies are subject to is the TCC. As a reflection of the European Union candidacy process, this Code, which entered into force in 2012, has adopted an approach that allows the State to intervene in economic life and assigns a protective, regulatory and supervisory role to the State. This approach, prominent in the TCC, is in line with Art. 167 of the Constitution. Indeed, according to this article, the State shall take measures to ensure and develop the healthy and orderly functioning of money, credit, capital, goods, and services markets. In Art. 210 of the TCC, which is valid for all commercial companies, it is also possible to carry out supervision by the Ministry of Trade (Ministry) on behalf of the public. In this study, the supervision of media companies on behalf of the public authority will be examined within the framework of the two main Codes, which in effect exist as a multiple supervision system. After examining the supervision mechanisms portrayed in both Codes separately, the advantages and disadvantages of the multiple supervision system, the problems experienced in the implementation in Türkiye and the evaluations and suggestions specific to what should be done to solve these problems will constitute the content of this study. This study aims to contribute to comparative

[3] Official Gazette, 14.02.2011, No: 27846.
[4] Official Gazette, 03.03.2011, No: 27863.

law within the framework of the *de lege lata* and *de lege ferenda* regarding the Turkish law system, which aims to harmonize its legal system with modern legal systems, primarily the European Union, with approximately 200 years of Westernization movements, and the legal regime in effect regarding the supervision of media companies, whose sphere of influence is multi-faceted and very wide, on behalf of the public.

2 LEGAL STRUCTURE OF MEDIA COMPANIES IN TÜRKİYE

2.1 Founding Elements of Media Companies

RTL can be pointed out as the main source of the legal regime to which media companies are subject. In the Law, the use of the broader concept of "media service provider" has been preferred instead of the concept of "media company". Indeed, a media service provider is defined as a legal entity that has editorial responsibility in the selection of radio, television and on-demand broadcasting service content, and decides on how this service is organized and broadcast (Kalaman, 2019). Therefore, media service providers may be legal persons only. Having legal personality is not the only characteristic sought for media service providers. In fact, other characteristics that a media service provider must possess are determined by the Regulation on Administrative and Financial Conditions to be Complied with by Media Service Provider Organizations and Platform and Infrastructure Operators[5] (Media Regulation), which is a sub-regulation enacted pursuant to RTL. According to Art.4 of the Media Regulation, the non-public shares of media service providers must be registered, the partnership structure and fields of activity must be certainly regulated in the articles of association of the companies, no dividend certificate must be created in favour of any person, and domestic and foreign shareholders must not have privileged shares. The condition of being registered is not sought for publicly traded shares. Although it is not mandatory for media service providers to be subject to the Capital Markets Law No. 6362[6] (CPL), it is not restricted either. Indeed, if media service providers are subject to CPL, they can issue and offer capital market instruments to the public (Özdal, 2023).

Another characteristic that media service providers must have is related to the type of company they may establish. In effect, according to Art.19 of RTL, it is stipulated that broadcasting licenses can only be granted to joint-stock companies established in accordance with the TCC, and Art.4 of the Media Regulation indicates that it is a requirement for media service providers to be established as joint-stock companies in accordance with the provisions of the TCC. Considering the crucial importance that media service providers pose,

[5] Official Gazette, 15.06.2011, No: 27965.
[6] Official Gazette, 30.12.2012, No: 28513.

especially in terms of public interest, it is certainly appropriate to make it mandatory for them to be established as joint-stock companies (Şener, 2022). The applicable corporate governance principles, the active role of the Ministry and therefore the State from its establishment to its management, a strong capital structure, a management mechanism conducive to professionalism, subjection to independent auditing, the ability to issue shares, and the possibility of going public are among the reasons why media service providers are required to be established as joint-stock companies. This is because their fields of activity and areas of influence require that media services be carried out only by a capital company with a strong institutional structure, such as a joint-stock company. However, a criticism can be put forward at this point in terms of *de lege ferenda*. This criticism also emerges within the framework of legislation drafting techniques. In RTL, establishment as a joint-stock company is shown as a requirement only for the broadcasting license. In contrast, in the Media Regulation, establishment as a joint-stock company for media service providers is accepted as a compulsory requirement that goes beyond the broadcasting license (Metin, 2020). Accordingly, if a restriction or obligation is to be imposed on the freedom of initiative in a matter such as incorporation, it may be more appropriate for this measure to be made only by a legal mechanism (Metin, 2020). It is also contrary to the *lex superior* principle to regulate an obligation, restriction or precondition not foreseen by RTL with a regulation in the nature of an administrative transaction. Therefore, the obligation of media service providers to be established as joint-stock companies should be regulated by RTL instead of the Media Regulation.

2.2 Media Companies as Special Types of Joint-Stock Company

A joint-stock company is a type of capital company regulated in Art.329 and following in the TCC. The limited liability of shareholders, in other words, with shareholders being limited to contributing capital and are only responsible to the company's legal entity, the certainty of their capital and, therefore, the necessity of indicating it in the articles of association, are among the basic characteristics of joint-stock companies. According to the TCC, the minimum capital rule applies to joint-stock companies, with the minimum capital amount being determined as 250,000 Turkish Liras (TL). Although it is regulated as a requirement for media service providers to be established as joint-stock companies within the framework of the provisions in the TCC by Art.4 of the Media Regulation, the rules regarding minimum capital amounts are regulated differently from the TCC and within the framework of the principles in the Media Regulation, specifically to media service providers. Accordingly, paid up capital for media service providers varies from over one million TL for on-

demand broadcasting services to fifty thousand TL for cable radio services[7]. As a critic, these amounts indicated in the Media Regulation, which are still valid, are not realistic considering Türkiye's inflationary economic atmosphere. In terms of what should practically be in place, the minimum capital amounts should be determined at a more realistic level as follows. This should preferably, and more realistically, be according to the volume of losses that media service providers' operations may cause, the number of their employees and should be automatically renewed and upgraded every year according to current economic data and inflation rates.

According to the TCC, while joint stock companies must have at least ¼ of their cash capital commitments paid before the establishment of the company (Art.344/1), it is an indispensable requirement for media service providers to pay all of the minimum capital amounts indicated in the Media Regulation before the establishment of the company. It is undoubtedly the case that this difference stems from the importance that media service providers present in terms of public interest (Özdal, 2023).

A joint stock company can be established for any economic activity that is not prohibited by law, according to the TCC. Indeed, there are certain fields of activity for which it is mandatory for companies established as joint stock companies. Banking, insurance, and sport companies are three examples. Companies established as media service providers must also be established as joint stock companies. In addition, the fields of activity of media service providers are determined according to the principle of limited numbers in both RTL and the Media Regulation, as in every field that is not prohibited by law. Accordingly, media service providers must be established to provide radio, television and on-demand broadcasting services and to be able to achieve this purpose and to perform broadcasting activities (Özdal, 2023; Metin, 2020; Güzel, 2020).

3 COMPARATIVE LAW FRAMEWORK

Across the European Union, the United Kingdom, Germany, and France, public oversight of media companies is united by a single foundational principle:

[7] The paid-up capital amounts of media service providers that apply for a broadcasting license in order to provide radio, television and on-demand broadcasting services cannot be less than 8,320,000 TL for national terrestrial televisions, 1,385,000 TL for regional terrestrial televisions, 250,000 TL for local terrestrial televisions, 1,000,000 TL for national terrestrial radios, 250,000 TL for regional terrestrial radios, 70,000 TL for local terrestrial radios, 275,000 TL for cable televisions, 50,000 TL for cable radios, 275,000 TL for satellite televisions, 50,000 TL for satellite radios, 100,000 TL for on-demand broadcasting services and 50,000 TL for internet radio and television.

media is not merely a commercial market, but a fundamental pillar of democracy and freedom of expression.

The EU sets the baseline standards for its member states, balancing content safety with explicit protections against state overreach. In EU legislation the recent development is the enaction of European Media Freedom Act (EMFA - 2024/1083)[8]. This Act strictly redefines and limits public authority over media via prohibiting direct or indirect state interference in editorial decisions, protecting journalists from being forced to reveal sources, banning spyware on journalists' devices except under judicial approval for serious crimes/terrorism, mandating transparent appointment/dismissal processes for state radio and TV boards, and enforcing media ownership transparency (declaring ultimate beneficiaries and financial support). To implement the provisions of the Act, European Media Services Board (EBMS) comprising representatives from national supervisory bodies was established. Another legislatice source related to media supervision in EU law is Audiovisual Media Services Directive (AVMSD – 2010/13)[9] which sets structural content limits for TV and video-on-demand (VoD). It mandates national oversight to combat hate speech, protect children, and ensure disability access. It also requires a minimum of 30% European-made content in digital catalogs.

The UK operates on a hybrid model that aims to keep state intervention to a minimum while maintaining robust legal frameworks to safeguard public interest. Public oversight on media in the UK splits into two pillars: broadcasting (radio, TV, VoD) and print/digital media (newspapers, magazines). Office of Communications (Ofcom) which has the public authority for supervision on media companies and is a statutory regulator independent of the government was established by the Communications Act 2003[10]. Ofcom holds the power to grant/revoke broadcasting licenses, issue administrative fines (including to the BBC), and enforce a strict code of principles (impartiality, accuracy, privacy, child protection). In the UK, other legislative source on media control is Online Safety Act 2023[11] which expands Ofcom's mandate to oversee social media and tech giants—specifically targeting illegal content, child protection, and algorithmic transparency.

[8] Regulation (Eu) 2024/1083 of The European Parliament and of The Council, 17.04.2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1083 (accessed 13.06.2026).
[9] Directive (Eu) 2010/13 of The European Parliament and of The Council, 10.03.2010, https://eur-lex.europa.eu/eli/dir/2010/13/oj/eng (accessed 14.06.2026).
[10]Communications Act 2003, 17.07.2003. https://www.legislation.gov.uk/ukpga/2003/21/contents (accessed 14.06.2026).
[11] Online Safety Act 2023, 26.10.2023. https://www.legislation.gov.uk/ukpga/2023/50 (accessed 13.06.2026).

Germany's model is heavily shaped by its Constitution (*Grundgesetz*)[12] and historical lessons, strictly enforcing the principle of "separation from the state" (*Staatsferne*). Media regulation is intentionally kept away from ministries or the executive branch. Constitutional Basis is Article 5 which guarantees freedom of expression/press and explicitly prohibits censorship. Public authority is wielded by independent regulatory bodies with public law legal personality, not the state's administrative apparatus. Broadcasting is divided in two. Accordingly, for public broadcasting, oversight is regulated internally by multi-stakeholder boards representing different segments of society: the Broadcasting Board (*Rundfunkrat/Fernsehrat*) and the Administrative Board (*Verwaltungsrat*). For private commercial broadcasting, 14 independent State Media Authorities (*Landesmedienanstalten*) were established for the oversight. In Germany, to tackle global tech companies, the Network Enforcement Act (*NetzDG*)[13] was passed in 2017 to police digital platforms alongside EU rules.

Reflecting traditional republicanism, France possesses the most centralized, state-oriented approach to media freedom and control within the Continental European legal tradition. The legal pillars for France's system are the Freedom of the Press Act of 1881[14] and the Freedom of Communication Act of 1986[15]. In addition, the French Constitutional Council constantly balances freedom of expression against media pluralism. Public institution who has power to supervise and oversee the media companies in France is Arcom (Autorité de régulation de la communication audiovisuelle et numérique) which formed in January 2022 by merging the CSA (audiovisual regulator) and Hadopi (digital copyright protection). Arcom is an independent public authority (API) under French administrative law, granting it a legal personality separate from the government, financial autonomy, and independent sanctioning power. Arcom is led by a 9-member board (*Collège*). Its chairman and members are appointed across a spectrum of high authorities: the President, the Presidents of the National Assembly and Senate, the Court of Cassation, and the Council of State.

4 SUPERVISION OF MEDIA COMPANIES WITHIN THE FRAMEWORK OF LAW NO. 6112 (RTL)

[12] Constitution / Basic Law (Grundgesetz), 08.05.1949. https://www.gesetze-im-internet.de/englisch_gg/ (accessed 14.06.2026)

[13] The Network Enforcement Act (NetzDG), 30.06.2017. https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html (accessed 15.06.2026).

[14] Freedom of the Press Act 1881 (Loi du sur la liberté de la presse), 29.07.1881. https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070722 (accessed 14.06.2026).

[15] Freedom of Communication Act 1986 **(**Loi léotard), Law No. 86-1067, 30.09.1986. https://fra.europa.eu/es/law-reference/freedom-communication-act-no-86-1067-30-september-1986 (accessed 14.06.2026).

4.1. Supervision with Administrative Sanctions

Administrative sanctions that can be applied to media service providers can be seen in two ways. The first is the administrative fine in the form of payment of a certain percentage of commercial communication income. The second aspect of administrative sanctions can be in the form of obstruction, suspension or prohibition (Özay, 1995; Açdoyuran, 2001). The authorized body that will decide on administrative sanctions is the Supreme Board. Administrative fines, imposed by a public authority (Supreme Board) rather than a court for a misdemeanor rather than a crime, differ from judicial fines in this respect. Violations that lead to administrative sanctions that can be applied to media service providers have been determined in accordance with the principle of limited number and legality (Bayazıt and Biçer, 2019). Media service providers shall be subject to an administrative fine of two to five percent of the gross commercial communication revenue in the month preceding the month in which the violation was detected, taking into account the severity of the violation and area of the broadcast.

In addition, an administrative measure can be decided to enforce the cessation of the broadcast of the program in question for up to five times, and to remove the program in question from the catalogue in optional broadcasting services. Considering the nature of the violation, an administrative fine and an administrative measure may be decided together or separately. Media service providers which broadcast programmes, violating the principles, obligations or prohibitions that they must comply with and are specified in RTL shall be issued with a warning. In the event of a recurrence of the violation, after the warning is issued to the relevant institution, the media service provider shall receive an administrative fine of one to three percent of the gross commercial communication revenue in the month preceding the month in which the violation was detected, taking into account the severity of the violation and area of the broadcast.

In the case in which the violation of the obligation or prohibition constitutes a crime, an administrative fine or administrative injunction decision may still be given, regardless of the condition that an investigation or criminal prosecution is conducted against the relevant parties as a result of criminal activity. In place of the programs whose broadcasting is stopped as a result of the implementation of administrative measures, programs on education, combating drugs, environmental education, and similar public wellbeing related topics provided by the Supreme Board shall be broadcasted in the same broadcasting time slot and without including commercial communication broadcasts (Seçkin, 2013).

In the event that a decision to stop the broadcast of a program is made as an administrative measure due to a violation of the obligation or prohibition, the

producer or presenter of the program, if any, who is responsible for the act that gave rise to the imposition of the sanction, shall not be able to produce or present another program under any name in the same or different media service provider organization during the period when the broadcast is stopped.

If the same violation is repeated within one year, the media service provider organization's broadcasting shall be suspended for five to ten days. In case of a second repetition of the violation, the broadcasting license shall be cancelled. Should the media service provider organization whose programs have been temporarily suspended continue its broadcasts in violation of the requirements of the decision despite the notification of the sanction decision, the broadcasting license shall then be cancelled.

The Supreme Board is authorized to decide on administrative fines or administrative measures. The Supreme Board may warn the media service provider organization instead of imposing an administrative fine once for each violation, taking into account the severity of the violation, and any existence of unfair economic gain and repetition, and administrative sanctions applied in the last five years. Administrative sanction decisions can be appealed to administrative courts. A lawsuit in an administrative court must be filed within fifteen days from the date of notification of the transaction. Filing an annulment lawsuit in an administrative court does not stop the execution of the decision for sanctions.

4.2. Supervision with Judicial Sanctions

The sanctions that can be applied due to the acts and transactions of media service providers can also be in the form of judicial sanctions. Broadcasting without obtaining a broadcasting license from the Supreme Board, or broadcasting despite the temporary suspension of broadcasts by the Supreme Board, or the cancellation of the broadcasting license is defined as a crime under RTL. The sanctions to be applied as a result of this crime include imprisonment from one to two years and a judicial fine from one thousand to five thousand days for the real persons and board members and general managers of legal entities who are the perpetrators of the crime. In addition, security measures will also be applied to legal entities in accordance with Art.60 of the Turkish Penal Code No. 5237[16].

Media service providers which broadcast outside the license type despite having a broadcasting license and establishing unauthorized transmitters are warned by the Supreme Board. The penal sanctions and security measures that have just

[16] Official Gazette, 12.10.2004, No: 25611.

been mentioned are also applied to those who continue broadcasting without permission despite the warning. Another crime definition is included in RTL, which is the failure to keep broadcast records for one year, or to deliver them within the time limit and in accordance with the original despite being requested by the Supreme Board or the Office of the Chief Public Prosecutor. The sanction for this crime is the imposition of a judicial fine of one thousand to five thousand days on the manager of the private media service provider. More specifically, if the fine is not paid, it is converted into imprisonment, and the judge has the authority to determine the length of the imprisonment, the amount of the fine to be paid, and the monetary equivalent for each day. It is also defined as a crime if the sent records are not the requested publication in terms of content, or if the records are tampered with, removed, or deleted. In this case, the responsible manager of the private media service providers is punished with a judicial fine of five thousand to ten thousand days.

5 SUPERVISION OF MEDIA COMPANIES WITHIN THE FRAMEWORK OF THE TURKISH CODE OF COMMERCE NO. 6102 (TCC)

5.1. Legal Basis

Media companies can be supervised by public authorities also within the framework of the TCC. This supervision is accepted as a result of the fact that media companies are required to be established as joint-stock companies. The provision regarding the supervision of the public authority, which can be applied to all commercial companies, and therefore, to media companies that are required to be established as joint-stock companies, is included in Art. 210 (Şener, 2022; Çebi, 2020; Pamukçu, 2023). This article is in the 2nd Chapter of the TCC, which is specific to commercial companies, and in the 1st Part of the 2nd Chapter, which contains general provisions applicable to all commercial companies regardless of their type, Art. 210, titled "Regulation and Supervision Authority of the Ministry of Trade"[17]. Art. 210 is not the sole source of legislation regarding the Ministry's supervisory and regulatory authority. The Regulation on the Supervision of Commercial Companies by the Ministry of Customs and Trade[18] (Supervision Regulation), enacted by the Ministry, also establishes the legal regime for the supervision and monitoring of commercial companies, and consequently, media companies established as joint-stock

[17] However, in legal doctrine, it has been systematically criticized that Art. 210 should be placed among the general provisions relating to commercial companies, but before the sections concerning the restructuring of commercial companies such as mergers, divisions, and changes of type, and the formation of company groups. For more information, see Kendigelen and Kırca, 2021.
[18] Official Gazette, 28.08.2012, No: 28395.

companies, by the Ministry. One of the characteristics of the audit conducted by the Ministry under Art. 210 is that, unlike independent or internal audits, it has a temporary character (Pulaşlı, 2014). This is because the audit under Art. 210 is conducted to clarify specific events and transactions within the media company. This objective is achieved by sending inspectors to the media company, having the inspectors prepare reports, and, if necessary, filing a lawsuit for the dissolution of the media company based on these reports (Eroğlu and Demirel Özdemir, 2020).

5.2. Public Authority Authorized to Perform Supervision

TCC is a law that entered into force in 2012 and where the direct or indirect influence of the State is felt more clearly in the legal regime related to commercial life especially commercial companies. This law, which is also accepted as a consequence of Turkey's European Union candidacy process, has adopted the protectionist, supervisory and controlling state approach adopted in the Sarbannes-Oxley Law that entered into force in the United States as a result of the Enron scandal, and thus has validated the view that public interest should also be taken into consideration in terms of commercial companies in Turkish law (Memiş, 2012; Pulaşlı, 2021; Türkmen and Keçecioğlu, 2021; Şener, 2022). More accurately, the regulation of mandatory independent auditing instead of internal auditing, the establishment of the Public Oversight, Accounting and Auditing Standards Authority as a central authority for setting auditing standards and monitoring auditors, the harmonization of accounting and reporting standards by the State with Turkish Accounting Standards (TAS) and Turkish Financial Reporting Standards (TFRS), and the requirement for independent auditing of joint-stock companies to have websites are all indicators of the increasing influence of the State on the legal regime concerning joint-stock companies. According to Art. 210, the public authority supervising and overseeing commercial companies is the Ministry. The purpose of the audit to be conducted by the Ministry is to ensure that all commercial companies, and consequently media companies, operate in accordance with the TCC and its subordinate legislation (Eroğlu and Demirel Özdemir, 2020). To this end, the Ministry is authorized and obligated to examine whether all transactions of commercial companies, from their establishment to their dissolution (Ayhan et al., 2021). The Ministry duties under Art. 210 include notifying the competent authorities of those found to have criminal liability and the authorized bodies of the media company of those found to have legal liability as a result of the audits. Another function of the Ministry's supervisory authority over media companies, pursuant to Art. 210, is to address the need for auditing caused by the absence of the transaction auditing institution, which existed in the original version of the TCC but was abolished due to amendments made by Law No. 6335 (Law on Amending the Turkish Code of Commerce and the Law on the Entry into

Force and Implementation of the Turkish Code of Commerce)[19] before the enactment of the new Law (Pulaşlı, 2021). The Ministry's authority not only includes supervision and oversight but also preparation, publication and enactment of sub-regulations such as regulations and communiqués in the legislation that constitute the legal regime related to commercial companies (Tekelioğlu, 2025). In addition, just as the Ministry can initiate dissolution proceedings as a result of its supervisory and oversight authority, it should also be able to initiate proceedings to determine the nullity or invalidity of general assembly decisions of media companies (Poroy et al., 2021). This is because proceedings to determine nullity or invalidity can be initiated by any party with a legal interest, and the Ministry can be considered as an interested party due to its obligation to protect the public interest. However, one point must be emphasized here. The sub-regulations to be enacted by the Ministry based on Art. 210 are the communiques. This is criticized because, unlike the bylaws that were removed from the legal system with the 2017 constitutional amendment, the communiques are not subject to review by the Council of State before coming into force. The legal basis for this criticism is that excluding the Council of State's review leads to disadvantages in terms of legal certainty (Moroğlu, 2012).

5.3. Scope of Supervision

The Ministry is authorized to perform supervision of the transactions of media companies within the scope of the Art. 210 of TCC and related sub-regulations. The scope of the audit conducted by the Ministry, as indicated in Art. 210, includes the transactions and activities of joint-stock companies, and consequently, media companies (Çebi, 2020; Pamukçu, 2023). This audit task is a requirement of the job description specified in the legislation specific to the Ministry. Therefore, it differs from the independent audit of the financial statements and accounting of media companies (Poroy et al., 2021).

What is meant by the transactions within the scope of the TCC and the relevant sub-regulations is listed in an extensive list in the Supervision Regulation. Accordingly, a wide range of transactions are encountered and include transactions related to commercial books, merger, division and type change transactions, transactions related to group of companies, affiliation and dominance, transactions related to the calling, convening, decision-making, duties and authorities of the general assembly, transactions related to financial statements, annual activity reports and reserve funds (Memiş, 2012; Ayhan et al., 2021). All transactions carried out from the establishment of the media company to its termination are supervised by the Ministry. Transactions within the scope of the TCC include all transactions made to realize the subject of

[19] Official Gazette, 30.06.2012, No: 28339.

activity. Suppose these transactions lead to information pollution and violation of other debts and obligations foreseen for media companies; in that case, the Ministry stands out as another public authority that applies sanctions resulting from the supervision of media companies, apart from the Supreme Board.

5.4. Principles Governing the Supervision

Even if the Ministry supervises media companies on behalf of the public authority, this supervision must be conducted in accordance with the principles of impartiality, equality, honesty, confidentiality and professionalism. Considering the position of the Ministry within the executive body, the fact that the Ministry is headed by a person appointed by the President and generally has a certain political tendency or is even a member of a political party, and the fact that the President is not required to resign from his party after being elected, doubts about the implementation of the requirement that the supervision be carried out impartially, independently and without being influenced come to the fore. These doubts are much stronger especially for the supervision of media companies that publish opinions and ideas that are opposed to and critical of political authority.

The personnel and decision-making authorities of the Ministry who carry out the supervision are obliged to act without prejudice, and demonstrate strict impartially in collecting evidence related to the supervision activity. The personnel who carry out the supervision must show care in the collection of evidence, not only that against the media company but also that in its favour. This care is also sought during the evaluation of the collected evidence. When deciding a result of the audit, it is also essential that this decision and the conclusion reached are based on sufficient and appropriate evidence (Tekelioğlu, 2025). At this point, the measure of care expected has been determined as the measure of maximum and professional care. Considering that the supervision personnel are experts with technical knowledge in their fields, it is understood that the measure of professional and maximum care should be determined at a highly qualified level. For the supervision activities to be carried out impartially and independently, the opinions of the audited media companies on the transactions examined will also be obtained when necessary (Memiş, 2012). Another principle valid for supervision activities is confidentiality. Although some activity subjects concern the public interest, the public announcement of the audit activities carried out on media companies operating for commercial gain may lead to negative effects in the final analysis.

5.5. Supervision Procedure

For supervision within the framework of TCC Art. 210, a decision of the Ministry is a must. The Ministry may decide to start the supervision ex officio

or as a result of reports and complaints from shareholders or third parties. For shareholders or third parties to be able to apply to the Ministry, or to submit their complaints or reports, it is both necessary and sufficient that there is a suspicion that their legitimate interests have been harmed (Poroy et al., 2021). The Ministry assigns a sufficient number of supervision personnel according to the scope of the supervision and the need (Pamukçu, 2023). The transactions of media companies are supervised at the company headquarters and, if necessary, at their branches or commercial enterprises. However, if the aforementioned places prevent the supervision activities from being carried out in a rigorous manner, the supervision personnel may also decide to continue the activities at the places they will determine as appropriate (Ayhan et al., 2021). It is a rule that supervision activities are carried out face-to-face in a physical environment. On the other hand, if the technological infrastructure of the media companies is sufficient and secure, if the supervision personnel do not necessarily need the supervision to be carried out at the company headquarters of the media company and if the Ministry of Trade Inspection Directorate deems it appropriate, access to the records and documents needed for the supervision activity can be provided electronically (Tekelioğlu, 2025).

5.6. Consequences of Supervision

Regardless of the consequences of the supervision conducted by the supervision personnel, certain reports must be prepared. These are inspection report, investigation report and examination report. The inspection report includes the results reached after examining the compliance of the media company's transactions for a certain period with the TCC and sub-regulations, using sampling and other suitable supervision techniques (Türkmen and Keçecioğlu, 2021). The report prepared to notify the authorized authorities in the event that a crime requiring investigation and prosecution on behalf of the public is committed during the supervision is the investigation report (Şener, 2022; Pamukçu, 2023). As a result of the supervision activity, the inclusion of situations requiring the legal responsibility of the relevant parties on the agenda of the general assembly and presentation to the shareholders, the implementation of administrative fines, and the notification of situations falling within the scope of the duties of other ministries, boards, institutions and organizations and requiring them to take measures or conduct audits to the authorized units can constitute the content of the inspection or examination reports. In case the supervision staff of the Ministry determines that the media company is involved in transactions or preparations in this direction, or in collusive work and activities that are contrary to public order or the subject of the business, an investigation report is prepared on this issue (Çebi, 2020).

Based on Art. 210, it is not necessary for the activities to be contrary to the public interest or the company's business purpose, or for collusive transactions

to be continuous, in order for a dissolution lawsuit to be filed against a media company (Can, 2015). The occurrence of these prohibited activities or transactions, whether once or several times at certain intervals, may constitute sufficient grounds for filing a dissolution lawsuit against the company (Türkmen and Keçecioğlu, 2021; Pulaşlı, 2014). The fact that the prerequisite for initiating a termination lawsuit is limited to its being contrary to public order or the subject of the business is highly appropriate, as it prevents the Ministry from acting arbitrarily in initiating termination lawsuits (Alışkan, 2007; Türkmen and Keçecioğlu, 2021). At this point, clearly defining the boundaries of the concept of public order, leaving no room for debate, is essential for determining the limits of the Ministry's supervisory authority and ensuring legal certainty[20]. If the court rules to dissolve the media company in a dissolution lawsuit, it will appoint a trustee to manage and represent the company.

Art. 210 regulates the dissolution lawsuit that comes into play even if a media company, registered despite having been established illegally, fails to comply with the three-month lawsuit filing period stipulated in Art. 353 of the TCC. In this case, the Ministry can, and is even obligated to, sue for the dissolution of the media company based on Art. 210 (Tekinalp, 2013). If a company agreement contains a clause not permitted by law, and the trade registry office rejects this agreement and refuses the registration request, but instead, due to negligence or deliberate intent, accepts the request, allowing the company to be established and exceeding the three-month statute of limitations for filing a dissolution lawsuit as stipulated in Art. 353, the Ministry has no other mechanism to remedy this unlawful situation other than Art. 210 (Tekinalp, 2013; Eroğlu and Demirel Özdemir, 2020).

The termination lawsuit regulated in Art. 210 must be filed within one year from the date the Ministry is aware of such transactions, preparations or activities. The one-year period is the lapse of rights period, and if it is exceeded, the Ministry loses the right to file a lawsuit (Kendigelen and Kırca, 2021). However, it has been argued in legal doctrine that the one-year period should be considered a statute of limitations, that the statute of limitations cannot be interrupted as long as the violation continues, and that it can only begin when the violation ends; therefore, the ten-year statute of limitations stipulated in general provisions should apply in this case (Pulaşlı, 2021). However, this view has been rejected by the majority in legal doctrine, and it has been predominantly accepted that the one-year period is not a statute of limitations

[20] Public order can be defined as all the institutions and rules that serve to ensure the provision of public services, the security and order of the state, and the rule of law, peace, and morality in relations between individuals; all the rules that aim to ensure the peace of society, protect the state and its structure, and form the basis of order in all areas of society in a state. See Pulaşlı, 2021.

but a period of lapse of rights (Kendigelen and Kırca, 2021; Can, 2015; Türkmen and Keçecioğlu, 2021; Poroy et al, 2021; Alışkan, 2007). From a legal certainty perspective, it is dangerous to stipulate a time limit for filing a termination lawsuit that begins only from the moment the action is learned of[21]. What is necessary is for the law to also specify a maximum time limit that begins to run from the date the action constituting the grounds for termination occurred. Until the law is amended, it should be accepted that the Ministry no longer has the authority to file a lawsuit if it delays filing it in a manner that violates the principle of good faith (Kendigelen and Kırca, 2021). A contrary approach would leave the media company perpetually facing the threat of a termination lawsuit from a Ministry with a political dimension.

The provision in the TCC that stipulates a violation of the company's business objectives as grounds for dissolution is actually open to criticism. The TCC has abandoned the ultra-vires principle, rendering the classic restriction that commercial companies, including media companies, have legal capacity only within the scope of their business objectives, invalid (Ayhan et al., 2021). However, the acceptance of activities contrary to business objectives as grounds for dissolution, even for media companies, and the granting of the authority to the Ministry to initiate a dissolution lawsuit to terminate a media company, should be identified as a contradiction within the TCC (Moroğlu, 2012; Alışkan, 2007; Kendigelen and Kırca, 2021). At this point, it has been suggested that lawsuits for dissolution should not be filed for every violation of the business objective, and that a lawsuit for dissolution could only be considered if the violation of the business objective is incompatible with the rules of good faith.

Another viewpoint put forward on this issue is that if the media company, and therefore the joint-stock company, operates for non-economic purposes, then the necessary condition for a dissolution lawsuit as stipulated in Art. 210 is met, since Art. 331 mandatorily stipulates that joint-stock companies can only be established for economic purposes and subjects that are not prohibited by law (Alışkan, 2007). Another view put forward in legal doctrine is that the violation of the business purpose should be understood as the media company engaging in activities outside of its normal commercial activities that are defined as crimes under the law and are therefore illegal (Pulaşlı, 2021).

Another criticism that can be raised regarding the Ministry's ability to initiate dissolution proceedings is that the scope of the authority it possesses to cause the termination of a media company by initiating a dissolution lawsuit is excessively broad, even unlimited. Indeed, the Ministry can initiate dissolution proceedings not only against media companies engaging in illegal activities, but

[21] For a detailed examination on the issue whether an upper limit exists for filing a lawsuit for termination of the company, see Can, 2015.

also against those preparing to engage in such activities, based on Art. 210. Art. 210 also accepts engaging in collusive activities as a reason for the Ministry to initiate a dissolution lawsuit. Collusion, according to Turkish law, is a reason that prevents the validity of a legal transaction and can be invoked by anyone at any time. It has been argued in legal doctrine that if a media company's collusive transaction is legally invalid, this invalid transaction should not lead to the dissolution of the media company (Kendigelen and Kırca, 2021). However, a media company's participation in a collusive transaction, and therefore one involving fraud and deception, constitutes a reason for dissolution at least on the same level as engaging in activities contrary to its business purpose. If the media company has engaged in fraudulent activities or circumventions of the law during its establishment or in the subsequent period, in other words, if it has engaged in collusive transactions, the Ministry should file a lawsuit using Art. 210.

6 EVALUATION OF THE SYSTEM REGARDING MULTIPLE SUPERVISIONS OF MEDIA COMPANIES BY SEPARATE INSTITUTIONS ON BEHALF OF PUBLIC AUTHORITIES

Considering the fields of activity of media companies and the areas of influence of the results they cause, the multiple supervision system by the public authorities is based on justified reasons (Dai, 2014; Devrani, 2018; Güzel, 2020). It is also fact that the supervision mechanism, which directly concerns the public interest, contributes to media companies acting with a sense of legal and even criminal responsibility while exercising their authority (Bayazıt and Biçer, 2019). For these reasons, there is no contradiction in the fact that in RTL, a typical public law regulation, media service providers are the addressees of administrative measures, administrative penalties and judicial penalties (Kalaman, 2019; Seçkin, 2013; Güzel, 2020). However, it should be underlined that despite RTL, media service providers are also private law legal entities in the form of joint-stock companies. Therefore, they are subject to principles of private law such as freedom of contract and free-will. Considering these essentials, questions may be raiseed concerning the appropriateness of the public authority’s supervision of media service providers within the framework of the TCC. However, one point should be underlined here. One of the striking points in the TCC, which entered into force in 2012 as a result of Turkey’s EU membership vision, is the adoption of the increasing influence of the State in commercial life and especially in the legal regime regarding commercial companies. The State is positioned as a power that directly intervenes in economic life, carries out the supervision and surveillance of commercial companies, and can even take initiatives that will lead to the dissolution of

commercial companies due to this supervision and surveillance. The role of Ministry representatives in the general assembly meetings of listed joint-stock companies, the requirement for Ministry permission for the establishment of listed joint-stock companies, the ability of the Ministry to initiate dissolution proceedings due to illegalities in establishment, and the authority of public legal entities to appoint members to the boards of directors of specified joint-stock companies all demonstrate that the TCC and the state's oversight and control powers continue to increase. The General Justification of the TCC itself refers to the Sarbanes-Oxley Act and the state's oversight and control authority due to the Enron scandal. For this reason, there is consistency in the fact that the public authority can supervise media service providers within the framework of the TCC.

Despite the picture drawn in the previous paragraph in terms of ideals, there are handicaps in practice. First of all, the fact that the public authority's supervision of media service providers is carried out within the framework of two different legislative sources with different priorities, may lead to conflicts between these two laws, both of which contain special provisions in terms of supervision. These conflicts do not only arise in terms of the regulations in the laws; they may also occur when determining the limits of the powers and authorities of the institutions and organizations that will carry out the supervision on behalf of the public authority when defining their duties and demonstrating the ability to implement the decisions taken (Devrani, 2018). While the Supreme Board is the institution that will carry out the supervision according to RTL, the institution authorized to carry out the supervision according to TCC is the Ministry. Conflicts may occur between the two institutions regarding the application of the rules regarding supervision. Indeed, the criterion of being against the public interest and order, which is required for the Ministry to impose sanctions on commercial companies according to Art. 210, may not be deemed sufficient for the initiation of the process leading to the application of judicial and administrative sanctions by the Supreme Board in RTL.

In addition to conflicts between provisions in the legislation, there may also be differences in interpretation between institutions and organizations that will supervise and make decisions on behalf of the public authority. All these differences and conflicts may cause the principle of legal trust to be damaged. Media companies established as joint-stock companies are also an important part of this and may cause problems in terms of stability in commercial life. The Turkish legal system has no administrative mechanism to eliminate these problems, end conflicts, and make decisions in this direction. As a result, only the courts can be applied to resolve disputes. However, when the courts are applied, another handicap may arise: Which court has the authority to resolve these disputes? Private law courts or public law courts? Commercial courts of

first instance or administrative courts? In case of a conflict of duties and authorities between these branches of the judiciary, the decision of the Court of Jurisdiction will have to be awaited to resolve this dispute. Therefore, there are uncertainties that may arise in terms of implementation when media companies are supervised by public authorities within the framework of a multiple supervision system. The suggestion in terms of what should be is that public authorities' supervision of media companies should be carried out within a single supervision system. In this case, this supervision can be launched by a specially established public institution or organization with specific expertise. Whether this institution or organization is the Supreme Board or the Ministry depends on the legislature's preference. However, it should be remembered that in any case, if there are gaps in the specific legal provisions applicable to media service providers, the TCC, and consequently Art. 210, will continue to be applied (TCC Art. 330).

Another handicap that should be pointed out regarding public authorities' supervision of media service providers stems from the question regarding the independence of the institutions and organizations (Açdoyuran, 2001). The body authorized to perform the supervision within the framework of RTL is the Supreme Board on behalf of the Radio and Television Supreme Council, which essentially has administrative and financial autonomy (Özay, 1995; Açdoyuran, 2001). The Board comprises nine members elected by the Grand National Assembly of Türkiye (TGNA). The TGNA, formed through elections, is a legislative body and consists, almost without exception, of representatives of political parties. As a result, the members of the Supreme Board reflect a political will, which will probably be motivated by political motives. It is questionable to what extent the Board, which is likely to be influenced by the political party in power, will be impartial and independent while performing its supervision on behalf of the public authority. In this case, practices that cause irreparable harm in terms of the public interest and the constitutional right to freedom of information, such as media service providers who give voice to dissenting opinions and criticize the political government, being subject to unlawful attitudes and behaviours and sanctions, may be encountered (Şener, 2022). For this reason, in terms of what should be, the selection of the members of the Supreme Board should be connected to a mechanism that will ensure that they are made with supra-political motives (Özay, 1995). It is in the direction that authorities such as Universities and Supreme Courts, which do not have a political aspect, should be authorized not only in nominating candidates but also in directly selecting the members of the Board. For this case, French system can be given as a sample. Arcom which has the power as a public authority, is led by a 9-member board (*Collège*). The chairman is appointed by the President while three members are appointed by the President of the French National Assembly, and three members are appointed by the President of the French

Senate. The Presidents of the Council of State and the Court of Cassation each have the authority to appoint one member. To eliminate the drawbacks that have been pointed out, it can be preferred to apply to the administrative courts and the administrative court system that carries out the judicial audit of the decisions made by the executive. However, the resolution of disputes by administrative courts may take a lengthy period of time. When the characteristics and priorities of the sector in which media service providers operate are taken into consideration, irreparable damages may have already occurred due to unlawful decisions and transactions until the court's decision.

The drawbacks pointed out in the Supreme Board being a reflection of a political preference are also valid for the audit to be carried out by the Ministry according to the TCC. Although the Ministry is within the executive body, it is headed by a minister who can have both administrative and is political aspects and appointed by the President. Ministers are prohibited from being members of parliament. They must be appointed from outside. When parliament members are appointed as ministers, they must resign from parliament. This framework requires, even theoretically, that the person heading the Ministry be constitutionally impartial. However, the will that appoints the Minister is the will of the President who is elected by the citizens as a candidate of a political party. That is why it is possible that the Minister is also be appointed with political motives and perform duties with political motives after being appointed.

Another issue that needs to be pointed out regarding the multiple supervision system envisaged for the supervision of media service providers by public authorities in Turkish law, are the questions regarding the extent to which institutions and organizations use their powers stemming from the Constitution and the laws. According to the information on the official website of the Radio and Television Supreme Council (https://www.rtuk.gov.tr/ust-kurul-kararlari), the Board has examined and made decisions on 14,820 files from 2013 to the present (28.12.2025), while according to the data obtained from the Ministry from the date of entry into force of the TCC, 01.07.2012 to the present, no media company has been supervised and there are none against whom the Ministry has filed a termination lawsuit in the commercial court of first instance as a result of this supervision. (https://ticaret.gov.tr/istatistikler/bakanlik-istatistikleri/ic-ticaret-ve-tuketici-istatistikleri) This situation brings risks to issues such as the multiple supervision mechanism of media companies, even though it is possible in terms of legislation and theory. However, it does not become functional in practice; the supervision of media companies on behalf of the public authority is carried out only by the Supreme Board, and drawbacks and reservations have been pointed out regarding the structure of the Board, such as the provision of media services in accordance with the public interest and freedom of

information. It should be admitted that the failure of the Ministry to exercise the supervision and surveillance authority on behalf of the public authority, which is granted to them by the Constitution and TCC Art. 210, is a handicap in terms of public interests.

CONCLUSION

It is more appropriate to regulate the obligation of media companies in that they be established as joint-stock companies by law instead of regulation in terms of *lex superior* principle and hierarchy of norms. Regulating this obligation in a law not in a regulation is among the suggestions in terms of *de lege ferenda*. Considering the fields of activity of media service providers, it is extremely appropriate in terms of public interest that they are ideally to be subject to inspection by public authorities[22]. This inspection emerges as a multiple supervision in Turkish law. It is possible to state that the multiple supervision system, which is carried out within the framework of two different Laws and by two different institutions and authorities and again with two different methods, is the result of a wise choice of the legislature due to the fact that media companies are subject to a multi-faceted supervision mechanism.

On the other hand, it should not be denied that there are also handicaps arising from both the multiple supervision system and the implementation in Türkiye. The conflict of legislative sources that form the basis of multiple supervisions and the occurrence of duty and authority disputes due to the diversity of institutions and organizations that carry out supervision on behalf of the public authority, can be counted among the handicaps of the multiple supervision system. The fact that the institutions and organizations that carry out the supervision of media companies may have a political structure, and that the officials at the head of these institutions and organizations may have close relations with politics also creates a risk for the supervision of media companies on behalf of the public authority to be carried out in a manner contrary to public interests and benefits. This risk is more evident in countries where democratic institutions and principles are not fully established. In terms of ideals and what should be, the suggestion is that the structure of the institutions and organizations that will carry out the supervision of media companies on behalf of the public should be determined in a completely independent, impartial or autonomous manner, without any political affiliation and with the guarantee of the Constitution. Compared to the intensity of the supervision carried out by the Supreme Board, it is also seen that the Ministry does not make the same level and intensity of effort in carrying out the audit of media companies arising from

[22] For a spesific perspective of audit of media by public, see Ongun, 2025.

the TCC. What should be done is not to be content with the inclusion of the supervision carried out by the Ministry within the framework of Art. 210, which is another leg of the multiple supervision system of media companies, in the legislation, but rather for the Ministry to take initiative in this regard actively.

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