

Legal Arrangement on Media Ownership and the Case of Turkey

Sevil Yıldız

Abstract—In this study, we will touch upon the legal arrangements issued in Turkey for prevention of condensation and for ensuring pluralism in the media. We will mention the legal arrangements concerning the regulatory and supervisory authority, namely the Radio and Television Supreme Council, for the visual and auditory media. In this context; the legal arrangements, which have been introduced by the Law No 6112 on the Establishment of Radio and Television Enterprises and Their Media Services in relation to the media ownership, will be reviewed through comparison with the Article 29 of the repealed Law No 3984.

Keywords—Media ownership, legal arrangements, the case for Turkey.

I. INTRODUCTION

THE fact “condensation”, which occurs in consequence of the gathering of the media ownership, namely, the gathering of the control in the hands of a limited number of persons, has a negative impact on circulation of accurate news and hinders circulation of multi-faceted information, and in addition, it causes unreal conditioning on people by way of circulation of unilateral news and thereby, it causes infringement on the right to information. Besides, the condensation existing in the media constitutes one of the most significant barriers against ensuring pluralism and the benefits expected from pluralism. In addition, this circumstance may cause emergence of a number of problems in terms of competition rules. Therefore, it emerges that taking measures for prevention of this circumstance, which has extremely negative impacts, constitutes a necessity [1].

The negative tendencies, which have occurred in the media markets in recent years, have also attracted attentions of the governments and caused them to search for solutions. The general competition rules applicable in the market are not found sufficient single-handedly for prevention of the emergence of negative consequences. Therefore, the media markets are regulated under special laws, in addition to the general competition rules [2].

With respect to prevention of condensation in the media markets, the governments make use of the laws regulating the media ownership and the competition law. In general; the general ownership rules, cross-ownership rules, foreign ownership and partnership rules and licenses are regulated in the laws concerning the media ownership. With regard to the Competition Law; the provisions concerning the matters, such

as the control of mergers and acquisitions, the audits on cartels and dominant positions, are used [5].

Among these legal arrangements; in the legal arrangements for the media ownership, development of policies for ensuring the pluralism is of a particular importance. This is because; the media represents a field that concerns the individuals’ fundamental rights, namely the freedoms of obtainment of information, transmission of news and expression/dissemination of thoughts. Therefore, it is of a particular necessity to secure emergence of free competition conditions and ensure pluralism in this field [5].

When the legal arrangements issued in the countries are reviewed in general terms, it is seen that the countries have taken measures preventing condensation at the national level and that they have regulated this matter in their laws concerning the visual-auditory media and that, thereby, they have introduced rules for prevention of acquisition of media instruments ownership by a limited number of persons [4].

II. LEGAL ARRANGEMENTS ON THE OWNERSHIP STRUCTURE OF THE MEDIA

In order to secure the rights and freedoms, protect the individuals and the society against detrimental effects of the media and prevent unfair competition and monopolization; a number of legal arrangements and limitations are introduced for the media. In addition; it is a necessity to issue legal arrangements and carry out inspections/audits in order to ensure independency of the media that has a significant impact on the social life and in order to protect media against all kinds of pressures [2].

In general, governments make use of the following policy instruments, in regulating the media markets [4]:

- Fundamental constitutional rights concerning the freedom of expression
- Laws aiming at transparency in the media firms

The requirement that the names of the company owners and shareholders are known,

Transparency of companies’ accounts,

Transparency of the resources concerning companies’ turnovers,

The requirement that the necessary changes in shares/transfers of shares are disclosed to the regulatory council,

- Laws concerning the media ownership
 - General ownership rules, licenses,
 - Cross-ownership rules,
 - Foreign ownership and partnership/ shareholding rules,
- Competition Law

Control of mergers and acquisitions,
Audits on cartels and dominant positions,

- Government supports and the subsidies for media companies
- Rules regulating editorial independency and accountability of media firms
- Limitations on the contents.

In the societies governed by democracy, it is seen that the field of printed media and the field of radio and television are considered as separate categories and that the legal arrangements are issued accordingly.

In the field of printed media, while the principle of freedom applies in Turkey, Western European Countries and the United States of America; the field of radio and television is subject to different legal arrangements since day one. A separate regulatory council is not provided for in the field of printed media and thereby, in general, the declaration system applies. By way of the legal arrangements such as the Press Law...etc., while it is aimed to ensure protection and balancing of the rights belonging to press organs and individuals; on the other hand, efforts are made for self-inspection by the press, by means of the formations such as the principles of press ethics, ombudsman, and press council [1].

However, in contrast to the printed media, the field of radio and television is subject to different legal arrangements. Considering the effectiveness of the instruments in the field of visual and auditory media where audio, images and writings can be used simultaneously; self-inspection by the broadcasters is not found sufficient and thus; this field is subject to different legal arrangements for the reasons such as scarcity of channels, public interest and ensuring continuity and consistency in the broadcasts. In addition to the fact that the frequencies are scarce and in a limited number, the fact that the frequencies being utilized in the field of radio and television are deemed as public property and that, within this framework, it is aimed to observe public interest has caused issuance of different legal arrangements for the field. Similarly, it becomes inevitable to issue legal arrangements since radio and television have the capability to transmit messages to very large mass of people in a very short time and in order that the negative impacts of these messages on the individuals and the society are minimized. Once the reasons, such as ensuring continuity and consistency in the broadcasts, are added to these matters; it has been preferred to establish an autonomous regulatory and supervisory authority, namely the Radio and Television Supreme Council ("RTSC") [3].

III. LEGAL ARRANGEMENTS ON THE VISUAL-AUDITORY MEDIA

A. Media Ownership-Related Provisions Contained in the Law No 3984

The repealed Law No 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasts had entered into force upon publication in the Official Gazette dated 20 April 1994, in order to supervise and regulate the visual-auditory media. In 2002, certain amendments have been made

by the Law No 4756. According to the repealed Law No 3984, radio and television broadcastings are subject to broadcast license and frequency allocation. The Radio and Television Supreme Council is authorized to grant broadcast license and allocate frequencies. The Law No 3984 has been repealed by the Law No 6112 on the Establishment of Radio and Television Enterprises and Their Media Services, which has entered into force upon publication in the Official Gazette dated 3 March 2011, Issue No 27863. The Law No 6112 has introduced new legal arrangements for today's media sector.

When we review the legal arrangements on RTSC; it is seen that the Article 29 of the repealed Law No 3984 is intended for media ownership and that, however, this Article could not be implemented actually, since the enforcement of the amendment made by the Law No 4756 has been suspended under the stay of enforcement judgment rendered by the Constitutional Court. Thereby, a legal gap has occurred with regard to the legal arrangements on the media ownership. The innovations brought by the new Law No 6112 with regard to the media ownership will be explained by looking into also the legal arrangements for media ownership and condensation, as contained in the repealed Law No 3984:

The Article 29 of the repealed Law No 3984:

"The other matters to be obeyed in relation to the share ratios and structure of the joint stock companies which have been granted or will be granted radio and television broadcast licenses are as follows:

- No radio and television broadcast license shall be granted to political parties, associations, labor and employer unions, professional associations, cooperatives, foundations, local governments and companies established by them or to which they become a partner/shareholder, business partners, unions and organizations and enterprises dealing with investment, importation, exportation, marketing and financial activities; these enterprises cannot become a partner/shareholder to any companies that have obtained radio and television broadcast license. The other paragraphs of this Article, which are relevant to ownership and share ratios, are briefly as follows;
- According to this Law, radio and television broadcast licenses shall only be granted to the joint stock companies which are incorporated in accordance with the provisions of the Turkish Commercial Code, only for the purposes of radio and television broadcasting, communications, education, culture and art. The same company may establish only one radio and one television undertaking.
- It is mandatory that the shares of private radio and television enterprises are registered ones. In these companies, no redeemed shares shall be issued in favor of any persons.
- According to the annual average viewing (rating) measurements to be carried out every year in compliance with the regulation to be prepared by the Supreme Council; if a television or a radio enterprise's average annual viewing or listening ratio exceeds 20%, then capital share of a real or legal person or a capital group in

that enterprise shall not exceed 50%. In the calculation of the shares belonging to a real person; the shares belonging to his/her blood relatives and relatives by marriage up to the third degree shall also be calculated as if they belong to the same person.

- If annual average viewing and listening ratio of a radio or a television enterprise, in which a real or a legal person or a capital group owns a share of more than 50%, exceeds 20%, then they shall drop their capital shares below 50% by selling a part of their shares or by offering a part of their shares to the public within ninety days as from the date of the notification given by the Supreme Council. If the annual viewing or listening ratio has been exceeded due to the sum of shares in more than one radio and television enterprise, they shall sell sufficient number of companies in order to drop that ratio below 50%. In a case of a breach of this provision, broadcast license of the enterprise shall be terminated.
- The national viewing ratios shall be determined by the Supreme Council for each calendar year and announced in January of the following relevant year.
- In the public offering of the stocks of the private radio and television enterprises; it is mandatory that approval of the Supreme Council is obtained before obtaining permission from the Capital Markets Board in accordance with the Capital Markets Law No 2499.
- In a private radio and television broadcasting enterprise, the share of the foreign capital shall not exceed 25% of the paid-up capital.
- A real or legal person that has become a shareholder to a private radio and television broadcasting enterprise shall not become a shareholder to another radio and television enterprise.
- Under no circumstances shall domestic or foreign shareholders hold privileged stocks.
- Share transfers concerning a joint stock company, to which a radio and television broadcast license has been granted, shall, within one month as from the date of transfer, be disclosed to the Supreme Council along with the information on the names and surnames of the shareholders and on the voting shares and shareholding structure occurred in consequence of the transfer of the company. Prior to the transactions for transfer of these companies to another company, acquisition of another company, merger with another company; it is mandatory to obtain permission from the Supreme Council in accordance with the required information and documents. In case, in consequence of these transactions, a contradiction has occurred in the company structure against the matters stipulated in the provisions of this Law; it is mandatory to remove this contradiction within the term to be granted by the Supreme Council. Otherwise, the broadcast license shall be terminated.”

Under the judgment dated 12.06.2002, File No 2002/97, Judgment No 2002/9 rendered by the Constitutional Court, the enforcement of the paragraphs (d) and (e) have been

suspended until such time as the judgment is rendered on the merits. Thereafter, under the judgment dated 21.09.2004, File No 2002/100, Judgment No 2004/109, these paragraphs have been annulled. Under the judgment dated 21.09.2004, File No 2002/100, Judgment No 2004/9 (Stay of Enforcement), the enforcement has been suspended again until such time as the judgment is published in the Official Gazette, in order that the annulment judgment does not remain inconclusive.

In 2002, by the Law No 4756, amendments concerning media ownership had been made in the repealed Law No 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasts. Audience share limitation had been introduced instead of the capital share limitation, as a legal arrangement on media ownership. According to the Article 29 (prior to the amendment) of the repealed Law No 3984, the share of a real or legal person in a radio and television enterprise could not exceed 20%. This Article of the former Law had been arranged in accordance with the necessity that real and legal persons shall not hold shares exceeding 20% in a broadcasting enterprise and that the total number of the shares (in that enterprise) belonging to the ones holding shares in more than one broadcasting enterprise shall not exceed 20%. In addition, according to the Article; the ones holding shares exceeding 10 percent in a private radio and television enterprise were inhibited from participating in public tenders. According to the previous arrangement in the Article 29; radio and television enterprises were prohibited to trade in stock exchange.

The Article 29 had been amended by the Law No 4756. Accordingly; depending on the annual average viewing (rating) measurements to be carried out every year, if a television or a radio enterprise's average annual viewing or listening ratio exceeds 20%, then capital share of a real or legal person or a capital group in that enterprise shall not exceed 50%. In other words; any capital share, stock limitations are not set for the enterprises, the annual listening/viewing ratios of which are below 20%.

In addition, the prohibition to participate in public tenders and trade in stock exchange has also been revoked. In democratic countries, while great importance is attached to the matter that financial institutions such as banking, insurance business and stock exchange intermediary institutions and the media are not involved in commercial affairs; we are of the opinion that, considering the remarkable dimensions of the steering impact of the media in Turkey, it would be more appropriate to make flexible these prohibitions under certain rules, instead of entirely revocation of the prohibitions concerning participation of media owners in public tenders.

Various opinions have been set forth for the legal arrangements concerning the Law. On one hand, it has been argued that actual owners will appear with the new arrangement and on the other hand, it has been argued that it is not an effective method and that it will increase the condensation.

According to this Law; it is possible for a real or a legal person to own a broadcasting enterprise entirely. This is because; according to the Law, the annual average viewing

and listening ratios shall be determined by means of the annual average rating measurements to be carried out every year in accordance with the regulation to be prepared by the Supreme Council. Considering the number of television receivers in Turkey, it is both very expensive and very difficult to determine such a ratio. In case the rating measurements are carried out on annual basis, this will make uncertain the actions to be taken against the changes that will occur throughout one year.

At this stage, the President of the Republic has applied for the Constitutional Court under the request for stay of enforcement and annulment of certain Articles of the new Law, including the paragraphs (d) and (e) that have been added to the Article 29 thereof. In June of 2002, the Court has rendered stay of enforcement judgment and decreed that it shall render its final judgment on the request for annulment in the future. At the end of a period of time exceeding two years, the Constitutional Court has rendered its final judgment in September of 2004 and annulled the paragraphs (d) and (e), and thereby, a legal gap has occurred with regard to the legal arrangements on media ownership, and however, the uncertainty has been removed by the Law No 6112 and thereby, a general framework has been drawn.

In brief, the legal arrangements provided by the repealed Law No 3984 are as follows:

- ❖ Radio and television enterprises shall, in certain fields, be incorporated as a joint stock company in accordance with the provisions of the Turkish Commercial Code, and the same company is entitled to establish only one radio and television undertaking.
- ❖ No radio and television broadcast license shall be granted to political parties, associations, labor and employer unions, professional associations, cooperatives, foundations, local governments and companies established by them or to which they become a partner/shareholder, business partners, unions and organizations and enterprises dealing with investment, importation, exportation, marketing and financial activities; these enterprises cannot become a partner/shareholder to any companies that have obtained radio and television broadcast license.
- ❖ In radio and television undertakings, no redeemed shares shall be created in favor of any persons, and domestic and foreign shareholders are not entitled to hold privileged stocks.
- ❖ For radio and television undertakings, the foreign capital limitation is 25% of the paid-up capital.
- ❖ A foreign person is entitled to become a partner/shareholder to only one radio and television undertaking.
- ❖ Changes in the ownership structure shall be disclosed to the Radio and Television Supreme Council and; permission of the Radio and Television Supreme Council is required for company transfers and mergers.
- ❖ Broadcast licenses of the enterprises, which have lost one of the conditions required for obtaining broadcast license or have met the required conditions fraudulently, shall be

terminated.

The Law No 3984 has been repealed by the Law No 6112 on the Establishment of Radio and Television Enterprises and Their Media Services, which has entered into force upon publication in the Official Gazette dated 3 March 2011, Issue No 27863. New legal arrangements have been introduced for the sector and thereby, a significant step has been taken for ensuring pluralism and for prevention of monopolization.

B. The Media Ownership-Related Provisions Contained in the Law No 6112

In the Law No 6112, the legal arrangements for media ownership are contained in the Article 19. The paragraph 1, which is contained in the Article 19 and sets out the matters to be obeyed by private media service provider enterprises in relation to their company structures and share ratios, is as follows:

- Broadcast license shall be granted to the joint stock companies incorporated in accordance with the provisions of the Turkish Commercial Code, exclusively for the purpose of providing radio broadcasting service, television broadcasting service and on-demand broadcasting service. The same company is entitled to provide only one radio broadcasting service, one television broadcasting service and one on-demand broadcasting service. After the broadcasting license has been granted, media service providers shall not insert into their articles of association any provisions contrary to the principles stipulated in this Article. Any amendments in the articles of association shall be reported to the Supreme Council within one month.

The Law No 6112 has introduced the concept “media service provider” and, has, besides the radio and television broadcasting service, included the on-demand broadcasting service into the services that may be provided by a media service provider. The necessity to report any amendments in their articles of association within one month is imposed on the media service providers and thereby, it is ensured that their company structures are controlled.

- No broadcast license shall be granted to political parties, unions, professional associations, cooperatives, associations, societies, foundations, local administrations and companies incorporated by them or to which they have become directly or indirectly shareholders, and to capital market institutions, and real and legal persons that are direct or indirect shareholders of these companies. These entities shall not become directly or indirectly a shareholder to the media service providers.

In this paragraph of the Article, the real and legal persons that are not entitled to obtain broadcast license have been determined. The institutions and organizations dealing with production, investment, exportation, importation and marketing activities have been allowed to become a media service provider or become directly or indirectly a shareholder to media service providers. While, in the repealed Law No 3984, it had been stated that financial institutions and organizations shall not be granted broadcast license; capital

market institutions have, in the Law which is in force, been determined as the institutions that are not entitled to obtain broadcast license.

Since, in the preamble of the Law, it has been stated that financial institutions and organizations may be granted broadcast license; it is necessary to define clearly the financial institutions and organizations as well as the capital market institutions. The definition, which is the most approximate to the definition of financial institution and organization, is the definition of financial institution contained in the Banking Law No 5411. The term "financial institution" is defined as the institutions which remain outside of deposit and participation banks and have been incorporated in order to carry out insurance business, individual private pension fund or capital market activities or to engage in minimum one of the fields of activity set out in this Law, development and investment banks and financial holding companies. In the Capital Markets Law, the capital market institutions are listed as follows:

- Intermediary Institutions,
- Investments Trusts,
- Investment Funds and,
- Other institutions permitted to carry out activities in the capital markets. Banks carry out activities in the capital markets upon they have obtained their required authorization certificates from the Capital Markets Board. Moreover, intermediary institutions, investment trusts and investment funds are established by banks. Therefore, we are of the opinion that it is of significance to determine clearly these institutions with regard to implementation of the provision which sets out that no broadcast license shall be granted to capital market institutions and to real and legal persons that have directly or indirectly to a shareholder/partner to capital market institutions.
- It is mandatory that the shares of media service providers are registered ones. No redeemed shares shall be issued in favor of any persons.
- Media service providers are entitled to issue and offer the capital market instruments to the public within the framework of the Capital Markets Law No 2499 dated 28/07/1981 and the relevant legislation. In such case, as required by the legislation, it is mandatory to obtain the consent of the Supreme Council before registration in the Capital Markets Board. Shares issued to the public do not need to be registered ones.

The provisions in these two paragraphs were also contained in the former Law. On one hand, while a 50% limitation has been imposed on foreign capital; on the other hand, it has been stated that companies are entitled to offer their shares to the public. Since, in case a public offering comes into question, it is not very easy to determine whether or not the shares have been acquired by foreign persons; it will not be possible to realize this limitation. In other words, the foreign capital limitation and the public offering will contradict with each other.

- A real or legal person is entitled to become directly or indirectly a shareholder to a media service provider

holding maximum four terrestrial broadcast licenses. However, in the case of partnership to more than one media service provider; the total annual commercial communication income of such media service providers, in which a real or legal person holds shares directly or indirectly, shall not exceed thirty percent of the total commercial communication income of the sector. The real or legal persons, whose total commercial communication income exceeds this rate, shall transfer their shares in media service providers in such a way that it shall be dropped below this rate within ninety days' term granted by the Supreme Council. For any real or legal person that has not fulfilled the requirements of the resolution of the Supreme Council within the granted term; the Supreme Council shall impose an administrative fine amounting four hundred thousand Turkish Liras for each month of non-fulfillment of the requirements of the resolution. The procedures and principles concerning implementation of this paragraph shall be determined by the Supreme Council.

Under this paragraph in the Law No 6112, a real or legal person may become directly or indirectly a shareholder to a media service provider holding maximum four terrestrial broadcast licenses. Any limitations have not been set for satellite, cable and on-demand broadcasting services. Thereby, efforts have been made in order to create a pluralistic structure. On the other hand, in order to prevent condensation; in the case of partnership to more than one media service provider, the total annual commercial communication income of such media service providers, in which a real or legal person holds shares directly or indirectly, has been limited to thirty percent of the total commercial communication income of the sector. Against the ones that have exceeded this limitation; the administrative fine has been stipulated in case they do not complete the transfer within the granted term.

- For real persons; the shares belonging to their spouses and blood relatives and relatives by marriage up to the third degree shall also be considered as if they belong to the same person.

According to this provision that is contained in the former Law; the blood relatives and relatives by marriage up to the third degree shall be taken into consideration in the shareholding structure.

- The total direct foreign capital share in a media service provider enterprise shall not exceed fifty percent of the paid-up capital. A foreign real or legal person is entitled to directly become a shareholder to maximum two media service providers. In the case that foreign real or legal persons participate in companies which are shareholders of media service providers and that they become indirectly shareholder to the broadcasting enterprises; it is mandatory that the chairmen/chairwomen, the deputy chairmen/chairwomen and the majority of the Board of Directors and the general managers of the broadcasting enterprises are the citizens of Republic of Turkey and that, in addition, the majority of the votes in the General Assemblies of broadcasting enterprises belong to real or

legal persons holding the Turkish citizenship. In the articles of association pertaining to these enterprises, the arrangements ensuring these matters shall be stated explicitly.

In the Law No 6112, it is stated that the total direct foreign capital share in a media service provider enterprise shall not exceed fifty percent of the paid-up capital, and it is stipulated that the direct foreign share shall be maximum 50%. Furthermore, in the Law, it is set out that a foreign real or legal person may directly become a shareholder to maximum two media service providers. On the other hand, in the event that foreign real or legal persons participate in companies which are shareholders of media service providers and that they become indirectly shareholder to the broadcasting enterprises; it is set forth that the chairmen/chairwomen, the deputy chairmen/chairwomen and the majority of the Board of Directors and the general manager of the broadcasting enterprises have to be the citizens of Republic of Turkey and that, in addition, the majority of the votes in the General Assemblies of broadcasting enterprises should belong to real or legal persons holding the Turkish citizenship. Under this legal arrangement that has been introduced; due to the provision stipulating that the majority of votes in the General Assemblies of broadcasting enterprises should belong to the persons holding Turkish citizenship, in case a foreign person has indirect partnership/shareholding in a broadcasting enterprise, they shall prepare an arrangement by inserting into their articles of association a provision stipulating that the majority of votes in the broadcasting company shall belong to the Turkish citizens.

- Under no circumstances shall domestic or foreign shareholders hold privileged stocks.

This paragraph has been included into the new Law, as a legal arrangement contained in the former Law.

In brief, the legal arrangements presented by the Law No 6112 are as follows:

Media service provider enterprises shall be incorporated as a joint stock company in accordance with the provisions of the Turkish Commercial Code, in order to provide radio, TV and on-demand broadcasting services. The same company may provide only one radio, television and on-demand broadcasting service.

No broadcast license shall be granted to political parties, unions, professional associations, cooperatives, associations, societies, foundations, local administrations and companies incorporated by them or to which they have become directly or indirectly shareholders, and to capital market institutions, and real and legal persons that are direct or indirect shareholders of these companies. These entities shall not become directly or indirectly a shareholder to the media service providers.

It is mandatory that the shares of media service providers are registered ones, and no redeemed shares shall be issued in favor of persons.

Media service provider enterprises may offer capital market instruments to the public; however, the approval of the Supreme Council is required prior to the offering.

A real or legal person may become a shareholder to a media service provider enterprise holding maximum four terrestrial broadcast license; however, in the case of partnership to more than one media service provider, the total annual commercial communication income of such media service providers shall not exceed 30% of that of the sector. Otherwise, share transfers are required and, administrative fine shall be imposed on the ones that have not completed the transfer within the term granted.

The shares of a person's relatives, including the third degree, belong to that person.

The direct foreign capital limitation is 50% of the paid-up capital. It is mandatory that the chairmen/chairwomen, deputy chairmen/chairwomen, the majority in the Board of Directors and the general managers of the enterprises with foreign capital are Turkish citizens and that, in addition, the majority of votes in the General Assemblies of broadcasting enterprises belong to real or legal persons holding Turkish citizenship.

Any changes in the ownership structure shall be reported to the Radio and Television Supreme Council, and the permission of the Radio and Television Supreme Council is required for company mergers and acquisitions.

The task of frequency planning and implementation of the plans belong to the Supreme Council.

In case one of the conditions required for broadcast license is lost; thirty day's term shall be granted to the concerned media service provider enterprise for fulfillment of this condition. The broadcastings of the enterprises, which have not fulfilled the relevant condition despite expiration of the granted term, shall be ceased for a period of three months. In the case of a failure to fulfill the relevant condition within this period of time; the broadcast license of the concerned enterprise shall be terminated, and the relevant channel and frequency utilizations shall be ceased.

The broadcast license of an enterprise, about which it has been determined that it has fulfilled the conditions for obtaining broadcast license fraudulently, shall be terminated. The broadcast license fee and the channel and frequency annual utilization fee, which have been collected from the enterprise whose broadcast license has been terminated, shall not be reimbursed to that enterprise.

The legal arrangements for media ownership, which were lacking in the repealed Law No 3984, have been introduced by the Law No 6112. In the Law, the ones that are not entitled to perform activities in the media sector have been listed and; in addition, the media ownership has been limited to four terrestrial licenses and thereby, the income share limitation has been introduced. With the commercial communication income limitation that will prevent domination over the sector; a significant step has been taken for prevention of condensation. Another significant development is that indirect shareholding is also contained in the Law. Furthermore; the arrangements for share transfers and company mergers and acquisitions are contained in a separate article. The absence of explicit arrangements for indirect shareholding, prohibition to participate in public tenders and arrangement for cross-

ownership constitute significant deficiencies concerning ownership structure, in the Law.

IV. CONCLUSION

With the variety of instruments owned by the media, the media holds a great power and an effective field. As an assurance for the right to communication and demand information in democratic societies, it takes on a significant task before the society, since it informs the public and since it establishes control over political powers. The media is used in order to acquire status, form public opinion and create advertisement area for other activities. Beyond the fact that it represents a field of commercial activities; the media has sociological and ideological impacts and, this circumstance has caused gradually occurrence of a change in the media capital. The media services, which have started as public broadcasting in our Country and all around the world, have gained a commercial character in consequence of privatizations and deregulation policies in 1980s and thus, it gets further away from the approach of public service. Although the number of communication techniques and media instruments has increased gradually, the capital having these techniques and instruments have gathered in a few hands.

The development in science and technology has also manifested itself in the field of media, and it has made communications much easier and faster. This rapid development in the technology, on one hand, facilitates the human life and on the other hand, makes the human life complicated. In particular, the communications have no national boundaries and, the media necessitates international interactions, and these circumstances caused the fact that the media has lost its country-specific characteristics and that it has gained a universal aspect. The technologies in this field are acquired particularly from developed countries, and this circumstance causes the fact that the media which ensures communications gains a global dimension. As a necessity, national boundaries have started to lose their meaning both technologically and conceptually. The media ownership has acquired a dimension reaching all the countries. The media enterprises, the origins of which are America or Europe, has established dominance over the entire world, and the foundations of the global media have been laid.

The Turkish media sector has formed later than those in the other countries. Until 1950s, the state supervision had control over the press, and between 1970 and 1980, the press had started to conglomerate (holding companies). As regards the television broadcasting; while the Turkish Radio and Television Corporation ("TRT") was the sole actor in the media sector between 1960 and 1990, the first private television broadcasting had been performed in 1990 and thereby, Turkey has started to experience the liberalization occurred in the world. In that period, the absence of a legal arrangement concerning commercial broadcasting has caused the fact that the media has got further away from its fundamental functions. This is the main reason for the fact that today's media ownership structure is destitute of transparency and that the broadcastings are lack of ethical values; however,

the Turkish media has also taken its share from the changes occurred in the world. When a review is carried out on the Turkish media sector; it is seen that, with the inflow of commercial capital in the media, the Constitution has been amended and the public monopoly has been removed. However, the legal arrangements have been introduced with a delay of ten years. Within this period, many media companies also performing activities in the banking and energy...etc. sectors have entered in the sector. However, for the reasons such as economic difficulties and the reason that the broadcastings require a great amount of capital; mergers and acquisitions have taken place in the sector, and a few groups have remained in the media. This demonstrates that the media sector exhibits an oligopolistic and a condensed structure in which a few large-scale groups perform activities.

With respect to the visual-auditory media ownership in Turkey, the first legal arrangement had been introduced by the Law No 3984 that entered into force in 1994. In the initial version of the Article 29 that set out the ownership, a "Capital Share Model" based on the criterion of share ratio had been provided. This model has been abandoned with the amendment made in the Law No 3984 by the Law No 4756 in 2002 and thereby, an "Audience Share Model" based on the principle of viewing/listening ratios has been introduced. However, with the annulment of the paragraphs (d) and (e) of the Article 29 in the Law by the Constitutional Court; it has become impossible to implement "the Audience Share Model". After the judgment on the annulment; any provisions, which set a limitation for the visual-auditory media ownership, have not remained. In this period, the provisions of the Law No 4054 represented the one any only legal arrangements applicable to the developments in the media markets.

In the Law No 6112 that has been entered into force in this context, certain limitations have been introduced for the ownership and thereby, it has been aimed to remove the legal gap in this field. Accordingly, a system based on "Broadcast License" and "Income Share" model has been provided for in the Law. However, any legal arrangements, which inhibit capital owners (holding shares in private radio and television enterprise) from participating in public tenders and from trading in the stock exchange and set a limit for cross-ownership, have not been introduced. The absence of a limitation with respect to these matters constitutes a significant deficiency for the sake of ensuring pluralism and prevention of condensation. This is because; the absence of a prohibition to participate in public tenders by media owners, and in addition, the fact that they are allowed to perform activities simultaneously in different fields of the media and that they are provided with the opportunity to control these fields, conflict with the introduction purpose of the legal arrangements on the ownership.

The media should fulfill its fundamental functions and operate efficiently under a transparent and an effective legal framework. The matters, which should be dwelt upon accordingly with the legal arrangements to be introduced in this context, are determined under the following topics:

- The provisions, which ensure prevention of condensation

in the media and reestablishment of pluralism, should be dwelt upon in relation to the media ownership. One or several of the methods such as audience share, license ownership, income share or frequency limitation, capital share or broadcast license may be used in order to limit the media ownership. Of these methods, in the audience share model; a limitation is set by taking into consideration of the rating pertaining to the channels within a certain period of time. In our Country, while the debates on the method for determination of the ratings continue, it is not considered as an appropriate method. The number of frequencies or licenses and the amount of capital to be held by the broadcasting enterprises may be limited. With the Law No 6112, license ownership and income share/frequency limitation has been introduced. This constitutes a significant step for the sake of preventing condensation in the media.

- Media cross-ownership limitation may be brought into question. An enterprise performing activities in other sectors should not be allowed to enter in the media sector or a limitation should be set in this regard.
- The public resources should be utilized effectively by realization of frequency allocations. Since these frequencies, which are regarded as a natural resource as per the Article 168 of the Constitution, are under the use and disposal of the State; they should be allocated to real and legal persons by the State. The legal arrangement concerning frequency planning and allocation is contained in the Law No 6112. By the studies to be carried out in this context; it should be ensured that the frequencies are utilized more effectively by improving the broadcasting quality.
- The prohibition to participate in public tenders may be introduced for media companies. In our Country where the full transparency cannot be ensured particularly for tenders; if the companies, which perform activities in a sensitive field, namely in the media, participate in tenders, this will not represent an acceptable circumstance. In this way, the media sector should not be used as an instrument for other earnings.
- Legal arrangement on indirect shareholding should be introduced. Companies performing activities in the media sector are incorporated as a joint stock company. Both real and legal persons may become a shareholder to these companies. While legal entities become a shareholder directly; the partners that constitute these legal entities become shareholders indirectly. Therefore, the legal arrangements should include both direct and indirect shareholding. The concept of indirect shareholding is also contained in the Law No 6112. Within this framework; the shareholding structure should be analyzed until such time as the ultimate actual shareholder is reached, and this should ensure transparency and supervision.
- The ownership structure should be regulated in conformity with the new broadcasting technologies.

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