

# **THE NEW FACE OF FISCAL AUDITING WITH IN THE FRAMEWORK OF THE NEW AMENDMENTS WHICH RELATED TO TURKISH COURT OF ACCOUNTS' (TCA) MISSION IN TURKEY**

\* Assoc. Prof. Serpil Ağcakaya, Ph.D

\*\* N. Fıratcan ÇINAR

## **ABSTRACT**

Recently, the most radical amendment in public financial management is General Account Law No: 1050 was removed and Public Financial Management and Control Law No: 5018 became valid. However, this state creates a period in Turkey's public financial management. 3E rule i.e, effective, economic, efficient principle has been entered into fiscal literature in Turkey. This new situation has changed Turkish Court of Accounts (TCA). With a important revolutionary regulation, TCA Law No: 832 was removed and TCA Law No: 6085 has been accepted. In this study, we will analyze and compare old TCA which performs propriety control and new TCA responsible for performance auditing.

\* Süleyman Demirel University Faculty of Economics and Administrative Sciences, Finance Department Instructor.

\*\* Süleyman Demirel University Strategy Developing Department, Assistant for Financial Services Specialist.

## **INTRODUCTION**

Changes in public finance system started after the law no. 1050 on general accounting law had been abrogated and the law no 5018 on public finance management and control law had been controlled and put into action instead of it. Aforesaid law started a new era in the area of public finance. To enable using the sources according to the famous 3E rules; that is to say effectively, economically and efficiently for general management or in its broad sense for public administration and also publicity and accountability are aimed. This regulation applied for the administrations as parts of the general management, obligated a change in legislation for TCA that inspects these administrations, as well. Therefore the law no. 6085 on TCA law that was accepted in Grand National Assembly of Turkey in 03.12.2010 and published in the 27790 no. and 19.12.2010 dated official gazette abrogated the old the law no. 832 on TCA. Along with this new law a lot of changes have happened in TCA's mission and vision, its judgment, its sorts of inspection. For example, the situation of inspecting hand over fist of documents of public administrations every year has ended. To keep up with the developments and follow these developments in a changing and modernizing world is an important and necessary situation for our country that has an institution whose origin about external audit is based on the Ottoman Empire. The new law removes the legitimated audit. TCA is going to apply the performance audit that is to say it is going to control how close the institutions reach the targets and aims instead of controlling how much source is spend and why.

## **SECTION ONE**

### **TCA REFORM**

Financial audit has been a part of all state structures since the first age and it has aimed the order in the public revenue and the prevention of revenue loss. Various obligations have been applied to prevent the revenue loss. Pecuniary penalty, death penalty, mutilation or prison sentence were in Egyptian and Roman Empires. In Greek civilization, officers that did not accept the audit were put in prison, they were asked to donate oblation for the God and they were banned on leaving the country. If there was a difference in the accounts of a financial officer, they were heard and if they were guilty, they were obliged to pay the difference in the accounts and the pecuniary penalty. And if they did not accept to pay these, they were put into prison and their goods were expropriated.<sup>1</sup>

As a product of the innovation efforts that started in Tanzimat Reform era in 1839 in Ottoman Empire, with reference to the necessity saying “the issues about the accounts should be transferred to a supreme court as it is in every state”, an offer memorandum was submitted to Sultan Abdülaziz to establish an institution called Divan-ı Muhasebat (court of accounts). This institution is to regulate the financial issues, to prevent to spend so much on the revenue of the state, to enable officers to explain the expenses that are spend by the administrations at the end of every year and to inspect the accounts. TCA was established as Divan-ı Ali Muhasebat (Supreme Court of Accounts) in 29<sup>th</sup> May 1862 and shaped as an audit and judicial branch that is independent from both the First Parliament of Turkey, government and the Emperor.<sup>2</sup>

TCA was regulated in items no 105- 107 of our first constitution 1876 dated The Ottoman Basic Law, and it continued to protect its status as a constitutional institution in 1924, 1961 and 1982 Constitutions.

With the acceptance and entering into force of the law no. 5018 on Public Finance Management and Control Law, some concepts like the efficient and effective use of public sources, accountability about the procedures, and publicity came to the forefront. In this context, the aim and the extent of the new TCA Law was dealt with again as parallel to the changes in apprehension of public finance management. Along with being actualized of all contemporary components of financial management, accountability and publicity being in the first place, all assignments and authority of the TCA, its approach to audit, its organizational

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<sup>1</sup> Filiz GİRAY, Maliye Datei, Ezgi Kitabevi, 2010, Bursa, s.20-21

<sup>2</sup> TCA, Stratejic Plan (2009-2013).

structure were reorganized.<sup>3</sup> People who are in charge of and authorized in using and obtaining of all kinds of public source, are responsible for using and obtaining the sources effectively, economically, efficiently and legally and also they are responsible for their recognition, and being reported and preventing them to be manipulated. Adding to these they have to state an account to the competent authority that are in charge.<sup>4</sup>

The aim of the new law is that the public administrations work in an effective, economic, efficient, legal way. Another aim is that the public sources should be obtained, protected and used according to foreseen targets, aims, law and other judicial regulations. These are going to be inspected on be half of the Grand National Assembly of Turkey. To organize the establishment of TCA, its functioning, the methods of audit and account judgment in TCA, the qualifications and assignments of its members, the authorities and tasks of the members, the rights and responsibilities of them and other employee personal rights, election and assurance of the President and the members are also among the aims of the new law.<sup>5</sup>

TCAs were established to inspect – on be half of the parliaments- to enable the taxes paid by the public to be used for the benefit of the public. Accountant is the responsible person to TCA and he is the one who has to explain the accounts according to the law no. 1050 on general accounting laws. The law no. 832 on TCA law was prepared based on the regulations of the law no. 1050 on general accounting laws. The audit sphere was defined according to the sphere mentioned on the law no. 1050 on general accounting laws. While an important part of the audit has been concluded with a judicial decision, the result of the judgment has been decided as recovery and exculpation. TCA is responsible for the inspection of all the units and fields where the public sources are used in international applications. In this context, by considering the condition that says in the European application guide about INTOSAI audit standards “regardless of whether TCAs take place in the national budget or not and who manages them, TCA should have an authority that is stated in constitution and laws over all public funds, sources and activities (including EU funds). Therefore; the new law was reorganized in a way that includes the all the audit fields of TCA, public funds, public sources and public activities.<sup>6</sup>

In old law of TCA, the assignment and the authority of TCA was to inspect expenses and revenues of general or annexed budget administrations on be half of the Grand National

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<sup>3</sup> H. Bayram Çolak (2010), *Yeni Sayıştay Kanunu Ne Getir (m)iyor?*, Güncel Mevzuat Dergisi.

<sup>4</sup> Kamu Mali Yönetimi ve Kontrol Kanunu, Resmi Gazete, Date: 24.12.2003, Issue: 25326.

<sup>5</sup> Sayıştay Kanunu, Resmi Gazete, Date: 19.12.2010, Issue: 27790

<sup>6</sup> H. Bayram Çolak (2010).

Assembly of Turkey, also to give a final judgment about the accounts and operations by trials, and to operate to inspect, survey and give judgment that are decided by law.<sup>7</sup> In the new TCA law, TCA inspects;

- centralized management budgets, public administrations, social security institutions, local administrations, incorporated companies that are established with special laws and whose public share is directly or indirectly above 50 % (...) (1), and other public administrations (except from professional organizations that are public institutes)
- every kind of companies, business organizations, institutes, associations (...), administrations dependent to the administrations that are mentioned in item (a) or directly/indirectly cooperation of these administrations - provided that the public share is not below 50 % - ,
- domestic debt and external indebtedness of public administrations, making any kind of loan, paying back the debts, the use of donations from abroad, donating, treasury guarantees, treasury claims, cash administration and other aspects about these, all funds transfers and uses, and the uses of all funds including EU funds and sources that are provided domestically or externally ,
- all public accounts including special accounts, funds, sources and activities regardless of whether all these take place in public administration budgets.<sup>8</sup>

The assignments of TCA in the new law are to;

- inspect the financial activities, decisions and operations of public administrations within the frame of being responsible to explain and also, report and inform The Grand National Assembly of Turkey about the results of the inspections in a sufficient, timely and accurate way,
- inspect the accounts and operations that is relevant to the goods, revenue and expenses of public administrations that of general management. While inspecting, whether these accounts and operations are appropriate to laws and other judiciary regulations or not is controlled. If there is a condition that causes a public loss because of the responsible person' accounts and operations, this is given a final judgment.

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<sup>7</sup> TCA Law No:832, Resmi Gazete, Date: 27.02.1967, Issue: 12538.

<sup>8</sup> TCA Law No:832 ,Resmi Gazete, Date: 19.12.2010, Issue: 27790.

- Submit the general declaration of conformance to the Grand National Assembly of Turkey.
- Deal with the surveys, audits and giving judgment that are given by the laws.<sup>9</sup>

It is aimed to create a connection between the budgets and economy and finance policies with the new public finance management system. Also, recognition and to be reported of governmental activities' are aimed to use the public sources in an effective way, to enable the financial publicity and accountability.<sup>10</sup>

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<sup>9</sup> TCA Law No: 6085 art: 5, Resmi Gazete, Date: 19.12.2010, Issue: 27790.

<sup>10</sup> İlhami SÖYLER, "Role of the TCA around the new Public Financial Management and Control System", Sayıştay Dergisi, S:87, Ekim-Aralık 2012, s.73.

## SECTION TWO

### CHANGING RESPONSIBILITIES IN CHANGING TCA

Some important regulations were made in the law no. 6085 TCA law after the replacement of law no. 1050 with the law no. 5018. These regulations were especially made about the concept of responsibility. In this context, the concept of responsibility was organized by taking the balance of the assignments and authority into consideration in the law no. 5018. Therefore; along with acceptance of the law no 6085 on TCA law, TCA account judgment wanted to be regulated to a parallel level with the law no. 5018. The account judgment is defined as “to give a final judgment about whether the accounts and operations - of the authorities that are assigned with the laws - are appropriate to the legislation or not, and also it states the means of law about these” in the 2<sup>nd</sup> clause of the law no. 6085 on TCA. <sup>11</sup>

The responsibility of accountability which is an essential concept of public finance management is organized as a kind of responsibility in the new TCA law. It is stated in the 34<sup>th</sup> clause of the law no. 6085 that one of the main aims of TCA audit is to place and develop the responsibility of accountability in the public.

One of the remarkable changes in the TCA judgment is that the judgment may hold as a trial. Titled as “judiciary be listened right” 27<sup>th</sup> clause of code of civil procedure that was published in 27836 numbered and 04.02.2011 dated Official Gazette includes the items below:

- (1) Parties of the court case, interveners, and other relevant people of the judgment have the right of judiciary being listened in connection with their rights.
- (2) This right includes;
  - (a) to be informed about the judgment,
  - (b) the right of demonstration and annotation,
  - (c) the evaluation of court by taking the annotations into consideration and realization of decision in a concrete and precise way. <sup>12</sup>

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<sup>11</sup> Üstün, Ümit Süleyman – Hepaksaz, Engin – Kılıç, Ramazan – Kuluçlu, Erdal (2011), “*Public Financial Management and Financial Accountability TCA Jurisdiction Account*”, Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi, Issue: 2, s: 379 – 397.

<sup>12</sup> Code of Civil Procedure Law No: 6100, Resmi Gazete, Date: 04.02.2011, Issue: 27839.

Titled as “Intervention (Civil Procedure)” 66<sup>th</sup> clause of the same law states that “a third person may involve in the case as a civil procedure to help to win the case to the party that has a judiciary benefit until the inquest has been ended”.<sup>13</sup>

## **2.1. THE CHANGING AUDIT LIMITS OF TCA**

Audit is to inspect the accounts, financial operations and activities and also internal control systems of public administrations. It is also to evaluate whether the funds are used in an effective, economic, efficient and legal way or not.<sup>14</sup>

Auditing approach appropriate to the auditing standards are like the list below;

- Regularity audit
  - Conformity audit
  - Financial audit
- Performance audit
- The evaluation of usage of funds in an effective, economic and efficient way.

The audit sphere of TCA is extended to include the general management institutes with the acceptance of the new system. This quantitative change emerged in a parallel way with the extent of the law no. 5018. The extension of the audit sphere of TCA is evaluated as a positive event.<sup>15</sup>

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<sup>13</sup> Code of Civil Procedure Law No: 6100, Resmi Gazete, Date: 04.02.2011, Issue: 27839.

<sup>14</sup> TCA Law art: 35 – 1/a, Resmi Gazete, Date: 19.12.2010, Issue: 27790.

<sup>15</sup> Osman Saraç, “Benchmarking and Stratejik Management”, Sayıştay Dergisi S: 56, Ocak Mart-2005, s. 158.



## CONCLUSION

With the acceptance of new law TCA;

- \* adopts the apprehension of audit that is based on a system instead of an operation,

- \* tries very hard to be transparent an institution instead of being an isolated institution,

- \* adopts to report basically to parliament and local assemblies,

- \* encourages the good applications and reports them,

- \* evaluates the performances of the public administrations,

- \* encourages accountability and publicity in public,

- \* adopts the apprehension of tendency from establishing the suitability towards evaluate the risks and performance

- \* adopts the apprehension of standardization rather than arbitrariness, following these standards, being a guide both for the inspector and for the inspected,

- \* adopts the apprehension of result oriented that is to say, head towards outcome not the income.

When we compare the TCA Strategic Declaration that was prepared for the years of 2000-2004 and TCA Strategic Plan that was prepared for the years of 2009-2013;

TCA aimed to contribute to the development and innovation of public management to serve for wealth and happiness of Turkish people in older vision. <sup>16</sup> In the new vision, TCA prepared a new motto by highlighting it with the capitals saying “TCA IS THE ASSURANCE OF THE PUBLIC MANAGEMENT WHICH HAS ACCOUNTABILITY AND PUBLICITY” <sup>17</sup>

As long as the law and the Presidency contribute to the mentioned aspects, TCA is going to reinforce and increase its efficiency.

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<sup>16</sup> TCA Strategy Statement (2000-2004).

<sup>17</sup> TCA Stratejic Plan (2009-2013).

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