Global Journal on Humanites & Social Sciences

Issue 4 (2016) 193-197

Selected Paper of 4rd World Congress of Administrative and Political Sciences, (APDOL-2015)
26-28 November 2015, Rome, Italy

Independent regulatory authorities in Turkish public administration

Mehmet Gokus *, University of Selcuk, Konya 42250, Turkey.

Suggested Citation:

Gokus, M. (2016). Independent regulatory authorities in Turkish public administration**,** *Global Journal on Humanites & Social Sciences.* [Online]. 04, pp 193-197. Available from: http://sproc.org/ojs/index.php/pntsbs

Received June 16, 2015; revised August 05, 2015; accepted September 11, 2015.
Selection and peer review under responsibility of Prof. Dr. Andreea Iluzia IACOB

Abstract

First examples of institutions called as independent regulatory authorities or agencies and being outside of the classic administrative structure have emerged in Anglo-Saxon countries. Starting from 1970s, these institutions have also started to be given place also in some countries in continental Europe.
Together with the influence of globalization process and developments occurring in the field of public administration in 1980s, regulatory functions of the government became prominent. In this process, independent regulatory authorities began to spread rapidly as new actors of this function. While weakening the state as an economic actor, liberalisation and privatization policies, strengthened the regulatory role of the state since 1980s in Turkey. To play this new role, independent regulatory authorities began to show presence as administrative institutions carrying unique features in terms of structuring and staying outside of the classical organization of administration. Independent regulatory authorities also undertook the role of minimizing the problems emerging due to populist attitudes of governments and loosening the ties between politics and economics in especially strategically important areas (energy, capital market, banking business). The common feature of these authorities is considered as being autonomous administrative units undertaking "regulation" and "supervision" activities in the fields and sectors like competition, banking, finance, communication, human rights, food and drug safety.
In this study, after giving general information about the independent regulatory authorities,the debate on determining constitutional position of these authorities in Turkish Public Administration system will be handled and evaluated.

Keywords: independent, authorities, government, Constitution

* ADDRESS FOR CORRESPONDENCE: **Mehmet Gokus,** University of Selcuk, Konya 42250, Turkey
E-mail address: mgokus@selcuk.edu.tr / Tel.: +0 533 3640392

1. Introduction

The process of globalisation, together with the rapid developments in information and communication technology, has changed administrative structures of states by means of affecting economic, social and political fields. Along with this process, the need to fill the gap emerged as a result of state withdrawal from the economic life and to make arrangements for the functioning of the liberal market (Kuçuk, 2008). In this process, state has assumed the role of determining the rules that elements like consumers, producers, professional organisations, media, civil society organisations must abide by. For this purpose, new units named independent regulatory agencies have been constituted (Arslan, 2010).

The main function of these institutions called as independent regulatory agencies is to regulate public and private sector activities of social and economic life in the fields which are closely related with fundamental rights and freedoms by establishing a set of rules; to monitor whether these rules are followed or not; to control and to impose direct sanctions for failure to comply with these rules. And sometimes, to mobilise judicial authorities for the implementation of sanctions foreseen in the law of establishment (Gunday, 2001).

IRAs in Turkey are contentious administrative units in so many respects from their naming to their characteristics, from their duties and authority to their control and their position in Turkish administrative system (Parlak, 2012; Eryılmaz, 2012). This study aims at concluding these controversial issues arising about IRAs.

2. Legal Basis of the Emergence of the Independent Regulatory Agencies in Turkey

Article 167 of the Constitution is shown as the legal basis of Independent Regulatory Agencies. Paragraph 1 of Article 167 of the Constitution of the Republic of Turkey charge state with the duty of "taking measures to ensure and promote the sound and orderly functioning of the markets for money, credit, capital, goods and services; and preventing the formation of monopolies and cartels in the markets, emerged in practice or by agreement". The content of this duty imposed on the state with this provision of the constitution is to regulate public and private sector activities in the areas which are closely related with rights and freedoms of individuals and communities like markets for money, credit, goods and services of the social and economic life, to control, to prevent improper action and to impose sanctions.

In Turkey, starting from 1980s, in 1990s and especially in recent years, these institutions named as Independent Regulatory Agencies, are established one after another in order to fulfil this duty. The idea of downsizing the state, privatisation of public services, especially the ones carried out in the economic fields, but also not to be totally oblivious of these public services left to the private sector, conducting a kind of outside regulation and establishing these institutions to make this regulation has also been an important factor in the creation of these institutions in Turkey (Gunday, 2001).

3. The relations of IRAs with the central administration

The most important issue about the autonomous structure of these institutions and independence of their decision-making body is that how their relationship with the central administration is established. Although these agencies are not within a hierarchical order and instruction relationship, it is not possible to talk about the fact that they have any connection with any other institution in compliance with the principle of integrity of the administration (Sever, 2015).

In compliance with the principle of integrity of the administration, a connection in administrative sense is tried to be established between IRAs and ministries as connected or related institutions. Here, the concepts of connected or related are rooted in the law of establishment of these institutions

(Eryılmaz, 2012). These concepts of connected or related do not mean that these institutions are subject to the supervision of and are dependent on the related ministries. Here, related ministry does not have any supervision authority on these institutions; this relatedness only refers to being related with duty areas (Arslan, 2010; Gunday, 2001). Related ministry is not hierarchical chief, superior of IRAs, nor does it have tutelage over them. In a similar way, related ministry does not have annulment and alteration authority for the decisions of IRAs. However, it is possible for related ministry to resort to the judgement on the grounds of illegality of the decisions of IRAs (Atay, 20006).

4. Duties and authorities of IRAs

These agencies use very important authorities while fulfilling their regulatory and control functions in the sensitive sectors with which they are related.

4.1. Authority of Regulation

IRAs have the authority to make regulations about the areas in which they operate. They can use this regulatory power by issuing bylaw. Besides this, they can also make regulations under the name of decree, notification or declaration. These agencies fulfil their legal duties via these kinds of regulations (Tan, 2002: 27). However, while performing regulatory transactions, they are obliged to comply with the general limitation and rules regarding regulatory authority of administration (Atay, 2006).

4.2. Authority of Delivering Opinion (Consultancy Function)

IRAs which are expert institutions in their respective fields have the most comprehensive knowledge and experience on those fields. Therefore, they can fulfil their advisory functions by delivering opinion and sharing experience with the private and public institutions and organisations regarding their respective domain (Arslan-Arslan, 2010).

4.3. Authority of Monitoring and Control

IRAs have the authority to control whether laws or other rules set by themselves by means of bylaws and so on are obeyed or not. In this context, a set of powers like asking for information and documents from the relevant people, listening to them, making on-site inspection if they consider it necessary are given to these institutions (Tan, 2002).

4.4. Authority of Imposing Sanctions

One characteristic of IRAs is their authority of imposing sanctions in their responsibility areas. The sanction power these agencies have is penal sanctioning with a direct transaction of administration - without taking any judicial decision- and applied with methods specific to administrative law, in the situations obviously permitted or not prohibited by law (Arslan, 2010). These agencies can impose sanctions like warning, fines, cancellation of permits and licences, temporary suspension of the use, ceasing broadcasting, ensuring the use of the right of (Atay, 2006).

4.5. Authority of Dispute Resolution

These agencies are given the authority to resolve the disputes since areas they operate are so technical and therefore it takes long time to reach a solution by resorting to judgement. In recent years, IRAs are shown as an example for non-judicial resolution of disputes (Tan, 2002:31).

5. Constitutional Position of IRAs in Turkish Administrative Organisation

In Turkey, there are different opinions about determination of the constitutional position of IRAs in Turkish administrative organisation. In the context of constitutional articles determining the structure of Turkish public administration, these questions arise about IRAs and answers to these questions lead to some debate:

- Can IRAs form a third administration structure besides central administration and decentralised administration?

Article 123 of the Constitution stated that Turkey can only be organised in the form of central administration and decentralised administration. Therefore, as an answer to the first question; it seems impossible that IRAs do not form the third category besides central administration and decentralised administration structure.

- Can IRAs be included in the central administration or decentralised administration structure, if they are not accepted as a third type of administrative structure?

According to the second paragraph of Article 123, the organisation and functions of the administration are based on the basics of central administration and decentralised administration. Institutions that arise as a result of the implementation of the principle of central administration are central administrative institutions. These are stated in Article 126 of the Constitution. Therefore, it seems impossible to evaluate IRAs as central administrative institutions.

Local governments which came out as a result of the implementation of the principle of decentralisation are counted as special provincial administration, municipality and village in Article 127 of the Constitution. For this reason, it is not possible to evaluate IRAs as local government institutions.

Based on the last paragraph of Article 123 of the Constitution, it is understood that functionally decentralised institutions are formed by means of establishing public corporate entities with the law or with the authority explicitly granted by the law. Functionally decentralised institutions do not take a direct place in the Constitution. In this case, is it possible to describe IRAs as functionally decentralised institutions? (Gunday, 2001).

When one seeks an answer for this question they see that there are significant differences between IRAs and functionally decentralised institutions. First of all, while functionally decentralised institutions offer a certain public service, IRAs do not. These agencies are the institutions that regulate and control sectors which are sensitive for society. Because, in administrative organisation and conceptually, public institutions, are normally used for conducting public services or they produce service or goods. These two stated functions are not in question for IRAs. IRAs do not undertake realisation of production of a goods or service like the other public institutions or organisations (Atay, 2006). Moreover, while IRAs are out of administrative tutelage control, transactions of functionally decentralised institutions are subject to administrative tutelage control.

When we take all these into account, it is not possible to consider IRAs within functionally decentralised institutions. However, another point of view advocates evaluating IRAs as functionally decentralised institution. Since there are no criteria to be followed in the establishment of functionally decentralised institutions, public institutions that change according to the characteristics of the service to be conducted can be formed. The relations of public institutions, which do not have any common criteria except having legal personality, with the central administration also vary. While there is almost hierarchical administrative tutelage control on some institutions, public institutions that are not subject to central control can also be established. For this reason, as they are independent from the central administration and as they are not subject to any control, the idea that it is necessary to evaluate IRAs as functionally decentralised institutions and there is no need to seek for another category is asserted (Sezer, 2003).

Besides this, since IRAs are founded according to the service criteria and this service is limited to a geographical area; and since their administrators are not elected by public, it is necessary to assess them as functionally decentralised institutions (Sezer, 2003; Eryılmaz, 2013).

5. Conclusion

It seems difficult to explain IRAs in Turkey with the existing constitutional principles. For this reason, acceptance of IRAs as a third administrative structure except central administration and decentralised administrative structure by changing Article 123 of the constitution will sweep disputes and ambiguity away. In this way, it will be possible to equip IRAs with legal assurance and also the authority of law maker will be determined.

A constitutional arrangement would eliminate criticisms about IRAs and arbitrary intervention of political power on these agencies as well. Thus, for each regulatory and supervisory institution, realisation of a common legal regime and adjudicating according to subject of activity would be possible (Atay, 2006).

In case of not making such an arrangement, current problem will continue to exist as well as rendering legislative acts about these institutions controversial.

References

Arslan, Negahan Talat (2010). Yonetimin Yeni Yapı Tasları Bağımsız İdari Otoriteler:"Yavru Leviathanlara Doğru, *Sosyal Siyaset Konferansları, 59*(2), 25–49

Arslan, N Talat & Aslan, Erkan (2010). Yeni Kamu Yonetimi Ve Ust Kurullar, Bursa Alfa l Yayınları.

Atay, E. Ethem (2006). B.İ.O ve Turkiye Uygulaması, *G. U. H. F. Dergisi, 10*(1,2). 256-293

Eryılmaz (2013). *Kamu Yonetimi,* Koceli, Umut Tepe Yayınları,

Gunday, M. (2000). Bağımsız İdari Otoriteler, konulu sempozyumu, Ankara.

Kuçuk, A. (2008). Duzenleyici Ve Denetleyici Kurumların Tabi Oldukları Sorusturma Usullerinin Karsılastırılması, Sayıstay Dergisi, (80), 107-134

Parlak B., & Zahid, S. (2012). Kamu Yonetimi, Bursa MKM Yayıncılık

Sever, Ç. (2015). Turkiye'de Duzenleyici Kurumların Yapısı, İslevi ve Donusumu, *AUHFD, 64*(1) 195-236

Sezen, S. (2003). Turk Kamu Yonetiminde Kurullar, Ankara, TODAİE,

Tan, T. (2002). Bağımsız İdari Otoriteler Veya Duzenleyici Kurullar Amme İdaresi Dergisi, 35(2)