

AN AUDIT GAP PROBLEMATIC IN TURKEY: THE ROLE OF TURKISH COURT OF ACCOUNT FOR SEMI-PUBLIC COMPANIES

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Abstract

The Turkish Court of Account (TCA) shall audit Public administrations Law no 6085. In this sense companies that use public source subject to audit by TCA while others, which can be expressed as private companies, are subject to independent external audit in accordance with the law no 6102, the New Turkish Commercial Code. However, in 14th of January 2016, with the change in law clause of 6085, TCA has become directly responsible for auditing of companies that more than 50% of their capital directly or indirectly owned by the public sector. For the others, which have public share less than %50 and subject to independent external audit, TCA could only present an opinion to assembly by using independent audit reports. Therefore, current legislative regulation can cause unconformity on objectives of auditing and an audit gap for some companies. This paper aims to discuss these issues and offer suggestions to prevent possible problems.

Key words: *audit, public companies, Turkish court of account*

1. INTRODUCTION

Supreme Court of Public Accounts had been approved and established by Sultan Abdülaziz in 1862 and started to work. In the official paper that had been served to Abdülaziz, which had managed the establishment of Supreme Court of Public Accounts, it was said; "...in order to manage financial issues, in order for state not to make expenses more than its revenues, in order for state officials to give the account of their expenses at the end of the year, all these issues should be inspected by a supreme court like in all other states..." (Akgündüz 2012 p.67; Kış 2014 p.13). As it can be understood, Supreme Court of Public Accounts had been established as a "Supreme Court" both to make fiscal inspection of public on one hand, and to give final judgments on accounts.

Supreme Court of Public Accounts being established as "judicial authority" has been exercising its activities as "Supreme Court", besides being an inspection body, can be understood from Articles 160 and 164 of 1982 dated Constitution of Republic of Turkey. Related Article of the Constitution arranging the activities of Supreme Court of Accounts is as follows (Constitution 1982);

“Article 160- (As amended on October 29, 2005; Act No. 5428) The Court of Accounts shall be charged with auditing, on behalf of the Grand National Assembly of Turkey, revenues, expenditures, and assets of the public administrations financed by central government budget and social security institutions, with taking final decisions on the accounts and acts of the responsible officials, and with exercising the functions prescribed in laws in matters of inquiry, auditing and judgment. Those concerned may file, only for once, a request for reconsideration of a final decision of the Court of Accounts within fifteen days of the date of written notification of the decision. No applications for judicial review of such decisions shall be filed in administrative courts.

In case of conflict between the decisions of the Council of State and the Court of Accounts, regarding taxes, similar financial obligations and duties, the decision of Council of State shall prevail.

(Paragraph added on October 29, 2005; Act No. 5428) Auditing and final decision on the accounts and acts of local administrations shall be conducted by the Court of Accounts.

The establishment, functioning, auditing procedures, qualifications, appointments, duties and powers, rights and obligations and other personnel matters of the members and guarantees of

the President and the members of the Court shall be regulated by law. (Paragraph repealed on May 7, 2004; Act No. 5170)”

“Article 164- Final accounts bills shall be submitted to the Grand National Assembly of Turkey by the Council of Ministers within seven months of the end of the relevant fiscal year, unless a shorter period is prescribed by law. The Court of Accounts shall submit its statement of general conformity to the Grand National Assembly of Turkey within seventy-five days of the submission of the final accounts bill to which it is related.

The final accounts bill shall be placed on the agenda of the Committee on Budget together with the budget bill of the new fiscal year. Committee on Budget shall submit the budget bill to the Plenary in conjunction with the final accounts bill; the Plenary shall debate and decide on the final accounts bills in conjunction with the budget bill of the new fiscal year.

The submission of the final accounts bills and the statement of general conformity to the Grand National Assembly of Turkey shall not preclude the auditing and trial of the accounts for the relevant fiscal year that have not been concluded by the Court of Accounts, and shall not mean that a final decision has been taken on these accounts.”

Article 160 of the Constitution clearly and accurately defines Supreme Court of Accounts as the single authority to examine and to inspect the accounts and transactions. The terms “verdict” and “definite”, expose the fact that, verdicts delivered by Supreme Court of Accounts are the results of judgment activities and the subject will not be presented before another authority (Tan 2013 p. 666). The concept “verdict” equipped Supreme Court of Accounts with judgment authority and the concept “definite” prevents judicial judgments to be presented to other judicial authorities (Akyel & Baş 2010). In case the arrangement of Article 164 of the Constitution is being evaluated, the term “account judgment” explains that Supreme Court of Account has been formed as a “judicial authority” (Akyel 2015).

1.1. Public Financial Management and Audit System

The operation of Turkish public financial management and audit system is based on two principle laws as of today. These are 01.01.2006 dated and 5018 numbered ‘Public Financial Management and Control Law’ and 03.12.2010 dated and 6085 numbered ‘Turkish Court of Accounts Law’.

When chronically examined, 1927 dated and 1050 numbered ‘General Accounting Law’ and 1934 dated and 2514 numbered ‘The Court of Accounts Law’ composed the ground of Turkish public audit system. 2514 numbered Law became valid for a while and on 21.02.1967, this Law had been replaced by 832 numbered ‘Law of the Court of Accounts’. In time, both of the laws were unable to meet the needs and became inadequate in terms of their scopes, management and audit techniques. Reevaluation of public financial management and audit system became necessity both with the effects of economic and financial developments in Turkey and within the framework of adaptation to acquis communitarian process (Söyler, 2012). Thus, in 2006, instead of 1050 numbered Law, 5018 numbered Law came into force that brought radical amendments on budgeting, accounting, reporting and internal control. Following, in 2010, instead of 832 numbered Law, 6085 numbered Law came into force which brought Supreme Court of Accounts the duties of external auditing and account judgment within the framework of new public financial management and audit system.

1.1.1. 5018: Public Financial Management and Control Law

The requirements of 5018 numbered Law derived from the malfunctions occurred on the basis of 1050 numbered Law, Candan (2006), malfunctions derived from 1050 numbered Law were summarized in titles in this study: narrow budget scope, much budget variations, irrational distribution of liabilities and authorities, spending institutions not having adequate initiative during preparing process of budget, lack of contemporary techniques, not settling of program budget system, not able to apply a

rational system in public accounting, not having internal control, external auditing being at the level of legal conformity and not adopting to international system.

Article 12 of 5018 numbered Law related with budget scope is as follows (PFMC 2012);

“Article 12 (*Budget Types and Scope*) - Budgets of the administrations within the scope of general government shall be prepared and implemented in the form of central government budget, social security institution budgets and local administration budgets. Public administrations cannot prepare any budget under another title apart from the foregoing.

Central government budget consists of the budgets of public administrations included in chart I, chart II and chart III of this Law.

General budget refers to the budgets of public administrations, which are included in chart I of this Law and which are under the legal entity of the government.

Special budget refers to the budget of each public administration, which is included in the chart II of this Law and established as affiliated or related to a ministry for performance of a defined public service, to which revenues are allocated, and which is authorized to spend from such revenues, of which establishment and operation principles are regulated by special law.

Regulatory and supervisory agency budget is the budget of each regulatory and supervisory agency, which is included in the chart III of this Law and established in the form of board, agency or supreme board by special laws.

Social security institution budget refers to the budget of each public administration, which is included in the chart IV and established by law to provide social security services.

Local administration budget refers to the budgets of public administrations within the scope of the local administration.”

1050 numbered Law used to contain only financial management of administrations with general budget. This narrow scope has been enlarged as it can be understood from Article 12 of 5018 numbered Law. Within this scope, the definition of the administrations within the scope of general government has been extended and classified under the titles such as central government budget, social security institution budgets and local administration budgets. Central government budget is composed of administrations with general budget, administrations with special budget and regulatory and supervisory agencies. Social security institution and local administration budgets were also included in central government budget. Thus, 5018 numbered Law included all public institutions except government business enterprises, Republic of Turkey Central Bank and state owned companies within the scope of budget that will be presented to Turkish Grand National Assembly.

Budgeting, in principle is an administrative tool. 5018 numbered Law, as it can be seen from Article 15 mentioned below, facilitated passing to three years of budget preparing process (PFMC 2012);

“Article 15 (*Scope of the Central Government Budget Law*) - Central Government Budget Law is the Law that indicates the revenue and expenditure estimations of the public administrations included in the central government and that grants authority and permission for their realization and execution.

Central Government Budget Law shall include revenue and expenditure estimations of the first year and the following two years; budget deficit or surplus amount if any and how the deficit will be covered or where the surplus will be used if any; tax revenues renounced due to tax exemptions, exceptions, reductions and similar practices; borrowing and warranty limits; authorities to be granted for the implementation of budgets; attached schedules and provisions pertaining to the revenues and the expenditures, to be implemented totally, to be implemented partially or not to be implemented at all during the fiscal year. The revenue expenditure estimations of each public administration within the scope of central government may be presented in special sections or schedules of the central government budget law.”

Governments reflecting policies on planning and budget processes, is an important tool to achieve source-spending equity in public. A decision making process without considering the current sources, will cause staying away from financial discipline and increasing of economic problems. Thus, multi-year budgeting brought by 5018 numbered Law, is an important element in terms of providing discipline in using of sources (Kesik 2005).

With 5018 numbered Law, the classical budgeting, in other words budgeting based on outputs was left behind and performance based budgeting process, based on relation of performance, plan and budget was initiated (Badem et al. 2013). Article 9 of 5018 numbered Law on performance based budgeting process is given below (PFMC 2012);

“Article 9 (*Strategic Planning and Performance Based Budgeting*) - Public administrations shall prepare strategic plans in a cooperative manner in order to form missions and visions for future within the framework of development plans, programs, relevant legislation and basic principles adopted; to determine strategic goals and measurable objectives; to measure their performances according to predetermined indicators, and to monitor and evaluate this overall process.

In order to present public services at the required level and quality, public administrations shall base their budgets and their program and project-based resource allocations on their strategic plans, annual goals and objectives, and performance indicators.

The Undersecretariat of State Planning Organization is authorized to determine the strategic planning calendar and the public administrations to be in charge of preparing strategic plans, and to set out the principles and procedures concerning the correlation of strategic plans with development plan and programs.

(Annex: 24/7/2008-5793/30 art.) Public administrations prepare their performance programs including activities and projects to be carried out, resources required for them and their performance objectives and indicators.

Public administrations shall prepare their budgets on performance basis and in concordance with the mission, vision, strategic goals and objectives included in the strategic plans. The Ministry of Finance is authorized to define the procedures and principles on the compatibility of administration budgets with the performance indicators stated in the strategic plans, and activities to be carried out by these administrations within this framework and other issues on performance-based budgeting.

Performance indicators that shall be jointly set by the Ministry of Finance, the Undersecretariat of State Planning Organization and relevant public administration shall be included in the budgets of these administrations. Performance audits are carried out in the framework of these indicators.”

Performance based budget is a budget system in which source allowances are done in order for the realization of objectives and scopes defined in strategic plans, institutional and other major political documents; accountability is being provided with efficiency, and economy measurements (Karacan 2010 p. 14). In other words, performance based budgeting, is a system in which efficiency is being provided in source allowances and strategic planning comes forth, aims to establish a relationship between inputs and outputs in public sector and aims to build budget-plan relation (Demircan 2006). Application of performance based budgeting is significantly important for the objectivity of indicators that will compose the ground for auditing and inspection. Determination of source allowance, in other words costs due to measurable and determinable targets or whether a source has been efficiently used or not, can be evaluated within the framework of initiatives defined for responsible. Articles 3 and 9 of the 5018 numbered Law are about strategic planning process. When these articles are evaluated together, we come to the conclusion that, relation between performance based budgeting and strategic planning.

5018 numbered Law brought important innovations and changes in state accounting. With the Article 1, financial reporting has been adopted. Furthermore, in Article 51, along with cash basis accounting

system, accruals accounting was brought and it was defined that revenues and expenses would be shown in the accounts of year they were accrued, budget transactions would be shown at the accounts of years where accrual and payment transactions are actually done as a prerequisite of cash based accounting system. Related articles of 5018 numbered Law are given below (PFMC 2012);

“Article 1 (*Purpose*) - The purpose of this Law is to regulate structure and functioning of the public financial management, preparation and implementation of the public budgets, accounting and reporting of all financial transactions, and financial control in line with the politics and objectives covered in the development plans and programs, in order to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.”

“Article 51 (*Year of Public Revenues and Expenditures and Offsetting Period*) - Public revenues and expenditures shall be indicated in the accounts of the fiscal year of their accrual.

Budget revenues shall be booked in the year of collection and budget expenditures in the year of payment.

Public accounts shall be kept on fiscal year basis. Offsetting operations of the payments actually performed but not offset until the end of fiscal year may be realized within one month following the end of the fiscal year, provided that their appropriations are reserved. In force majeure cases, this period may be prolonged by the Ministry of Finance for a maximum of one month for budget expenditures and for a maximum of two months for other transactions.”

When both two articles are evaluated together and in addition within the scope of other related articles of 5018 numbered Law, institution and finance type classification being obligatory brought the opportunity of co application of analytical budget and accruals state accounting system. With this, an accounting systematic has been established in competence with international standards and basic accounting principles, and also in competence with healthy operating budget classification and accrual basis (Dayar &Esenkar 2008). Analytical budget provides the realization of the objectives of very detailed arrangement of functional classification, financial transparency and accountability. Finance type classification, which is a coding system, makes possible evaluating and monitoring of all source allowances such as special allowances and foreign credits that all offices and institutions require within the scope of 5018 numbered Law.

As is can be seen in the articles that give a basic evaluation of 5018 numbered Law; legal framework that allows the effective auditing of the offices and institutions which are subject to the audit of Supreme Court of Public Accounts, has been established. As it stands, 5018 numbered Law, made Turkish public finance system in competence with international standards and composed a legal infrastructure that annihilated the deficiencies and malfunctions derived from 1050 numbered Law.

1.1.2. 6085: Turkish Court of Accounts Law

The other Law of two laws that compose the public financial administration and auditing system is the 6085 numbered ‘Turkish Court of Accounts Law’ and this Law gives primarily reporting mission to Supreme Court of Accounts. As the necessity of this mission, Supreme Court of Accounts prepares several reports and presents them to Turkish Grand National Assembly. Within the scope of 6085 numbered Law, judgment mission of Supreme Court of Accounts which has also the status of a court has been considered secondary. Within the framework of 6085 numbered Law, Supreme Court of Public Accounts prepares the following reports: (1) According to Article 38, "the external audit general evaluation report", (2) According to Article 39, the accountability general evaluation report, (3) According to Article 40, the financial statistics evaluation report, (4) According to Article 43, the statement of general conformity and (5) According to Article 42, other reports (TCAL 2011). 6085 numbered Law which provides the institutionalism of internal control system, adaptation of risk based internal audit, application of performance based auditing in parallel with 5018 numbered Law, detail examined within the scope of this study, in terms of 'external auditing',

The following sections of the study are prepared as follows: In the 2nd section, the role of the Supreme Court of Accounts in external auditing, its objectives, its audit area, general principles are evaluated within the scope of 5018 and 6085 numbered laws. The determinants which cause the formation of audit gap for semi-public companies that have less than %50 of share as the result of change in the Article of 6085 numbered Law, are explained under the titles of 'Legal Gap' and 'Difference in Purpose of Auditing'. The study has been concluded with the suggestions for to overcome the audit gap problem.

2. EXTERNAL AUDIT ROLE of TCA

6085 numbered Law changed the qualification of external auditing given to the liability of Supreme Court of Accounts. Articles 2 and 36 that define these changes are given below (TCAL 2011);

“Article 2 (*Definitions*) – (1) in the enforcement of this Law;

- a) Audit by Turkish Court of Accounts: Means regularity and performance audit,
- b) Regularity audit: Means financial audit and compliance audit,
- c) Financial audit: Means the audit on reliability and accuracy of financial reports and statements in accordance with results of the assessment of accounts and transactions of public administrations as well as their financial activities, financial management and control systems,
- d) Compliance audit: Means the audit pertaining to the examination of the compliance of accounts and transactions related to the revenues, expenditures and assets of public administrations with laws and other legal arrangements,
- e) Performance audit: Means measurement of results of activities with respect to objectives and indicators determined by public administrations within the framework of accountability,
- f) Trial of account: Means taking final decision by judicial procedure on whether the accounts and transactions of those responsible specified in laws are in compliance with the legislation, and the legal remedies related to this,
- g) Judicial report: Means the report prepared by auditors regarding public loss identified during the audit of the accounts and transactions of public administrations within the scope of the general government, which shall be taken as basis in the trial to be carried out by the chambers of Turkish Court of Accounts,
- h) Audit report: Means the report prepared by headships of audit groups or auditors as a result of audits and examinations, which shall be taken as a basis for Turkish Court of Accounts reports,
- i) Report of Turkish Court of Accounts: Means the report prepared as a result of audits and examinations and submitted to the Turkish Grand National Assembly or sent to public administrations by the President of Turkish Court of Accounts,
- j) Examination by Turkish Court of Accounts: Means the activities of Turkish Court of Accounts in fields other than taking final decision and auditing,
- k) Public administration: Means all administrations, organizations, institutions, associations, enterprises, subsidiaries and companies subject to the audit by Turkish Court of Accounts, regardless of whether they are subject to the provisions of public or private law,
- l) Public administrations within the scope of the general government: Means public administrations within the scope of the general government as defined in Law No. 5018 on Public Financial Management and Control, dated 10.12.2003,
- m) Public administrations within the scope of the central government: Means public administrations within the scope of the central government as defined in Law on Public Financial Management and Control,

n) Public Loss: Means public loss defined in the Law on Public Financial Management and Control,

o) Public resources: Means the revenues, movable and immovable assets belonging to the public or acquired via public mandate, the places, funds, receivables and rights and all kinds of valuables, including those acquired through borrowing, donations and aids under the jurisdiction and possession of the State,

p) The auditor of Turkish Court of Accounts: Means the principal auditor, senior auditor, auditor and assistant auditor,

q) Performance: Means the level of achievement of the targets and indicators set by public administrations.”

“Article 36 (*The audit by Turkish Court of Accounts*) – (1) The audit by Turkish Court of Accounts shall cover regularity audit and performance audit.

(2) Regularity audit shall be carried out through;

a) Determining whether revenues, expenditures and assets of public administrations, as well as accounts and transactions pertaining to those are in compliance with laws and other legal arrangements,

b) Giving opinion on the reliability and accuracy of financial reports and statements of public administrations, by evaluating all kinds of supporting and necessary documents,

c) Assessing financial management and internal control systems.

(3) Performance audit shall be carried out through measuring the activity results related to the objectives and indicators determined by administrations within the framework of accountability.

(4) As a result of these audits, other matters regarding audit or resulting from audit activities, required to be clarified may be reported as well.”

As it can be understood from the articles of the law, the Supreme Court of Accounts has been given performance audit as well as regularity audit. Regularity audit is composed of financial audit and compliance audit. Principles of regularity audit are defined as follows in the Article 35 of 6085 numbered Law (TCAL 2011);

“Article 35 (*General principles of auditing*) – (1) the general principles of auditing are:

a) Auditing means the examination of accounts, financial transactions and activities as well as the internal control systems of public administrations, and the evaluation of effective, economic, efficient and legal usage of public resources. Turkish Court of Accounts shall not undertake propriety audit and shall not render decisions that limit or remove the discretionary powers of administrations.

b) Audit shall be carried out in accordance with the generally accepted international auditing standards.

c) Turkish Court of Accounts and auditors shall carry out audit activities independently and impartially. Turkish Court of Accounts shall not be given instruction in planning, programming and executing of the audit function.

d) Audits shall be carried out with due consideration to the implementation of the contemporary audit methodologies.

e) For effective fulfillment of audit function, technical and professional competencies of the personnel of Turkish Court of Accounts shall be developed.

f) For maintaining quality assurance, each stage of audit shall be reviewed constantly in terms of its conformity with audit standards, strategic plans, audit programs and professional code of ethics.”

2.1. Change in Audit Area of TCA

Within the framework of 6085 numbered Law, in parallel with 5018 numbered Law, in a way the audit area of Supreme Court of Accounts has been extended to include the whole of general administrative institutions. This is a positive development because the main accepted trend in world is the auditing of all public funds, sources and activities in the name of national assemblies by the courts of accounts. International Organization of Supreme Audit Institutions-INTOSAI, stated that, being out of the classical financial framework, activities of state should be subject to auditing of Supreme Court of Accounts including economic and social sectors (LD 1977).

With the 14.1.2016 dated amendment in the Article 4 of 6085 numbered Law, the audit area of Supreme Court of Accounts has been reorganized. According to this reorganization, institutions that have less than %50 public share are subject to the auditing of independent auditing institutions and Supreme Court of Accounts will present Turkish Grand National Assembly the report it has prepared based on the reports of independent auditing. Article 4 after the amendment is given below (TCAL 2016);

“Article 4 (Audit area) – (1) Supreme Court of Accounts audits;

- a) (Amendment: 12.7.2013-6495/73 article) public administrations and social security institutions within the scope of central administrative budget, local administrations, corporative established due to special laws which have directly or indirectly public share, other public administrations (except for professional organizations with the characteristics of public institutions),
- b) (Amendment: 12.7.2013-6495/73 article) all kinds of administrations, institutions, managements, unions of companies that have been directly or indirectly established by the administrations defined in (a) clause,
- c) All kinds of internal and external debt raised by public administrations, loaning, debt returns, using of foreign grants, delivering grants, Treasury guarantees, Treasury dues, cash management, and other issues related with those; all source transfers and using of other sources and funds obtained by domestic or external sources including European Union funds,
- ç) All public accounts, funds, sources and activities including private accounts without considering whether they take place in public administrative budgets or not.

(Additional paragraph: 14.1.2016-6661/19 article) the audit of companies which have directly or indirectly have less than %50 of public share and thus subject to auditing of independent companies due to (a) and (b) clauses, is being undertaken by considering independent auditing reports sent to Supreme Court of Accounts due to current legislation. Supreme Court of Accounts prepares its individual report based on independent auditing reports and presents it to the Turkish Grand National Assembly.

(2) Supreme Court of Accounts also audits accounts and transactions of international institutions and organizations within the context of principles of agreements and contracts.

(3) Auditing of public institutions and corporations within the scope of Article 2 of 02.04.1987 dated and 3346 numbered Law on Arrangement of Auditing of Government Business Enterprises and Funds by Turkish Grand National Assembly, is undertaken in accordance with this Law and other methods and principles defined in other related laws.

As it can be understood, this change occurred in 6085 numbered Law, again deactivated Court of Supreme Accounts for the auditing of institutions with less than %50 of public share, annihilated the on-site auditing authority of Supreme Court of Accounts in terms of these institutions. Supreme Court of Accounts, within the scope of this change, can only send opinion to Grand National Assembly based on independent auditing reports.

2.2. General Principles of TCA's Auditing and Public Loss

With additional Article 2 of Article 35 of 04.07.2012 dated and 6085 numbered Law, 'public loss' had been included to the general principles of auditing. within this context, external auditing and reports based on this auditing undertaken by Supreme Court of Accounts were more focused on whether public loss had occurred or not. In other words, for the regularity auditing, examination and determination whether public loss had occurred, was taken as basis. Without a doubt, this caused the consideration of judgment mission of Supreme Court of Accounts as primary and auditing mission as secondary and caused to focus on determining the public loss, ignoring accounting standards and performance auditing. The public loss determination of Supreme Court of Accounts is being undertaken within the scope of 5018 numbered Law. The Article 71 of the Law, which defines the public loss is given below (PFMC 2012);

“Article 71 (Public loss) - (Amendment first paragraph: 25.4.2007-5628/4 art.) Public loss is preventing an increase or causing a decrease in the public resource as a result of a decision, transaction or action that violates the legislation and that stems from their intention, fault or negligence.

When determining public loss, the following are considered;

- a) To make payments in excess of the amount determined as the price of works, goods or services,
- b) To make payments without receiving the goods or without having the work done or service provided,
- c) To make excessive or groundless payments in the expenditures in the form of transfers,
- d) To purchase goods, works or services, or to have them done for a price higher than their market price,
- e) Not to impose, accrue or collect the revenues of the administration in accordance with the legislation,
- f) (Abolishment: 22.12.2005-5436/10 art.)
- g) To make payments although not envisaged in the relevant legislation.

(Amendment third paragraph: 22.12.2005-5436/10 art.) A public loss determined as a result of controls, audits, examinations, final sentence or trial shall be collected from the relevant persons together with its legal interest to be calculated according to the related legislation as of the date of the loss occurred.

Officials who prevent an or cause a decrease in the public resources by issuing false documents where any money, goods or values which have not in fact been received appear to have been received, any services not rendered appear to have been rendered, or any construction, repair or manufacture works not executed or completed appear to have been executed or completed; and officials who deliberately issue, sign or approve such documents shall be subject to a legal action pursuant to the relevant provisions of the Turkish Penal Code or other applicable laws. In addition, those having undertaken such actions shall be subject to a fine amounting up to two times of the net monthly payment they earn including all kinds of salary, allowance, pay raise and compensation.

(Amendment the last paragraph: 25.4.2007-5628/4 art.) The procedures and principles regarding the compensation of the public losses from the public official who has caused the mentioned loss or from other real and legal persons shall be governed in a by-law to be issued by the Council of Ministers upon the proposal of the Ministry of Finance.

As it can be understood, determination of public loss is crucial in terms of regularity auditing and it gains importance within the framework of judgment authority duty of Supreme Court of Public Accounts. Furthermore, auditing duty of Supreme Court of Public Accounts defined in 6085 numbered Law as primary, should be considered at the front of the scene.

Auditing tools in public are defined as presenting sufficient and adequate information to both public and Turkish Grand National Assembly as the prerequisite of budget right, executing of public financial administration in competence with legislations, protecting public sources, evaluating the performances of public administrations, public accountability and setting of financial transparency and extending of all these in general. Thus, within the objectives of auditing, Supreme Court of Public Accounts should not only focus on determination of public loss it its implementations.

3. AUDIT GAP CREATION for SEMI-PUBLIC COMPANIES

With the amendment of 6085 numbered Law, extracting of companies which have less than %50 public shares from the auditing scope of Supreme Court of Public Accounts and making them subject to independent external audit, derived some issues for these mentioned companies;

- Are all these companies which do not take place within the audit area of Supreme Court of Public Accounts, subject to independent external auditing?
- In case there are companies out of the audit area of Supreme Court of Public Accounts, how will they be audited?
- In case all these companies are passed through independent external auditing, will these auditing reports be adequate for Supreme Court of Public Accounts to prepare an opinion and to present it to Turkish Grand National Assembly in competence with 6085 and 5018 numbered laws.

When the answers of these questions are taken into account, it is clear that an audit gap will emerge for semi-public companies that have less than %50 public shares. The problems that may derive from the audit gap are evaluated in two aspects; these are (1) legal gap and (2) difference in the purpose of auditing.

3.1. Legal Gap

6102 numbered Turkish Trade Code, which was approved by Turkish Grand National Assembly on 13th January 2011 and published in 14th February 2011 dated and 27846 numbered Official Gazette, came into force with general terms on 1st July 2012. 6102 numbered Turkish Trade Code was prepared in order to renew 1957 dated and 6762 numbered Turkish Trade Law and to facilitate the adaptation of European Union *acquis communautaire*. At the same time, 6102 numbered Turkish Trade Code aims to create more transparent and reliable investment environment in Turkey. As a part of adaptation process, Public Oversight Accounting and Auditing Standards Authority (KGK) had been established in accordance with 26th September 2011 dated and 660 numbered Governmental Decree (KHK) on Organization and Duties of Public Oversight Accounting and Auditing Standards Authority (KGK).

6102 numbered Law, initiated a new period for the companies within the scope and external auditors by focusing on important issues. Among these subjects there are some new issues such as subjects related with book keeping, preparing of financial statements, being subject to independent external auditing, activity reporting, early diagnosis of the risks, and new liabilities for independent auditors.

6102 numbered Law brought several arrangements related with independent external auditing. These arrangements determine the scope, limitations of the external auditing as well as the liabilities of external auditors.

Articles 397 and 398 of the 13.1.2011 dated and 6102 numbered Turkish Trade Code related with external auditing are given below (TCC 2011);

“Article 397 (In general) - (1) Financial statements of share company or corporations will be audited by an auditor due to Turkey Auditing Standards in competence with international auditing standards. The issue whether financial information that take place in the annual activity report of executive board is compatible with audited financial statements and whether they reflect the truth, is considered within the scope of audit.

(2) Financial statements and annual activity reports of executive board are considered unarranged unless they were subject to auditing of the auditor.

(3) In case financial statement and annual activity reports of executive boards of the companies are changed after presenting of auditing reports and such change has the characteristics of auditing reports, financial statements and annual activity reports of the executive board within first clause are re audited. Re auditing and its result is specially explained in the report. Also in auditor’s opinion, appropriate attachments are added reflecting the re auditing. “

“Article 398 (Subject and scope) - (1) Auditing of financial statements and annual activity reports of executive board is the auditing of inventory, accounting and internal audit within the framework of standards foreseen by Turkey Accounting Standards, reports delivered in accordance with rules of Article 378 in this section and annual activity reports of executive board within the first clause of Article 397. This auditing involves whether it is in competence with Turkey Accounting Standards, law and rules of the main agreement on financial statements. Auditing is being realized within the principles determined by the board and institution foreseen in temporary 2nd and 3rd articles, and in competence with ethics that auditing profession requires. Auditing is exercised to determine whether properties and financial situations of the companies or corporations are honestly reflected within the scope of Article 515 and if not, its reasons in honest manner.

(2) Auditing is exercised in order to define and explain;

a) Financial statements of the company and annual activity reports of executive boards within the scope of first clause of Article 397 and second clause of Article 402,

b) Whether consolidated financial statements of corporation and annual activity report of executive board within the scope of first clause of Article 397 and second clause of Article 402, are in competence with the data and information auditor gathered during auditing.

(3) Auditor, responsible of the auditing of financial statements, audits financial statements of the companies that are taken into consolidated tables of corporation, especially adaptation and accruals subject to consolidation within the scope of first clause unless company taken into consolidation has been audited as a requirement or law or without necessity in competence with the rules of this section. This exception is also valid for a company of which registration office is in a foreign country, that has been the subject of auditing equal to the one foreseen in this Law.

(4) Auditor audits in order to determine whether the executive board has established system and authorized committee to determine the risk that may compose threat to company on time and to realize risk management foreseen in article 378, and if there is such system, auditor prepares another report including its structure and implementations of committee and presents it to the executive board along with the auditing report. The principles of this report are determined by the board and institution foreseen in temporary 2nd and 3rd articles”.

The Law in general defines the scope of independent auditing for companies subject to independent external audit and how the audit will be executed. Financial statements of share companies and corporations should be audited by the auditor in competence with Turkey Audit Standards that are in parallel with international auditing standards published by KGK. Same Law also involves annual activity reports within the framework of auditing. Within this scope, according to Governmental Decree on Determining Minimum Content of Annual Activity Reports of Companies published by Ministry of Customs and Trade, the annual activity report should be presented within two months following the end of accounting period it is related with.

According to 6102 numbered Law, companies that are subject to audit, will be determined by Council of Ministers. About determining the scope, on 23rd January 2013 dated and 28537 numbered Official Gazette, Decision of Council of Ministers on Determining of Companies Subject to Independent Audit, has been published. In this decision, certain criteria were defined about the scope of audit. After that, on Decision making amendment on Decision of Council of Ministers on Determining of Companies Subject to Independent Audit published on 1st February 2015 dated and 29254 numbered Official Gazette, independent auditing criteria were leveled down. In determining whether companies are subject to audit or not, general criteria on total assets alone and with its associated partners, annual net sales and number of employees, are given below;

- i. the ones with assets of 50 million TL and above,
- ii. the ones with 100 million TL and over annual sales amount,
- iii. the ones with more than 200 employees.

How these criteria will be evaluated in being subject to independent audit, is being realized due to KGK Board Decision Related with Methods and Principles of Decision of Council of Ministers on Determining the Companies which are Subject to Independent Audit published on 12.03.2013 dated and 28585 numbered Official Gazette. According to the decision of Council of Ministers, the companies should meet at least two of those mentioned three criteria two accounting years in row in order to be a subject of audit. Those meeting criteria should not be the same.

Within this context, the companies which surpass the limits of at least two of three mentioned criteria in two accounting periods in row, becomes the subject of audit in the following accounting period. Companies which are subject to audit will be taken out of the scope of audit in case they are below the determined limits of at least two of three criteria in two accounting periods in row or they are twenty percent or more below of the limits in the two of three criteria, in the following accounting period. In determining whether the limits of two of three criteria are surpassed, active sum of the company and financial statements of the previous years (last two years) prepared in competence with current legislation, and number of average employees in recent years (last two years) are taken into account. Considering companies with associated partners and, in determining whether the limits of two of three criteria are surpassed, active sum, sum of units that take place in financial statements of main partnership and associated partner in terms of annual net sales revenues (if any inner group transactions are eliminated), number of average employees in recent years (last two years) are taken into account. In terms of joint ventures, such criteria are considered due to amount of shares in the ventures.

Within the framework of 6085 numbered Law, for semi-public companies that are not within the scope of audit of Supreme Court of Accounts, to be subject of auditing, they have to meet the criteria of independent external audit defined in 6102 numbered Law. Otherwise, although they have less than %50 public share, these semi-public companies will not be subject to any external auditing. In other words, there occurs an audit gap for these companies deriving from a legal gap. After the amendment of 6085 numbered Law, Supreme Court of Accounts initiated study to determine the companies within the context of such legal gap.

3.2. Difference in Purpose of Auditing

There are many semi-public states in Turkey where the public is a partner and has less than %50 shares. For example, Turkish Airlines is one of those and is subject to independent external audit within determined criteria. On the other hand, will the report emerged as the result of independent audit be sufficient enough for Supreme Court of Accounts to deliver an opinion to Turkish Grand National Assembly within the scopes of 5018 and 6085 numbered laws?

Independent external auditing is applied in order to determine whether the financial statements are properly, accurately and truly reported without any deceits. Within this framework, independent external audit examines the suitability of financial statements to international accounting standards as generally accepted accounting concepts and principles; accuracy of information presented in financial tables based on auditing evidences. Thus, the liability of auditor in independent external audit is to deliver opinion on the accuracy of financial statements on the basis of objective and confirmable reports. This opinion alone will not be enough to meet audit and judgment missions of Supreme Court of Accounts due to 5018 and 6085 numbered Laws.

As it was mentioned, the Supreme Court of Accounts makes evaluation in order to determine 'public loss' in its auditing activities. Main purpose is to determine in case public source composed of taxes paid by the citizens, have been used efficiently and in case of determination of public loss, to pay the responsible to account by using its judgment mission. Independent external auditing within the scope of 6102 numbered Law, is not interested in objectives and principles of determining of public loss and determining of responsible within the scope of account judgment.

These certain distinction and differences among two external audits, removes the possibility of making audit for semi-public companies that use less than %50 public source within the scopes of 5018 and 6085 numbered laws even though they are subject to external auditing. This audit gap deriving from the differences in audit purposes makes Turkish public financial administration and audit system functionless for these semi-public companies.

4. CONCLUSION AND SUGGESTIONS

Turkish public financial administration and audit system has been managed by 5018 numbered 'Public Financial Management and Control Law' and 6085 numbered 'Turkish Court of Accounts Law' and whether the public sources are properly used has been audited by Supreme Court of Accounts. Along with performance and regularity audit, Supreme Court of Accounts also undertakes the mission of judgment. Within this framework, in the regularity audit, it evaluates and determines the emergence of public loss and in case of suspicion of occurrence of public loss, it makes account judgment by undertaking supreme court characteristics. The content of public loss has been defined in 5018 numbered Law.

According to 6085 numbered which came to force on 1.1.2006, audit area of Supreme Court of Accounts began to include all general administration institutions. Following, with the amendment of article 4 of 6085 numbered Law on 14.01.2016, audit area of Supreme Court of Accounts has been re organized. According to this change, institutions with less than %50 public share, will be audited by independent external auditors and Supreme Court of Accounts will present its opinion based on these reports to Turkish Grand National Assembly.

With this change, an audit gap occurs deriving from the legal gap for the semi-public companies which are not subject to independent external audit due to 6102 numbered Law although they have less than %50 public share. Supreme Court of Accounts initiated study to determine these semi-public companies deriving from legal gap.

In case all semi-public companies with have less than %50 public share had been subject to independent external auditing, the problem of audit gap could not be solved. Because while Supreme Court of Accounts has been auditing based on public loss, independent external auditing has been making auditing reporting within the scope of 5018 numbered Law. Independent external auditing,

evaluates principally the veridicality of financial statements. Within this concept, such independent external audit reports, will limit Supreme Court of Accounts to deliver opinions within the scope of 5018 and 6085 numbered laws. Thus, the difference of purposes among both two audits, has caused an unsolved audit gap problem in Turkish public financial administration and audit system for this kind of semi-public companies.

Solutions with three different points of views can be brought to this problem. First, is to remove the changes in 6085 numbered law. But, this alternative is not realistic. Besides, such mentioned change has also some positive aspects as well. These kind of semi-public companies in global and liberal markets which aim value maximization, including into the public loss concept defined in 5018 numbered law, will rise administrative problems and affect negatively the growth of the companies. Because, investment and administration decisions are given within the framework of risk-return-term optimization and every decision may cause loss due to risk it carries with. Thus, auditing of semi-public companies based on public loss, may facilitate administrators to stay away from risks and to evaluate potential investment alternatives.

Second is to remove audit gap deriving from legal gap. In other words, for semi-public companies that have less than %50 public share but not subject to external audit due to 6102 numbered law, there should be an alternative external audit mechanism should be developed. Preparation for 'Local Accounting Standards', which straitens the scope of International Accounting Standards and which is being applied in EU, can be a solution to the problem. Following these standards coming to force, more simplified audit process can be undertaken for the companies liable to apply Local Accounting Standards.

The third and the most important is the solution foreseen to remove audit gap deriving from the differences in audit purposes. With the change in 6085 numbered Law, the amount of public share determines which companies will be subject to Supreme Court of Accounts audit and which will be subject of independent external audit. This criterion is defined as %50 in determining administrative responsibility. Briefly, this is understood from the article: if the administrative responsibility of company belongs to public, the audit of Supreme Court of Accounts, in case does not belong to public the audit of external auditing will be valid. Then, what should be done, is to make necessary arrangements to re involve semi-public companies that were taken out of the scope of Supreme Court of Accounts again into the audit of Supreme Court of Accounts. For this, two changes-amendments have to be done in 6085 and 5018 numbered laws;

- i. With the change in 6085 numbered law, an arrangement should be applied on for semi-public companies which have less than %50 public share are subject to regularity audit in order to determine public loss by Supreme Court of Accounts and additionally making independent external audit due to 6102 numbered Law.
- ii. With change and amendment in 5018 numbered Law, public loss definitions that will be based in regularity audit of Supreme Court of Accounts, should be redefined in additional article unique to semi-public companies that have less than %50 of public share in order to remove administrative inconveniences.

As the result of the system emerged with these two arrangements, it is possible to remove audit gap both involving first and second solutions. Without a doubt, the content of the proposed change on the 5018 numbered law is an important issue to study on. Within this context, future studies should be undertaken based on this study about the content of related suggestion.

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