

The Efficiency and Functionality of Independent Regulatory Agencies in Developing Countries: Turkish Case

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Abstract

Independent regulatory agencies have emerged as the basic institutional structures of the rising “regulatory government model” after 1990’s. These institutions are different from traditional political and administrative structures because of their original institutional definitions, functions, power ,organizational qualities and importance within the government.

The regulatory agency phenomeon is not a new subject. Many regulatory agencies appeared in public sector related with the markets in USA with the beginning of the nineteenth century and similar institutions emerged first in Western Europe and then in many other countries after 1980’s with the rise of neo-liberal concept.

The existence, legitimacy and power of these institutions producing and implementing public policies in the name of public and independent from bureaucracy and governments have always been a subject of criticism. It has been a matter of discussion how they emerged and overspread. The reason of imposition by the suprational institutions like IMF, WB, OECD and EU and how and why the national governments accepted to transfer their powers to these agencies are the questions to be answered. There have been serious discussions on these subjects worldwide.

Independent regulatory agencies have been an important subject in Turkey’s agenda in the last twenty years. They have been praised for helping the country to avoid the negative effects of global financial crisis (as in the case of Banking Regulation and Supervision Agency-BDDK) but on the other hand they are criticised for helping the governments to avoid their responsibilities (as in the case of Radio and Television Supreme Council-RTUK and Energy Regulations Regional Association –EPDK)

In this paper, it will be discussed if the independent regulatory agencies will play an efficient and functional role in developing countries like they did in developed Western countries by examinig the case of Turkey.

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Introduction

Nowadays, it is really getting harder for the governments to deal with the rapidly changing world. One of the main reasons for this is the slowly working bureaucratic structure and the lack of ability of governments to deal with the new emerging fields of interest as there is a

need for a new regulations. That's why governments prefer to establish independent regulatory agencies (IRA) more than ever. In fact these agencies are not a new phenomenon. After the economic crisis in 1929 the USA handled with the situation by establishing these structures. but European countries chose nationalization .Coming to 1980's beginning with the wave of privatization, the countries this time started establishing independent regulatory agencies in order to get over the difficulties and problems of privatization. Another reason for the increase of these agencies was, the desire of governments to stay away the pressures coming from the political and economic pressure groups which operate in infrastructure, financial and competition markets. Also the desire coming from the international organizations which one of them is the European Union is an important factor. The EU wants the member and candidate countries to separate the operator and regulator roles of governments especially in privatized sectors. So today it is obvious that independent regulatory agencies are becoming an integral part of governments.

The Need for Regulation

Complex structure of both the economy and the society and the need for competition derived from this reason, emerging new service fields, conditions of the sectors after privatization and the externalities brought by the economies have increased the need for regulation (OECD, 1998:193). For this reason, regulatory organizations have been established in many countries. Regulation means providing the compliance of the individuals and corporations with the legal regulations through sanctions. Such sanctions can comprise of prohibition of certain activities, cash fine and disclosure of the violations to the public (Çevik and Demir, 2005:251). This may also be called regulation in narrow sense. When the regulatory role of the state is concerned, it means the organization/direction of the executed activities and related processes through rules, incentives and restrictions to be defined by units authorized to issue and impose sanctions (Guash and Hahn, 2004:1). This situation may be called regulation in a wider sense. Main targets of regulation are as follows (Joskow, 1998:12-13):

1. Providing efficient distribution of the goods and services among consumers and preventing the harmful activities of the leading companies in the sector against this efficiency.
2. Providing cost efficiency, in other words, allowing the companies providing goods and services to maintain their activities with the minimum costs. Other targets regarding the wider segments of society can be added to the main targets given above. These are:

- Trying to make the goods and services reach all over the country even if it does not cover their costs,
- Preventing the leading goods and service providers from making profits in excess amounts and therefore protecting the consumers from higher prices.
- Estimating for investor companies to gain a competitive profit,
- Allowing investor companies to maintain their activities by closely following the technological developments,
- Providing a foreseeable stability in a positive way. Providing such guarantee will constitute a positive factor in investment environment.

The purpose of regulation organizations may be summarized as (Tan, 2002:14):

- 1-The classical public organizations are not suitable for solving the problems in economic areas as they are complicated and technical
- 2-It is better for the independent regulatory agencies to make decisions in those areas where governments are both the referee and the player
- 3-It is possible and easy for these agencies to make decisions that the politicians can not make easily and design politics for long terms and watch them

4-The politicians prefer these authorities as they want to get rid of the negative results of economic and political crises

The Characteristics of Independent Regulatory Agencies

There are two main reasons for the separation of Independent Regulatory Agencies from other organizations. The first is independency and the second is regulation. Such reasons shall be referred below (Tan, 2002:117-120; Aslan, 2010:32-35, Ulusoy, 1999:5-7).

Being independent is not a target in such authorities. Independency is a tool for more efficient use of the authority with an aim to create public benefit. Such authorities are called the Forth Branch of Government in an addition to the classic government powers in Anglo-Saxon literature.

However, the fact that such authorities are responsible before the parliament for making regulations, accountability and similar issues should not be neglected. These agencies have no disposal in inspecting the political power and other administrative units regarding their bodies and their functions. This is called administrative independence. Organic independence is allowing employees in decision making bodies to make decisions by delivering certain assurances for them. That is to say, the members are generally elected for certain and not short terms for the reason that they operate in councils, they are not withdrawn from duty unless their term is completed and they cannot be reelected after the completion of the term of duty.

The reason for those completed their terms not being reelected is to maintain the impartiality of the members. To prevent the members from being punished for their decisions, it is provided for those completed their terms to be appointed to their previous positions or an equal duty. Thus, such members are allowed to make decisions without any risk of job loss. Functional Independence is that the executive body lacks the authority to annul the operations and activities of such authorities. Enforcement Independence means these agencies should possess the capacity to apply/have applied for their duties to be executed for public benefit because of the responsibilities they face. Financial independence means that they are not restricted by the state budget capabilities to execute their duties. Independence does not mean that such organizations are not subject to any auditing. They are subject to jurisdiction and legislation auditing as per the integrity of state principle. Their decisions may be annulled by judicial organs and their budget may not be approved by legislation bodies.

Regulation function; failures in execution of certain duties by the state have caused the emergence of Independent Regulatory Agencies. They use their authorities regarding decision making and auditing while they realize their functions. Furthermore, they may use Sui Generis authorities regarding the regulation function. The power for decision making means that such authorities may execute administrative operations. Within the scope of auditing power, there are activities such as conducting research and review, executing investigations and imposing sanctions and activating the jurisdiction. Regarding Sui Generis authorities, powers that are not owned by other administrative bodies may be given as example such as recommendation and submission report and information to public opinion on their field of operation.

Independent Regulatory Agencies in USA and Europe

IAs show differences from one country to another and there is not a certain model covering all countries. Countries organize their own models according to their democracy culture, administrative structure and management approaches. The earliest applications of IAs are in USA. The first IAA in this context is the Interstate Commerce Commission established in 1887. The main reasons for the establishment of IAs in USA may be summarized as follows:

- 1) The demand for creating a federal structure especially in economy related fields due to the federal government structure of the country,
- 2) The demand for restricting the powers of the President by establishing IAAs due to the power and authority conflict between the President and the Congress.
- 3) The preference to overcome this chaotic environment occurred in USA after 1929 depression through IAAs (Karacan,2002:24).

When the regulation concept is concerned from the European point of view, it would not be wrong to say that this is a newer concept when compared to USA. As the production activities in Europe are mainly owned by public sector contrary to USA, these have been regulated by the state. On the other hand, such activities have been executed through federal and local commissions in USA.

In Europe, IRAs have been established in seven sectors in France. There are strong similarities between the two utility regulators, which combine extensive independence for decision-makers with weak regulatory powers and moderate organisational autonomy and independence with respect to government and parliament. The two other economic regulators, for competition and financial markets, share weaker autonomy for agency heads, management boards, and organisational matters. In addition, the three social regulators are similar on all dimension with the exception of competencies, where the pharmaceuticals regulator is unusually autonomous. It is also interesting to note that the agency head is more independent than the management board, which confirms that the two need not be symmetric. Finally, it seems that three models can be identified, for utilities, other economic regulators, and social regulators.

The figures confirm that IRAs in Germany tend to be less independent than in other countries. They are also very heterogeneous, as all dimensions vary considerably across sectors. There is no IRA for electricity. Germany is the only country with Switzerland, where the government has not delegated regulation of the electricity market to a specialised agency, although the competition agency does have some powers. Another interesting point is that the financial markets regulator, born in 2002 from the merger of previously separated agencies, has a large organisational autonomy (which is unusual for Germany) but otherwise very weak independence on the other dimensions.

Italian IRAs have high and similar independence scores. Their composition is also similar. The telecom and electricity regulators exhibit almost the same characteristics: few competencies, but extensive autonomy on the other dimensions, although the decision-makers of the telecom regulator are slightly less independent. This similarity is not surprising, as the two IRAs have been designed on the basis of the same blueprint. The financial market regulator, which is Italy's oldest IRAs also has limited powers but relatively high independence on the other aspects, although less than the two other IRAs. Finally, there are no independent regulators for food safety and pharmaceuticals, while separate authorities exist for both competition and environment. (Gilardi,2003:11-14)

Characteristics of Independent Administrative Authorities in Turkey

IRAs started to be established in Turkey as from 1980's. The first clause of Article 167 of 1982 Constitution is

as "State takes measures to provide and improve the healthy and organized operation of money, loan, capital, goods and service markets; prevents monopoly and cartelization to emerge actually or as a result of agreement in markets". Regulating and auditing the activities of both public and private sector in areas defined above and to prevent violating actions by sanctions are under the scope of the duty assigned to state by Article 167 of the Constitution.

In an addition to the reasons defined in the Constitution, the services provided by state have started to decrease and the privatization process of SEEs as begun with the effect of globalization having influence in Turkey since 1980's. But in order to prevent private monopolies that may occur as a result of the possession of such services by private sector, public authority has preferred to establish IRAs to make regulation with the influence of the international organizations and the conjuncture.

Not all of the IRAs have the same characteristics. They may be divided into two main groups. The organizations in the first group execute regulation and auditing functions in areas that are also called sensitive sectors of public life. Radio and Television Supreme Council, Capital Market Board, Banking Regulation and Supervision Agency, Public Procurement Agency and Competition Authority may be given as examples to this group. The organizations in the second group are concerned in areas that became operative with the participation of public sector after the opening of public services that were under the monopoly of state to competition. Telecommunications Council and Energy Market Regulatory Authority may be given as examples to this group.

The characteristics of IAAs in our country may be summarized as follows: (Tan, 2002:27-29, Sezen, 2003:147-150, Atay, 2006:274-289)

1-IRAs have public legal entities. They derive their baseline from the Constitution and they have administrative and financial autonomy.

2- These agencies are established by law. - In this context, we can say that all councils in Turkey have legal entities. The main reason for IRAs to have such characteristics is to allow both the organization and the personnel to operate away from the oppressions politics and politicians

3 -IRAs have the authority to make regulations in their operation fields. They can use this authority by issuing regulations. They can make regulations under titles such as decision and notification additionally

4-IRAs conduct their consultation functions by submitting their opinion in their operation fields to the related organizations and institutions.

5- IRAs have broad authorities in imposing administrative and financial sanctions in their operational fields.

6-IRAs may be commissioned in resolution of disputes in their own fields .

7- The main decision body of IRA's is the councils.

8- The number and the duty terms of IRA members show difference according to their operational fields.

9- The members of IRAs are appointed by the Council of Ministers (except for Radio and Television Supreme Council).

10- IRAs may gather subsidies from the general budget as well as obtaining income from their operational fields.

11- IRAs should provide the compliance with the rules enforced by law and their own regulations.

Conclusion

As the duties and responsibilities of governments increase day by day, there have been some complicated areas that have to be organized privately and interdependently. That's why independent regulatory agencies came to the agenda. The responsibilities, duties and organizations of these agencies changes from country to country and they are often criticized of being centers of power besides the governments. However, if they are managed properly, it can be said that they play critical roles especially in economic arena. Independent regulatory agencies are comparatively new structures in Turkey and it is hard to say that they found their exact place and role in Turkish administrative system. They have to be developed as it seems that they will continue to increase.

Table:Independent Regulatory Agencies in Turkey

Agency	Scope	Purpose
<i>Capital Market Boards of Turkey (SPK)</i>	Capital market instruments and their issuance, public offering and sale; those who issue or offer them to the public; exchanges and other markets organized pursuant to the Law; capital market activities; capital market institutions;	to regulate and control the secure, transparent and stable functioning of the capital market and to protect the rights and benefits of investors with the purpose of ensuring an efficient and widespread participation by the public in the development of the economy through investing savings in the securities market.
<i>Radio and Television Supreme Council (RTÜK)</i>	matters relating to radio and television broadcasts transmitted by any and all techniques, methods or means and by electromagnetic waves or other means under any denotation for reception domestically or abroad.	To prescribe the principles and procedures relating to the regulation of radio and television broadcasts
<i>Turkish Competition Authority (RK)</i>	Agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the boundaries of the Republic of Turkey, and the abuse of dominance by the undertakings dominant in the market, and any kind of legal transactions and behaviour having the nature of mergers and acquisitions which shall decrease competition to a significant extent, and transactions related to the measures, establishments, regulations and supervisions aimed at the protection of competition	to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end.
<i>Banking Regulation and Supervision Agency (BDDK)</i>	banks and financial holding companies	To regulate, enforce and ensure the implementation of the establishment, activities, management and organizational structure, merger, disintegration, change of shares and liquidation of banks and financial holding companies and with the reservation of the provisions of other laws and the related regulation, financial leasing, factoring and consumer financing companies, and monitor and supervise enforcement of such,
<i>Information and Communication Technologies Authority (BTK)</i>	All telecommunication services	to inspect telecommunication facilities in respect of them being compliant with the principles to determine the applicable terms and procedures and to detect the

		compatibility of the equipment to the standards
Energy Market Regulatory Authority (EPDK)	electricity, natural gas, oil and LPG	to manage and supply electricity, natural gas, oil and LPG, sufficient, with good quality, continuous, low-cost and environmentally friendly way to consumers
Turkish Sugar Authority (ŞK)	sugar,flavouring	to regulate the sugar regime , the procedures and principles applicable to sugar production, and conditions and methods of pricing and marketing, with the objective of meeting local demand by local production and making exports thereof when necessary.
Tobacco and Alcohol Market Regulatory Authority	Tobacco products,alcohol beverages	To arrange the principles of production and sale of tobacco products and alcohol beverages
Public Procurement Authority	All public organizations	to establish the principles and procedures to be applied in any procurement held by public entities and institutions governed by public law or under public control or using public funds.

Source:Adapted from Emek and Acar,2004:123

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