THE IMPACT OF GLOBALIZATION ON THE ORGANIZATION OF PUBLIC ADMINISTRATION: TURKISH CASE*

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Abstract: *This paper deals with the impact of globalization on the organization of public administration in Turkey. The most important consequence of the globalization process could be found in the building and the rapid spreading of a new type of institution called "regulatory agencies" or "independent agencies." These institutions differs from other public institutions by their broad authorities, their collective decision making system, the presence of interest groups representatives in their decision body, the level of their autonomy from the political power, their budgetary possibilities and high personnel wages.*

After a description of national and international policies leading to this transformation, the general characteristics of regulatory agencies and their peculiarities are examined. Afterwards the changes occurred in Turkish public administration with their creation are evaluated. Regulating agencies are studied from the stand point of their place in the state organization chart, their impacts on relations between executive versus legislative powers and also relations between politics and bureaucrats and accountability of the administration.

Keywords: *regulatory agencies, independent regulatory agencies, public administration, globalization, Turkey.*

I. Introduction

Either we tackle it as a concept or as a fact, the first thing we can say about globalization is that it is chewed up and swallowed a lot. Kettl (2000: 490) rightfully says that while approaching to the year 2000 there is not a speech that ends up without making reference to globalization. Secondly, despite certain emphasis there is a set of definition of globalization, which varies according to the standpoints and the ideologies of the persons concerned. According to some,

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this is a new ideology of capitalism and some describe it as a "new form of imperialism" (de Vries, 2001: 394). According to Cerny (1999: 188) globalization is "the convergence of economics and politics across borders into single dominant model, a variant of liberal capitalism aligned with neo-liberal politics" or "the intersection of different form of both convergence and divergence." Giddens interprets these developments as "the emergence of a world economy, a world polity and perhaps a culture, in short, the emergence of a world society" (Giddens, 1991). Lastly Chandler (2000: 13) touches upon the "Americanization", which underlines the culture orientation. From a general point of view, globalization can be considered as a process in which extension of information, circulation rate of capital has gained a significant momentum and in which the obstacles in front of this circulation are eliminated. It is difficult to find an area that this process did not affect and touch: national borders, values, cultures, policies, institutions and actors etc.

This paper discusses the impact of globalization on the organization of the Turkish public administration. Turkey is one of the countries that have been deeply affected from the globalization policies. New right policies were illustrated mainly by policies shaped by Mr. Reagan and Mrs. Thatcher. These policies have lead to the process of restructuring the state from the early 1980s until recent years. One of the concrete indications of the restructuring is the emergence of the "new sort" of public organizations, which are called as "independent regulatory agencies" or "independent administrative authorities" and the proliferation of these public organizations. In this paper, firstly a frame of general impacts of globalization on the public administration shall be drawn. Later on, the basic policies, which provided the transition from interventionist state to regulatory state in Turkey, and the means of implementation of these policies, shall be mentioned. And then, in the following section, the general features of the regulatory agencies in Turkey shall be laid down and their status in public administration shall be defined. Lastly, the problems emanating from the regulatory agencies in one hand and in the other the impact of these agencies on the legislative body-executive body relations and also executive body-bureaucracy relations will be discussed. In other words their impact on the way of policy making shall be reviewed on the axes of recent developments.

II. Globalization and Its Impacts on the Public Administration

The main target of the globalization process, which affects many dynamics of social life, is the nation states. On one hand the area of the state's sovereignty has been narrowed and on the other hand its functions, functioning and responsibilities as shaped after the World War II were redefined. The state has abandoned to market forces, the areas that it occupied after 1945, under the influence of the new right policies. With the applications of privatization and deregulation, state's role on production, accumulation and distribution was

weakened and its regulatory role came to the front line. This transformation symbolizes a transition from interventionist state to regulatory or arbitrator state. Not only the state and its socio-economic functions were transformed, but also state's institutional organization and its functioning, the judicial rules on which it is dependent, personnel regime and lastly conceptualization of public services entered into a thoroughly transformation process. This transformation could be described as a shift from the public administration to new public management (NPM). NPM considers that public sector can be managed as in private sector and the values and operational techniques of the private sector can be adapted to public sector. "It advocates treating citizens like customers, separating public administrators from the public policy process, and convincing both that government is nothing more than a business within the public sector" (Box et al., 2001: 611).

As a scholar has mentioned, "globalization has been accompanied by the creation of new legal regimes and legal practices and the expansion and renovation of some older forms that bypass national legal systems" (Sassen, 2000: 57). Within the context of elimination of transnational commercial disputes, the role of national legislation was receded, yet the role of international commercial arbitration centers has gained significance. This development can be interpreted as the privatization of jurisdiction. The concrete indicator of this development is the increasing number of international commercial arbitration centers. In 1993, there were 127 arbitration centers (Sassen, 2000: 57, 58). On the other hand, in the countries, where there is a separate jurisdiction order for public administration, the dependence of public administration to administrative law is seriously eroded and the function of administrative law is transformed. A scholar suggests that "in global era, administrative law now appears to be moving from its role as a surrogate political process that legitimates new extension of public power, to one that legitimates new blends of public and private power and/or private power used for public interest ends" (Aman, 1999: 270).

While the globalization process has been eroding the state's sovereignty within the national borders, it has also modified the way of using the existent authority of the state. In this context, we can say that there were two-dimensions of authority delegation: authority delegation within the national borders and at international level. Therefore a two-dimensional erosion of state's authorities is in question. While the state's economic, political and judiciary authorities are transferred to the transnational powers, it is forced to share its existing authorities with the other actors. The result of globalization is not only the loss of state's power but also the change of ways and methods of using the remainder of its power. This transformation is expressed through the concepts of governance and new public management. Governance has redefined the use

of public competence and suggests the joint use of this authority not only by the official actors but also by the unofficial actors and it gives importance to the role of non-governmental organizations. New public management considers the delivery of public services as a technical issue and instead of the concepts like public interest, conformity to the law; it substitutes the management-related concepts such as profitability, productivity and the customer preferences. Briefly, both the governance and the new public management lead to the elimination of the political content of the public services and their reduction to a technical activity.

The change of state's role lies beneath the transformation resulting from globalization process. While the sovereignty is eroded, the nation state itself becomes the actor materializing the transformations that is appropriate to the demands of globalization. In the era of globalization the main function of state is to secure the functioning of the market mechanisms. It is the state itself that ensures the adaptation of structural and legal mechanisms based on the conceptualization of social state, or welfare state, to the new function. The reflection of this transformation on the administrative structure of the state is the emergence of the new institutions that shall provide the functioning of the market mechanism. Therefore in many European countries and in Turkey, while the state is under pressure for being reduced for the benefit of the market, it is continuing to widen its institutional structure in order to secure a healthy competition environment.[1] The regulatory agencies have become the widespread model of the organization of the global era. As it is known the pioneer of these agencies is the Interstate Commerce Commission, which was established independent from the executive body in 1887 in USA (Huntington, 1996: 58-59). According to Pauliat (1998: 7-8), there are more than 50 regulatory agencies in the USA.

When we take into consideration their organization, functioning and their status vis-à-vis the executive body, regulatory agencies fit well in line with requirements of the globalization. Their wide autonomy from the executive body, their outstanding budgetary and staff possibilities, their independence from the strict rules and in some cases, during the decision process, the representation of the interest groups are compatible for the expectations of governance and new public management approach.

[1] For example, in Britain, despite privatization, or partly because of it, the number of public agencies has increased rather than declined during the last 20 years (Chandler, 2000: 7).

III. Transformation of the State in Turkey: From Interventionist to Regulatory State

"Until 1980, in Turkey, the state was involved in the economic life as a producer and as a regulator and was the engine of development" (Sezen, 1999: 216). The development policy, based on the mixed economy and the import substitution, was integrated to the conceptualization of planned development in 1960s. The State Economic Enterprises (SEEs) have been the means of implementation of this development policy. SEEs were not only instruments for investment and creation of new jobs but they have also played "a significant role in the development of the private sector" (Heper, 1990: 209). The state's intervention to the economic life was fulfilled through the compulsion of the conditions rather than the political preference. In the early years of the Republic, the national capital was so insufficient that it has leaded the state to accumulate the domestic capital. The 1929 crisis has intensified the implementation of etatism in 1930s. The state was the instrument of development and the applied etatist policies had the features to promote, prevent and develop the private sector rather than hindering it.

In the Turkish economic history, decisions of 24 January 1980 represent a turning point (Aksoy, 1993: 39). The development policy that has been implemented since the foundation of the country until this date was abandoned. A new concept of development was adopted. The main characteristics of this new concept were liberalization, integration to international trade and growth based on export. Following a military coup, the liberal policies were rapidly implemented in line with the recommendations of IMF in such a period when the social opposition was suppressed and these policies have gained a new momentum in the aftermath of the elections in 1983. The period (1983-1991) when the Motherland Party under the leadership of Turgut Özal, devout defender of the new right policies, came to the power alone, can be described by, in line with the new right policies, the staggering of both the economic policies and conceptualization of the state; and of all of the values that have directed the functioning of the state.

The main objective of these policies that were implemented during this period was to provide the transition to free market economy. The import regime, interest and price policies were liberated; the sectors like tea, tobacco were opened to the private enterprises by means of lifting the public monopolies and as from 1984 SEEs were initiated to be privatized.[2] We should not consider

[2] Since 1986, privatization implementations have gained momentum and 165 companies were privatized either via sale of shares or assets sale and in 147 companies no state shares were left. Total income from organizations included in privatization program during 1985-2001 (December) periods reached to US $ 9.9 billion. In the same period, total privatization expenses were US $ 9.7 billion (www.oib.gov.tr, 2002).

that the applications of privatization, which are still continuing today, were solely confined of the transfer of property. The applications within the scope of privatization can be cited as follows: The private companies have made important investments by means of build-operate-transfer method. The security and mail services, radio and TV broadcasting were opened to the private enterprises. Some internal services (e.g. food, cleaning) delivered by public institutions are now fulfilled by the private firms via the tenders.

The liberalization policies have changed the concept of the public service itself. According to the new concept, since the state is considered as an enterprise and the ones, who benefit from the public services as a customer, it is agreed as a principle that the ones, who benefit from the services, shall pay the price. For instance, the *Seventh Five-Year Development Plan* has had such a purpose that the beneficiaries of the public services shall pay the price of the individual benefit they obtained (Yedinci Beş Yıllık Kalkınma Planı, 1995: 20). The examples concerning the pricing of health, education and urban services can be cited as follows: paid examination has been implemented in state and university hospitals. The fees on the higher education were considerably increased. In primary and secondary schools the families were asked to donate to meet the expenditure of the schools. The environment and cleaning taxes have been put into practice.

In 1980s the status of the public bureaucracy under the influence of liberal policies was "set in the sidelines." Prime Minister Özal did not rely on high level public bureaucracy and preferred to work with the personnel, known as the "princes", whom he appointed to high positions in the public banks; and with a staff that consisted of advisors coming from the business circles. It is noticeable that there is a similarity between the working style of Özal and that of Thatcher, who preferred to work with the "outsiders" who came from business circles, instead of "insiders" (Evans, 1997: 54). This preference was actually a way to overcome the resistance of the conventional bureaucracy against the liberal policies. Another way to exclude the conventional bureaucracy from the decision mechanism was the use of councils. The councils have been transformed into very important economic decision centers either by endowing existing advisory councils with the decision competence of the or by establishing the new councils that have broad competences. Meanwhile the Ministry of Finance, the powerful institution of the conventional bureaucracy, has become a unit that solely collects revenues and its role in the economic management was weakened. This was materialized through separating the Treasury and transforming it to an Undersecretariat attached to the Prime Minister's Office.

The liberal policies, which are aiming at shrinking the state, leaving the economic functioning to the market powers have put an end to the "planned

development." The development plans were continuing to be prepared as required by the Constitution. But, that were the letters of intent given to IMF and the structural adjustment programs of World Bank rather than the five years plans that have actually shaped the socio-economic policies of the country. In 1980, practically the IMF stability program has replaced the Fourth Five Years Plan (Sezen, 1999: 305). This process has changed the quality of the plans. The comprehensive, detailed plans oriented to transform the society, have been replaced by plans merely oriented to transform the structure of the state. These plans, instead of preparing economic and social developments were only following developments of policies aiming the rebuilding of the state in the light of new right policies.

In Turkey, there is an administrative judiciary system. The liberal policies that were fulfilled after 1980 have a two-dimensional reflection on this judiciary system: a) the public areas, where the administrative law was applied were narrowed in favour of private law; b) the role of the national jurisdiction was narrowed in favour of the international arbitration centres for the motive of attracting the foreign capital to the country.[3]

In the early 1980s, the military government has started the restructuring of the state. Between 1983 and 1991, the Özal governments have continued to diffuse and deepen this restructuring through the motto of "integration with the globalizing world" and "keeping up with the era". During 1990s-2000s when the government was formed by a coalition of the center right and center left parties, the twosome, the IMF and World Bank could nearly be described as the "fourth power" in the administration of the country. The new steps were taken in the frame of European Union-Turkey relations (entry into force of the final step of the Customs Union Agreement (Ankara Agreement) in 1996 and the recognition of Turkey's candidacy as a full member at the Helsinki Summit in 1999). And within this context the necessity to harmonize national legislation with the European legislation and institutions was determinant for restructuring.

IV. A New Organization Model in Turkish Public Administration: Regulatory Agencies

In Turkey, a unitary state, the state administration is basically consisting of the central and the decentralized institutions. The main units of the central administration, in other words the general administration, are the ministries. There are 17 ministries and the ministers, who are the members of the Council of Ministers, are the chiefs of these ministries. As required by the constitution, each and every minister is responsible to the prime minister and is responsible

[3] According to the constitutional amendment in 1999, a possibility was provided, which is to solve the discords resulting from the privilege agreements on the on the public services, via national and international arbitrators.

for the activities within his competences and of the actions and operations within his ministry.

There are two sorts of decentralized institutions: The first one is the local governments that consist of the provincial local administrations, municipalities and village administrations. They are responsible of delivering local services and their decision-making bodies and the executive bodies (except for the provincial administrations) are elected by the public. The local governments are autonomous from the central administration and they constitute public corporate entities with a special budget. In order to provide the unity of the public services, preserve public interest and execute the local services in line with the principle of administrative unity, the central administration is endowed with the competence of administrative tutelage on the local governments. The second sort of the decentralized institutions is the "functionally decentralized" units, which are granted autonomy by taking into consideration the nature of the services they render. The educational and research institutions, SEEs, and some others constitute this category. These institutions, with their separate legal entity, are autonomous from the central administration and are subjected to the tutelage supervision of the central administration like the local governments. Except for the universities, the ones that are in the scope of this category are defined as attached or affiliated institutions either to the Prime Minister's Office or to a ministry.

According to the Constitution, "The administration forms a whole with regard to its structure and functions and regulated by law" (article 123). Either as a central administration body or as a decentralized body, all institutions, which take place in the state's organization, is subjected to the supervision of the executive body (government) in line with this principle. This supervision is broader, much more strict and hierarchic on the central administration institutions while it is looser on the autonomous decentralized institutions. The limits of this administrative tutelage are determined by law. This supervision relation between the executive body and the administrative institutions also put these institutions under the control of the legislative body. The Parliament that control the Council of Ministers, supervises indirectly these public institutions as well.

While the globalization policies drag the functions of the state from the "intervention" to the "regulation" it affects its organization structure as well. This impact has become mostly evident in the SEEs. Through the privatization practices, during last two decades the number of the SEEs has rapidly decreased in Turkey. On the other hand there was a proliferation of institutions that shall execute the regulatory function of the state in the new economic regime. In the early 1980s, the establishment of the Capital Markets Board was followed by the establishment of the Supreme Council of Radio and Television; Competition

Agency and Banking Regulating and Supervising Agency in 1990s. In 2000s, in addition to these, the Telecommunication Agency; Energy Market Regulating Agency; Sugar Agency; Tobacco, Tobacco Products and Alcoholic Beverages Market Regulating Agency and the Public Procurement Agency were established. The last three of these are at the establishing stage.

1. General Structure of Regulatory Agencies

The general features of the regulatory agencies can be classified under six titles:

a) Competence: All of the regulatory agencies are established by the law. The common feature of the organizational laws is that they regulate not only the general principles concerning the functioning of the sector but also the organization and functioning of the regulatory agencies which shall apply and control these principles. All of the agencies possess the public legal personality and (except for the Sugar Agency) administrative and financial autonomy. Besides the autonomy, it is emphasized in the law that some of them are independent. For instance, in the Capital Market Law there is a provision stipulating that "The Board shall use its authority independently under its own responsibility." The Law on the Protection of Competition stipulate that "In carrying out its duties, the Authority shall be independent; no organ, authority or person can give orders." Similar regulation is valid for the Public Procurement Agency as well.

The agencies are endowed with broad competences in the sector under their control. These competences can be classified as aa) *authorization* or *licensing*, ab) *regulation,* ac) *monitoring* and *supervision*, ad) *sanctioning.*

aa) Authorization: The creation of an institution and its activities in the related sectors are subject to the authorization of the agencies. For instance, establishment of a private radio or a TV is dependent on the authorization of the Supreme Council of Radio and Television. Establishment of a bank and banking operations are dependent on the authorization of the Banking Regulating and Supervising Board. The merger of the companies is subject to the authorization of the Competition Board. While the activity of the capital market institutions is subject to the authorization of the Capital Markets Board.

ab) Regulation: The agencies are competent to put the principles concerning the application of the organizational law and regulate the functioning of the sector. They proceed by means of the sub-regulatory operations such as regulations and communiqué.

ac) Monitoring and Supervision: The agencies are obliged to monitor, supervise the sector, which they are responsible of, and take necessary measures for the healthy functioning of the markets. For example, Supreme Council of

Radio and Television (RTÜK) is responsible of monitoring and supervising radio and television broadcastings. The Banking Regulating and Supervising Agency (BDDK) is responsible of the monitoring and supervising the financial structure and the functioning of the banks; and also the nomination and dismissing of their top administrators. The Capital Markets Board is responsible of monitoring and supervising the capital market institutions; and the activities of the stock exchanges. Public or private sector institutions are obliged to submit any document and information when required by these agencies.

ad) Sanctioning: The agencies are capable of imposing sanctions on the institutions, which do not comply with the legislation. The agencies may directly use their sanctioning authority or they may use it by activating indirectly the judicial bodies. However, quite a number of sanctions are imposed directly. For instance, the broadcastings of the private radio and TV corporations, which are in breach of the broadcasting principles are suspended for a certain period by RTÜK or according to the nature of the violation, their broadcasting license is cancelled. The Capital Markets Board may suspend temporarily or definitely the activities of the capital market institutions. Competition Board imposes fines on the persons or corporations that do not comply with the law and do not implement the decision of the Board. BDDK has a number of powers ranging from dismissal of the bank's executive board members, to ask an increase of the capital, or annulment of operation license and seizure of the bank. As a matter of fact, BDDK has confiscated 18 banks until mid-2001 (BDDK, 2001: 3).

b) Decision Making Bodies: The common feature of the regulatory agencies is that decisions are taken by boards. In other words, it is based on a system of collective decision making. Two of them are called "board" (Capital Markets Board, Supreme Council of Radio and Television) and the others "agency". Nevertheless each and every agency possesses a board as the decision body. The boards' members figure varies between 5-11 persons. The duration of their terms of office varies between 5-6 years. Except for the Public Procurement Board, the appointment of the members is renewable. The duration of the terms of office of the Sugar Board depend on the occupation of the posts they represent. As soon as their post ends, their membership to board falls as well.

The members of the boards are appointed by the Council of Ministers. The only exception of it is the Supreme Council of Radio and Television, whose members are appointed by the Parliament among the candidates nominated by the party/parties in power (5 positions) and the opposition parties (4 positions). The Council of Ministers directly and solely appoints the members of the Energy Market Regulating Board and selects the other members of the boards from among the candidates submitted. The nominating authority varies

according to the boards. The related minister uses this authority for the Banking Regulating and Supervising Board. In the other boards, the authority to nominate belongs to ministries, ministers, judiciary institutions like Council of State or Court of Cassation, the professional institutions, the private companies etc (see appendix 2). However, Turkish Union of Chambers and Commodity Exchanges, the top institution of the chambers of commerce, industry, maritime trade and commodity exchanges has an important place. The Union is entitled to nominate one candidate of each and every one of four boards.

The law sets some conditions for the members of the board such as education and experience, yet there is not an obligation of being a civil servant. It is sufficient that they have worked either in public or private sector. Therefore today a person, who is a manager in a private company and who fulfil the general conditions, is eligible for being appointed as a board member and therefore he can use the public competence. The exception of it is the Public Procurement Board. The other members of the board, except for the ones that are nominated by the Union of Chambers and Employer Associations, should have worked in the public institution.

In order to provide the independent and unbiased attitude of the board members and prevent arbitrary intervention of the governments, the tenure is ensured for the members and the dismissal is bound to strict conditions. During their terms of office, the board members cannot be dismissed unless the conditions mentioned in the law are realized. Yet as mentioned before, in the Sugar Board, in case the members quit their main function, their membership falls.

c) Relations with the Executive Body: The linkage between the regulatory agencies and the government vary from one agency to the other. For some of those, this is a direct link with a minister. For instance, Capital Markets Board and Tobacco Agency are related to the state minister designated by the Prime Minister; BDDK is related to the Prime Minister or to the state minister designated by the Prime Minister; and the Supreme Council of Radio and Television is directly related to the Prime Minister. The other agencies are related to the ministries and not to a minister (see appendix 1).

However, the legal nature of the relations between the ministries and these agencies are indefinite and controversial because in the Turkish legislation there is not a specific definition of the "related institution" *(ilişkili kuruluş)* and this concept is subject to a discussion. As mentioned before, according to the constitutional principle of unity of the administration, no matter what the nature and the degree of autonomy is, many public institutions, which are not organized as a ministry are attached or affiliated to a ministry. Therefore a link between the government and these institutions is established. In the Turkish

legislation, these institutions are called "attached institution" *(bağlı kuruluş)* or "affiliated institution" *(ilgili kuruluş)*. The definition of these concepts is made in the Law no: 3046 on the Establishment and Organization of the Ministries. Although it is difficult to make a clear-cut distinction between this two kind of linkage "the adjective *affiliated* emphasizes that the relation is milder in comparison to the qualification *attached"*(Örnek, 1991: 99). However, since the sense of "related institution" is not enough clear, the nature of the relation between the regulatory agencies and the ministries is vague. It is supposed that this adjective choice is made in order to establish a more flexible link in comparison to the "affiliated institutions" and "attached institutions".

d) Funding: A common feature of the agencies with regard to their funding is that they are mostly independent of the state's budget. Their expenditure is mainly met by the sector they regulate. This is a contradictory practice in the Turkish administration. The sources of income vary from one agency to another. For instance, in the agencies, where administrative fines are applied a certain percentage of these fines is recorded as income. 5 % of the gross annual advertising income of the public and private radio-television corporations is recorded as income for the Supreme Council of Radio and Television. The other incomes such as license fee, contribution etc. are the important items of income.

e) Supervision: According to Constitution (article 125), "The recourse to judicial review shall be open against all actions and acts of the administration." Therefore these institutions are subjected to judicial supervision. The disputes emanating from the operations of administration come within the competence of administrative courts, which are the first judiciary instances. The competent authority of appeal for these verdicts given by these courts is the Council of State, supreme administrative court. However, the appeals against the decision of some of these boards (Banking Regulating and Supervising Board, Competition Board, Energy Market Regulating Board) are brought to the Council of State instead of administrative courts. For this reason certain agencies are considered as quasi-judiciary institutions.

The common feature of these agencies is that they are not subjected to hierarchic or administrative tutelage supervision. The control of the executive body on these institutions is limited with financial matters. Competent bodies for financial supervision are not the same for every agency. *The Court of Accounts* supervises the Competition Agency, the Telecommunication Agency and the Public Procurement Agency. *The Prime Minister's Office High Supervising Board* supervises the Energy Market Regulating Agency, the Sugar and Tobacco Agencies; *the Prime Minister's Office Inspection Board* supervises the Capital Markets Board. The supervision of RTÜK is materialized by the *Parliament's Plan and Budget Commission*. An *ad hoc* commission consisting of an auditor from the Court of Accounts, an inspector from the Prime

Minister's Office Inspection Board and another from the Ministry of Finance, fulfils the supervision of the Banking Regulating and Supervising Agency (see appendix 1).

f) Personnel and Wage Regimes: These agencies are distinguished from other public institutions by their capacity to act flexibly with regard to the employment of personnel and wage regimes. As a general practice they employ contractual personnel. These personnel are not bound by the clauses concerning the wages and financial rights of the Law no: 657 on Civil Service. The personnel of the Sugar Agency have the status of workers and are out of this category.

The wages of the boards' members are fixed by the Council of Ministers, while the wages of the personnel are determined by the agencies according to the principles laid down by the Council of Ministers. Therefore with this great deal of latitude concerning the budget and the financial rights of the personnel, these agencies, are in a very privileged position among the public bureaucracy. High wage policies fallowed by these agencies have created many reactions in the public bureaucracy and even among the parliamentarians. Upon these reactions, the Council of Ministers has felt the need to take measures to stabilize the wages increase.

2) An Evaluation

Turkish experience concerning regulatory agencies lead to some observations that could be summarized as follows:

1) The first example of the regulatory agencies was established in the early 1980s. These institutions have proliferated during 1990s and 2000s. They fulfil almost the whole three main functions of the state: legislative, executive and judiciary in their respective field of competence. For these reasons, the agencies can be described as the "state in the state." They are eligible for establishing the rules concerning the operations of the related sector, supervising the rules laid down, giving the authorization for practicing in the sector or prohibiting their activities and confiscate the private property (only for the banking sector), or impose fines that can cause the bankruptcy of a firm.

2) There is no constitutional clause concerning these agencies. Each and every one of them are established with a special law, thus with the will of the National Parliament. The organizational form of the public services is actually a political preference (Millet, 1966: 28). Yet the role of the international organizations (e.g. European Union, OECD,[4] IMF and World Bank) in the

[4] OECD closely monitors the regulatory reform activities in its member states. In order to help the governments concerning the increase of the regulatory quality, it has started to implement the Regulatory

emergence of the regulatory agencies cannot be denied. Especially for recently created ones, the actual role of the National Parliament consisted of legalizing the letters of intent given by the government to the IMF, or the provisions of the structural adjustment programs of the World Bank.[5] The government has put pressure on the Parliament for the enactment of these laws because of the need felt to get the financial assistance from them. Furthermore, some of these laws have been amended upon the demands of the IMF before even being implemented.[6] Therefore the agencies are not considered as the products of the freewill of the legislation body.

3) The high number of these agencies does not display a rational consistency. As the matter of fact for most of them they are not established because of a national need, but often because of an international pressure linked to foreign credits. For instance, it is difficult to understand the establishment of two separate agencies in the agricultural sector (Sugar and Tobacco Agencies). Also instead of two separate agencies, a financial sector agency could have been established that would cover the banking sector and the capital markets.

One of the main bottlenecks is that the agencies function independently from one to another and that the coordination mechanism is inexistent between them. It seems necessary to establish a coordination mechanism. Indeed one big enterprise may operate in such a way that its activity may be in the scope of more than one agency and that an agency may have a decision that may affect the jurisprudence of another agency.

4) Although they have similar functions there is not a harmony and consistency in the organization models of these agencies. The members of RTÜK are appointed by the Parliament and the members of the other agencies are appointed by the Council of Ministers. Mostly the appointment body selects from among the candidates submitted to it; there is not candidacy mechanism in

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Reform Program in 1998 and within this framework it monitors 3-4 countries every year and it publishes the results as a report.

[5] In the aftermath of 1990s, the government has given letters of intent to IMF and has signed the loan agreements with the World Bank. These documents expose the formation process of the regulatory agencies in Turkey. For instance, there were certain provisions of the Loan Agreement that was signed with the World Bank to receive Economic Reform Loan, mentioning the laws shall be enacted to liberalize the electricity and natural gas sectors and independent regulatory agencies shall be established (*Official Gazette*, 14 June 2000/24079). In the letter of intent given to IMF (dated 18.12.2000) it is mentioned that the government undertakes the submission of the law on the formation of an independent regulatory agency to the Parliament until the end of 14 January 2000 as a precondition and that in accordance with the World Bank Economic Reform Loan. This agency shall have a full authority on the tariff policy, and that the government agrees that the materialization of this law until the end of January 2000 is the structural performance criteria. (www.hazine.gov.tr, 27.01.2001).

[6] For instance, in order to satisfy the IMF the important articles of the Banking Law no. 4389 dated 18.06.1999, which establishes the Banking Regulating and Supervising Agency was amended in 1999, before the initiation of the agency. These amendments included the regulations undertaken in the letter of intent given to the IMF (dated 9 December 1999).

the Energy Market Regulating Board. All of them are not financially supervised by the same authority. The number of the members varies from one agency to another and the renewal of their terms of office is possible, except for the members of the Public Procurement Agency. While in the laws of some of them the independence is emphasized besides their autonomy, there is not such an emphasis for many others.

5) Equally there are some differences between the agencies in respect of judiciary supervision. The appeals against their decisions are brought, for some of them, to the administrative courts which are the first judiciary instances, while for others, to the Council of State which is the supreme administrative court.

3) Regulatory Agencies and Basic Challenges

As a result of the state's functions re-defined according to the axle of state's liberal policies, the regulatory agencies are articulated to the administrative structure of the state. However, it is difficult to say that the legal, political and administrative bodies have very well absorbed them. The main problems arising from the creation of agencies could be cited as follows:

1) There isn't a common understanding about the place occupied by these institutions in the state's organization scheme and what kind of organization they are compared to the formerly existing ones. The agencies remain nearby the functionally decentralized public institutions. Yet they are not subject to the administrative tutelage supervision, as the functionally decentralized public institutions are. And they are distinguished from these latter by their broad autonomy. The views of the academics, who study this topic, differ from one to another. According Yıldırım, the agencies are functionally decentralized public institutions (Yıldırım, 1999: 187, 231). While Ulusoy, considers agencies as a third category of decentralized administrative institutions besides the local governments and functionally decentralized public institutions (Ulusoy, 1999: 13). And for Akıncı, these are "at the intersection of the legislative-executive and judiciary powers" (Akıncı, 1999: 375).

2) High wage policies fallowed by these agencies have very rapidly transformed them to centres of attraction for public officials. The Turkish public service wage regime already enough complex became more complicated with the agencies. During the establishment stage of the agencies the personnel is composed of the people transferred from the related ministries. The personnel that would like to be transferred compete with each other and force various methods.

3) One of the main objectives of the establishment of the regulatory agencies in Turkey is to preserve the functioning of markets from the political

intervention. The subject upon which the IMF and World Bank dwelled is the provision of independence of the agencies from the political interventions. Therefore the existence of agencies modifies the relations between both the legislative and executive bodies; and the executive body and bureaucracy. Turkey has a parliamentarian regime. Therefore the bureaucracy is controlled by the executive body which is, at its turn, controlled by the parliament that possesses sovereignty. The legislative body controls the executive body via various means and, at the same time, the public bureaucracy indirectly. With the establishment of agencies, this articulated control structure is changing. The first change emerges in the relation between the executive body and bureaucracy: The control of the political power on the administration weakens. In parallel with the extension of authority of agencies, the impact and efficiency area of politics shrinks. With the authorities they have and their autonomy vis-à-vis the executive body, the agencies are policy makers, policy appliers and controller in the strict sense of the word. Through the action of these regulatory agencies, the political interferences on vital sections of the economy are eradicated. Thus politician's influence on economic decisions is lost. Subsequently, the definitions of politics and power, and of the public administration as an apparatus, become controversial in the literature concerned. The inexistence of a control mechanism between agencies and political power has three consequences: Firstly, the lack of control on agencies by the government limits indirectly the span of control of the parliament on the executive and thus, on the administration. Since "each and every public institution and their activities are in the general policy area of the government", this fact brings to the agenda the following question: Who shall account for the activities and the operations of the agencies to the Parliament? (Duran, 1997: 8) Secondly, the political responsibility concerning the activities and the operations of the agencies are very vague. The political responsibility of the activities and operations of the public institutions lie with the government. In case of a bank bankruptcy, victim people, apply the government and ask for a reimbursement. Can the governments get rid of the responsibility on the grounds that the agencies are autonomous in such a case? The third consequence of the lack of control is the erosion of the constitutional principle, concerning the "integral unity of the administration."

4) The agencies could be considered as the examples of the Turkish application of governance, one of the key concepts of globalization. Interest groups representatives and/or representatives of the regulated sector sit in decision bodies of six agencies. However, the representation of interest groups in the agencies is biased: capital owners are represented while employees and consumers are not. The Turkish Union of Chambers and Commodity Exchanges is the most represented institution. Its representatives sit in four agencies.

Moreover this Union participates in the Telecommunication Board as the representative of consumers. The Turkish Confederation of Employer Associations is represented in one agency while the Confederation of Turkish Trade Unions is not represented at all.

The representation of interest groups and market powers overshadows the autonomy of agencies, which is considered as very important. In Turkey, the autonomy of agencies is generally seen as an independence from the political sphere. However, the agencies' independence from the market powers is much more significant from the point of view of their neutrality, and for the healthy functioning of market economy.

Conclusion

Since more than two decades, in Turkey, the state is in a restructuring process. This process could be qualified as the revision of state's functions and organization in order to reinforce the market economy. The European Union (Turkey is a candidate to accession) and the international financial organizations, the IMF and World Bank are the main actors in defining the direction and the content of this restructuring.[7] The most important outcomes of the organizational dimension of restructuring are the regulatory agencies. With their broad authorities, their collective decision making system, the presence of interest groups representatives in their decision body, the level of their autonomy from the political power, their budgetary possibilities and with high personnel wages, they represent a new sort of organization in the Turkish public administration. These agencies, with their differences regarding to conventional public organizations, have, as mentioned before, brought some administrative problems as well. Yet I suppose that the main impact of these agencies may be detected on the political sphere. An important part of the economic decision competence has been transferred from political spheres to these agencies. Thus they have become new centres of power. However, what is strange is that the political power, which has not hesitate to promise the IMF and World Bank the establishment of them and have put pressure on the Parliament for their immediate creation, seems to discover this reality just now. In a TV program, the Prime Minister Ecevit said "*there are some institutions in the state with broader competences than the state itself. We don't have authority on them. I do not know whether we made a mistake or whether we did right or wrong*" (Akşam, 2001). In the following press conference he continued to express his uneasiness concerning agencies. His statement summarizes perfectly the influence of the regulatory agencies in Turkey on the politics:

[7] Within last 2.5 years, the Parliament has enacted approximately 250 laws. Prime Minister Ecevit has mentioned that most of these laws have the quality to meet the demands of the IMF, The World Bank and the EU (Cumhuriyet, 2002: 5).

> "I should confess that we passed the limit on granting the autonomy. It is said that this is necessary for democracy, market economy and is the demand of the IMF. Many public institutions have become independent institutions that are totally out of the control and the influence of the state and the government. The businessmen, who come to Ankara, know that many authorities have slipped through our fingers. They want to see the government and the sate as an interlocutor. (...) the state is totally left on the sidelines with regard to banking or any other sensitive subject. We can put up with it, but the people cannot" (Cumhuriyet, 2002:5).

Despite the uneasiness expressed on the political ground, it seems that the proliferation process of the regulatory agencies in Turkey has not come to an end yet. The abolition of the High Council of Privatization, which is composed of many ministers under the presidency of the prime minister and which determines the SEEs that shall be privatized, is in question and establishment of an independent regulatory agency is at the agenda of the government. Yet in the near future, the regulations providing the accountability of agencies to the Parliament may become an important issue on its agenda.

Appendix 1

Table 1: Regulatory Agencies in Turkey (April 2002)

Agency Name	Foundation Year	Field of Competence	Administrative Nature	Junction with the Government	Audit Institutions
Capital Markets Board	1981 active since 1982	Capital markets	Bears a public legal personality and possesses administrative and financial autonomy, qualified as independent by law	Related with a Minister of State designated by the Prime Minister	Prime Minister's Office Inspection Board
Supreme Council of Radio and Television	1994	Radio and TV broadcasting	Bears a public legal personality and possesses autonomy, qualified as neutral by law	Related with the Prime Minister	Plan and Budget Commission of Turkish Grand National Assembly
Competition Agency	1994 active since 1997	All sectors	Bears a public legal personality and possesses administrative and financial autonomy, qualified as independent by law	Related with the Ministry of Trade and Industry	Court of Accounts
Banking Regulation and Supervising Agency	1999 active since 2000	Banking sector	Bears a public legal personality and possesses administrative and financial autonomy	Related with the Prime Minister or with a Minister of State designated by him	A commission, composed of an auditor from Court of Audit and two inspectors, one from Prime Minister's Office Inspection Board and the other from Ministry of Finance
Telecommunication Agency	2000	Telecommunication sector	Bears a public legal personality and possesses administrative and financial autonomy, qualified as independent by law	Related with the Ministry of Transportation	Court of Accounts
Energy Market Regulation Agency	2001	Electric energy and natural gas sectors	Bears a public legal personality and possesses administrative and financial autonomy	Related with the Ministry of Energy and Natural Resources	Prime Minister's Office High Supervising Board

Agency Name	Foundation Year	Field of Competence	Administrative Nature	Junction with the Government	Audit Institutions
Sugar Agency	2001	Sugar sector	Bears a public legal personality	Related with the Ministry of Trade and Industry	Prime Minister's Office High Supervising Board
Tobacco, Tobacco Products and Alcoholic Beverages Market Regulating Agency	2002	Tobacco and Alcoholic Beverages markets	Bears a public legal personality and possesses administrative and financial autonomy	Related with a Minister of State designated by the Prime Minister	Prime Minister's Office High Supervising Board
The Public Procurement Agency	2002	Public procurements	Bears a public legal personality and possesses administrative and financial autonomy, qualified as independent by law	Related with the Ministry of Finance	Court of Accounts

Appendix 2

Table 2: Composition and Appointment Method of the Regulatory Boards in Turkey (April 2002)

Board Name	Number of Members	Term of Office	Reappointment of Members	Appointing Authority	Nominating Authorities
Capital Markets Board	7	6 years	Possible	The Council of Ministers	-the Related Minister (2) -the Ministry of Finance (1) -the Ministry of Trade and Industry (1) -the Banking Regulation and Supervising Agency (1) -the Turkish Union of Chambers and Commodity Exchanges (1) -the Association of Capital Market Intermediary Institutions of Turkey (1)
Supreme Council of Radio and Television	9	6 years	Possible	The Turkish Grand National Assembly	-the party/parties in power (5) -the opposition parties (4)
Competition Board	11	6 years	Possible	The Council of Ministers	-the Competition Board (4) -the Ministry of Trade and Industry (2) -the Ministry of State to which Undersecretariat of the State Planning Organization is affiliated (1) -the Court of Cassation (1) -the Council of State (1) -the Turkish Union of Chambers and Commodity Exchanges (1) -the Board of Inter-Universities (1)
Banking Regulation and Supervising Board	7	6 years	Possible	The Council of Ministers	-The Related Minister
Telecommunication Board	5	5 years	Possible	The Council of Ministers	-Ministry of Transportation (3) -the Ministry of Trade and Industry and the Turkish Union of Chambers and Commodity Exchanges (1) -Telecommunication sector (1)

Board Name	Number of Members	Term of Office	Reappointment of Members	Appointing Authority	Nominating Authorities
Energy Market Regulation Board	7	6 years	Possible	The Council of Ministers	--
Sugar Board	7	5 years	The term of office is dependent on the continuity of the posts they represent	The Council of Ministers	-the Ministry of Trade and Industry (1) -the Ministry of Agriculture and Village Affairs (1) -the Ministry of State to which Undersecretariat of the Foreign Trade is affiliated (1) -Public sugar company (1) -the Superior Union of Beet Cooperatives (1) -Private sugar companies(2)
Tobacco, Tobacco Products and Alcoholic Beverages Market Regulating Board	7	5 years	Possible	The Council of Ministers	-the Ministry of Finance (1) -the Ministry of Health (1) -the Ministry of Agriculture and Village Affairs (1) -Turkish Union of Agricultural Chambers (1) -the Ministry of State to which Undersecretariat of the Treasury is affiliated (1) -the Ministry of State to which Undersecretariat of the Foreign Trade is affiliated (1) -the Ministry of State to which the General Directory of Tobacco, Tobacco Products, Salt and Alcoholic Beverages is affiliated (1)
Public Procurement Board	10	5 years	Impossible	The Council of Ministers	-Ministry of Finance (2) -the Ministry of Public Works and Settling (3) -the Ministry of State to which Undersecretariat of the Treasury is affiliated (1) -the Council of State (1) -the Court of Accounts (1) -the Turkish Union of Chambers and Commodity Exchanges (1) -Turkish Confederation of Employer Associations (1)

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