

## A Discussion on the Implementation and Consequences of the Turkish Court of Accounts' Performance Audits

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### Extensive Summary

#### Introduction

In the past three decades, with the widespread acceptance of neoliberal policies on the international scene and, in connection with this, with the prevailing of new public management understanding, performance auditing has been at the forefront of the efforts to modernize public administrations.

In international practice, we can list the reasons why performance auditing has become so popular today; to help reduce the public economy by saving public expenditures, to enable more efficient and more effective use of public assets and resources and to contribute to transparency and accountability gains.

Therefore, in this new understanding, the function of auditing has expanded beyond investigating and reporting of legislative appropriateness of past transactions, activities and expenditures to advising to public administrators, political authorities and legislative bodies about how decisions should be taken in the future.

Parallel to these developments, the first concrete initiative that enabled the implementation of performance audit in the Turkish public administration took place in 1996. With an article added to the Turkish Court of Accounts Law No. 832 (abolished now), the Turkish Court of Accounts (TCA) was authorized to examine institutions and organizations in terms of using public resources economically, efficiently and effectively.

During the period of fourteen years until the adoption of the Law on the Court of Accounts numbered 6085 in 2010, despite a number of shortcomings, public administrations were audited limitedly within the scope of the 'economy, efficiency and effectiveness' (3e) concepts in the performance audits conducted by the TCA, and audit results were shared with the public.

However, due to developments in and after 2010, the performance audit practice in Turkey was rapidly moved away from the examples used widely in the international

arena. Accordingly, the subject has become controversial in some respects in terms of existing legal regulations, practices and consequences of the performance audit.

### **Methodology**

As a method of research, all three-year audit reports (129 reports and 765 findings) of general budget administrations for the period of 2014-2016 published on the website of the TCA have been examined and the concepts of 'economy, efficiency and effectiveness' have been searched with the *office word program* in the audit report texts. The relevance of these words to the elements of *3e* within the scope of performance audit according to international definitions has been researched, and it has been determined in which part of (regularity audit report or performance audit report) the reports these concepts (*3e*) are included. According to the results obtained from here and to the generally accepted auditing standards, normative evaluations and comments have been made.

As a result of examining the audit reports of the public administrations within the scope of the General Budget for the years 2014, 2015 and 2016, it has been shown in Table-1 that evaluations related to *3e* have been made in the findings under the regularity audit. Summaries of the auditor evaluations of these findings about *3e* in regularity audit reports and our comments on these are shown in Table-2. On the other hand, none of the performance audit reports of the three-year period examined had a technical analysis, identification and evaluation of *3e*.

### **Findings**

According to the results of research and examinations, our determinations on the current situation regarding performance audit of public administrations in Turkey are;

- According to Laws 5018 and 6085, auditing should be carried out in accordance with international standards. According to international standards, processes such as inspection, review, analysis, identification, evaluation and reporting related to *3e* are in the scope of performance audit.

- TCA Law was amended while discussing in Parliament in 2010. The Law Proposal text was amended and the part related to *3e* was removed from the definition of performance audit. This amendment was made by the members of the ruling party in political terms and consent, not based on scientific principles, and the amendment was not endorsed by the vast majority of the Turkish Court of Auditors.

- According to the Guidelines prepared in parallel with the said amendment, the Court of Auditors' performance audits still do not take any action related to *3e*. This situation is criticized in 'Progress Reports Prepared by the European Commission about Turkey' and in academic papers.

- Hampering or preventing evaluation of *3e* in performance audit reports means limiting the duty areas of TCA auditors. According to the current practice, as a result of performance audit, auditors are not able to evaluate and report on these subjects; economical selection and use of inputs required to achieve performance targets, to carry out efficiency analysis of methods, activities or processes used to achieve performance goals, effectiveness evaluation of the degree of achievement of performance targets.

- TCA is in charge and responsible for the evaluation and report of *3e*, according to some other items currently in force in Laws 5018 and 6085.

- With the ‘Auditing Regulation of the TCA’ in 2011, a new type of audit was introduced by using the name of ‘effectiveness, efficiency and economy audit’ which is not included in the Act with the exception of ‘regularity audit’ and ‘performance audit’, however, it is not implemented.

- According to the implementation in 2014 and the following years, it is seen that some of the evaluations have been made using the dictionary meanings of these concepts, rather than being based on technical and scientific analyzes related to 3e in the section on ‘regularity audit’ of TCA reports of public administrations. This situation leads to a kind of conceptual confusion regarding the classification of the TCA audit findings.

- According to the TCA Law, performance audits do not create financial and legal responsibility. Accordingly, if assessments related to 3e are included in the performance audit section of the reports, financial and legal responsibility will not arise. Otherwise, it can create controversy.

- The TCA performance audits are not conducted in public administrations which are not obliged to prepare a strategic plan. Pursuant to article 2 of the ‘Regulation on Procedures and Principles on Strategic Planning in Public Administrations’, the public administrations which are not obliged to prepare a strategic plan is not (performance) audited and/or reported by TCA.

- In the ‘Performance Audit Guide for Public Internal Auditors’, which entered into force in 2016, the performance audit was made in accordance with international standards. Thus, 12 years after the enforcement of the Law No. 5018, the review, evaluation and reporting processes within the scope of 3e allowed in internal audits in accordance with international standards and examples. Accordingly, performance audit in terms of ‘external audit’ and ‘internal audit’ has different meanings in Turkish financial legislation.

- As shown in Table-1, about public expenditures carried out independently of the performance program in the regularity audit reports; 8 findings in 2016, 6 in 2015 and 7 findings in 2014, criticized topics were associated with 3e by the TCA auditors. Our evaluations on the compliance with legislation of the criticized issues are made in Table-2.

- It is understood that the public administrations comply with the findings and recommendations regarding the ‘compliance with the law’ in the regularity audit reports. Because no similar findings were found in the audit reports of the following year. However, in the regularity audit reports, it has been seen that the determinations and proposals related to 3e, which are controversial or irrelevant to the ‘compliance with the law’, can continue in the following years.

### **Discussion**

The discussion in this study is carried out under three headings. The first is the relationship between ‘performance audit’ and ‘review of expediency’. The other is related to the sorting of the audit findings of the TCA, ie to which of the findings should be included in the performance audit reports, which should be included in the regularity audit reports. The latter is related to the financial, legal, criminal, administrative and political responsibilities arising from the consequences of the TCA audit reports.

Of course, it is unthinkable that the TCA auditors had a lack of knowledge that the 3e-related subjects were related to the performance audit. Therefore, to include audit findings about 3e on the 'regularity audit' section of the reports instead of the 'performance audit' section, it is necessary to evaluate that it as an interim solution from helplessness which is found to compensate the situation arising from the distortions made by politicians in the Law Proposal prepared by technocrats and bureaucrats.

In 2010, two important successive legislative actions took place: the September 12 Constitutional Amendment and the Turkish Court of Accounts Act, which entered into force on December 19. In the Constitutional amendment, the phrase “*Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency*” was added to Article 125. Following this development, the Turkish Court of Accounts Law Proposal was started to be discussed in Parliament and accepted on 3 December. Perhaps, depending on whether the topic is so hot and on the agenda, the section related to 3e concepts was removed from the definition of performance audit in the Law Proposal for the reason that it means ‘review of expediency’.

But, in the case filed by the opposition party, the decision of the Constitutional Court is expressed as follows; “*Reporting to the Parliament that the public resources are being used effectively, economically and efficiently, as a requirement of international auditing standards of the TCA Auditors, can not be described as a review of expediency*”.

However, the decision of the Constitutional Court has not changed the willingness of the political authority to ‘prevent evaluation of whether public resources are used effectively, economically and efficiently’ and in practice, since the two articles which were not brought to the Constitutional Court remain in force, auditors can not review, analyze and evaluate the concepts of 3e within the scope of ‘performance audit’ from the day the new Law enters into force.

### **Conclusion**

As of the end of 2017, differently from international standards and implementations, audits carried out according to the TCA Law, which has completed the seventh year in force, the public assets and resources used to achieve performance targets within the scope of the performance program are not being examined technically as to whether they are used according to the 3e basis, and evaluations related to them are not included in performance audit reports.

On the other hand, in the regularity audit reports, various criticisms and suggestions related to the elements of 3e can be brought up by using ‘lexicon meanings’ in matters not contrary to the legislation about audit findings of some public activities and expenditures carried out independently of strategic plans and performance targets. The inclusion of findings on elements 3e, which should be advisable, in TCA regularity audit reports creates debate about the financial and legal consequences of the reports and their binding.

The fact that the 3e findings are not included in the performance audit reports leads to the lack of knowledge in the public opinion about economically, efficiently and effectively acquisition and use of public resources in the scope of the performance

programs. Thus, ministers' political responsibilities and public officials' accountability under administrative responsibilities are also hindered.

In addition, thanks to auditor's findings, determinations, analysis, evaluations and proposals, decisions to be made in the future could have made public services more economical, more efficient and more effective. But the restriction on 3e elements in performance audit reports eliminates the opportunity or possibility of reducing the size of the public sector by providing savings in expenditures, at the beginning of the audit period.

It is evaluated that there is no need to make any legal arrangements for the solution of the issues expressed as problems in this study. What we see as the source and the beginning of discussions is the removal of 3e concepts from the definition of 'performance audit' in the Act by politicians during the legislative process with the concern that the performance audit will have the meaning of 'review of expediency', and for this reason, the TCA Performance Audit Guide has been prepared without mentioning how to conduct and evaluate economy, efficiency and effectiveness analyzes.

The seven-year experience has shown how unfounded and baseless concerns are about 'review of expediency'. Therefore, even though the provisions of the Law on the definition and application of performance audit remains current, as there is no legal obstacle, it is believed that the adding of 3e-related subjects into the TCA Performance Audit Guideline will be sufficient to resolve the trouble and end all discussions.