

## JUDICIAL FUNCTION OF THE TCA AS COURT OF ACCOUNT<sup>1</sup>

*Hale Avci*

*Senior Rapporteur of the 2nd Judicial Chamber of the TCA*



The Turkish Court of Accounts (TCA) is a supreme audit institution equipped with a judicial function, which has many precedents in the continental Europe. This study gives general information on the trials performed by the TCA as a court of accounts.

### General Information on the Judicial Function of the TCA

The TCA is tasked with auditing the public administrations on behalf of the Parliament and taking the final decision on the findings related to public loss at the end of audits. In this sense, it performs a judicial activity. This judicial activity is performed by the Chambers and Board of Appeals of the TCA.

Audit by the TCA covers:

- The financial 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;
- The compliance 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; and

- The performance audit, which is the measurement of results of activities with respect to objectives and indicators determined by public administrations within the framework of accountability.

TCA auditors audit whether public administrations function effectively, economically, efficiently and in compliance with laws and whether public resources are acquired, preserved and utilized in accordance with foreseen purposes, targets, laws and other legal arrangements, and as a result, the audit results are presented in judicial reports and audit reports.

The judicial activity of the TCA is related to the task of taking final decision on the judicial reports of TCA Chambers as an “court of accounts”, and this is called the “trial of account”.

The “trial of account” of TCA Chambers on the judicial reports means taking final decision through the 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. In this sense, the trial of account is a result of the compliance audit.

<sup>1</sup> Hale Avci, Senior Rapporteur of the 2<sup>nd</sup> Judicial Chamber of the TCA.

### Chambers of the TCA

Where a matter resulting in public loss is detected by auditors in the course of audits of the accounts and transactions of public administrations within the scope of the general government, the defense statements of those responsible is taken through an inquiry. After that the judicial report which includes the inquiry, defense and auditor's opinion is sent to the Chamber, which will perform the trial of account. The Chairmen of chambers take the written opinion of the Office of Public Prosecutor and one member on the judicial reports submitted to their chamber, and then the report becomes ready for trial.

TCA Chambers consist of a chairman and six members. Three fifths of TCA members are elected from among professional TCA personnel; the remaining members are elected from among other public officers such as Rector, Governor, Professor, Undersecretary, provided that at least half of these are from among the professional personnel of the Ministry of Finance. The Chairmen are elected from among TCA members by the General Assembly of the TCA. The chambers also include the TCA auditors assigned as Rapporteurs to handle the decisions, minutes, writs, opinions of chambers and carry out other actions required for those.

### Trial Procedure and Writs

Trials are conducted with one Chairman and

four Members. Verdicts and decisions are rendered by a majority vote. After the judicial reports are tried by the chamber, decisions can be made on:

- a) The compliance of accounts and transactions with legislation,
- b) Indemnification of public loss from those responsible,
- c) Informing the relevant authorities on necessary matters.

A minute of verdicts and decisions accompanied by justifications are drawn up and signed by the Chairman and Members of chamber. The decisions are explained through the writs prepared by the rapporteurs in the TCA chambers. Those writs are communicated to those responsible, the public administrations to which these are affiliated, the Ministry of Finance for administrations within the scope of the general budget, relevant accounting unit and the Office of the Chief Prosecutor.

The writs prepared after the decisions made by the TCA chambers become final upon the decision of the Board of Appeals of the TCA if those concerned apply for appeal and upon the expiration of appeal period if no one applies for appeal or no application is made during that period. The writs, which become final upon the expiration of appeal period, should be fulfilled in ninety days. This obligation belongs to the senior manager of the relevant public administration.

### What are the legal remedies against the decisions of chambers?

The legal remedies against the decisions of chambers are appeal, retrial and correction of decision. Requests for retrial are made to the chamber which performed the trial; requests for appeal and correction of decision are made to the Board of Appeals of the TCA with a petition.

#### Retrial

The writs are prepared after the decisions made by chambers; then they are communicated to those responsible, the public administrations to which these are affiliated, the Ministry of Finance for administrations within the scope of the general budget, relevant accounting unit and the Office of the Chief Prosecutor; after that the same parties can request retrial for those decisions. However, the chamber can also decide for retrial directly. The period for requesting retrials five years after the communication of the writ; this request does not prevent the execution of the writ. If the petitions of the parties indicate;

- a)** Existence of calculation errors, incorrect or incomplete record of names, incompleteness or duplication in accounts,
- b)** Detection of falsification in a document that has had an effect on decision,
- c)** After the judgment, detection of an incorrect or unlawful transaction which was

not noticed during the audit or trial,

- d)** After the judgment, discovery of some documents, which were unavailable in the course of audit or trial and may have affected the decision,
- e)** Rescindment of a writ, which constituted the basis of the decision,
- f)** Discovery of the fact that the expert witness or the expert prepared an inaccurate report.

These justifications are assessed by the chamber, which then can decide for retrial. In this case, the matter is re-discussed in line with those justifications, and a new decision can be made, and a new writ is communicated to the same parties.

#### Appeal

Requests for appeal, which are made to the Board of Appeals of the TCA, are about the decisions made by TCA chambers. The writs of TCA chambers may be appealed for:

- a)** Violation of law,
- b)** Ultra vires action,
- c)** Failing to obey legal procedures of account trial,

Period for appeal is sixty days from date of notification of writ to those concerned. Board of Appeals can either approve the decision as it is or by correcting it or reverse or revoke it. In case of reversal, petitions are sent to the relevant chamber for re-decision.

### Correction of Decision

Another legal remedy is the “correction of decision”, and it can be used just once for the decisions of the Board of Appeals. The parties may request the correction of decision in the event that:

- a) Claims and objections affecting the substance of the decision have not been satisfied,
- b) Existence of contradictory decisions on the same matter,
- c) Detection of fraud and falsification in the documents affecting the substance of the decision during the examination by the Board of Appeals,
- d) Existence of at least one of the reasons for appeal.

Since this request is against the decision of the Board of Appeals, it can be accepted or denied by being assessed by the Board of Appeals.

### What happens if a criminal act is detected during trial?

As the above-mentioned decisions indicate, neither the inquiry made by the auditor nor the decision made by the chamber find or decide upon the crimes under Turkish Penal Code. In the event of encountering a criminal act in the course of audit and trial, the auditor

identifies the evidence immediately and notifies the TCA. As a result of the investigation to be carried out by the chamber assigned by the President of TCA, if the collected initial evidence is qualified as subject of public prosecution, the file is sent to the Chief Prosecutor of TCA either to be handed over to the responsible official's public administration forth necessary action to be taken, or to be sent directly to the Public Prosecution Office for an investigation in accordance with the nature of the offence

### Conclusion

In conclusion, the judicial activity of the TCA is related to public loss entirely. The judgments to be passed are related to finding whether there is public loss, and if so, compensation of this loss or notification of relevant authorities of the matter. Those responsible for public loss are the civil servants who work in the auditee and who are related to the matter. The judicial process primarily starts when the auditors detect a public loss while auditing the legality of the accounts and transactions of the relevant public administration and report it in their judicial reports. The process ends when those reports, which cover the auditor's opinion, prosecutor's opinion and defenses of those responsible, are discussed in the chambers and Board of Appeals.