

INDEPENDENT REGULATORY AGENCIES IN TURKEY AND THEIR FORMAL INDEPENDENCE LEVELS

Mehmet Zahid Sobaci
Uludag University, TURKEY

Tamer Çetin, Phd. (Corresponding Author)
Zonguldak Karaelmas University, TURKEY

Mehmet Nargeleçekenler
Uludag University, TURKEY

Abstract

This article aims to examine IRAs in Turkey in terms of structural and functional situation, place of in Turkish administrative structure and control and to evaluate their formal independence levels. However, before doing that we will briefly explain reasons of creating IRAs and the concept of independence of IRAs because of their importance to evaluate IRAs and their formal independence levels in Turkey.

Keywords: Independent Regulatory Agencies, Independence, Turkey

Introduction

Independent regulatory agencies (IRAs) have a long history in Anglo-Saxon administrative tradition. United States is known as the first country to establish an organization which can be defined as an IRAs and a starting point for a western type institution (Majone 1996: 16; Moran 2003: 13; Goodman and Wrightson 1987: 11; Fisher 1998: 146). However, IRAs show features and forms changing from one country to another both in theory and practice (Bouckert and Peters 2004: 22).

IRAs have become widespread gradually as a result of market economy being adopted and privatization policies taking place. It is observed that the creation of IRAs is synchronous with statist policies being replaced by regulated market economy. In this context, it is noted that, as a result of privatization and liberalism trends, regulation policies took the place of 'positive state' and that they have been effective in the rise of 'regulatory state' (Majone 1994, 1997) or 'regulatory capitalism' (Levi-Faur 2005; Levi-Faur and Jordana 2005).

IRAs are seen as a reflection of the changing role of the state in economic and social areas to public administration and affect the economic, social, political and administrative areas more and more. However, in countries which have little experience in delegating functions to 'arm's length' institutions, IRAs are a controversial topic. Turkey is one of

these countries. Turkey is a unitary state and these agencies are in conflict with the main principles of the unitary state structure as a result of their unique characteristics.

In this context, this article aims to examine IRAs in Turkey in terms of structural and functional situation, place of in Turkish administrative structure and control and to evaluate their formal independence levels. However, before doing that we will briefly explain reasons of creating IRAs and the concept of independence of IRAs because of their importance to evaluate IRAs and their formal independence levels in Turkey.

1. Creating IRAs and Reasons Of Delegation Powers to IRAs

The main rationale behind the creation of IRAs is to improve the efficiency of markets. In order to do necessary arrangements for establishing a competitive market structure and to implement sanctions to actors which do not comply with rules; it is essential that capacity of state be developed in accordance with run of law based on governance model (World Bank 1997: 4). Likewise, IRAs are seen as an important element of governance structure, that is 'regulatory state', which state will form in order to undertake regulation, inspection and supervision functions (Thatcher 2002b: 859-860; Scott 2000: 45; Das et al. 2002: 1; Thatcher 2005: 347).

The primary aim of such agencies is the need and purpose to purify areas of the communication, energy, economic competition, telecommunication, banking and finance from the influence and pressure of politicians and actors that are active in these sectors (Cushman 1953: 145; Jacobzone 2005: 72). Independent regulatory agencies, in the context of depoliticized state, are seen as the guaranty for objective and unbiased administration of these sensitive sectors.

Moreover, there are many reasons that can be given for creating IRAs and delegating power to them in the literature. These reasons are summarized as below (Gilardi 2005a: 102-103)

Expertise: IRAs are closer to the regulated sector than ordinary bureaucracy and can more easily gather relevant information. In addition, IRAs can easily adapt to technology or technical knowledge.

Flexibility: IRAs' autonomy makes them more able to flexibly adjust regulations to changing conditions.

Credible Commitments: IRAs are insulated from political influence and electoral constraints. Thus, IRAs can increase the credibility of the pro-market and fair-regulation commitments of governments.

Stability: IRAs provide a stable and predictable regulatory environment. Stability means that rules will not be subject to sudden and unexpected change.

Efficacy and Efficiency: As a result of previous factor, IRAs lead to better regulatory outputs.

Public Participation and Transparency: The decision making process of IRAs is more open and transparent than that of ministerial departments and is thus more sensitive to diffused interests such as those of consumers.

Decision Making Costs: Delegation to IRAs reduces decision making cost.

Blame Shifting: IRAs enable politicians to avoid blame, when regulatory failures occur or when unpopular decisions are taken.

Political Uncertainty: When politicians set up a policy, they know that this may in future be charged of a different party or coalition wins the elections. To prevent this, policy may be insulated from politics. IRAs are a means for politicians to fix policies so that they will last beyond their term of office.

However, the functional advantages such as adaptation to technology or technical knowledge and expertise that these agencies have are not sufficient on in explaining the delegation to these agencies and to analyze them. Differences in the spread of IRAs and the timing of their creation, the variations in institutional forms chosen in their establishment can not be explained by the functional advantages. At this point, Thatcher adds some 'contextual factors' to the analysis. These contextual factors are policy learning and institutional isomorphism; state traditions and structures, political leadership and state reforms. In addition, direct support from international organizations such as IMF, OECD and WB and tendency of Europeanization place important role in creating IRAs (Gilardi 2005b: 84-85).

Moreover, it is stated that New Public Management (NPM) is a important approach in creating IRAs. Because, the concept of 'agencification' or 'distributed governance' is a core element of NPM (Moynihan 2006; Verhoest et al. 2004) and agencification and distributed governance refers to the great number of non-majoritarian institutions and quasi-autonomous non-governmental organizations (Flinders 2004)

2. Independence of IRAs

Independence of IRAs is generally defined as the ability of these institutions to make decisions regarding the sectors they regulate without any affect or intervention from outside, especially from government or the actors in the regulated sector (Smith 1997a: 9; Virag 1999: 16; Hogwood 1990: 595). To put in another way, independence means that the classical administrative supervisory authority of political power and administrative units is not implemented over organs and functions of these agencies and that other organs can not order or instruct to these agencies. Actually, independence, in this context, describes the stand of such agencies against the actors around them.

Independence of IRAs can be assessed under two dimensions, organic and functional independencies. By organic independence, it is meant that those who are appointed to management boards have more security compared civil servants in other institutions in the context of appointment methods, terms of office and their dismissal procedure. IRAs

which have high independence level are characterized by a long term of office for their board members, appointment board members based on technical skills and dismissal only for official misbehaviour not related to policy (Thatcher 2001: 13; Gilardi 2001b: 9). In addition, to ensure organic independence of IRAs, sources of revenues and budgets of these agencies and their personnel policies are also important factors. Functional independence means that units of executive organ does not have any direct authority like putting operation under approval, blocking or delaying the operation coming into force over the operations and actions of IRAs, which may lead to invalidity of such operations and actions and that no institution or authority can give orders or instructions which will change these operations or prevent them from coming into force.

Although there are opinions stating that formal independence is not always a necessary condition for an efficient regulatory system (Stern 1997: 72), others state that the 'independence' of IRAs should be put under guaranty and they present some requirements to be fulfilled for this purpose (Smith 1997a: 11; Estache 1997: 1; Virag 1999: 16). These requirements are as follows:

- to provide IRAs with a distinct legal mandate, free of ministerial control,
- to determine professional standards in the appointment of board members,
- to delegate power to IRAs to regulate and guide the practice,
- to determine board members' terms in such a way that they will not coincide with general political elections,
- to exempt IRAs from civil servant salary rules which will hinder them from employing personnel of high quality,
- to provide IRAs with special budget which relies on fees levied on the regulated industries instead of public funds,
- not to interfere their own personnel policies,
- to appoint head and board members for fixed and long terms (for 6 years) and to protect them against arbitrary removal from office,
- not to give the chance of appointment renewable,
- to design their dismissal procedure so as to protect them against dismissal based on political grounds.

At this point, it is necessary to state that especially functional independence of IRAs should not be seen as an absolute independence but as a relative one. According to Fesler (1968: 192), absolute independence of IRAs against execution and parliament is a 'myth'. As Christensen and Laegreid (2005: 17) points that it is necessary to distinguish between the *de jure* formal level of independence and *de facto* independence. Real agency independence might not correspond with formal agency independence. Politicians might

use informal channels to influence the decision making of agencies. Besides, IRAs should consider development plans, yearly programs, government programs, economy policies implemented in decisions they will make. Otherwise, problems and conflicts will rise between IRAs and governments about carrying out of policies and the relationship between them will take a form which can be defined as 'bureaucrat-politician dilemma'.

3. IRAs in Turkey: A Structural and Functional Analysis

IRAs is one of the most debated topics in Turkey in recent years. Such debates are generally about features these institutions have, the duties and authority of these institutions, their places in administrative organization, supervision and accountability of them. As a result, it is early to say that Turkey is a country which is compatible with these institutions.

In Turkey, there is not consensus even on the term to use for these institutions and this topic is the reason for intense debates (Karacan 2001: 8). Even though, these agencies are generally named as 'independent regulatory agencies', terms like 'supervisory boards', 'autonomous agencies', 'regulatory boards', 'regulators' and 'wise committees' are also used (Ozdogan 2002: 8; TUSIAD 2002: 151).

If one looks at the creating of IRAs in Turkey, he can see that these agencies emerged not in framework of specific principles and doctrines but in the context of conjectural developments. For example, while the creating of Competition Authority (CA) is explained by the Customs Union process, the emergence of Banking Regulation and Supervision Agency (BRSA), Energy Market Regulatory Authority (EMRA), Telecommunication Authority (TA) and Public Procurement Authority (PPA) is justified by the suggestions of IMF and European Union candidacy process (TUSIAD 2002: 75). Additionally, if one considers the regular reports on Turkey's progress towards accession to European Union, it can be seen that expectations regarding the IRAs are stated in every report. Similarly, OECD notes that the reforms which make the regulatory and supervisory functions of state a matter of primary importance in Turkey are directed and supported by both national and international elements (OECD 2002).

There are nine active IRAs in Turkey. All of them were created by laws made in the Turkish National Assembly (TNA). Consequently, they can not be described as constitutional institutions. IRAs have public legal personality in Turkey. There is the related Ministry of the each IRA to secure the administrative integrity according to Turkish Administrative Law. IRAs perform their duties and exercise their powers through their boards. These boards are decision-making authority of IRAs.

However, it is not an absolute necessity for IRAs to have decision-making authority structured as boards. While some countries like USA, Argentina, Chile, Philippines use boards, others countries like United Kingdom and Malaysia entrust decision-making authority to a single individual (World Bank 1998: 137). There are advantages and disadvantages specific to both methods. While 'individual decision-maker' is efficient in

terms of speed of decision-making, accountability for decisions made, demand for resources and predictability of decisions; board is efficient in terms of involvement of multiple points of view, a sound stand against negative pressures from outside and individual interests, loose ties with political power and contribution to stability (Smith 1997b: 17). However, Turkey has preferred to structure decision-making authority of IRAs as board.

IRAs are determined briefly as below:

Capital Markets Board (CMB): CMB was established by the Law 2499 which was enacted in 1981. CMB is the regulatory and supervisory authority in charge of the securities markets in Turkey. The CMB has been making detailed regulations for organizing the markets and developing capital market instruments and institutions for the past twenty-six years in Turkey. Its major objective is to take the necessary measures for fostering the development of capital markets and hence to contribute to the efficient allocation of financial resources in the country while ensuring investor protection.

Radio and Television Supreme Council (RTSC): RTSC was established by the Law 3984 in 1994. RTSC is responsible for the regulation of the radio and television broadcasts all across Turkey. RTSC was founded in place of the Radio and Television High Council and had broader competence and responsibilities compared to its former position.

Competition Authority (CA): CA was established by Law 4054 in 1994. However, CA commenced operation in 1997. The main task of the Ca is to prevent agreements restricting competition, to control of mergers and acquisitions which adversely affect competition and to monitor of state aids. Authority also evaluates complaints from the parties concerned and consumers

Banking Regulation and Supervision Agency (BRSA): BRSA was established by the Law 4389 in 1999. BRSA's mission is to ensure confidence and stability in financial markets, to create an environment that will improve competitiveness of the financial system, to enable effective operating of loan system, to protect the rights and benefits of the depositors, to take necessary measures for enabling institutions subject to supervision to operate in a sound, secure and well-organized manner in market discipline.

Telecommunications Authority (TA): TA was established by the Law 4502 in 2000. The main purpose of the TA is to ensure a complete liberalization in the sector. The establishment of the Authority has an importance for ensuring continuance, order, reliability and transparency in the telecommunication sector. In addition, TA is the first sector regulation institution of Turkey.

Energy Market Regulatory Authority (EMRA): EMRA was established by the Law 4628 in 2001. Nowadays, the objective of the EMRA is to ensure a financially viable, stable and transparent energy market and to take necessary measures to provide sufficient electricity, natural gas, petroleum and LPG of good quality to consumers. In this context, EMRA has broad competence in electricity and gas sector.

Sugar Authority (SA): SA was established by the Law 4634. Having a public legal personality, the Authority have been formed in order to ensure application of Sugar Law

and other relevant legislation, to supervise and conclude related applications, to make arrangements within the framework of the powers granted by the Law, to fulfill other duties entrusted and exercise the powers granted by the Law.

Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Authority (TTPABMRA): TTPABMRA was established by the Law 4733 in 2002. The Authority have been formed in order to ensure application of this Law. Its main task is to regulate and supervise the tobacco and alcoholic beverages market.

Public Procurement Authority (PPA): PPA which is administratively and financially autonomous was established by the Law 4734 in 2002. The Authority carries out the duties assigned with Public Procurement Law. Its main task is to prepare regulations related with public procurement and to examine the complaint about all public procurement. The Authority is independent in fulfillment of its duties.

These agencies in Turkey have the authority to regulate, supervise, express their opinions, implement sanctions, solve conflicts in markets they are active. In Turkey, IRAs' powers include enforcing sector rules, licensing, determining standards and tariffs, applying fines and investigating. IRAs have authority to request all information from the regulated and to examine all their books, documents and records. Mentioned agencies act independently while they use this authority. These agencies do not get orders or instructions from any person, institution or authority while they undertake their duties and benefit from broad administrative and financial autonomy.

In Turkey, status of IRAs generally can be summarized as followings:

- Board members and head are appointed by the Council of Ministers among candidates having qualifications which are stated via related Laws. Candidates are presented from different public institutions and professional associations.
- Long term of office (4-6 years) is ensured for members and head of board. Except PPA, the principle of 'no appointment renewable' has not been implemented,
- Members of Board can not be removed from office before their terms of office end and can be dismissed only for official misbehaviour. The dismissal of board members from office before they finish their fixed term has been tied very strict conditions.
- IRAs' board members are exempt from civil servant salary rules. The board members and staff are paid higher salaries compared civil servants in other institutions.
- The IRAs have financial and organizational autonomy. Budgets of these agencies are composed of sources specific to them. These include fees levied on the regulated industries, shares received from the fines, aids like donations. They are free in determining of their internal organization in according to their needs.
- The IRAs subject to judicial review.

3.1. The place of IRAs in Turkish Administrative Structure

Although IRAs have been given political, organizational and financial autonomy by related Laws, since Turkey does not have long tradition of IRAs like other continental countries such as France and Italy do, place of these agencies in Turkish administrative structure is controversial. In Turkey, there are different opinions among administrative jurists and academicians about the place of IRAs in administrative structure. While some jurists find talking about IRAs in Turkey as a fantasy considering main basics and principles dominating Turkish administrative structure, some try to place these agencies somewhere in current structure (Duran 1997: 3; Erkut 1998: 131; Gunday 2001: 76; Ulusoy 2003: 93; Ozdag 2002: 19; Ardiyok 2002: 83-84; Tan 2000: 126).

First of all, it is necessary to state that Turkey is a unitary state. The integrity between the units in a unitary state structure is fulfilled by two means named hierarchy and administrative tutelage. Hierarchy refers to ranking in the administrative structure and means that the officers in the structure are bound to each other step by step and degree by degree from highest rank to lowest rank where all obeys orders from superiors. Hierarchy ensures integrity not just among the institutions of central administration but also among various organizations and units in the same legal personality (Gunday 1999: 53-54).

Administrative tutelage is a legal mean which ensures the integrity between central administration and institutions of decentralization which arise as a result of implementation of decentralization system. In other words, administrative tutelage is authority of supervision over decentralization institutions of central administration in order to secure the integrity of state and harmonious working of public services in the country.

IRAs are not under supervision of hierarchy and administrative tutelage mentioned above. This feature of IRAs is the most important one that distinguishes these institutions from other administrative institutions in Turkey and it causes them to be likened to an 'island' in administrative organization. Consequently, this feature gives rise to problems in countries like Turkey which have unitary state structure in determining the place of such institutions in administrative organization.

According to Article No.123 of 1982 Constitution, "administration forms a whole with regard to its structure and functions and shall be regulated by law. The organization and functions of administration are based on the principles of centralization and decentralization. Public legal personality is established either by law or authority given clearly by law." As it is seen from Article No.123, only centralization and decentralization are possible in Turkey. 1982 Constitution does not allow any other organization type. As a result, IRAs can not be a third category besides centralization and decentralization. These institutions can be placed somewhere in two administrative structures in current system.

It is not possible to include IRAs in centralization considering the features they have. This results from the fact that hierarchic control is implemented in centralization. In 1982 Constitution, local administrations which emerged as a result of implementation of

decentralization principle in terms of location are defined and stated by their names. Consequently, it is not possible to think these agencies among local administrations. Additionally, the features these agencies have do not allow such placing. Because, local administrations are subject to central administration's administrative tutelage control in Turkey.

There are also functionally decentralized organizations which emerged as a result of implementation of decentralization principle in terms of functions but these organizations do not have a direct place in 1982 Constitution. These were established on basis of phrase in Article 123 stating that public legal personality can be established by law or authority given clearly by law.

There are definite differences between IRAs and functionally decentralized organizations. First of all, while functionally decentralized organizations undertake a specific service, IRAs do not. These agencies are institutions which regulate and control sectors that are sensitive for society. Additionally, organs of functionally decentralized organizations can be assigned and removed from office by executive power. As a result, it is not possible to talk about the independence of functionally decentralized organizations. Additionally, while IRAs are out of control of administrative tutelage, operations of functionally decentralized organizations are subject to central administration's administrative tutelage control. Consequently, it is not possible to place IRAs among functionally decentralized organizations.

Since IRAs can not be placed among central and local administrations because of features like their public legal personality, organic and functional independence and autonomy and since they can not be included into functionally decentralized organizations; they can be seen as a fourth category or model besides local administrations, functionally decentralized organizations and professional associations which have public institution characteristics.

At this point it should be noted that actually the features and functions of IRAs are not compatible with the structure of decentralization. Because of this, if such features will be maintained; first thing to do is to change the Article 123 of Constitution and to accept IRAs as a third administrative structure besides structures of centralization and decentralization.

It should also be noted that in order to include these agencies into administrative integrity, each of them was related to a Ministry. According to this, TTPABMRA and CMB were related to Minister of State charged by Prime Minister, EMRA to the Ministry of Energy and Natural Resources, SA and CA to the Ministry of Industry and Commerce, TA to the Ministry of Transport, PPA to the Ministry of Finance, RTSC to the Prime Ministry and BRSA to the Prime Ministry or to the Minister of State charged by the Prime Minister. The aim of this method was to establish the connection between these agencies and the administrative structure. However, the only power these ministries have is to take the operations and actions of IRAs they find against law to administrative courts.

3.2. The Control of IRAs in Turkey

One of the most debated topics regarding the IRAs in Turkey is about the control over them. One can talk about three types of control over IRAs in Turkey: jurisdictional, administrative and financial control. First of all, it should be stated that a general jurisdictional control of administrative actions was regulated by Article 125 of 1982 Constitution and it was accepted that in principle, one can apply to jurisdiction against any decisions and operations of the administration.

Smith (1997b: 19) states that the place which is applied against the decisions of IRAs should be independent as well. It can be said that high jurisdiction in Turkey does not see IRAs differently from other administrative institution. As a result, there is not a difference between jurisdictional control of these institutions' decisions and other administrative institutions' decisions (Ulusoy 2003).

It is clear that the jurisdictional control of IRAs will be done in administrative jurisdiction. However, there is not a single way to follow regarding the place where necessary application for this control will be done at first hand, that is, the first degree court. For example, while the Council of State is the first degree court for the lawsuits against the decisions of the CA, BRSA and EMRA; Ankara administrative courts are authorized for lawsuits against the RTSC.

However, the bill about the supervisory and regulatory agencies which was sent by 59th Government to the parliament and intends to determine common methods and fundamental principles regarding IRAs' formation, organization, authority and duties, control and status of board members and employees aims to put an end to different practices in this issue and accepts the Council of State as first degree court.

In the context of IRAs' administrative control, there seems to be a distinction between the decisions these institutions take and operations undertaken regarding the sector regulated and decisions they take about internal affairs and their own management (Ulusoy 2003: 69). It is stated that if IRAs' decisions regarding the sector regulated are controlled by an administrative unit attached to politicians, this will be against the basic philosophy and purpose considered during the establishment of these agencies and such control may be used as a mean for political pressure. As a result, it is stated that the decisions taken by an IRA about related sector should not be subject to administrative control but administrative control should be in place for decisions and operations regarding internal affairs and management.

In Turkey, financial control of IRAs is an intensely debated topic and it is focus of current interest. The latest development about the financial control of these agencies is Act No. 5018 of Public Financial Management and Control. Before this act passed, there was uncertainty in financial control. However, with Act No.5018, in a similar way to practices in developed countries, the Turkish Court of Accounts was authorized for the financial control of IRAs.

3.3. Formal Independence Levels of IRAs in Turkey: Empirical Analysis

Data and Methods

In order to evaluate the formal independence of IRAs in Turkey, index of IRAs' independence developed by Gilardi (2002: 881-883) is utilized. This index is focused on formal independence of IRAs. This can be divided into five main dimensions, namely the agency head status, the management board members' status, the general frame of the relationships with the government and the parliament, financial and organizational autonomy and the extent of delegated regulatory competences. The indicators are presented in detail in Table 1.

Each indicator is numerically coded on a scale of 0 (lowest level of independence) to 1 (highest level of independence). Under every indicator, there are choices showing possible situations regarding this indicator.

Table 1: Formal independence of regulatory agencies

Dimension	Indicators	Numerial Coding
A) Agency head status	1) Term of Office	
	- over 8 years	1,00
	- 6 to 8 years	0,80
	- 5 years	0,60
	- 4 years	0,40
	- fixed term under 4 years or at the discretion of the appointer	0,20
	- no fixed term	0,00
	2) Who appoints the agency head?	
	- the management board members	1,00
	- a complex mix of the executive and the legislature	0,75
	- the legislature	0,50
	- the executive collectively	0,25
	- one or two ministers	0,00
	3) Dismissal	
	- dismissal is imposible	1,00
	-only for reasons not related to policy	0,67
	- no specific provisions for dismissal	0,33
	- at the appointer's discretion	0,00
	4) May the agency head hold other offices in government?	
	- no	1,00
- only with permission of the Executive	0,50	
- no specific provisions	0,00	

Table 1 Contunied	Table 1 Contunied	Table 1 Contunied
	- no	1,00
	- yes, once	0,50
	- yes, more than once	0,00
	6) Is independence a formal requirement fort he appointment?	
	- yes	1,00
	- no	0,00
B) Management board member's status		
	7) Term of Office	
	- over 8 years	1,00
	- 6 to 8 years	0,80
	- 5 years	0,60
	- 4 years	0,40
	- fixed term under 4 years or at the discretion of the appointer	0,20
	- no fixed term	0,00
	8) Who appoints the management board members?	
	- the agency head	1,00
	- a complex mix of the executive and the legislature	0,75
	- the legislature	0,50
	- the executive collectively	0,25
	- one or two ministers	0,00
	9) Dismissal	
	- dismissal is imposible	1,00
	- only for reasons not related to Policy	0,67
	- no specific provisions for dismissal	0,33
	- at the appointer's discretion	0,00
	10) May management board members hold other offices in government?	
	- no	1,00
	- only with permission of the Executive	0,50
	- no specific provisions	0,00
	11) Is the appointment renewable?	
	- no	1,00
	- yes, once	0,50
	- yes, more than once	0,00
	12) Is independence a formal requirement for the appointment?	
	- yes	1,00
	- no	0,00

Table 1 Contunied	Table 1 Contunied	Table 1 Contunied
	- yes	1,00
	- no	0,00
	14) Which are the formal obligations of the agency vis-a-vis the government?	
	- none	1,00
	- presentation of an annual report for information only	0,67
	- presentation of an annual report that must be approved	0,33
	- the agency is fully accountable	0,00
	15) Which are the formal obligations of the agency vis-a-vis the parliament?	
	- none	1,00
	- presentation of an annual report for information only	0,67
	- presentation of an annual report that must be approved	0,33
	- the agency is fully accountable	0,00
	16) Who, other than a court, can overturn the agency's decision where it has exclusive competency?	
	- none	1,00
	- a specialized body	0,67
	- the government, with Qualifications	0,33
	- the government, unconditionally	0,00
D) Financial and Organizational Autonomy	17) Which is the source of the agency's budget?	
	- external funding	1,00
	- government and external funding	0,50
	- governmet	0,00
	18) How is the budget controlled)	
	- by the agency	1,00
	- by the accounting Office or court	0,67
	- by both the government and the Agency	0,33
	- by the government	0,00
	19) Who decides on the agency's internal organization?	
	- the agency	1,00
	- both the agency and the Government	0,50
	- the government	0,00
	20) Who is in charge of the agency's personnel policy?	
	- the agency	1,00
	- both the agency and government	0,50

	- the government	0,00
E) Regulatory Competencies	21) Who is competent for regulation in the sector?	
	- the agency only	1,00
	- the agency and another independent authority	0,75
	- the agency and parliament	0,50
	- the agency and government	0,25
	- the agency has only consultative	0,00

Source: Modified from Gilardi (2002).

In this study, multidimensional scaling analysis is used to determine the formal independence of IRAs in Turkey. Firstly, multidimensional analysis is introduced by Richardson (1938), and after with Torgerson (1952, 1958), Shepard (1962), and Kruskal (1964) this analysis method has been popular. The goal of multidimensional scaling is to find a representation of the objects in a low-dimensional space. Thus, complex relationship among the objects in multidimensional data matrix can be presented and interpreted easily by multidimensional scaling. In addition, multidimensional scaling can be used to introduce similarity and dissimilarity (Takeuchi et al. 1983: 410).

Applying multidimensional scaling analysis is important to identify data's measurement. Because, technical of distance matrix is chosen according to measurement type of data. (Jobson 1992: 585). Multidimensional scaling analysis is utilized from distance matrix. Consequently, we must calculate distance matrix suitable to data's type. If measurement of data is interval or ratio, it is the most used Euclidean distance that can be calculated for i and j unit as follows:

$$d_{ij} = \left[\sum_{k=1}^r (X_{ik} - X_{jk})^2 \right]^{1/2}$$

(1)

Where $X_{i1}, X_{i2}, \dots, X_{id}$ is element of vector X_i , and $X_{j1}, X_{j2}, \dots, X_{jd}$ is element of vector X_j for $k = 1, 2, \dots, r$.

After applying multidimensional scaling, we must compare configuration distance with distance obtain from original data for suitability. That is to say, Stress measure is used for compare suitability to finding results with original distance matrix. Stress measure can be calculating as follows (Hair et al. 1998: 540).

$$\text{Stress} = \sqrt{\frac{(d_{ij} - \hat{d}_{ij})^2}{(d_{ij} - \bar{d})^2}}$$

(2)

Where \bar{d} is mean distance ($\sum d_{ij} / n$), d_{ij} is original distance, and \hat{d}_{ij} configuration distance for between i and j . So, the more \hat{d}_{ij} is close d_{ij} , the more stress value is small. The stress measure is used to compare suitability between original distance and distance obtained from solution. Therefore, lower stress measure indicates better solutions (Timm 2002: 546).

Results

As a result of the multi-dimensional scaling analysis, it is seen that among alternative dimensions, three-dimension case is the most suitable one. Iteration implemented for three-dimension solution and result of Young's Stress test, which gives goodness of fit, are shown in Table 2.

Table 2: Young's Stress Test Result

<i>Iteration</i>	<i>S-stress</i>	<i>Improvement</i>
1	0,08968	-
2	0,06588	0,02380
3	0,06284	0,00303
4	0,06269	0,00016

S-stress test stops when recovery is below 0,001. The stress test value (0.06269) found in third iteration shows that goodness of fit is at high level.

The values given according to indicators used in the evaluation of IRAs' independence show also similarities and dissimilarities between related agencies. The coefficient of Stimulus coordinates is used for the evaluation of such similarities and dissimilarities. In the context of this study, similarities and dissimilarities point out independence levels of IRAs. The agency which has the highest positive Stimulus coefficient is the most independent regulatory agency in Turkey.

When Table 3 is analyzed, it is seen that the highest positive value (1.2193) in the first dimension belongs to the BRSA. After a complete examination of indicators measuring the independence of institutions, it is found that BRSA is the one which has the highest level of independence among IRAs. On the contrary, SA is the one which has the lowest level of independence in the first dimension. This results from the fact that, SA takes a negative and low value (-3,6921) in the examination of calculated similarities. To sum up, while BRSA is the most independent IRA in the first dimension, SA is the least independent one. The independent levels of other agencies do not show significant differences.

Table 3: Stimulus Coordinates (Similarity as to Dimension)

<i>No</i>	<i>StimulusName</i>	<i>Dimesions</i>		
		<i>1</i>	<i>2</i>	<i>3</i>
1	Banking Regulation and Supervision Agency (BRSA)	1,2193	-1,5876	0,3444
2	Capital Markets Board (CMB)	0,8124	0,0870	0,1443
3	Telecommunication Authority (TA)	0,1564	-0,1164	-0,6434
4	Energy Market Regulatory Authority (EMRA)	0,4053	-0,4418	1,2125
5	Competition Authority (CA)	0,5554	-0,2245	-0,0488
6	Sugar Authority (SA)	-3,6921	0,2993	0,2121
7	Public Procurement Authority (PPA)	0,4909	0,6703	-1,0105
8	Radio and Television Supreme Council (RTSC)	0,7207	-1,7506	-0,0989
9	Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Authority (TTPABMRA)	-0,6683	-0.1108	-0,1116

Table 4 is a matrix showing the distances among agencies. For example, first column demonstrates the distances between the BRSA and itself and the BRSA and other agencies.

Table 4: Optimally Scaled Data Disparities

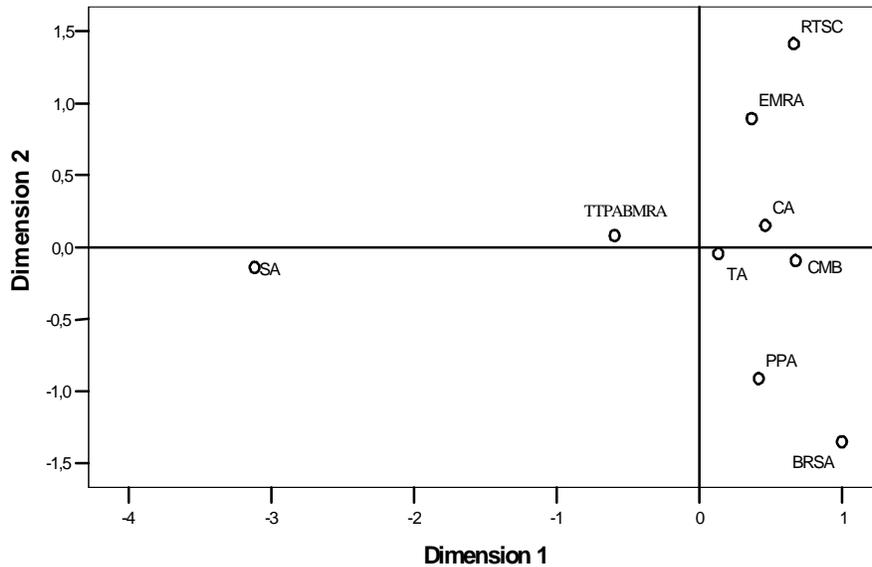
<i>Optimal Disparities Among Independent Regulatory Agencies</i>									
	BRSA	CMB	TA	EMRA	CA	SA	PPA	RTSC	TTPABMRA
BRSA	0,000								
CMB	1,677	0,000							
TA	2,444	0,830	0,000						
EMRA	2,544	1,567	1,712	0,000					
CA	2,017	0,000	0,277	1,171	0,000				
SA	5,025	4,469	3,992	4,344	4,275	0,000			
PPA	1,817	1,659	0,626	2,356	1,275	4,392	0,000		
RTSC	3,183	1,935	2,065	2,175	1,586	4,803	2,655	0,000	
TTPABMRA	2,662	1,722	0,719	1,484	1,347	3,153	1,578	2,305	0,000

If the first column is analyzed, it is seen that the BRSA is the most distant agency to the SA (5,025). Actually, this is another way to confirm that the BRSA has the highest level of independence since the SA has the lowest level of independence. An interesting point is the closeness between the distance values of the CMB and CA. The fact that calculated distance value is equal to 0,000 shows that independence levels of these two agencies are very close to each other. Another interesting point is that the SA is the most distant agency to any agency.

The matrix of optimal distances between IRAs can be also modeled as a graph. Although it is found that appropriate model for this study must be three dimensioned, the distances are drawn for two-dimension case since it is not easy to understand and to comment on

three-dimension case. In Fig. 1, it is seen that the BRSA is the regulatory agency with the highest independence level in Turkey as it is the closest one to the ideal point. On the contrary, the SA has the lowest level of independence since it is the most distant one to the ideal point.

Figure 1: Derived Stimulus Configuration for Independent Regulatory Agencies



4. Conclusion

Many theories and reasons are put forward in the literature to explain the creating of the IRAs which are established in order to improve the market efficiency and to purify the market from the effects of politicians. However, in case of Turkey, it is possible to say that these agencies were established as a result of conjectural developments like the process of EU candidacy or suggestions from international organizations rather than such theories and principles.

The IRAs are out of classical supervision of political power and administrative institutions. Additionally, employees of these agencies have more security in terms of appointment procedures, terms of office and dismissal from the office relative to employees in other institutions. All these elements can be seen as necessary conditions to put the independence of the IRAs under guaranty. In this context, it can be stated that the

IRAs in Turkey generally have the independence that the IRAs in developed countries have at least in legal grounds.

However, all these features make these institutions a focus of intense debate in Turkey as it is the case in other continental European countries like Italy and France. As a result of these features, it gets difficult to find a place for these agencies in administrative structure of Turkey which is a unitary state. This results from the fact that these agencies are in conflict with the principles and means which dominate current administrative structure. The solution to this problem is to change Article No.123 of 1982 Constitution and to undertake necessary regulations which will achieve the legitimacy of the place these agencies have in Turkish administrative structure.

In addition, according to results of empirical analysis, BRSA has the highest level of independence among IRAs. On the contrary, SA is the one which has the lowest level of independence. The independent levels of other agencies do not show significant differences. Consequently, necessary measures should be taken to improve formal independence level of SA.

References

Ardıyok, Ş. (2002). *Doğal tekeller ve düzenleyici kurumlar: Türkiye için düzenleyici kurum modeli*. Ankara: Rekabet Kurumu Yayınları.

Bouckaert, G. & Peters, G. (2004). What is available and what is missing in the study of quangos?. In C. Pollitt & C. Talbot (eds), *Unbundled government: A critical analysis of the global trend to agencies quangos and contractualisation*. New York: Routledge, pp. 22-50.

Christensen, T. & Laegreid, P. (2005). Regulatory Reforms and Agencification. Paper prepared for the 3. ECPR Conference. Budapest, 8-10 September 2005.

Cushman, R. (1953). The problems of independent regulatory commissions. In D. Waldo (ed), *Ideas and issues in public administration*. New York: McGraw-Hill, pp. 138-156.

Das, U., Quintyn, M. & Taylor, M. W. (2002). Financial regulators need independence. *Finance & Development: A Quarterly Magazine of the IMF* 39(4): 1-6.

Duran, L. (1997). Türkiye’de bağımsız idari otoriteler. *Amme İdaresi Dergisi* 30(1): 1-10.

Döhler, M. (2002). Institutional choice and bureaucratic autonomy in Germany. *West European Politics* 25(1): 101-124.

Erkut, C. (1998). Bağımsız idari makamlar müessesesi açısından Sermaye Piyasası Kurulu’nun kısa bir değerlendirmesi. In I. Kaboglu (ed), *Bağımsız idari otoriteler*. İstanbul: Alkım Yayıncılık, pp. 129-135.

Estache, A. (1997). Designing regulatory institutions for infrastructure-lessons from Argentina. *Public Policy For Private Sector*, World Bank, May: 1-4.

- Fesler, J. (1968). Independent regulatory agencies. In F. Morstein Marx (ed), *Elements of public administration*. New Delhi: Prentice Hall of India Private Limited, pp. 191-219.
- Fisher, L. (1998). *The politics of shared power: Congress and the executive*. College Station: Texas A&M University Press.
- Flinders, M. (2004). Distributed public governance in Britain. *Public Administration* 82(4): 883-909.
- Gehring, T. (2004). The consequences of delegation to independent agencies: Separation of powers, discursive governance and regulation of telecommunications in Germany. *European Journal of Political Research* 43(4): 677-698.
- Gilardi, F. (2005a). Evaluating independent regulators. In *Designing Independent and Accountable Regulatory Authorities For High Quality Regulation* (Proceedings of An Expert Meeting in London, 10-11 January 2005), Paris: OECD, pp. 101-125.
- Gilardi, F. (2001a). Independent Regulatory Agencies as Ultimate Step of Delegation: Hypotheses From the Transaction-Cost Politics Approach. Paper for Presentation at the Workshop Delegating Powers to Independent Agencies, Lousanne, 6-7 December 2001.
- Gilardi, F. (2001b). Principal-Agent Models Go to Europe: Independent Regulatory Agencies as Ultimate Step of Delegation. Paper Presented at the ECPR General Conference, Conterbury, 6-8 September 2001.
- Gilardi, F. (2002). Policy credibility and delegation to independent regulatory agencies: A comparative empirical analysis. *Journal of European Public Policy* 9(6): 873-893.
- Gilardi, F. (2005b). The institutional foundations of regulatory capitalizm: The diffusion of independent regulatory agencies in Western Europe. *Annals of The American Academy of Political and Social Science* 598: 84-101.
- Goodman, M. & Wrightson, M. (1987). *Managing regulatory reform: The Reagan strategy and its impact*. New York: Praeger Publishers.
- Gunday, M. (1999). *İdare hukuku*. Ankara: İmaj Yayıncılık.
- Gunday, M. (2001). Bağımsız idari otoriteler. In *Bağımsız idari otoriteler*. Ankara: Rekabet Kurumu Yayınları, pp. 73-79.
- Hair, J. F., Enderson, J. R., Rolph, E., Tahtam, R. L., & Black, W. C. (1998). *Multivariate data analysis*. London: Prentice-Hall International Inc.
- Hogwood, B. (1990). Developments in regulatory agencies in Britain. *International Review of Administrative Science* 56: 595-612.
- Jacobzone, S. (2005). Independent regulatory authorities in OECD countries: An overview. In *Designing Independent and Accountable Regulatory Authorities For High Quality Regulation* (Proceedings of An Expert Meeting in London, 10-11 January 2005). Paris: OECD, pp. 72-100.
- Jobson, J. D. (1992). *Applied multivariate data analysis volume II: Categorical and multivariate methods*. New York: Springer Verlag Inc.

- Karacan, A. (2001). Özerk kurumların özerkliği. *Rekabet Dergisi* 8: 3-59.
- Levi-Faur, D. (2005). The global diffusion of regulatory capitalism. *Annals of The American Academy of Political and Social Science* 598: 12-32.
- Levi-Faur, D. & Jordana, J. (2005). Preface: The making of a new regulatory order. *Annals of The American Academy of Political and Social Science* 598: 6-9.
- Majone, G. (1994). The rise of the regulatory state in Europe. *West European Politics* 17(3): 77-101.
- Majone, G. (1996). Regulation and its modes. In G. Majone (ed), *Regulating Europe*. London: Routledge, pp: 9-27.
- Majone, G. (1997). From the positive to regulatory state: Causes and consequences of change in the mode of governance. *Journal of Public Policy* 17(2): 139-167.
- Majone, G. (2001). Two logics of delegation: Agency and fiduciary relations in EU governance. *European Union Politics* 2(1): 103-122.
- Moran, M. (2003). *British regulatory state: High modernism and hyper-innovation*. Oxford: Oxford University Press.
- Moynihan, D. (2006). Ambiguity in policy lessons: The agencification experience. *Public Administration* 84(4): 1029-1050.
- OECD (2002). *Review of regulatory reform: Turkey*. Paris: OECD.
- Ozdogan, M. (2002). *Özerk kurullar*. Ankara: Avrasya–Bir Vakfi ASAM Yayınları.
- Pollack, M. (2002). Learning from the Americanists (Again): Theory and method in the study of delegation. *West European Politics* 25(1): 200-219.
- Scott, C. (2000). Accountability in the regulatory state. *Journal of Law and Society* 27(1): 38-60.
- Smith, W. (1997a). Utility regulators-the independence debate. *Public Policy For Private Sector*, World Bank, December: 9-12.
- Smith, W. (1997b). Utility regulators-decision-making structures, resources and start-up strategy. *Public Policy For The Private Sector*, World Bank, December: 17-20.
- Stern, J. (1997). What makes an independent regulator independent?. *Business Strategy Review* 8(2): 67-74.
- Takeuchi, K., Yanai, H. & Mukherjee, B. N. (1983). *The Foundations of multivariate analysis*. New Delhi: Wiley Eastern Limited.
- Tan, T. (2000). Bağımsız idari otoriteler. In I. Atiyas (ed), *Devletin düzenleyici rolü*. Istanbul: Tesev Yayınları, pp. 115-133.
- Thatcher, M. (2001). *Delegation to independent regulatory agencies in Western Europe*. (<http://www.essex.ac.uk/ECPR/events/jointsessions/paperarchive/grenoble/ws20/thatcher.pdf>) Accessed 15.05.2005.

- Thatcher, M. (2002a). Regulation after delegation: Independent regulatory agencies in Europe. *Journal of European Public Policy* 9(6): 954-972.
- Thatcher, M. (2002b). Analysing regulatory reform in Europe. *Journal of European Public Policy* 9(6): 859-872.
- Thatcher, M. (2002c). Delegation to independent regulatory agencies: Pressures, functions and contextual mediation. *West European Politics* 25(1): 125-147.
- Thatcher, M. (2005). The third force? Independent regulatory agencies and elected politicians in Europe. *Governance: International Journal of Policy, Administration and Institutions* 18(3): 347-373.
- Thatcher, M. & Sweet, A. S. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics* 25(1): 1-22.
- Timm, N. H. (2002). *Applied multivariate analysis*. New York: Springer.
- TUSIAD (2002). *Bağımsız düzenleyici kurumlar ve Türkiye uygulaması*. Ankara: TUSIAD.
- Ulusoy, A. (2003). *Bağımsız idari otoriteler*. Ankara: Turhan Kitabevi.
- Verhoest, K., Peters, G., Bouckaert, G. & Verschuere, B. (2004). The study of organisational autonomy: A conceptual review. *Public Administration and Development* 24(2): 101-118.
- Virag, G. (1999). *Independence of a regulatory institution-A means to alleviate credibility problems in the CEE countries*. Case-Ceu Working Papers Series 34, Warsaw.
- Wilks, S. & Bartle, I. (2002). The unanticipated consequences of creating independent competition agencies. *West European Politics* 25(1): 148-172.
- World Bank. (1997). *State in a changing world*. World Development Report, Oxford: Oxford University Press.
- World Bank. (1998). *Concessions for infrastructure: A guide to their design and award*. *World Bank Technical Paper No: 399*, Washington: World Bank.