

CITIZENS' POWER TO DEMAND ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PUBLIC SERVICE*

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A Brief Introduction

"Providing Explanation/Calling to Account" or the concept of "Accountability" in the international literature has been perceived in various forms and frequently neglected in Turkey. It can be alleged that this is the result of the choices of semantic roots in translation process to the corresponding cultural structures and concepts,

just like it's the case in many other examples. In Turkey and in Turkish language "Calling to Account" is

usually perceived as a concept which can often be experienced only by the strong party and includes a threat, while "Giving Account or Providing Explanation" is usually perceived as an involuntary and insulting obligation attributed solely to the weak to answer to the strong. Therefore citizens' venture of calling to account the "almighty State" is labeled as an absentminded approach overstepping the predefined boundary, from time to time (maybe often). The state which is

administered by the government is depicted as "Father State", the sovereign protector whose omnipotence cannot be questioned by the people walking the streets. On the other hand at the global level this concept, definitely by the help of historical developments, is perceived noticeably different. In a nutshell: Since "Corporate

«INDEED, IT HAS BEEN SAID THAT DEMOCRACY IS THE WORST FORM OF GOVERNMENT, EXCEPT FOR ALL THOSE OTHER FORMS THAT HAVE BEEN TRIED FROM TIME TO TIME...»
SIR. W. CHURCHILL

Governance" is cultivated to manage corporations with a better quality, "Accountability" can be considered as the projection of "Corporate

Governance" which increases quality in democracy and administration of the state. Thus the concept of "Accountability" finds wide, even creative and innovative practice fields in many democracies which are defined as "healthy" and is a fundamental part of legitimacy of the use of public authority. This component, as one of the most important checks and balances mechanism, helps to improve the quality in state administration, and performs a kind of automatic course-correction function: **Ergo extremely vital!**

SUMMARY: A healthy democracy requires citizens to participate in policy selection and decision making processes as an individual or community. This participation also constitutes an external audit for the government. Citizens' Power of Calling Government to Account is a critical area which have been improving and evaluating throughout the history of democracy. These whole sets of accountability mechanisms aim a better public administration and are enforced widely in international law and practice, especially in the EU, since these are some of the most critical components of a healthy democratic practice.

Questions That Needs to Be Addressed

With this perspective, addressing many interlinked areas cannot be avoided since many topics within this concept have significant importance on their own, yet only combined they constitute an intact structure. However it's impossible to cover every dimension of all topics within the limits of this brief analysis. Even though it's impossible to examine

each and every topic, bringing up a series of questions and touching upon them is possible and useful.

Therefore at least the questions below should be noted as **topics that need to be addressed and examined:**

- Why Do Being A Citizen And Accountability Are Important?
- Democracy Or «Healthy» Democracy?
- What Do We See When We Look Into Examples And Mechanisms Of The EU And The EU Members?
- Where Does Regulatory Impact Assessment/Analysis And Turkey Stand Today?
- Where Does Turkey Stands In The Context Of "Accountability" In Public Administration?
- What Kind Of Road Map Should Turkey Follow In The Future?

Taxation, Representation and Magna Carta

Democracy is practiced with various checks and balances mechanisms in many different countries around the world. There is no doubt that United Kingdom (UK) and United States of America (US) methodologies have an exclusive place among the first and most successful ones. Even though these systems have both strengths and weaknesses which are unique to themselves, the fact that these systems have some of the most successful or healthy practice of democracy in the world is undisputable. From this point of view, the foundation of the US revolution and democracy, the Boston Tea Partyⁱ is one of the special moments in history. This incident, identified with the famous slogan "**No Taxation Without Representation!**" (in decision making processes)", has been one of the principal arguments of citizens' right to

participate in administration of the state, therefore oversight of the government by civil will and calling public administration to account.ⁱⁱ However the right to participate in decision making and oversee the public administration, which can also be named as the right to call the administration to account, in fact had been acknowledged much earlier and even recorded in some documents which changed the course of time.

One of the most famous examples



in this area is certainly "The Great Charter of the Liberties – Magna Carta Libertatum" which dates

back to 1215.ⁱⁱⁱ Deemed as one of the documents that changed the course of time, Magna Carta has a vital importance in many



areas, but these three implicit assurances/pledges are especially spectacular:

- Actors of economy will have a right to voice their opinions, since the Kings' decisions will affect them financially,
- People who are financing the kingdom will have a right to participate in its administration,
- The Kings won't have a right to punish any "free" citizens neither without concrete and proportional reason to do so, nor with their own discretion (Rule of Law).

Accountability Relationship and Participation

This document from England, the cradle of democracy, became one of the premier documents of the “unique” British Constitution over time.^{iv}

It can be argued that: Following this step, the historical interaction of the concepts “Calling to Account, Providing Explanation, Oversight and Participation”

developed with time and created the four pillars of a fundamental mechanism ensuring a healthy practice of democracy.

However it shouldn't be forgotten that oversight of the state can only be realized by two approaches:

- States Voluntarily Generates Mechanisms
- Individuals'/Citizens' Demands (Constitutional Participation Right)

As it was observed in Boston Tea Party and Magna Carta examples; sometimes states' positive approach, sometimes citizens' demands, sometimes both have pushed the processes in various examples throughout the history. Nevertheless it should be clearly declared that; accountability, participation or

audit relationship cannot be created if political will as a ruling power does not acknowledge the need to do so! It must be noted that in the first example British and US Governments', in the second example the King's

NEVERTHELESS IT SHOULD BE CLEARLY DECLARED THAT; ACCOUNTABILITY, PARTICIPATION OR AUDIT RELATIONSHIP CANNOT BE CREATED IF POLITICAL WILL AS A RULING POWER DOES NOT ACKNOWLEDGE THE NEED TO DO SO!

acceptance and the official assent created a new era and enabled a reformed administration style put into practice. Therefore the

ruling political will, voluntarily or involuntarily, made choices to give acceptance to share its authority, open itself to audit and share its administrative privilege with the society that is the source of this privilege. It can be

asserted that; in time, this reformed administration style provides course correction for unjust practices, as well as “deficient conjectures

regarding the outcomes of decisions that are based on incomplete data or erroneous projections”.

Today, the UK has one of the most participatory and successful administrative systems aiming to eliminate bureaucracy and

paperwork by Cutting the Red Tape^v and Regulatory Impact Assessment^{vi} (RIA) practices. One of the main reasons of this success and participatory rate might be lying in this controversial period in its history. So we can argue that: **While the main pillars of “The Principle of Separation of Powers” (Trias Polica) Legislature, Executive and Judiciary provide an “internal audit” to the state, another indispensable pillar is the citizens' oversight on the state, practically an “external audit”, which is at least as much**

needed. This external audit is a civil right and liberty of ordinary citizens, as well as citizens who are taking part in business world and can be exercised both as an individual and collectively. Even though the role of individuals in

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this audit is vital, more efficient audits are conventionally achieved by civil society organizations. At this point a special emphasis must be put on

participation, since **a complete audit is impossible without participation at some basic level.** Moreover participation to decision making or implementation processes is one of the most effective audit methods itself. ^{vii}

In Turkey, the concept of audit is generally perceived as an accounting activity that starts after everything has finished. This in fact is a great fallacy and an approach that makes many

reversible mistakes impossible to fix. Whereas audit can be done ex-post, for instance after a legislative act, administrative decision or legal enforcement, it can **also be done ex-ante or**

even during decision making process, implementation or enforcement. Timing of audit is the most important aspect that defines the mechanism or methodology of audit.

A Glimpse at the EU

When we glimpse at the European Union (EU) the first element that deserves our attention might be the fact that accountability is understood on the basis of Good Governance.^{viii} Therefore it can be pointed out that high quality in state and government administration also requires the four main principle of Corporate Governance:

- Transparency
- Accountability
- Fairness
- Responsibility

Right after this basic structure, the first topic that must be touched upon is efforts on Fighting Corruption. Even if it is not the sole subject in accountability of the state, it is a fundamental one and most likely one of the most critical ones. This is the reason why Fighting Corruption is an area where international cooperation is widespread and highly sophisticated, including layers of the EU institutions.^{ix} Consequently there is a comprehensive legal *acquis* that includes

international and national legal acts, manuals and reports. However it mustn't be forgotten that within the audit and accountability relationship; even though corruption is a fundamental and most likely one of the most critical subjects, it's not only one!

Within the audit and accountability relationship **there are many deep study areas primarily including, but not limited to:** (i) Participation of Civil Society and Private Sector Organizations to policy making and legislative processes, (ii) Joint assessment of recommendations on alternative solutions, (iii) Reevaluation and redesign of the solutions based on results, (iv) Design of Better, even Smart Regulations^x and Regulatory Impact Assessment, (v) Improvement of e-Government applications, (vi) Legal protection of whistleblowers.^{xi}

MAIN PRINCIPLES OF CORPORATE GOVERNANCE ARE ALSO REQUIRED FOR GOOD GOVERNANCE:

- **TRANSPARENCY**
- **ACCOUNTABILITY**
- **FAIRNESS**
- **RESPONSIBILITY**

Within this perspective, as a core instrument of democracy, ballot box practice still has a critical role; but **today it is also evident that it's in**

need of support from many other democratic components and practices.

Impact Assessment

While we delve in the need of accountability of the state and government to the citizens (therefore to civil society and private/business sector) as one of the founding principles of democracy, another topic that must be emphasized might be Regulatory Impact Assessment. This topic has been neglected in Turkey, but it's a technical and practical model that can be implemented and has potential to create solid outcomes in the short run.^{xii} Moreover it's certainly deemed "vital" both not only for audit and accountability, but also designing high quality policies and enhancing

competitive powers of countries.

Whereas this “vital” topic became part of Turkish regulations just within the last decade, global examples have a long history and have been used by Organization for Economic Cooperation and Development (OECD) since 1974.^{xiii}

Due to its productive results during the last decades, the

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concept of impact assessment gained so much importance in the EU that only in five years during 2003 – 2007 a total of 287 Impact Assessments at the EU level had been conducted and published. Similarly in the UK which is one of the most successful examples in this topic; during the 6 years between 2008 – 2013, a total of 2.734 Impact Assessments had been conducted and transparently published in the internet for public view and consultation. At this point it must especially attract attention that; **not only the final/result reports of the impact assessments, but also the prior civil society and business world consultation versions of them were also published with the same transparency.**

Apart from the transparency dimension; the fact that the contents and quality of the impact assessments must be submitted to public and private sector stakeholders’ audit, review and evaluation is indispensable. One of the most important measures to increase the quality of impact

assessments in this area is the establishment of the Impact Assessment Board (IAB) in 2006 by the European Commission. The

data from the 2012 IAB Report states that during the 6 years between 2007 – 2012 a total of 583 Impact Assessments were evaluated by the Board and the IAB requested 765 amendments to improve these reports. As a consequence of these requests 283 changes had been made for the final Impact Assessments during the 4 years between 2009 – 2012 alone.^{xiv}

Yet another point that needs a special emphasis is the importance of the fact that impact assessments are not conducted only for regulations, but also for main policy areas and even road maps that will eventually result in regulations. 69% of 583 EU level impact assessments were conducted during legislative

processes, while the rest were on other areas.

For more information on this area European Commission’s 2009 Impact Assessment Guidelines^{xv}, the Commission’s impact assessments^{xvi} in 2014 and IAB opinions regarding these assessments, Open Consultations from the European Commission^{xvii} and the report that assesses “the costs and benefits of regulation” which was prepared by The Centre for European Policy Studies (CEPS) for the European Commission^{xviii} are among the primary and the most useful resources.

...and Turkey

The Republic of Turkey exhibits diverse structures on all the above mentioned areas such as; public accountability, state’s willingness to give account or open itself to citizens’ audit, participation of civil society to legislative processes, open consultations before policy making, e-government structures, design of smart regulations and transparency of administrative procedures.

One of the most comprehensive attempts in this area, which is relatively new in our country, was the adoption of “The Law Regarding Basic Principles and Restructuring of

Public Administration” on the 15th July, 2004. The article (5) of this law included the provision: “Impact assessment must be done prior to new regulations and decrees to establish administrative units”.^{xix} However this law was vetoed right after its adoption by the President in power at the time and the parliament didn't review it again. Consequently this law lost its chance to become a part of regulations in effect and gain enforcement power. Therefore the primary regulation that embeds impact assessment into legal system is “Public Financial Management and Control Law” numbered 5018, which dates back to December 10th, 2003. Even though this law foresees impact assessment in more than a couple articles, the defined assessments are exclusively for “the main principles of public finance”. This means impact assessments are required components, but solely for justification of budget and project finance proposals.

The holistic reform step in all these areas – especially important for impact assessment – was taken with a secondary resource of law in 2006: “Regulation on Rules and Principles Regarding Preparation of Regulations”.^{xx} This revolutionary regulation

obligates the public authorities to “conduct regulatory impact assessments for every draft law and draft law-creating governmental decrees that will predictably influence more than 10 million Turkish Liras, if enforced”. This vital piece of law which is still in effect was supplemented with and strengthened by “Circular Order of the Prime Ministry on Regulatory Impact Assessment Practices”^{xxi} which includes an enclosed “Regulatory Impact Assessment Guide” in 2007 and “Regulation on Rules and Principles of Public Service”^{xxii} in 2009. Thus with these developments Turkey initiated much deeper studies on new concepts like “Standard Cost Model”^{xxiii} based on international examples.

The European Commission's Turkey Progress Report in 2006 noted that “Turkey has made some progress regarding better regulation” and “introduced regulatory impact assessments into the Turkish legal system” and emphasized that “The use of RIA should, amongst other things, support Turkey in the conduct of EU accession negotiations.”^{xxiv}

THE HOLISTIC REFORM STEP IN ALL THESE AREAS, ESPECIALLY IMPORTANT FOR IMPACT ASSESSMENT, WAS TAKEN WITH A SECONDARY LAW RESOURCE ADOPTED IN 2006: “REGULATION ON RULES AND PRINCIPLES REGARDING PREPARATION OF REGULATIONS”.

This topic also became a part of “Medium Term Program 2014 – 2016” of Turkey as a statement: “In order to strengthen accountability and increase efficiency in resource management, before implementing new spending initiatives... impact assessments will be performed”.^{xxv} Even though this topic is emphasized with a priority, public finance perspective was still dominating.

Another important effort in this area that must definitely be touched upon is “The Coordination Council for the Improvement of Investment Climate” (YOİKK). With the initiative of “Republic of Turkey Prime Ministry Undersecretariat of Treasury” and support of World Bank a research for a report on “Reducing Administrative Barriers to Investment” in Turkey started in the year 2000. Parallel to the recommendations of the report and as a step of “**The Investment Climate Reform Program in Turkey**” YOİKK^{xxvi} **was officially established in the year 2001. In a nutshell: YOİKK have been creating many new initiatives in Turkey for a better public administration.**

Overall Evaluation and Conclusion

The overall area framed above is within both national and international priorities of Turkey, since these processes that increase **the quality of state administration constitute «an unwritten chapter» in the EU membership process.** This area including democratic governance forms an implicit, but substantive part of The Copenhagen Criteria. Within this perspective, an elaborate consideration is needed on many components such as; participation to processes in Turkey, improvement and institutionalization of decision making processes so that they will be durable and stable.

Moreover noting that **“there are some pauses and developments that are not consistent with the recommendations of various prominent international structures, other countries’ good practice examples and even Turkey’s own official commitments”** is of utmost importance.

A milestone in this area was “Turkey – Crucial Support for Economic Recovery” report that was published in the year 2002 within the framework of OECD Reviews of Regulatory Reform. In this report; “absence of any government-wide regulatory reform

strategy and Regulatory Impact Analysis along with the use of regulatory alternatives that contrasts with OECD recommendations and the practices adopted by many OECD countries” were boldly emphasized.^{xxvii}

There have been some steps taken throughout the years; however the facts that these steps were unable to gain an institutional durability, be nurtured into more improved structures, and in some cases even reverted to the old structures strikes as a strong negativity.

Similarly it mustn’t be forgotten that Turkey has been unable to satisfy some international commitments. For example Circular Order no. 2013/19 of the Prime Ministry of Turkish Republic stated that “as a sign of political determination ... to increase the standards on democracy, human rights and rule of law, enhance efficiency of the public administration, transparency, accountability and participation ... Our Country joined the Open Government Partnership initiative”.^{xxviii}

Contrary to this important step, despite the official commitments that websites on transparency, spending and regulation will be operational

soon

(www.transparency.gov.tr, www.spending.gov.tr, www.regulation.gov.tr), these websites have still been offline.^{xxix}

When all the related regulations, practices, national and international developments that were briefly mentioned in this general analysis are evaluated with a holistic approach, these assessments can be made:

- Turkey had delayed to start harmonization in these areas.
- Despite this fact, many practices and regulations have been created that resemble good examples.
- However, after an important leap forward, pauses and setbacks are being experienced especially on Impact Assessment and Institutionalized Consultations.
- The frequently observed setbacks are:
 - The practices are dependent on persons, not standards.
 - Regular and consistent practices are non-existent.
 - Predictability is limited, priorities changing quickly.

Following these assessments, maybe the last point to be kept in mind is the fact that accountability or audit

relationship has three components in essence:

- Responsibility of the Decision Maker to provide explanation (Formal/Informal),
- Instruments and abilities of the persons who call for account,

- Existence of sanctions for bad performance and rewards for good performance (Formal/Informal).

To conclude: Improvement of current practices in Turkey and aiming for the Best Practices in the world are necessary. Within this area, it doesn't seem possible to attain successful

results unless the state takes “Confidence Building Measures”. Therefore most possibly:

Legitimate demands rising from various levels of civil society will forge the future in this area, just like it has been the case all throughout the history!!

* This article was originally written in Turkish and primarily for Turkish speakers; however it also appeals to international audience except for a couple of footnotes with Turkish academic resources.

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FOOTNOTES

- ⁱ As an introduction to many other resources: http://en.wikipedia.org/wiki/Boston_Tea_Party – Public domain image.
- ⁱⁱ For a cursory look on Tax Resistance: Kerim Gok, "Development of Tax Resistance", Marmara University İ.İ.B.F. Magazine, No: 1, Vol: XXII, 2007, p. 143-163, <http://bit.ly/1k9gKwo> (21.06.2014)
- ⁱⁱⁱ A brief introduction: http://en.wikipedia.org/wiki/Magna_Carta – Public domain image.
- ^{iv} The constitution of the United Kingdom is the sum of principles and various documents like laws, court judgments: <http://www.parliament.uk/business/publications/research/notes-on-parliament-and-constitution/> (21.06.2014)
- ^v For UK and Red Tape Examples:: <http://www.parliament.uk/business/publications/research/notes-on-parliament-and-constitution/> (21.02.2014) and <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/> (21.06.2014)
- ^{vi} RIA implementation in UK: <http://www.legislation.gov.uk/ukia> (21.06.2014)
- ^{vii} For more information on basic concepts and a deeper perspective: John M. Ackerman, (2005) "Social Accountability in the Public Sector: A Conceptual Discussion", The World Bank Social Development Papers (Participation and Civic Engagement), P.:82 (21.06.2014) <http://bit.ly/1nYHFw4>
- ^{viii} For an EU Commission Document that dates back to 2001, but still has a high importance: European Governance – A White Paper COM(2001) 428 final, (2001/C 287/01) <http://bit.ly/1jxXsGu> (11.07.2014)
- ^{ix} For a comprehensive list please check: National and International Authorities/Bodies against Corruption: <http://www.track.unodc.org/ACAAuthorities/Pages/home.aspx> (21.06.2014)
- ^x For more information on recent Smart Regulation efforts: <http://ec.europa.eu/smart-regulation/> (21.06.2014) and http://www.oecd-ilibrary.org/governance/better-regulation-in-europe_20790368 (21.06.2014)
- ^{xi} This protection is partly enjoyed at the Ministry of Finance and the Social Security Institution in Turkey. For more information on this protection: Council of Europe – How to Protect Whistleblowers <http://bit.ly/1iUGl12> (21.06.2014) and Transparency International - EU Countries Must Do More To Combat Corruption By Better Protecting Whistleblowers: <http://bit.ly/1qtlWl1> (21.06.2014)
- ^{xii} For more information on Impact Assessments (in Turkish): Müberra GÜNGÖR and Gökhan EVREN, "Concept, Implementation, Examples and Suggestions: RIA Regarding the Regulations on Mobile Interconnection Prices", Information and Communications Authority- November 2009 <http://bit.ly/1qMC3ZQ> (21.06.2014)
- ^{xiii} For more information on Regulatory Impact Analysis at OECD website: <http://bit.ly/1ok2F3g> (21.06.2014)
- ^{xiv} European Commission Impact Assessment Board Report - 2012: <http://bit.ly/1o2nEGg> (21.06.2014)
- ^{xv} European Commission Impact Assessment Guidelines (2009): <http://bit.ly/1IN4je2> (21.06.2014)
- ^{xvi} For the list and full texts of Impact Assessments and IAB Opinions on them: <http://bit.ly/1IN45DQ> (21.06.2014)
- ^{xvii} Open Consultations from the European Commission: <http://bit.ly/1iUGiSN> (21.06.2014)
- ^{xviii} A comprehensive CEPS publication regarding the costs of regulation: <http://bit.ly/1qMBJKC> (21.06.2014)
- ^{xix} The official full text of the law in Turkish: <http://www.tbmm.gov.tr/kanunlar/k5227.html>
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- ^{xxi} <http://bit.ly/1ok2dSQ> (21.06.2014)
- ^{xxii} <http://bit.ly/1mgfgpS> (21.06.2014)
- ^{xxiii} For information on European Commission's Standard Cost Model Approach please refer to related web pages starting with: http://ec.europa.eu/smart-regulation/refit/admin_burden/scm_en.htm (16.07.2014)
- ^{xxiv} Turkey Progress Report 2006: <http://bit.ly/1jwR027> (16.07.2014), Turkish Translation: <http://bit.ly/1mPHUNX> (21.06.2014)
- ^{xxv} The official full texts of "Medium Term Program 2014 – 2016" in English: <http://bit.ly/1rq3tFg> & in Turkish: <http://bit.ly/1snbeOM> (16.07.2014)
- ^{xxvi} "Turkey: Reducing Administrative Barriers to Investment" was prepared by Foreign Investment Advisory Service which is a joint service of the International Finance Corporation (IFC) and The World Bank (in English): <http://bit.ly/1na8PoO> (16.07.2014) & in Turkish: <http://bit.ly/1luNBLI> (16.07.2014)
- ^{xxvii} OECD Reviews of Regulatory Reform: Turkey - Crucial Support For Economic Recovery: <http://bit.ly/1qejMFt> (21.06.2014)
- ^{xxviii} The full text of the official circular signed by the Prime Minister Recep Tayyip ERDOĞAN (in Turkish): <http://bit.ly/1pSrlKq> (21.06.2014)
- ^{xxix} As of 18.07.2014 and the full text of Turkey's National Action Plan committed to the Open Government Partnership Initiative: <http://www.opengovpartnership.org/file/956/download> (21.06.2014)