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Research Article

## Legal Function of the Public Budget

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### ABSTRACT

In Turkish Budget Law, the rules regarding the procedure of budgets have always been determined primarily at the Constitutional level. In fact, the fundamental principles of enactment and compulsion of the public budget are included in the Constitution of the Republic of Turkey dated 1982. The detailed rules of the public budget, are regulated in the Public Fiscal Management and Control Law No. 5018. In this way, the legality in the preparation, implementation, and control of the budget within the scope of the legal function of the budget have been ensured. In addition, budget principles are also regulated in the aforementioned Law and have become a rule. Budget laws, on the other hand, contain the most detailed regulations regarding the provisions to be applied in the fiscal year. The legal nature of the public budget, which obliges its implementers to be complied with the budget, constitutes the legal function. For this reason, unless the legal function of the public budget is fulfilled, other functions cannot be made functional. The legal function of the public budget creates an area of judicial control also. In this way, fiscal actions are subject to legal compliance control and legal accountability can be made effective.

**Keywords:** Fiscal law, public budget, Turkish budget law, budget right, legal function of the public budget



## 1. Introduction

Finance, which is a combined science, is in close relationship with other social sciences (Gürsoy, 1975, p. 42-43). The reason for this combined nature of the science of finance is that the fiscal instruments that cause fiscal events are related to every field of science such as law, politics, economics, management, and control<sup>1</sup>. As a matter of fact, the public budget, which is a fiscal instrument, also gains a combined character by establishing a relationship with the law (Gürsoy, 1980, p. 14).

In the explanations in the finance doctrine, the legal aspect of the public budget is always more or less examined, and this reveals the importance of the legal aspect of the public budget. In this study, it is aimed to examine the legal function, which is one of the duties expected from the public budget, by drawing a general but systematic framework and examining it independently. In this way, it will be revealed that there is a legal function area that has come into existence separately from the other functions of the public budget. Especially when it comes to the control of the public budget, it will be seen that the legal function of the public budget comes to the fore. Even if it is assumed that the public budget fulfills its economic and fiscal functions, these functions cannot be implemented unless it fulfills its legal function.

The public budget is not just a string of numbers, it also has a legal meaning and quality (Kuyucak, 1952, p. 8). The legal function of the public budget makes it more relevant to the figures it contains because the figures in the public budget are included in the scope of accountability thanks to the legal function.

The most important feature of the legal function of the budget, which differs from the other functions, is its scope, and therefore its limits can be determined in advance. Within the scope of the legal function of the public budget, law, public law, fiscal law and the legal value and nature of the budget law are discussed (Gürsoy, 1980, p. 1). For this reason, in this study, the budget will be discussed as a fiscal law institution to determine the scope of the public budget.

The functions of the public budget constitute the duties of the budget (Feyzioglu, 1984, p. 41). Therefore, if a legal duty analysis is made, it will be necessary to look at the legal arrangements for the public budget for this research. For this reason, revealing the sources of the legal function of the public budget in the Turkish Budget Law requires firstly the 1982 Constitution of the Republic of Turkey. Followed by the Public Fiscal Management and Control Law and the budget laws that regulate the procedures and principles of the fiscal year budgets. This fiscal legislation, which includes basic regulations, constitutes the rules for the control of budget disputes at the same time. In fact, assigning a legal function to the public budget constitutes the most important reason for the emergence of some disputes. In other words, when it comes to a duty arising from a legal rule, the public budget will also be checked whether it fulfills this legal function. In this regard, judicial control made by courts emerges as a requirement of the legal function of the public budget.

In Turkish Budget Law, the Constitutional Court of the Republic of Turkey / Türkiye Cumhuriyeti Anayasa Mahkemesi (*the Constitutional Court*), which controls the conformity of all other budget-related laws, especially budget laws, with the Constitution, appears as the judicial

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1 It is stated that it is possible to define *audit* and *control* within the framework of all purposes with some minor differences, and there is a conceptual confusion in this regard in Turkey. See: (Mutluer, Öner & Kesik, 2006, p. 348). In the doctrine or in some legal regulations, the concept of *audit* is also included. However, the use of the concept of control was preferred in the budgetary regulation of the Constitution. In this study, only the concept of *control* was preferred in the explanations, to ensure terminological harmony.

settlement authority of disputes related to the public budget. The Court of Accounts of the Republic of Turkey / Türkiye Cumhuriyeti Sayıştay (the *Court of Accounts*), which has special authority and duty in the accounting jurisdiction, controls fiscal actions within the framework of budgetary legal regulations. As a matter of fact, almost all the disputes in the Court of Accounts are a dispute related to the public budget in a broad sense. In addition, the reason of some of the disputes to be resolved in the Council of State of the Republic of Turkey / Türkiye Cumhuriyeti Danıştay (the *Council of State*) which is the highest court of the administrative judicial regime, is the administrative actions based on budget laws or other laws related to the budget. Apart from this, disputes regarding tax and similar fiscal obligations are resolved by administrative courts as a rule. In the context of the revenues of the budget, the Council of State, in a broad sense, is authorized, and duties for disputes arising from the legal function of the public budget are also.

## 2. The Public Budget as an Institution of the Fiscal Law

A legal science of finance has developed in the form of fiscal law or tax law today. And this quality not only established a bridge between finance and law, but also ensured a close cooperation (Tuncer, 1972, p. 24). Budget is one of the most important implementation tools of both public finance and public finance law (Oktar, 2012, p. 190). Public expenditures and public revenues are fiscal events (Altuğ, 2019, p. 4). Fiscal law has three sub-branches: income law, expense law and budget law (Oktar, 2022, p. 21). In this context, firstly, the relationship between public finance and law, and then explanations about fiscal law and fiscal events, which are the intersection of public finance and law, will be given.

### 2.1. Public Finance and Law

The science of public finance is also in close relationship with the science of law (Aksoy, 2011, p. 36). Public finance, which expresses the fiscal actions of the State and other public institutions (Akgül Yılmaz, 2020, p. 1), analyzes the effects of the State's revenues and expenditures on allocation, distribution, and the stability of the economy (Davie & Duncombe, 1972, p. 22). Public finance also evaluates the expenditures made by the State and public legal entities to produce public goods and services, the revenues collected for the financing of these expenditures, and the results of how the balance between the expenditures and revenues will be achieved from a legal point of view (Susam, 2020, p. 1-2). In this context, the subject of public finance is the money collected for the provision of public services, the money spent within the framework of the accepted public budget and the supervision of those who fulfill them. These activities are mainly carried out within the framework of the legislation adopted by the legislature and thus are related to the legal dimension of public finance (Bilici & Bilici, 2019, p. 2).

One of the views in the science of finance is the legal view, and the legal basis usually occupies a large place in most of the fiscal studies (Tuncer, 1972, p. 24). According to the legal approach, which is one of the traditional perspectives of public finance, public finance is concerned with the examination of fiscal events within the constitutional and legal framework (Bilici & Bilici, 2019, p. 3).

The doctrine also deals with the relations of *finance-law* (Aksoy, 2011, p. 34; Gürsoy, 1975, p. 46<sup>2</sup>). In this context, the close relationship of public finance with both public law and private law is revealed (Susam, 2020, p. 13).

2 For the study in which *public finance with law* is discussed in the doctrine, **see also:** (Ertuğruloğlu, 1969, p. 22). For the analysis titled *public finance-law* in the doctrine, **see also:** (Akgül Yılmaz, 2020, p. 8; Susam, 2020, p. 13).

Both the boundaries of the State's field of activity, the limits of the expenditures to be made for these activities, and the issue of which revenues these expenditures can be financed are basically determined and classified in the legal texts (Akgül Yılmaz, 2020, p. 8). In Turkish Budget Law, Public Finance has also gained a legal definition in article 4 of **the Public Fiscal Management and Control Law No. 5018 / 5018 sayılı Kamu Malî Yönetim ve Kontrol Kanunu**<sup>3</sup> (*the Public Fiscal Management and Control Law*).

Public budget is a matter of primary importance in the political, legal, and especially in economic life in the application of finance, as well as in the science of finance (Feyzioğlu, 1984, Preface). Public budget, which is considered a separate discipline today, constitutes a part (Aksoy, 2011, p. 15-16), a piece (Mutluer et. al., 2006, p. 24) of the science of finance. One of the classifications of the science of finance is the budget, and the science of finance is doomed to be incomplete without the State budget (Tuncer, 1972, p. 32, 39), because the application area of public finance is the public budget (Altug, 2019, p. 8).

## 2.2. Fiscal Law and Fiscal Events

Due to the close relationship between finance and law, one of the fields arising from the merger of these two social sciences is *fiscal law* (Aksoy, 2011, p. 14, 36) / *financial law* (Gürsoy, 1975, p. 46). Public finance law is the superstructural institution of finance (Oktar, 2012, p. 190).

The part that examines the legal aspect of the science of finance is called fiscal law (Aksoy, 2011, p. 14, 36). Fiscal law deals with the collection of revenues and the making of expenditures in parallel with public finance (Öncel, Kumrulu, Çağan & Göker, 2019, p. 79). Therefore, within the scope of fiscal law, there is a budget as well as public revenues and public expenditures (Bilici, 2018, p. 6). In this sense, the budget and its implementation are one of the subjects of fiscal law (Öner, 2020, p. 28). The subject of fiscal law is the rules and laws that express public revenues, public expenditures and their comparison and balance and the regulation the fiscal activities of the State (Aksoy, 2011, p. 36).

The acquisition of economic values and their spending on public services to meet public needs, represent fiscal events (Erginay, 2010, p. 17) because, financial events are events that are created by the needs that need to be achieved by the State (Pelin, 1945, p. 3). It should be noted here that in principle, within the scope of the public budget, which allows the necessary expenditures to meet the public services, both the revenues and the expenditures are realized within a legal order and procedure (Erginay, 2010, p. 198).

There is an obligation to examine the fiscal events that constitute the subject of the science of finance (Erginay, 2010, p. 17; Tuncer, 1972, p. 9) from various aspects. This necessity has led to the formation of separate branches in the science of finance (Erginay, 1990, p. 5). A set of laws, expressed as fiscal legislation, reveals fiscal events (Gürsoy, 1975, p. 42). In other words, fiscal events are shaped based on legislation (Bilici & Bilici, 2019, p. 3). In this case, fiscal events also have legal characteristics (Oktar, 1997, p. 30) and in fiscal events, legal factors dominate (Tuncer, 1972, p. 24). For this reason, the legal nature of fiscal events is discussed in the doctrine, because every action that concerns the State and has fiscal-economic consequences must be based on law (Coşkun, 2000, p. 2).

In contemporary societies, the largest part of the relations between people and the State is the relations that cause the formation of fiscal events and the laws that determine these relations (Gürsoy, 1975, p. 46). For this reason, one aspect of fiscal events that take place depending on

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3 See: Official Gazette dated 24.12.2003 and numbered 25326.

certain legal rules also constitutes the legal aspect<sup>4</sup> (Aksoy, 2011, p. 14). In fact, in principle, fiscal events occur within the legal order and are based on legal foundations. In this context, taxes are set by law or public expenditures are determined by the budget law (Erginay, 2010, p. 26-27).

Fiscal law is a branch of law that examines fiscal events in terms of their legal aspects<sup>5</sup> and quantities (Tuncer, 1972, p. 41). In this sense, the legal aspect of all fiscal events, which are based on legal foundations, is examined by the science of fiscal law (Akgül Yılmaz, 2020, p. 8) in public finance (Susam, 2020, p. 13). As stated before, fiscal instruments give rise to fiscal events, and in this respect, fiscal law is the branch of law that regulates the emergence, form, content, application, and control of fiscal instruments (Gürsoy, 1980, p. 14, 43).

### 3. Budget Right and Functions of the Public Budget

The public budget also creates legal consequences due to its structure (Erginay, 2010, p. 198). In this sense, just as although tax itself is an economic event it takes place on a legal basis (Saygılıoğlu, 1991, p. 57), *the budget is also included in a legal basis as an economic event.*

#### 3.1. Budget Right

The public budget is also a right and corresponds to the concept of the budget right<sup>6</sup>, which is the power related to the budget (Üstün, 2019, p. 19). The right to budget is one of the rights that has a fiscal character between the duties of the State and individual rights (Aksoy, 2011, p. 35). It is argued that the right to budget is a political right, just like the right to tax (Üstün, 2019, p. 235). Along with the tax right, the budget right are two components of fiscal sovereignty (Oktar, 2012, p. 199). As a result of the struggles to limit the taxation authority of the State, the parliament has become dominant in the taxation authority (Aktan, 2020, p. 281). Moreover, the first authority gained by parliaments was taxation authority (Karakoç, 2021, p. 43).

One of the meanings and dimensions of the principle of legality of tax for the individual is the sub-principle that there is no tax without representation (Güneş, 2014, p. 15-16). This principle has been established as one of the first and fundamental Constitutional rules in Western countries. The taxation authority, which is one of the powers within the scope of fiscal sovereignty, can be used primarily to explain the legislative authority on taxation (Çağan, 1982, p. 3, 5, 15). The limitation of the tax power of the government was the reason for the limitation of the powers related to the public budget (Üstün, 2019, p. 48). In this respect, it is argued that the right to the budget should be understood as an upper concept that includes the right to receive taxes (Pınar, 2009, p. 18).

Subordinating the administration of the State's revenues and expenditures to the prior granting permission and authorization of the legislature means the right to the budget (Erginay, 2010, p. 201). In addition, the State itself puts the fiscal instruments that cause fiscal events; however, the existence and use of these instruments is based on law. The right to budget is that the institutions authorized to decide on behalf of the society have a say in the emergence, use and control of fiscal instruments (Gürsoy, 1980, p. 14, 43). In this context, the budget right is exercised by the parliament by discussing, approving the public budget and controlling the results of the public budget (Feyzioğlu, 1983, p. 27).

4 Also see: (Erginay, 2010, p. 26; Tuncer, 1972, p. 18).

5 Also see: (Erginay, 2010, p. 27).

6 Also see: (Aksoy, 2011, p. 35; Altuğ, 2019, p. 12; Eğilmez, 2020, p. 80; Erginay, 2010, p. 201; Feyzioğlu, 1983, p. 3; Feyzioğlu, 1984, p. 23; Güneş, 2000, p. 174; Gürsoy, 1980, p. 10; Kuyucak, 1952, p. 15; Oktar, 2012, p. 191; Öztürk, 2013, p. 25; Yılmazcan, 2000, p. 163).

The budget right within the scope of the fiscal authority of the State (Üstün, 2019, p. 22), is also defined in a decision of the Constitutional Court. The budget right means that the legislature authorizes the executive body by determining the limits and controls the results of collecting public revenues on behalf of the people and spending these revenues on behalf of the people. Thereby, the right to budget is the right to determine the type and amount of tax and similar revenues and public expenditures, to approve them and to control the results<sup>7</sup>.

**The Constitutional Law of 1876** / 1876 Kânûn-ı Esâsî<sup>8</sup> was the first law in which the right to budget was accepted and expressed (Feyzioğlu, 1984, p. 28; Kuyucak, 1952, p. 25). As a matter of fact, in article 98 of the Constitutional Law of 1876, it was stated that the budget, that is, the general law of balance, would be examined and accepted item by item in the General Assembly.

In Article 5/1 of the Public Fiscal Management and Control Law, one of the basic principles of public finance is stated as the execution of public fiscal management in accordance with the budget right of the Grand National Assembly of Turkey / Türkiye Büyük Millet Meclisi. Again, in the provision of article 34/1 of **the Court of Accounts Law No. 6085** / 6085 sayılı Sayıştay Kanunu<sup>9</sup> (*the Court of Accounts Law*), one of the objectives of the control conducted by the Court of Accounts is stated as providing reliable and sufficient information to the Grand National Assembly of Turkey and to the public about the results of the activities of the public administrations as a requirement of the budget right.

### 3.2. Functions of the Public Budget

In the doctrine, *the aspects of the budget* (Laufenburger, 1956, p. 12) are discussed and the characteristics of the public budget are revealed<sup>10</sup>. Apart from that, in the doctrine, it is seen that *the aspects of fiscal events* (Aksoy, 2011, p. 13-14) are examined more comprehensively.

The public budget, which is one of the instruments of economic and fiscal policy (Öztürk, 2016, p. 173, 178-179), is one of the most basic documents of the State (Kaneti, 2011-a, p. 166). Like every economic and legal institution, the public budget has certain functions that it is responsible for fulfilling (Feyzioğlu, 1984, p. 41). Besides, there are also principles that must be followed for the public budget to fulfill the functions that it must comply with while fulfilling its duties (Aksoy, 2011, p. 390, 392-393).

One of the fiscal functions of the public sector is the coordination of **budget functions** (Musgrave & Musgrave, 1989, p. 13-14). *The functions of the public budget* are defined as making the determined policies operational and fulfilling the duties undertaken by the budget in this regard with the budget method (Edizdoğan & Çetinkaya, 2013, p. 10). In the classical understanding, the public budget has some main duties and one of these duties is its legal duty (Sur, 1946, p. 110). In the doctrine, it is seen that the functions of the public budget are discussed classification as *classical*

7 See: Constitutional Court, decision dated 14.02.2018 and numbered 2016/47-2018/10.

8 See: Constitutional Court. *1876 Kânûn-ı Esâsî*. Retrieved from: <https://www.anayasa.gov.tr/tr/mevzuat/onceki-anayasalar/1876-k%C3%A2n%C3%BBn-i-es%C3%A2s%C3%AE/>, 11.01.2022.

9 See: Official Gazette dated 19.12.2010 and numbered 27790.

10 In this context, for the work in which *the nature of the budget* is discussed, see also: (Feyzioğlu, 1984, p. 5), for the work in which *the duty of the budget* is discussed, see also: (Neumark, 1951, p. 263), for the work in which *the duties of the budget* are discussed, see also: (Altuğ, 2019, p. 11; Özer, 1986, p. 32), for the work in which *the functions of the budget* are discussed, see also: (Aksoy, 2011, p. 392; Altuğ, 2019, p. 11; Bilici & Bilici, 2019, p. 134; Bulutoğlu, 2004, p. 45; Coşkun, 2000, p. 29; Edizdoğan & Çetinkaya, 2013, p. 1, 12; Erginay, 2010, p. 207; Feyzioğlu, 1984, p. 41; Gürsoy, 1980, p. 10, 14; Neumark, 1951, p. 262).

*budget functions and macro-economic functions of the budget* (Feyzioğlu, 1984, p. 41-48)<sup>11</sup>.

**The legal function of the public budget**<sup>12</sup> is handled within the scope of the classical functions of the budget<sup>13</sup>. In the same context, besides its legal function, there is also the fiscal-economic function of the budget, the political function of the budget and the control function of the budget (Altuğ, 2019, p. 11-13; Coşkun, 2000, p. 29; Edizdoğan & Çetinkaya, 2013, p. 11-17)<sup>14</sup>.

As stated earlier, there is a legal aspect of fiscal events, and fiscal events take place in a legal order depending on the rules of law (Aksoy, 2011, p. 14). For this reason, it is thought that the legal function of the public budget arises from its being a fiscal event.

The first and important legal function of the public budget is to ensure the transition to democratic administration, and there has been a legal change in the taxation-expenditure axis, which also includes the national will (Gürsoy, 1980, p. 51).

The most distinctive feature of public services, which is a legal concept, is that it arises from public needs, which is an economic concept (Özer, 1986, p. 9). The financing instrument of the production of goods and services, which is the subject of the public economy, is the public budget (Altuğ, 2019, p. 8). The legal function of the public budget, arising from *its legal nature*<sup>15</sup>, is related to the working of the public economy in a legal framework different from the market economy (Altuğ, 2019, p. 12). Indeed, the public economy, which differs from the market economy, operates within a legal framework whose details have been determined (Bulutoğlu, 2004, p. 17).

Constitutional rules determine the legal framework of the public economy (Altuğ, 2019, p. 12). It is compulsory to comply with the provisions in the budget law text adopted by the legislature, just like any other law (Özer, 1986, p. 33). The legal function of the public budget and the force of law it has oblige all public administrations to comply with the budget (Feyzioğlu, 1984, p. 42). Thus, all administrative activities by means of the public budget are legally bound to legal norms (Neumark, 1951, p. 263). As a matter of fact, the budgets of the administrations are also a law, and since these laws cannot be violated, the changes to be made in the public budget must be made by a law also (Altuğ, 2019, p. 12).

The science of finance has undergone many changes in terms of subject, purpose, and method in the historical process (Neumark, 1951, p. 3). The legal approach, which is put forward as one of the modern fiscal approaches related to public finance in the doctrine, is based on the principle of determining the functions undertaken by public legal entities according to legal and theoretical regulations. As it arises from this principle, the legal regulations regarding the source and methods of the revenue collection and expenditure activities, which must be carried out by public legal entities during the fulfillment of the duties assigned to them by the Constitution, constitute the

11 Apart from this, in the doctrine, the functions of the public budget are examined based on classifications as *classical functions of the budget* or *modern-contemporary functions of the budget*. See: (Edizdoğan & Çetinkaya, 2013, p. 11-20). For the study that includes the classification of *traditional functions of the budget* and *new functions of the budget*, see also: (Altuğ, 2019, p. 11, 22). For another study that includes the classification of *classical functions of the budget* and *contemporary functions of the budget*, see: (Coşkun, 2000, p. 29-44).

12 In the doctrine, both the legal nature of the public budget and the legal functions of the public budget are handled within the scope of the general principles of budget law. See: (Pınar, 2009, p. 22, 30).

13 See: (Altuğ, 2019, p. 11-13; Coşkun, 2000, p. 29; Edizdoğan & Çetinkaya, 2013, p. 11-17; Feyzioğlu, 1984, p. 41).

14 For the work that deals with the economic-fiscal function of the budget, the political function of the budget, the legal function of the budget, and the control function of the budget as the four main functions of the budget in the doctrine, see: (Neumark, 1951, p. 263-264). In addition, for the work in which the duties of the budget are handled as economic and fiscal duty, political duty, legal duty, and the duty of providing supervision, see: (Sur, 1946, p. 110).

15 The legal nature of the public budget arises from the necessity of bringing legality to fiscal actions such as collecting revenues, making expenditures and determining the implementation principles for them. Thus, the budget has a legal character. See: (Mutluer et. al., 2006, p. 75).



subject of the legal approach in public finance (Susam, 2020, p. 17-18). In this context, by means of the legal approach, which is one of the approaches to the public budget, budgets and related legislation are tried to be placed on a legal basis (Mutluer et. al., 2006, p. 11).

#### **4. The Legal Function of the Public Budget Revealed by Normative Regulations in Turkish Budget Law**

The public budget, first, presents the view of a legal document (Laufenburger, 1956, p. 9), in other words, the public budget is a legal document by its nature (Aksoy, 2011, p. 390; Kaneti, 2011-a, p. 160). The public budget also has a law that regulates the budget right, and this law is examined within the scope of *budget law*<sup>16</sup> in the doctrine<sup>17</sup>. All theoretical and legal rules regarding the public budget and the legislation regulating public budget expenditures constitute the budget law (Altuğ, 2019, p. 12).

It is neither correct nor possible to examine the budget separately from social issues since the budget has a legal nature, because, in a broad sense, the public budget links all the administrative activities of the State to legal norms (Feyzioğlu, 1984, p. 6, 9, 42). Thus, the public budget has the function of establishing a legal order in a state and increasing the effect of this order (Feyzioğlu, 1984, p. Preface).

Planning, preparation, obtaining authorization, implementation, and supervision of the public budget constitute the budget process (Altuğ, 2019, p. 11). In Turkish Budget Law, it is seen that normative regulations draw the framework of the public budget process at all stages.

##### **4.1. The Legal Function of the Public Budget in the Context of Constitutional Arrangements**

It is stated that one of the most important indicators that the public budget is handled with its legal aspect in *the Constitution of the Republic of Turkey No. 2709 / 2709 sayılı Türkiye Cumhuriyeti Anayasası*<sup>18</sup> (*the Constitution of 1982*) (Edizdoğan & Çetinkaya, 2013, p. 14), because the Constitutional order assigns the preparation, acceptance, implementation, controlling and laundering of the public budget (Bulutoğlu, 2004, p. 18, 29). In this sense, the public budget is a Constitutional institution. (Gürsoy, 1980, p. 10). For this reason, it is necessary to handle principles of Constitutional value (Saban, 2019, p. 15) before the legal regulations.

In Article 161 of the Constitution of 1982, rules regarding both the budget law and the final account law were introduced. In a decision of the Constitutional Court, it is stated that when the articles of the Constitution related to the budget are examined, it is understood that the Constitution maker attaches special importance to the budget laws compared to other laws<sup>19</sup>.

It is stated that the will of the people to have a say in the State budget and especially on taxes is at the root of the Constitutional movements (Bulutoğlu, 2004, p. 29-30). In this context, the first constitutional movements in the world emerged due to fiscal issues. Budget is also included in these fiscal issues, and the approval of public expenditures by the parliaments every year and the right to budget have been included in the basic legal texts of many countries (Susam, 2020, p. 13). For this reason, there are Constitutional principles regarding public budgets (Kaneti, 2011-a, p.

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16 In practice, it is stated that the concept of Budget Law is used instead of Expenditure Law. See: (Öner, 2020, p. 28). In this sense, it is stated that the expenditure side of the public budget is examined within the framework of Budget Law. See: (Altuğ, 2019, p. 13).

17 See: (Bilici & Bilici, 2016, p. 111; Erginay, 2010, p. 200; Ertuğruloğlu, 1969, p. 23; Gürsoy, 1980, p. 10; Mutluer et. al., 2006, p. 10; Oktar, 1997, p. 32, 39; Oktar, 2022, p. 21, Pınar, 2009, p. 20).

18 See: Official Gazette dated 09.11.1982 and numbered 17863-Repeated.

19 See: Constitutional Court, decision dated 14.02.2018 and numbered 2016/47-2018/10.



158). Fundamentally in Turkish Budget Law, there are two separate legal principles within the framework of Constitutional fiscal provisions: i. The legality of the tax and ii. The legality of the budget (Oktar, 2012, p. 193). Approval of the budget by the legislature gives the public budget *legality* and a *compulsory* attribute (Gürsoy, 1980, p. 4). These qualifications will be discussed below.

#### 4.1.1. The Principle of Enactment of the Public Budget

The text of the Constitution of 1982, in which the Constitution entered into force, is essentially like the principles envisaged by *the Constitution of the Republic of Turkey No. 334 / 334 sayılı Türkiye Cumhuriyeti Anayasası*<sup>20</sup> (*the Constitution of 1961*). The issues related to the right to budget were regulated in detail in the Constitution of 1961 (Yılmazcan, 2000, p. 169). In addition, with the Constitution of 1961, the national budget was regulated as a Constitutional order (Gürsoy, 1980, p. 97).

Article 161/3 of the Constitution of 1982, titled *budget and final account*, states that the President will present the budget law proposal to the Grand National Assembly of Turkey at least seventy-five days before the fiscal year. Then, in the same provision, it was stipulated that the text of the budget proposal, which will be discussed at the Budget Committee<sup>21</sup> and accepted within fifty-five days, will also be discussed in the General Assembly, and will be decided by the beginning of the fiscal year. It is seen that the Constitutional provision binds the principles governing the presentation, discussion, and enactment of the public budget (Kaneti, 2011-a, p. 169-170). Therefore, the public budget rules are enacted in accordance with a special Constitutional procedure (Güneş, 2000, p. 191). In this context, *the principle of legality* (Oktar, 2012, p. 191) / *lawfulness* (Üstün, 2019, p. 212) *of the budget* is essential in Turkish Budget Law.

This Constitutional rule<sup>22</sup> is also regulated in the Public Fiscal Management and Control Law. In the provision of article 13/1-i, in which the *budget principles* of the Law are regulated, it is stated that public budgets cannot be implemented unless they are accepted or approved by the Grand National Assembly of Turkey or authorized bodies before the start of the fiscal year. In this sense, the public budget is discussed in the legislature (Bulutoğlu, 2004, p. 98), and in this respect, the budget is a document debated by the legislature (Özer, 1986, p. 30).

The process of collecting public revenues and transforming them into public expenditures or public assets begins with the acceptance of the public budget by the legislature (Kaneti, 2011-b, p. 119). The public budget is a Constitutional authorization document that provides the cash flow necessary to produce public services (Bulutoğlu, 2004, p. 11). This document shows the permission that the legislature gives to the executive (Bulutoğlu, 1982, p. 7).

It is a rule that the public budget is approved and put into effect before the start of the fiscal year (Altuğ, 2019, p. 15). In this context, public budgets should be enacted before the start of the fiscal year (Özer, 1986, p. 38). It is argued that public budgets that are not prepared and accepted

20 See: Official Gazette dated 20.07.1961 and numbered 10859.

21 With the provision of article 161/3 of the Constitution of 1982, the Budget Committee of the Grand National Assembly of Turkey was given a Constitutional quality and a Constitutional institutional identity. See: (Kaneti, 2011-a, p. 171).

22 The Constitutional rule corresponds to *the principle of approval of the budget before entering the fiscal year* (-bütçenin malî yıla girmeden evvel onanması kaidesi-, Feyzioğlu, 1984, p. 50), *the principle of previous permission* (-önceden mezuniyet prensibi-, Neumark, 1951, p. 265; -önceden izin ilkesi-, Güneş, 2000, p. 173; Mutluer et. al., 2006, p. 100), *the principle of preliminary permission* (-ön izin ilkesi-, Gürsoy, 1980, p. 116), *the principle of obtaining prior permission* (-önceden izin alma ilkesi-, Aksoy, 2011, p. 395; Altuğ, 2019, p. 15; Erginay, 2010, p. 215), *the principle of enactment* (-yasalaşma ilkesi-, Özer, 1986, p. 38).

before the fiscal year will not be able to achieve their economic-fiscal function (Neumark, 1951, p. 266). The public budget, which is prepared by the executive body, and which determines the amount and composition of all public revenues and expenditures, is discussed and approved by the legislative body, thus gaining the quality of an action that must be followed for the executive body that prepared it. This situation constitutes the legal function of the public budget, and the realization of public revenues and expenditures are tied to certain legal rules that must be complied with (Aksoy, 2011, p. 392). In addition, in article 87 of the Constitution of 1982, “...to discuss and accept the budget and final account law proposals...” was counted as one of the duties and authorities of the Grand National Assembly of Turkey. This Constitutional arrangement constitutes the fiscal function of the legislature in Turkish Budget Law (Kaneti, 2011-b, p. 121). In this sense, the public budget is a legislative action (Ertuğruloğlu, 1969, p. 89).

It should be noted here that, in article 88 of the Constitution of 1982, it is stated that deputies are authorized to propose laws, that law proposals will be made to the Grand National Assembly of Turkey, and that the procedures and principles for discussing these proposals will be regulated by the bylaws. On the other hand, in article 161 of the Constitution of 1982, it is stated that the President is authorized to propose budget laws, that law proposals will be made to the Grand National Assembly of Turkey, and that the beginning of the fiscal year and the preparation, implementation and control procedures of the central government budget will be regulated by law. Accordingly, the regulation of the preparation and discussion of the budget was not left to the bylaws but was largely regulated directly in the Constitution (Gözler, 2019, p. 700).

In article 161 of the Constitution of 1982, even the issues to be regulated by law are limited. Apart from these limited issues, which are determined to be regulated by law with the article, the procedure for enacting budget laws is regulated in the Constitution. This situation shows that, unlike other laws, the principle of enactment of budget laws has a Constitutional procedure. As a matter of fact, in a decision of the Constitutional Court, it was stated that the proposals, discussion procedures and principles of the laws in the Grand National Assembly of Turkey were regulated in general in article 88 of the Constitution of 1982. On the other hand, the procedures, and principles for the discussion of the budget laws are also regulated in the 162nd article and that a special method was adopted for the discussion of budget law proposals with article<sup>23</sup>. In a different decision of the Constitutional Court, it was stated that different procedures were adopted in the Constitution in terms of the preparation, discussion, and publication of budget laws in the parliament, since the failure to prepare or adopt the budget laws in a timely manner could cause irreparable harm to the public order<sup>24</sup>. In another decision of the Constitutional Court, it was stated that when the articles of the Constitution related to the public budget are examined, two separate and different methods of enactment are regulated in the Constitution. In the continuation of the decision, it was expressed that, as a natural consequence of this situation, it was impossible with the budget law to regulate, change or abolish an issue that should be regulated by ordinary law<sup>25</sup>.

Finally, in this section, the final account laws, which have a very close relationship with the public budget (Mutluer, Öner & Coşkun, 2015, p. 182-183) and allow the budget accounts to be cut at the end of the fiscal year (Edizdoğan & Çetinkaya, 2013, p. 360) needs to be mentioned. Final account laws also take their legal basis from the Constitution (Mutluer et. al., 2006, p. 385). For

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23 See: Constitutional Court, decision dated 18.01.2018 and numbered 2016/180-2018/4. In the current situation, the special procedure for discussing budget law proposals is included in article 161 of the Constitution of 1982.

24 See: Constitutional Court, decision dated 14.02.2018 and numbered 2016/47-2018/10.

25 See: Constitutional Court, decision dated 29.01.2014 and numbered 2013/66-2014/19.

this reason, there are also Constitutional principles regarding final account (Kaneti, 2011-c, p. 177). Pursuant to Article 161/9 of the Constitution, the proposal for the central government final account law is submitted to the Grand National Assembly of Turkey at the latest six months after the end of the relevant fiscal year, by the President. According to the article 161/11 of the Constitution, the final account law proposal is discussed and decided together with the new year budget law proposal. Final account is the feedback process that ensures the control of the executive body by the legislative body after the implementation of the public budget (Oktar, 2012, p. 191). After the implementation of the public budget is over, it is controlled by the preparation of the law called final account (Feyzioğlu, 1984, p. 444-445). At this point, the adoption of budget laws should be considered a start (Mutluer, et. al., 2015, p. 183). In this context, with the entry into force of the final account laws, the legality of all actions and accounts in the public budget implementation is ensured. For this reason, final account laws are legal regulations that ensure the laundering of the budget (Coşkun, 2000, p. 287). As a matter of fact, it is argued that unless approved by the legislature by ex-post audit of the budget, the approval of the public budget law by the legislature will not mean much (Oktar, 2012, p. 191, 196).

#### ***4.1.2. The Principle of Compulsion of the Public Budget***

One of the principles that dominate the preparation and implementation of the public budget is *the principle of compulsion of the budget*<sup>26</sup>. According to this principle, the public budget constitutes the upper limit of the appropriation allocated in terms of public expenditures and constitutes the limit of expenditures in terms of authority (Kaneti, 2011-a, p. 159-160). The provisions of the article 161/5, 161/7 and 161/8 of the 1982 Constitution meet the principle of the compulsion of the public budget. In the provision of article 161/5, it is stipulated that the members of the Grand National Assembly of Turkey cannot make proposals to increase expenditures or decrease revenues. However, amendment proposals that foresee an increase in appropriations in the current year's budget and proposals that impose a fiscal burden on the current and subsequent years' budgets can be made. To make these offers, it is compulsory to show fiscal resources that can meet the expenses according to the provision of Article 161/8. Finally, according to the provision of Article 161/7, the appropriation given by the central government budget indicates the limit of the amount that can be spent. No provision can be made in the budget law that the amount that can be spent can be exceeded by Presidential decree.

It is a necessity to comply with the written appropriations in the public budget, which the legislature has discussed and converted into a law (Özer, 1986, p. 30). Hence, appropriations in the public budget are limited and restrictive (Gürsoy, 1980, p. 49). In fact, another function of the budget document is to prevent overspending and irregularities in expenditures (Bulutoğlu, 2004, p. 47). Budget laws provide the principle of legality of expenditures (Gözler, 2019, p. 700). Thus, unless budget authority exists, spending cannot legally take place (Davie & Duncombe, 1972, p. 264).

It is seen that the principle of compulsion of the public budget is also met in the doctrine with *the principle of obtaining prior permission* (Aksoy, 2011, p. 395; Altuğ, 2019, p. 15), *the principle of allocation (approval by department) in expenditures* (Feyzioğlu, 1984, p. 50) or *the principle of allocating appropriations in the budget* (Özer, 1986, p. 37).

<sup>26</sup> This principle is considered one of the principles that dominate the preparation and implementation of the public budget within the scope of the Constitutional principles regarding budgeting in Turkish Law. See: (Pinar, 2009, p. 137).

According to the principle of obtaining prior permission, which is considered an element or a sub-principle of the principle of legality of the public budget (Üstün, 2019, p. 216), a maximum of the amount in the public budget can be spent for services (Aksoy, 2011, p. 395). According to the principle of allocation (approval by department) in expenditures, it is possible to spend the appropriations given by the public budget as much as the amounts determined by the parliament (Feyzioğlu, 1984, p. 50). According to the principle of allocating appropriations in the public budget, it is obligatory to have appropriations in the budgets for all public services to be performed. Expenditure cannot be made without the appropriation, and no expenditure can be made above the appropriation (Özer, 1986, p. 37).

It should also be mentioned here that the public budget, which is one of the laws regulating and limiting the discretionary power of the administration, not only determines the authority ceiling that the expenditures will reach, but also determines the works that can be spent on behalf of the State (Gürsoy, 1980, p. 51-52). From this point of view, one of the functions of the budget document is to ensure that the appropriations determined by it are spent in accordance with the desired services (Bulutoğlu, 2004, p. 47).

On the other hand, while the legislature determines the limit of expenditures with its approval authority in the public budget, it also tries to determine the limit of the tax<sup>27</sup> by means of revenues (Laufenburger, 1956, p. 10). Budget laws allow for taxes to be collected each year (Güneş, 2000, p. 180). In this sense, with the budget laws that create two kinds of legal effects, tax laws are activated on the one hand, allowing for the imposition, accrual and collection of incomes and the spending of the appropriations in the charts on the other hand (Özer, 1986, p. 33). In this context, the authority given by the public budget gives permission to receive in terms of public revenues and regulates the limit that should not be exceeded for expenditures in terms of public expenditures (Kaneti, 2011-a, p. 160).

## **4.2. The Legal Function of the Public Budget in the Context of the Public Fiscal Management and Control Law No. 5018**

When *the budget method* is mentioned, the issues of *preparation, implementation and control of the public budget* come to the fore. The legal definition of the budget was made with the Public Fiscal Management and Control Law. In the provision of article 3/1-f of the Law, it is stated that the budget refers to the document that is duly put into effect and shows the revenue and expenditure estimates for a certain period and the issues related to their implementation. In this sense, the budget is equipped with the rule of *being a procedural document*.

### **4.2.1. The Principles of the Public Budget**

In the fulfillment of the functions of the public budget, this budget should be *prepared, implemented, and controlled* according to certain *principles* (Feyzioğlu, 1984, p. 41). In this context, there are several principles developed in the 19th century about public budgets (Gürsoy, 1980, p. 115).

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<sup>27</sup> It is useful to mention an important point here. During the implementation of the Constitutional Law of 1876, in a meeting held and recorded in the Senate (Meclis-i Ayan), it was objected that a tax that was not regulated by law was requested to be collected by the public budget. See: Grand National Assembly of Turkey. *Meclisi Ayan Zabıt Ceridesi*. 4 (1). 18 March 1336 (1920) Thursday, p. 206. Retrieved from: <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/MECLISIAYAN/mad04ic01c001/mad04ic01c001ink020.pdf>, 01.10.2022.

These principles are handled as *budget principles/principles of the budget*<sup>28</sup> in the doctrine. These principles are related to the preparation, discussion, approval, implementation, and control stages of the public budget (Musaballı, 1970, p. 29). Today, it is argued that in the fulfillment of both classical and contemporary characteristics of the public budget, rules consisting of budgetary principles should be followed (Erginay, 2010, p. 211). In fact, some of these principles are applied to contemporary budgets by taking them into various laws, especially the Constitutions (Gürsoy, 1980, p. 115).

In Turkish Budget Law, the will of the legislature about the principles of the public budget is quite clear. The first regulations related to the principles of the public budget in Turkish Budget Law were also included in ***the General Accounting Law No. 1050 / 1050 sayılı Muhasebei Umûmiye Kanunu***<sup>29</sup> (*the General Accounting Law*) (Bilici & Bilici, 2019, p. 131). In addition, in the 13th article of the Public Fiscal Management and Control Law, the budget principles are listed one by one. Therefore, without any hesitation, these principles have been given a legal basis, and they are obligatory rules beyond being a principle. In the special justification of this article, it is stated that the principles to be followed in the *preparation, implementation and control of budgets* are listed in the article, and it is aimed to ensure the effective, economic, and efficient use of public resources by including contemporary budget principles as well as classical budget principles<sup>30</sup>.

#### ***4.2.2. Determination of the Public Budget Preparation, Implementation and Control Procedures by Law***

Since it is not possible to resolve all issues related to the public budget with the Constitution, legal clarity, and continuity regarding the right and law of the budget are ensured thanks to the laws that derive their source from the Constitutional regulations (Gürsoy, 1980, p. 10). One of the Constitutional principles related to the public budget is *the principle of determining by law how the budget will be prepared and implemented* (Kaneti, 2011-a, p. 159, 166), which appears as a Constitutional obligation<sup>31</sup>. Over and above, this principle is being examined within the scope of "*The Principle of Legality of Budget Preparation and Implementation Methods in Fiscal Law*" regarding the effectiveness of the principle of legality (Güneş, 2014, p. 10).

In article of 161/2 of the Constitution of 1982, it is stipulated that the beginning of the fiscal year and ***the preparation, implementation and control*** of the central government budget, and special periods and procedures for investments or works and services that will last more than one year will be regulated *by law*. In Turkish Budget Law, this Law is the Public Fiscal Management and Control Law (Gözler, 2019, p. 700).

28 **See:** (Aksoy, 2011, p. 393; Coşkun, 2000, p. 44; Edizdoğan & Çetinkaya, 2013, p. 120; Eğilmez, 2020, p. 82; Erginay, 2010, p. 211; Ertuğruloğlu, 1969, p. 111; Feyzioglu, 1984, p. 48; Gürsoy, 1980, p. 115; Kuyucak, 1952, p. 47; Mutluer et. al., 2006, p. 83; Neumark, 1951, p. 262; Özer, 1986, p. 34; Pınar, 2009, p. 34; Sur, 1946, p. 111). For the study in which these public budget principles are handled as *budget technique and rules/the technical principles of the budget* in the doctrine, **see:** (Musaballı, 1970, p. 29). For the study in which these principles are handled as *classical principles or traditional principles of the budget* in the doctrine, **see:** (Altuğ, 2019, p. 13). For the studies in which these principles are handled as *principles in budgeting* in the doctrine, **see:** (Bilici & Bilici, 2019, p. 135; Bilici & Bilici, 2016, p.113). For the studies in which these principles are handled as *budgeting principles* in the doctrine, **see:** (Avcı, 2008, p. 24; Bilici & Bilici, 2019, p. 131; Bulutoğlu, 2004, p. 45).

29 **See:** Official Gazette dated 09.06.1927 and numbered 606.

30 **See:** Grand National Assembly of Turkey. *Kamu Mali Yönetimi ve Kontrol Kanunu Tasarısı ve Plan ve Bütçe Komisyonu Raporu (1/692)*. Retrieved from: <https://www.5tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c032/tbmm22032026ss0302.pdf>, 21.12.2022.

31 Within the scope of the principles that dominate the preparation and implementation of the public budget in the doctrine, this principle is also addressed by expressing it as *the principle of determining the preparation and implementation principles of the budget by law*. **See:** (Pınar, 2009, 159).

Before being repealed by the Public Fiscal Management and Control Law, the provisions regarding the public budget in Turkey were regulated in the General Accounting Law (Aksoy, 2011, p. 407). In Turkish Budget Law, it is argued that the General Accounting Law and the Public Fiscal Management and Control Law are the constitution of the public budgets and constitute the basis for the public budgets (Mutluer et. al., 2006, p. 16).

#### **4.3. The Legal Function of the Public Budget in the Context of Budget Laws**

Although the public budget is a fiscal institution and concept (Gürsoy, 1980, p. 1), in the definition of the budget based on a legal and technical concept, it is stated that its nature is a law, and this law shows the annual expenses and incomes of the State or other public institutions and gives permission and authority to implement them (Erginay, 2010, p. 198).

The basis of the legal power of the public budget is that it shows a legal force. In fact, for the public budget to fulfill its legal function, the budget has been given the quality of a law (Feyzioğlu, 1984, p. 9). It is stated that it is possible for public budgets to have a legal basis only if they become a law (Özer, 1986, p. 70). Otherwise, a public budget that does not have lawfulness force cannot fulfill its legal function (Neumark, 1951, p. 263).

It is stated that there is no doubt in practice<sup>32</sup> that the budget is a law in terms of administrative and judicial organs (Edizdoğan & Çetinkaya, 2013, p. 10). Hence, the phrase “budget law” is included in Articles 89 and 161 of the 1982 Constitution. In the provision of article 15/1 of the Public Fiscal Management and Control Law, the central government budget law is also defined as the law that shows the revenue and expenditure estimates of the public administrations within the scope of the central government and authorizes and permits their implementation and execution<sup>33</sup>. In this context, in accordance with the Constitution of 1982 and the Public Fiscal Management and Control Law, there is no hesitation in the Turkish Budget Law that the budget is a law (Güneş, 2000, p. 185<sup>34</sup>).

As a law, the public budget is a legal document (Musaballı, 1970, p. 27). In other words, the public budget, which is a law, is being a legislative document (Erginay, 2010, p. 198). The budget is a law of great importance in political, economic, fiscal, and social aspects (Gürsoy, 1980, p. 10).

The public budget comes into force with a law consisting of articles that determine the implementation conditions for that year (Musaballı, 1970, p. 38). By means of the budget law, a legal opportunity arises for the collection of revenues and the making of expenses, and the fiscal provisions that must be complied with during their validity are regulated (Özer, 1986, p. 38). It will be possible for the executive body, which is permitted and authorized by the budget law, to establish legal action, and thus the State will become a creditor in terms of revenues and a debtor in terms of expenses (Erginay, 2010, p. 207).

The text of the budget law consists of the articles and additional tables that determine the implementation rules as well as the qualifications of the public budget (Bulutoğlu, 2004, p. 95). Nevertheless, it should be noted here that the budget is a law that estimates both the revenues to be obtained and the expenses to be incurred by the State. For this reason, the provisions of the

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32 **Also see:** (Feyzioğlu, 1984, p. 11).

33 Similarly, in the 6th article of the General Accounting Law, the definition of the budget is made by stating that it is a law that shows the annual income and expense accounts of the state money and savings and gives graduation to their implementation and execution.

34 The General Accounting Law, which was in force at the time the work was written and was only abolished by the Public Fiscal Management and Control Law, is included. **See:** (Güneş, 2000, p. 185).



public budget laws are indicative (Musaballı, 1970, p. 27). This legal document is a fiscal plan that shows how the necessary balance is achieved between the expenditures and revenues of the State (Tuncer, 1972, p. 39). As a matter of fact, the budget, unlike the balance sheet<sup>35</sup> and final account, is oriented towards the future, not the past (Sur, 1946, p. 99). Therefore, as a law, the public budget has its own specific provisions, which are purely estimation (Edizdoğan & Çetinkaya, 2013, p. 13). Also, with the Constitutional rules, special method rules have been established in the presentation, discussion, and entry into force of the public budget (Kaneti, 2011-a, p. 169). In this context, budgets are laws of a unique nature (Güneş, 2000, p. 193).

In addition to these, it is argued that the adoption of the central government budget as a law in the Grand National Assembly of Turkey and the realization of revenues and expenditures in accordance with the budget law clearly reveal the legal nature of the public budget (Edizdoğan & Çetinkaya, 2013, p. 10). This situation, which inevitably must be done in accordance with the rules of law, constitutes the subject of budget laws (Güneş, 2000, p. 193). It is also stated that the approval of the public budgets of public institutions and organizations outside the central government with the approval of their own assembly or related boards and their implementation in this way is also related to the legal nature of the budgets (Edizdoğan & Çetinkaya, 2013, p. 10-11).

Another point that should be mentioned here is that the provisions regarding the implementation of the public budget, which includes the two principles of collecting revenues and making expenses (Erginay, 2010, p. 256), are included in the budget laws. This situation is related to the legal function of the public budget. Likewise, including the rules of control of the public budget in the budget laws is within the scope of the legal function of the public budget because a budget law reveals what the legal basis should be that will be the basis for judicial control (Gürsoy, 1980, p. 52).

### 5. Control of Disputes in Turkish Budget Law

The legislative and executive organs and the judiciary also has a role on the public budget (Feyzioğlu, 1984, p. 39). In this context, it is argued that the agents of the public budget are the legislature, the government, the bureaucracy, and the judiciary (Bulutoğlu, 2004, p. 29). Within the scope of public finance control<sup>36</sup>, the control of the budget in Turkey is examined with administrative control, judicial control, and legislative control classifications (Musaballı, 1970, p. 202-205; Sur, 1946, p. 226).

With the control of the public budget, with the permission granted by the budget law, the activity of monitoring and determining whether the authority is used in accordance with the laws and the budget is carried out (Erginay, 2010, p. 284). Control of the public budget takes place first and foremost in the form of legal control (Coşkun, 2000, p. 29). As mentioned before, within the scope of the functions of the public budget, there is a *control function*<sup>37</sup> and the budget has the duty of *providing control* (Sur, 1946, p. 110). It is argued that the control function, which expresses this duty, is the main function that complements the other functions of the public budget and that the legal function of the budget can only be fulfilled by controlling the budget (Feyzioğlu, 1984, p. 42, 357). The control function of the public budget covers the legal and mathematical control of the fiscal management of the public sector and provides legal control (Altuğ, 2019, p. 13).

Appropriate systems for accountability to the public are needed. One of the types of accountability in this context is *legal accountability* (Heald, 1987, p. 160). All actions of the administra-

35 Also see: (Aksoy, 2011, p. 390; Erginay, 2010, p. 198).

36 For terminological usage, see: (Kaneti, 2011-a, p. 121).

37 See: (Altuğ, 2019, p. 11-13; Coşkun, 2000, p. 29; Edizdoğan & Çetinkaya, 2013, p. 11-17; Neumark, 1951, p. 263).



tion with the public budget are subject to legal rules in Turkish Budget Law (Sur, 1946, p. 110). Every lira of the State is obtained and spent in accordance with the law (Aksoy, 2011, p. 34) because the expenditures and revenues of the State are determined by laws (Akgül Yılmaz, 2020, p. 8). In this way, it can be said that legal accountability is valid in the public budget in Turkish Law.

In case of disputes arising in the matters of income, expenditure and property related to the public budget, judicial bodies can be applied and thus, control of public activities can be carried out during the judicial period (Altuğ, 2019, p. 130). As a matter of fact, in the implementation of the public budget, conflicts may arise between the citizens and the public administration organizations with various public legal entities. In this case, the function of the judiciary comes to the fore in budget implementation (Bulutoglu, 2004, p. 44) and thus judicial control of the budget is carried out (Aksoy, 2011, p. 425). The resolution of the disputes that arise about the income and expenses of the State is again within the legal system and legal organization (Susam, 2020, p. 13). Judicial control over the implementation of the public budget, first, is carried out on the income and appropriations foreseen on the budget (Gürsoy, 1980, p. 52). Within the scope of disputes in Turkish Budget Law, independent and impartial courts, in particular the Constitutional Court, the Court of Accounts, and the Council of State, are authorized and duty for the resolution of these disputes.

### 5.1. The Control of the Constitutional Court

Article 148/1 of the Constitution of 1982 regulates the duties and authorities of the Constitutional Court. In this context, the Constitutional Court controls the conformity of laws with the Constitution in terms of form and substance. In this way, abstract norm control (cancellation case) is operated which is a way of controlling compliance with the Constitution (Gözler, 2019, p. 1134). Based on this duty and authority, a lawsuit can be filed for the annulment of budget laws or laws related to the budget, and these lawsuits are decided by the Constitutional Court.

In the continuation of the study, the decisions of the Constitutional Court within the scope of the control of disputes in Turkish Budget Law will be given. Provisions that are claimed to be unconstitutional and whose cancellation is requested can be directly included in budget laws as well as in laws containing regulations related to the budget. It should be noted here that most of the illegalities that led to the annulment decisions by the Constitutional Court were found to be due to non-compliance with *the principle of not including any provisions in the budget law other than the provisions related to the budget*<sup>38</sup> (Kaneti, 2011-a, p. 166). Pursuant to Article 161/2 of the Constitution, no changes can be made to existing other laws by means of budget laws. Budget law provisions that violate this prohibition are annulled by the Constitutional Court (Gözler, 2019, p. 700).

As an example of this, in a lawsuit filed with the request of annulment of the additional article 23 of the Public Fiscal Management and Control Law, the Constitutional Court has concluded that the annual permission and authority given to the executive body by the legislature with the budget laws for the collection of public revenues and expenditures are a requirement of the budget right that the legislature derives from the public. In the same decision, it was decided that the legal regulation requested for annulment was inconsistent with the right to the budget, and inconsistent with the Constitutional provisions which obliges the predetermination of the appropriation amounts by the budget laws and states that no expenditure can be made above the appropriation

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38 For the study in which this public budget principle is handled as *the principle of not including any provisions other than the provisions related to the budget in the budget law*, see also: (Pınar, 2009, p. 160).

given by the budget<sup>39</sup>. It is seen that the annulment decision of the Constitutional Court in question resulted from the violation of the *principle of compulsion of public budget*.

In another annulment application made to the Constitutional Court, the subject of the lawsuit was related to a provision in the Law on the Court of Accounts. The Constitutional Court stated that the control of the Court of Accounts is not among the duties and authorities of the Grand National Assembly of Turkey, which is enumerated in article 87 of the Constitution of 1982, and so, according to article 6 of the Constitution of 1982, the legislator does not have the authority to make the regulations subject to the lawsuit without taking its source from the Constitution<sup>40</sup>. The dispute regarding the annulment decision is within the scope of the control of the Court of Accounts (Aksoy, 2021, p. 129). With the aforementioned Constitutional Court decision, Article 79 of the Court of Accounts Law, titled *audit of the Court of Accounts*, was annulled. However, this abrogated article and article 69 of the Public Fiscal Management and Control Law, titled *audit of the Court of Accounts*, are exactly the same and article 69 of the Public Fiscal Management and Control Law is still in effect.

The control regime of budget laws is not different from other laws. The Constitutional Court is in duty and authorized in cases filed with the allegation that the budget laws are unconstitutional in terms of form and substance (Gözler, 2019, p. 704). In this context, as another example, an application was made for the cancellation of some articles and additional tables of *the 2017 Central Government Budget Law No. 6767 / 6767 sayılı 2017 Yılı Merkezî Yönetim Bütçe Kanunu*<sup>41</sup>, which is direct a budget law. The Constitutional Court stated that the appropriations given in the public budget will be used to meet the work done, goods and services purchased and other expenses in line with the purposes for which they were allocated, and the appropriations should be specified in a way that will meet all the needs of the budget year. Subsequently, it was decided that the provisions of the budget law in question were incompatible with the principle that the budget laws and the provisions of the existing law cannot be changed explicitly or implicitly, or with the principle that no provisions other than the provisions related to the budget can be included in the budget law by being regulated by the budget law, while it should be regulated by ordinary laws<sup>42</sup>.

Another example, a lawsuit was filed for the cancellation of some articles and additional schedules of *the 2016 Central Government Budget Law No. 6682 / 6682 sayılı 2016 Yılı Merkezî Yönetim Bütçe Kanunu*<sup>43</sup>, which is direct a budget law. The Constitutional Court decided to annul some of the budget law regulations that are the subject of the case, on the grounds that it violated the principle that no provisions other than those related to the budget could be included in the budget law and that the budget law and the provisions of the existing law cannot be changed ex-

39 See: Constitutional Court, decision dated 13.10.2022 and numbered 2021/133-2022/120.

40 See: Constitutional Court, decision dated 28.02.2013 and numbered 2011/21-2013/36.

41 See: Official Gazette dated 24.12.2016 and numbered 29928-Repeated.

42 See: Constitutional Court, decision dated 14.02.2018 and numbered 2017/61-2018/12.

43 See: Official Gazette dated 16.03.2016 and numbered 29655-Repeated.

licity or implicitly<sup>44</sup>.

- 44 See: Constitutional Court, decision dated 14.02.2018 and numbered 2016/47-2018/10. Moreover,
- For the decision on the lawsuit filed for the annulment of some articles and additional schedules of the 2015 Central Government Budget Law No. 6583 / 6583 sayılı 2015 Yılı Merkezi Yönetim Bütçe Kanunu published in the Official Gazette dated 26.12.2014 and reiterated number 29217, see: Constitutional Court, decision dated 26.05.2016 and numbered 2015 / 7-2016/47.
  - For the decision on the lawsuit filed for the annulment of some articles of the 2007 Central Government Budget Law No. 5565 / 5565 sayılı 2007 Yılı Merkezi Yönetim Bütçe Kanunu published in the Official Gazette dated 29.12.2006 and numbered 26391, see: Constitutional Court, decision dated 25.02.2010 and numbered 2008/75-2010/40.
  - For the decision on the lawsuit filed for the annulment of a provision of the 2005 Fiscal Year Budget Law No. 5277 / 5277 sayılı 2005 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 31.12.2004 and numbered 25687 with the 1st repetition, see: Constitutional Court, decision dated 28.02.2008 and numbered 2008/11-2008/64.
  - For the decisions regarding the annulment lawsuit filed for the cancellation of some articles of the 2004 Fiscal Year Budget Law No. 5027 / 5027 sayılı 2004 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 28.12.2003 and numbered 25330, see: Constitutional Court, decision dated 07.06.2005 and numbered 2004/12-2005/35; Constitutional Court, decision dated 10.11.2005 and numbered 2005/125-2005/74; Constitutional Court, decision dated 29.11.2005 and numbered 2004/102-2005/96; Constitutional Court, decision dated 29.11.2005 and numbered 2004/115-2005/92.
  - For the decisions regarding the annulment lawsuit filed for the annulment of some articles of the 2003 Fiscal Year Budget Law No. 4833 / 4833 sayılı 2003 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 31.03.2003 and numbered 25065, see: Constitutional Court, decision dated 29.11.2005 and numbered 2005/9-2005/95; Constitutional Court, decision dated 08.10.2009 and numbered 2007/94-2009/140; Constitutional Court, decision dated 14.01.2010 and numbered 2009/92-2010/11.
  - For the decisions regarding the annulment lawsuit filed with the request of annulment of some articles of the 2002 Fiscal Year Budget Law No. 4726 / 4726 sayılı 2002 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 22.12.2001 and numbered 24618, see: Constitutional Court, decision dated 22.10.2002 and numbered 2002/138-2002/96; Constitutional Court, decision dated 11.03.2003 and numbered 2003/8-2003/9; Constitutional Court, decision dated 01.04.2003 and numbered 2003/19-2003/12; Constitutional Court, decision dated 16.04.2003 and numbered 2003/24-2003/35.
  - For the decisions regarding the annulment lawsuit filed for the annulment of some articles of the 2001 Fiscal Year Budget Law No. 4611 / 4611 sayılı 2001 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 30.12.200 and numbered 24273, see: Constitutional Court, decision dated 27.03.2002 and numbered 2001/385-2002/40; Constitutional Court, decision dated 17.09.2002 and numbered 2002/52-2002/84; Constitutional Court, decision dated 22.10.2002 and numbered 2002/60-2002/97; Constitutional Court, decision dated 22.10.2002 and numbered 2001/412-2002/95; Constitutional Court, decision dated 14.01.2010 and numbered 2009/91-2010/10.
  - For the decisions regarding the annulment lawsuit filed with the request of annulment of an article of the 1999 Fiscal Year Budget Law No. 4393 / 4393 sayılı 1999 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 30.06.1999 and repeated numbered 23741, see: Constitutional Court, decision dated 25.01.2001 and numbered 2000/76-2001/9.
  - For the decisions regarding the annulment lawsuit filed for the cancellation of some articles of the 1998 Fiscal Year Budget Law No. 4316 / 4316 sayılı 1998 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 27.12.1997 and numbered 23213, see: Constitutional Court, decision dated 07.10.1998 and numbered 1998/29-1998/60; Constitutional Court, decision dated 28.12.1998 and numbered 1998/56-1998/89; Constitutional Court, decision dated 20.07.1999 and numbered 1999/22-1999/32; Constitutional Court, decision dated 21.09.1999 and numbered 1999/28-1999/38; Constitutional Court, decision dated 24.11.1999 and numbered 1999/36-1999/43; Constitutional Court, decision dated 28.12.1999 and numbered 1999/44-1999/48.
  - For the decision on the action for annulment filed with the request of annulment of an article of the 1997 Fiscal Year Budget Law No. 4219 / 4219 sayılı 1997 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 26.12.1996 and numbered 22859, see: Constitutional Court, decision dated 13.05.1998 and numbered 1997/44-1998/16.
  - For the decisions regarding the annulment lawsuit filed with the request for the annulment of some articles of the 1994 Fiscal Year Budget Law No. 3941 / 3941 sayılı 1994 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 29.12.1993 and numbered 21803, see: Constitutional Court, decision dated 15.02.1995 and numbered 1994/69-1995/8; Constitutional Court, decision dated 26.06.1996 and numbered 1996/30-1996/27; Constitutional Court, decision dated 26.06.1996 and numbered 1996/31-1996/28.
  - For the decision regarding the annulment lawsuit filed with the request of annulment of an article of the 1993 Fiscal Year Budget Law No. 3859 / 3859 sayılı 1993 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 29.12.1992 and reiterated number 2145, see: Constitutional Court, decision dated 20.09.1994 and numbered 1994/3-1994/69.
  - For the decisions regarding the annulment lawsuit filed for the annulment of some articles of the 1991 Fiscal Year Budget Law No. 3690 / 3690 sayılı 1991 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 28.12.1990 and numbered 20739, see: Constitutional Court, decision dated 27.11.1991 and numbered 1991/37-1991/44; Constitutional Court, decision dated 30.01.1992 and numbered 1991/8-1992/5.
  - For the decision on the annulment lawsuit filed with the request for annulment of some articles of the 1990 Fiscal Year Budget Law No. 3595 / 3595 sayılı 1990 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 30.12.1989 and repetitively numbered 20388, see: Constitutional Court, decision dated 28.06.1990 and numbered 1990/6-1990/17.
  - For the decision on the action for annulment filed with the request for annulment of an article of the 1989 Fiscal Year Budget Law No. 3512 / 3512 sayılı 1989 Mali Yılı Bütçe Kanunu published in the Official Gazette dated 06.01.1991 and reiterated number 20747, see: Constitutional Court, decision dated 02.07.1991 and numbered 1991/16-1991/19.
  - For the decision on the annulment lawsuit filed with the request for the annulment of some articles of the 1974 Budget Law No. 1823 / 1823 sayılı 1974 Yılı Bütçe Kanunu published in the Official Gazette dated 01.06.1974 and numbered 14902, see: Constitutional Court, decision dated 21.11.1974 and numbered 1974/26-1974/48.

## 5.2. The Control of the Court of Accounts

According to Article 160 of the Constitution of 1982, the duty of finalizing the accounts and actions of public administrations, social security institutions and local administrations within the scope of the central government budget rests with the Court of Accounts. One of the legal areas that emerged with this provision is the control of the Court of Accounts (Bilici & Bilici, 2019, p. 171).

In Turkish Budget Law, the Court of Accounts has also undertaken the judicial function (Mutluer, et. al., 2015, p. 135). In this sense, within the scope of the judicial system in Turkey, the Court of Accounts jurisdiction is also discussed (Aksoy, 2021, p. 208). The Court of Accounts, which is a Constitutional institution (Kaneti, 2011-a, p. 120) and a court of accounts, carries out judicial control<sup>45</sup> of the public budget (Musaballi, 1970, p. 204). This control, which gives final judgment on the accounts and actions of those responsible with the account examination carried out by the Court of Accounts, has judicial consequences (Özer, 1986, p. 101). In this way, the Court of Accounts fulfills its duty to make a final decision (Gözler, 2019, p. 1039).

The subject of the accounting judgment of the Court of Accounts is fiscal activities and actions (Mutluer, et. al., 2015, p. 136). In this context, the Court of Accounts judges those responsible for income, expenditure, and assets in the public sector (Altuğ, 2019, p. 130). Thus, it can be stated that *the responsibility regime in budget law* (Pınar, 2009, p. 258) emerged within the scope of the control of the Court of Accounts. Penalties are imposed on irregularities discovered after the Court of Accounts' judicial control (Eğilmez, 2020, p. 85).

The main independent control of the Court of Accounts, which is one of the institutions and organizations that have a role in the functioning of public finance (Kaneti, 2011-a, p. 119-120), is the judicial control of the accounts after the public budget period<sup>46</sup>. The duties performed by the Court of Accounts in this control are a judicial activity, and the decisions taken have the effect of final judgment and executive force (Feyzioğlu, 1984, p. 426).

According to article 1 of the Court of Accounts Law, the controlling and accounting proceedings of the Court of Accounts are included in the purpose and scope of the Law. In the article 2/1 of the same Law, it is stated that the account judgment refers to the final decision through judgment whether the accounts and actions of the responsible persons determined by the laws follow the legislation and the related legal remedies. Additionally, in article 34/1-b of the Law, it is stated that one of the purposes of the control is to ensure that the public fiscal management is carried out in accordance with the law.

Further according to articles 2 and 36 of the Court of Accounts Law, there are regularity controls, which consist of fiscal control and compliance control, and performance control, in the field of control of the Court of Accounts. Compliance control within the scope of regularity control includes controlling the compliance of the accounts and actions of public administrations with respect to income, expenditure and property with laws and other legal regulations.

In the doctrine, according to the classification of the control types of the Court of Accounts in terms of quality and method, it is seen that the compliance control regulated in the Court of Accounts Law is expressed as the legality control (Özer, 1986, p. 101).

Apart from this, it is also stated in the doctrine that the fiscal control, which constitutes the regularity control together with the compliance control, is also expressed as the legality control in

45 Also see: (Ertuğruloğlu, 1969, p. 244).

46 Also see: (Erginay, 2010, p. 284).

accordance with the Law on the Court of Accounts (Altuğ, 2019, p. 120; Erginay, 2010, p. 297). Again, in the doctrine, the legality control of the Court of Accounts is expressed as the judicial duty and regularity/compliance control of the Court of Accounts (Bilici & Bilici, 2019, p. 174).

It is thought that the compliance control regulated in Articles 2 and 36 of the Court of Accounts Law corresponds to the account judgment of the Court of Accounts. As a matter of fact, according to the provision of article 48/1 of the fourth section of the Court of Accounts Law, which regulates the account judgment, during the control of the accounts and actions of the public administrations within the scope of the general government, in the event that a matter causing public loss is detected by the controllers, the defenses of the responsible persons will be taken and the judicial report will be prepared as of the end of the fiscal year. It is understood from the provision of article 48/2 of the Law on the Court of Accounts that the report, which is the basis for the trial, is prepared for the account trial to be made by the Court of Accounts because, in the justification of the Court of Accounts Law, it is stated that the compliance control is the type of control that has legal and fiscal results<sup>47</sup>.

Moreover, the Public Fiscal Management and Control Law has a very close relationship with the Court of Accounts Law. Article 68 of the Public Fiscal Management and Control Law is the provision regarding the control and account judgment of the Court of Accounts (Mutluer, et. al., 2015, p. 56, 60). It is claimed that the article regulates the legality control of the Court of Accounts (Bilici & Bilici, 2019, p. 173). When the article is taken into consideration, it is primarily determined that the external control of the Court of Accounts is carried out by determining whether the fiscal actions of public administrations regarding income, expenditure and property follow the laws and other legal regulations, on the basis of public administration accounts and related documents. In the continuation of the article, adjudication of accounts is defined as deciding whether the revenue, expenditure, and property accounts of the public administrations within the scope of general government and the actions related to these accounts follow the legal regulations.

As one of the types of budget control in Turkey, there is also a continuous and regular judicial review of the Court of Accounts without any request (Altuğ, 2019, p. 130). The fiscal audit conducted by the Court of Accounts after the annual fiscal actions are carried out requires regular reporting every year (Mutluer, et. al., 2015, p. 125). Therefore, this fiscal action control, which is carried out continuously and regularly on the basis of reports without any request, constitutes the reason for hundreds of decisions by the Court of Accounts. To give an example in terms of expenditures made from public budgets within the scope of this study, one of the issues that the Court of Accounts has made a final decision on, is exceeding the monthly maximum limit stipulated by the legislation for the vehicle rental service obtained by the direct procurement method. In this context, the decision of the 3rd Chamber of the Court of Accounts, which found exceeding the spending limit unlawful, was approved by the Appeals Board of the Court of Accounts<sup>48</sup>. In another decision of the Court of Accounts, it was decided that the expenditure made was unlawful, since there was no provision or statement that allowed the clothing of the civil servants working in the Private Secretary's Directorate of the Municipality to be made from the Municipality Bud-

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47 See: Grand National Assembly of Turkey. *Adalet ve Kalkınma Partisi Grup Başkanvekilleri Yozgat Milletvekili Bekir Bozdağ, Samsun Milletvekili Suat Kılıç, Kayseri Milletvekili Mustafa Elitaş, Giresun Milletvekili Nurettin Canikli, İstanbul Milletvekili Ayşe Nur Bahçekapılı ve 3 Milletvekilinin; Sayıştay Kanunu Teklifi ve Avrupa Birliği Uyum ile Plan ve Bütçe Komisyonları Raporları (2/594)*. Retrieved from: <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c079/tbmm23079007ss0510.pdf>, 11.01.2022.

48 See: Appeals Board of the Court of Accounts, decision dated 22.12.2021 and numbered 48419/50654. Retrieved from <https://kararlar.sayistay.gov.tr/tkk/?krr=24794>, 21.12.2022.

get<sup>49</sup>. In another Court of Accounts decision, it was decided that it is against the law to pay the bar association fees of the lawyers of the public institutions and organizations and public economic enterprises, from the budgets of these institutions and organizations and economic enterprises<sup>50</sup>.

To give an example in terms of revenues to be collected in public budgets, in a decision of the Court of Accounts, it was stated that the attorney's fee amount is not included in the salary paid in the same calendar year caused the income tax to be levied and accrued incompletely<sup>51</sup>. In another decision of the Court of Accounts, it is stated that it is against the law for the Municipality to pay the income and stamp taxes instead of the taxpayer by increasing the amount determined in the contract<sup>52</sup>.

### 5.3. The Control of the Council of State

Due to the legal structure and function of the public budget, administrative procedures must be carried out within the existing laws. In this context, only a commitment can be made for an authorized expense within the budget law and its annexes, and an authorized income can be collected (Erginay, 2010, p. 207). Thereby, extra-budgetary or non-budget administrative actions will be against the law (Feyzioğlu, 1984, p. 9). According to the understanding based on the public budget principles, for the public services to be carried out with proper rules, administrative actions, and actions in terms of the budget should be tied to some records (Erginay, 2010, p. 211).

In the doctrine, it is asserted that the results of the actions taken by the judicial organs can also fall within the scope of public budget control in the cases brought by the taxpayers about the tax and other fiscal liabilities related to the budget revenues. Hence, tax courts, regional administrative courts and the Council of State ensure the control of the budget with the decisions they make while resolving these disputes (Coşkun, 2000, p. 266). In this context, it can be stated that the *tax jurisdiction law* (Karakoç, 2017) is within the scope of the budget control law.

According to Article 155 of the Constitution of 1982, it is the final examination authority of the decisions and provisions given by the administrative courts that the law does not leave to another administrative jurisdiction. It also considers certain cases specified by law as a court of first and last instance. Today, the Council of State, which is one of the administrative courts, resolves some cases as a court of first instance in the context of its judicial duties. It also fulfills its duties as an appellate authority in some cases (Akyılmaz, Sezginer & Kaya, 2023, p. 45-70). In this way, in case of injustice regarding State actions, the Council of State is applied (Bulutoğlu, 2004, p. 51).

In Article 160/2 of the 1982 Constitution, a rule was introduced to be specific to taxes, similar fiscal liabilities and duties. According to this rule, in case of conflict between the decisions of the Council of State and the Court of Accounts, the decisions of the Council of State will be taken as a basis. This regulation appears as one of the Constitutional principles regarding the Court of Accounts (Kaneti, 2011-d, p. 189).

Pursuant to the provision of article 152/1 of the Constitution of 1982, which regulates the assertion of unconstitutionality in other courts, in cases if the court dealing with a case considers

49 See: Appeals Board of the Court of Accounts, decision dated 03.11.2021 and numbered 43675/50376. Retrieved from <https://kararlar.sayistay.gov.tr/tkk/?krr=24172>, 21.12.2022.

50 See: Appeals Board of the Court of Accounts, decision dated 03.11.2021 and numbered 43709/50379. Retrieved from <https://kararlar.sayistay.gov.tr/tkk/?krr=24172>, 23.12.2022.

51 See: Appeals Board of the Court of Accounts, decision dated 01.07.2020 and numbered 43596/47927. Retrieved from <https://kararlar.sayistay.gov.tr/tkk/?krr=21735>, 22.12.2022.

52 See: Appeals Board of the Court of Accounts, decision dated 15.11.2017 and numbered 41725/43666. Retrieved from <https://kararlar.sayistay.gov.tr/tkk/?krr=15623>, 23.12.2022.



the provisions of an applicable law or Presidential decree to be unconstitutional, or if considers that the alleged from one of the parties unconstitutionality is serious, the case is adjourned until the Constitutional Court's decision on this matter. In this way, concrete norm control (appeal way) is operated which is a way of controlling compliance with the Constitution (Gözler, 2019, p. 1141). In this context, the Council of State and administrative courts have the authority to apply for annulment to the Constitutional Court about laws related to the budget. Indeed, it is seen that the provisions regarding the budget laws were canceled by the 5th Chamber of the Council of State<sup>53</sup>, 8th Chamber of the Council of State<sup>54</sup>, 10th Chamber of the Council of State<sup>55</sup>, Ankara 2nd Administrative Court<sup>56</sup>, Ankara 5th Administrative Court<sup>57</sup>, İstanbul 6th Administrative Court<sup>58</sup>, İzmir 4th Administrative Court<sup>59</sup>, Diyarbakır Administrative Court<sup>60</sup>, Erzurum Tax Court<sup>61</sup>, through the applications made to the Constitutional Court.

In addition, among the litigation subjects of the decisions given by the Council of State, there are also administrative procedures applied based on the provisions of the budget laws. For example, in a decision of the Council of State, it was stated that the value of the immovables sold to the Treasury in accordance with *the 2004 Fiscal Year Budget Law* was determined by the commissions established in accordance with *the Public Procurement Law No. 4734 / 4734 sayılı Kamu İhale Kanunu*<sup>62</sup>, and that this valuation process was a unilateral and mandatory process of the Administration. For these reasons, it has been stated that this dispute, which arose in relation to the valuation of immovables by these commissions and regarding the implementation of *the Law on the Procedure Collection of Public Receivables Law No. 6183 / 6183 sayılı Amme Alacaklarının Tahsil Usulü Hakkında Kanun*<sup>63</sup>, falls within the jurisdiction of tax courts within the administrative jurisdiction<sup>64</sup>.

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**53 For sample decisions, see:**

Constitutional Court decision dated 20.09.1994 and numbered 1994/3-1994/69.  
Constitutional Court, decision dated 20.07.1999 and numbered 1999/22-1999/32.  
Constitutional Court, decision dated 21.09.1999 and numbered 1999/28-1999/38.  
Constitutional Court, decision dated 25.01.2001 and numbered 2000/76-2001/9.

**54 See:** Constitutional Court, decision dated 13.05.1998 and numbered 1997/44-1998/16.

**55 For sample decisions, see:**

Constitutional Court, decision dated 15.02.1995 and numbered 1994/69-1995/8.  
Constitutional Court, decision dated 26.06.1996 and numbered 1996/30-1996/27.  
Constitutional Court, decision dated 26.06.1996 and numbered 1996/31-1996/28.  
Constitutional Court, decision dated 28.12.1998 and numbered 1998/56-1998/89.  
Constitutional Court, decision dated 24.11.1999 and numbered 1999/36-1999/43.  
Constitutional Court, decision dated 28.12.1999 and numbered 1999/44-1999/48.  
Constitutional Court, decision dated 22.10.2002 and numbered 2002/60-2002/97.  
Constitutional Court, decision dated 22.10.2002 and numbered 2001/412-2002/95.

**56 For sample decisions, see:**

Constitutional Court, decision dated 11.03.2003 and numbered 2003/8-2003/9.  
Constitutional Court, decision dated 01.04.2003 and numbered 2003/19-2003/12.

**57 For sample decisions, see:**

Constitutional Court, decision dated 02.07.1991 and numbered 1991/16-1991/19.  
Constitutional Court, decision dated 27.11.1991 and numbered 1991/37-1991/44.

**58 See:** Constitutional Court, decision dated 16.04.2003 and numbered 2003/24-2003/35.

**59 See:** Constitutional Court, decision dated 17.09.2002 and numbered 2002/52-2002/84.

**60 See:** Constitutional Court, decision dated 22.10.2002 and numbered 2002/138-2002/96.

**61 See:** Constitutional Court, decision dated 07.10.1998 and numbered 1998/29-1998/60.

**62 See:** Official Gazette dated 22.01.2002 and numbered 24648.

**63 See:** Official Gazette dated 28.07.1953 and numbered 8469.

**64 See:** 4th Chamber of the Council of State, decision dated 04.02.2015 and numbered 2014/3506-2015/189. Retrieved from: <https://29b13951316a490bc215ebb98f180002769de725.vetisonline.com/ictihat/danistay/4-d-e-2014-3506-k-2015-189-t-4-2-2015>, 17.12.2022.



In another decision of the Council of State, it was stated that the exception provision introduced by the rules of *the 1992 Fiscal Year Budget Law* cannot be applied to actions with third parties over government bonds and Treasury bills previously purchased by banks. It was expressed that an opposite approach would result in the creation of tax exemptions through interpretation and would be contrary to the principle of legality of taxation<sup>65</sup>.

## 6. Conclusion and Evaluation

Within the scope of the legal function of the public budget, issues regarding the legal nature of the budget come to the fore. First, the public budget process, which is a requirement of the public budget, is a result of the legal function of this budget because the beginning and the end of the public budget process, the stages it will go through and the sequence of these stages, the authorized bodies in these stages, the duties, and authorities within these stages, and even the maximum duration of the stages are provided with certain rules that are foreseen in advance. These predetermined and certain rules are revealed by legal regulations. Therefore, the legal function of the public budget is not just its creation as a law. Moreover, it is the most basic feature of the legal function of the public budget that its existence and its expiration are formulated with the legal rules that must be applied for each fiscal year's budget.

The first duty arising from the legal function of the public budget is to establish the budget right. The right to budget provides the establishment of a budget law relationship between the State and individuals. Hence, the legal function of the public budget is both the reason for the relations to be established between the State and individuals and the regulator of the rules of this relationship. Within the scope of the budget relationship, there is also the tax law relationship established between the State and taxpayers.

In the Turkish Budget Law, this legal function, which is related to the right to the budget with the Constitutional arrangements, has been loaded from the very beginning. Furthermore, the right to budget is regulated as a legal terminology in the Public Fiscal Management and Control Law No. 5018 and the Law on the Court of Accounts No. 6085, which are among the sources of Turkish Budget Law. In this context, a public fiscal management principle in line with the budgetary right has been introduced. In addition, as a requirement of the budget right, providing reliable and adequate information to the Grand National Assembly of Turkey and the public about the results of activities of public administrations has been regulated as the aim of the audit of the Court of Accounts.

So, when we ask, "*What are the functions of the public budget?*", this question can be answered in accordance with the assessment to be made based on budgetary principles. However, when these remain at the principal level, their qualities cannot go beyond being "expected". In other words, the legal function of the public budget ensures that these principles, which are brought to the budget technique by the science of finance in the historical process, become followed. Consequently, the transition of the public budget principles from the "expected" nature to the "necessary" nature to be implemented is also within the scope of the legal function of the budget.

In this regard, the Public Fiscal Management and Control Law in Turkish Budget Law has the characteristics of a legal text in which the legal function of the public budget is fully activated, because in the Law, both the principles of public finance and the principles of the public budget are the titles of the articles. In the relevant articles, the principles of public finance and the budgetary principles have been clearly and individually enumerated, making them a rule.

65 See: Tax Litigation Chambers Board of the Council of State, decision dated 24.11.1995 and numbered 1995/16-1995/280. Retrieved from: <https://29b13951316a490bc215ebb98f180002769de725.vetisonline.com/ictihat/danistay/vergi-dava-daireleri-kurulu-e-1995-16-k-1995-280-t-24-11-1995, 14.12..2022>.

To sum up, the legal function of the public budget primarily has duties in terms of establishing, maintaining, and protecting the budget right. These duties also necessitate making the principles of the budget a rule. Therefore, we think that one of the duties of the public budget arising from its legal function is to transform the principles into a legal rule that must be followed. In addition to the duties included in this section, in our opinion, there should be control within the scope of the legal function of the public budget, because only in this way will non-compliance with the budget rights and rules be revealed.

When the situation is evaluated in terms of Turkish Budget Law, it is seen that applications have been made to the Constitutional Court with the claim that the provisions of the laws related to the budget, or the provisions of the direct budget laws are unconstitutional. In this regard, there are more than 30 decisions of the Constitutional Court in which only the budget law regulations were annulled. Thus, the legal regulations that do not comply with the budget right and public budget principles, which are made effective at the Constitutional level, are controlled, and canceled. This control is due to the legal function of the public budget.

The Court of Accounts, which is a Constitutional institution, controls the implementation of the public budget within the framework of all fiscal legislation, especially the laws related to the budget. In this sense, it would not be wrong to say that the legal accuracy is ensured by the Court of Accounts by controlling the results of the budgetary arrangements transferred to the accounts. As a matter of fact, because of the accounting judgment, the Court of Accounts carries out the duty of making final judgments in a volume that cannot be included in this study. Again, this control is due to the legal function of the public budget.

The provisions brought directly by the laws related to the budget or the budget laws determine the duties and authorities of the administrative organs. With these provisions, basic elements such as the administrative actions and/or actions that these bodies can establish, their procedures and legal consequences are also regulated. In this context, the control of the administrative activity will be carried out within the framework the provisions brought directly by the laws related to the budget or by the budget laws.

The provisions brought directly by the laws related to the budget or the budget laws determine the duties and authorities of the administrative organs. With these provisions, basic elements such as the administrative actions and/or actions that these bodies can establish, their procedures and legal consequences are also regulated. In this context, the control of the administrative activity will be carried out within the framework the provisions brought directly by the laws related to the budget or by the budget laws. Therefore, apart from the calculations created by the authorities, it is very possible for the related parties to cause a violation of interests or rights within the framework of these calculations. In such cases, legality control is carried out by the Council of State as the highest court of the administrative judicial regime. In this respect, administrative jurisdictions, including the Council of State, decide whether the actions taken by the administration against individuals or on the basis of budget-related laws or direct budget laws are in compliance with the law. Tax disputes should also be accepted as part of the control of the public budget to a large extent. Here again, it should be noted that this control is due to the legal function of the public budget.

It is understood from these explanations that the meaning of the legal function of the public budget emerges in terms of fiscal actions. Assuming that the public budget does not have a legal function, it is not possible to talk about regular fiscal actions. By determining the rules of fiscal actions, the legal function of the public budget ensures that fiscal actions can be controlled according to these rules.

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## References

### Books and Articles

- Akgül Yılmaz, G. (2020). *Kamu maliyesi: teori ve Türkiye uygulaması*. (6th edition). Ankara: Türkmen Kitabevi.
- Aksoy, M. (2021). *Kamu mali yönetiminde Sayıştay hukuku*. Ankara: Yetkin Yayınları.
- Aksoy, Ş. (2011). *Kamu maliyesi*. (4th edition). İstanbul: Filiz Kitabevi.
- Aktan, C. C. (2020). *Vergi: vergi teorisi, vergi politikası, normatif vergi hukuku*, Vol. I. Ankara: Seçkin Yayıncılık.
- Akyılmaz, B., Sezginer, M. & Kaya, C. (2023). *Türk idari yargılama hukuku*. Ankara: Seçkin Yayıncılık.
- Altuğ, F. (2019). *Kamu bütçesi*. İstanbul: Beta Yayınları.
- Avcı, M. A. (2008). *Türkiye'de ve Dünya'da kamu mali yönetiminde mali saydamlık kavramının gelişimi ve önemi*. Ankara: Maliye ve Hukuk Yayınları.
- Bilici, N. (2018). *Vergi hukuku: vergi usul hukuku, vergi yargılama ve tahsil hukuku*. (46th edition). Ankara: Savaş Yayınevi.
- Bilici, N. & Bilici, A. (2016). *Mali hukuk*. (2nd edition). Ankara: Savaş Yayınevi.
- Bilici, N. & Bilici, A. (2019). *Kamu maliyesi I (hukuki boyut)*. Güncellenmiş ve Geliştirilmiş 10. Baskı, Ankara: Savaş Yayınevi,
- Bulutluoğlu, K. (1982). *Türk vergi sistemi dersleri*. (1st edition). İstanbul: Araştırma, Eğitim, Ekin Yayınları.
- Bulutluoğlu, K. (2004). *Kamu bütçesi, kamu harcamaları, kamu borçları*. İstanbul: Batı Türkeli Yayıncılık.
- Coşkun, G. (2000). *Devlet bütçesi: Türk bütçe sistemi*. (6th edition). Ankara: Turhan Kitabevi.
- Çağan, N. (1982). *Vergilendirme yetkisi*, İstanbul: Kazancı Hukuk Yayınları.
- Davie, B. F. & Duncombe, B. F. (1972). *Public Finance*. United States of America: Holt, Rinehart and Winston, Inc.
- Edizdoğan, N. & Çetinkaya, Ö. (2013). *Kamu bütçesi*. (4th edition). Bursa: Ekin Yayınevi.
- Eğilmez, M. (2020). *Kamu maliyesi*. (6th edition). İstanbul: Remzi Kitabevi.
- Erginay, A. (1990). *Vergi hukuku: ilkeler-vergi tekniği, Türk vergi sistemi*. (14th edition). Ankara: Savaş Yayınları.
- Erginay, A. (2010). *Kamu maliyesi*. (18th edition). Ankara: Savaş Yayınevi.
- Ertuğruloğlu, M. (1969). *Maliye ilmi: maliye ilminin genel esasları*. I. Book, Özel Ankara İktisadi ve Ticari İlimler Yüksek Okulu, A Serisi Yayınları No: 8, Ankara: Başnur Matbaası.
- Fezyioğlu, B. N. (1983). "Modern Anayasalarda Bütçe Hakkı". *Maliye Araştırma Merkezi Konferansları*, 29, pp. 1-28.
- Fezyioğlu, B. N. (1984). *Nazarî, tatbikî mukayeseli bütçe*. (7th edition). İstanbul: Filiz Kitabevi.
- Gözler, K. (2019). *Türk Anayasa hukuku*. (3rd edition). Bursa: Ekin Kitabevi.
- Güneş, G. (2000). Hukuksal teknik açıdan bütçede "önceden izin ilkesi"nin vergi gelirleri yönüyle işlevini kısmen yitirmesinin bütçe hakkı açısından irdelenmesi, *XIII. Türkiye Maliye Sempozyumu "Anayasal Mali Düzen"* in the book (pp. 173-196). 14-16 May 1998. İstanbul: Marmara Üniversitesi Döner Sermaye İşletmesi Teknik Eğitim Fakültesi Matbaa Birimi.
- Güneş, G. (2014). *Verginin yasallığı ilkesi*. (4th edition). İstanbul: On İki Levha Yayıncılık.
- Gürsoy, B. (1975). *Kamu maliyesi: giriş-masraflar*, Vol. I. Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları No: 378. Ankara: Sevinç Matbaası.
- Gürsoy, B. (1980). *Kamusal maliye: bütçe*. Volume II. Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları No: 436. Ankara: S.B.F. Basın ve Yayın Yüksek Okulu Basımevi.
- Heald, D. (1987). *Public expenditure*. USA: Basil Blackwell Inc.

- Kaneti, S. (2011-a). Türk kamu maliyesinin Anayasal temelleri (I). *Makaleler* in the book (pp. 157-176). (1st edition). İstanbul: On İki Levha Yayıncılık.
- Kaneti, S. (2011-b). Kamu maliyesinin örgütsel yapısı. *Makaleler* in the book (pp. 119-155). (1st edition). İstanbul: On İki Levha Yayıncılık.
- Kaneti, S. (2011-c). Türk kamu maliyesinin Anayasal temelleri (II). *Makaleler* in the book (pp. 177-181). (1st edition). İstanbul: On İki Levha Yayıncılık.
- Kaneti, S. (2011-d). Türk kamu maliyesinin Anayasal temelleri (III). *Makaleler* in the book (pp. 183-197). (1st edition). İstanbul: On İki Levha Yayıncılık.
- Karakoç, Y. (2021). *Sosyal maliye*. (2nd edition). Ankara: Yetkin Yayınları.
- Karakoç, Y. (2017). *Vergi yargılaması hukuku*. (4th edition). Ankara: Yetkin Yayınları.
- Kuyucak, H. A. (1952). *Bütçe*. İstanbul: İstanbul Akgün Matbaası.
- Laufenburger, H. (1956). *Mukayeseli maliye: Amerika Birleşik Devletleri-Fransa-İngiltere-Sovyet Rusya*. Translators: Bedi N. Feyzioğlu, Süleyman Barda. İstanbul Üniversitesi Yayınlarından No. 687, İktisat Fakültesi No. 90, Maliye Enstitüsü No. 2. İstanbul: Sermet Matbaası.
- Musaballı, H. (1970). *Maliye: bütçe*. Volume II. İstanbul: Özel İstanbul İktisadi ve Ticari Bilimler Yüksek Okulu Yayınları: 3.
- Musgrave, R. A. & Musgrave, P. B. (1989). *Public finance in theory and practice*. (5th edition). Singapore: Mcgraw-Hill Book Company.
- Mutluer, M. K., Öner, E. & Coşkun, A. (2015). *Sayıştay hukuku*. (1st edition). İstanbul: İstanbul Bilgi Üniversitesi Yayınları.
- Mutluer, M. K., Öner, E. & Kesik, A. (2006). *Bütçe hukuku*. (2nd edition). İstanbul: İstanbul Bilgi Üniversitesi Yayınları.
- Neumark, F. (1951). *Maliyeye dair tetkikler*. (4th edition). İstanbul: İstanbul Akgün Matbaası.
- Oktar, S. A. (1997). Mali hukukun anlam ve kapsamı üzerine. *Sosyal Bilimler Dergisi*, Volume: III, 2, July, pp. 29-40.
- Oktar, S. A. (2012). Kamu maliyesi hukukunun bazı Anayasal ilkeleri ve Anayasanın mali hükümlerine ilişkin düşünceler. *Anayasadan mali ve vergisel beklentiler* in the book (pp. 189-200). Editors: Feridun Yenisey, Gülsen Güneş, Ertuğ Şirin. (1st edition). İstanbul: On İki Levha Yayıncılık.
- Oktar, S. A. (2022). *Vergi hukuku*. (16th edition). İstanbul: Türkmen Yayınevi.
- Öncel, M., Kumrulu, A., Çağan, N. & Göker, C. (2019). *Vergi hukuku*. (28th edition). Ankara: Turhan Kitabevi.
- Öner, E. (2020). *Vergi hukuku*. (12nd edition). Ankara: Seçkin Yayıncılık.
- Özer, İ. (1986). *Devlet maliyesi*. Volume: II. (New edition). Maliye ve Gümrük Bakanlığı Araştırma, Plânlama ve Koordinasyon Kurulu Yayın No: 1986/277. Ankara: Başbakanlık Basımevi.
- Öztürk, N. (2013). *Kamu mali yönetimi: mali kurumlar*. Bursa: Ekin Yayınevi.
- Öztürk, N. (2016). *Maliye politikası*. (4th edition). Bursa: Ekin Yayınevi.
- Pelin, İ. F. (1945). *Finans ilmi ve finansal kanunlar*. I. Book. (3rd edition). İstanbul: İsmail Akgün Basımevi.
- Pınar, B. (2009). *Türk Bütçe Hukuku Açısından Kamu Mali Yönetim Sisteminin Hukukî Analizi*. (Doktora Tezi). D. Okuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, İzmir.
- Saban, N. (2019). *Vergi hukuku*. (9th edition). İstanbul: Beta Yayınları.
- Saygılıoğlu, N. (1991). Verginin Anayasal çerçevesi ve yorumlama biçimi. *Vergi yönetimi ve yargı ilişkisi paneli* in the book (pp. 56-61). Session I. 25-31 Mart 1991 Vergi Haftası Etkinlikleri. Ankara: Gelirler Genel Müdürlüğü.
- Sur, F. H. (1946). *Maliye dersleri*. Volume: II. Ankara: T. C. Ziraat Bankası Matbaası.
- Susam, N. (2020). *Kamu maliyesi: temel kavram ve esaslar*. (4th edition). İstanbul: Beta Yayınevi.
- Tuncer, S. (1972). *Kamu Maliyesi*. (3rd edition). İstanbul: Yalkın Ofset Matbaası.
- Üstün, Ü. S. (2019). *Türkiye’de vergi ve bütçe hakkı*. (1st edition). Ankara: Nobel Akademik Yayıncılık.
- Yılmazcan, D. (2000). Bütçe hakkı ve bütçe uygulamaları, *XIII. Türkiye Maliye Sempozyumu “Anayasal Mali Düzen”* in the book (pp. 163-172). 14-16 May 1998. İstanbul: Marmara Üniversitesi Döner Sermaye İşletmesi Teknik Eğitim Fakültesi Matbaa Birimi.

## **Judgments**

### *The Decisions of Constitutional Court*

Constitutional Court, decision dated 21.11.1974 and numbered 1974/26-1974/48.  
Constitutional Court, decision dated 28.06.1990 and numbered 1990/6-1990/17.  
Constitutional Court, decision dated 02.07.1991 and numbered 1991/16-1991/19.  
Constitutional Court, decision dated 27.11.1991 and numbered 1991/37-1991/44.  
Constitutional Court, decision dated 30.01.1992 and numbered 1991/8-1992/5.  
Constitutional Court, decision dated 20.09.1994 and numbered 1994/3-1994/69.  
Constitutional Court, decision dated 15.02.1995 and numbered 1994/69-1995/8.  
Constitutional Court, decision dated 26.06.1996 and numbered 1996/30-1996/27.  
Constitutional Court, decision dated 26.06.1996 and numbered 1996/31-1996/28.  
Constitutional Court, decision dated 13.05.1998 and numbered 1997/44-1998/16.  
Constitutional Court, decision dated 07.10.1998 and numbered 1998/29-1998/60.  
Constitutional Court, decision dated 28.12.1998 and numbered 1998/56-1998/89.  
Constitutional Court, decision dated 20.07.1999 and numbered 1999/22-1999/32.  
Constitutional Court, decision dated 21.09.1999 and numbered 1999/28-1999/38.  
Constitutional Court, decision dated 24.11.1999 and numbered 1999/36-1999/43.  
Constitutional Court, decision dated 28.12.1999 and numbered 1999/44-1999/48.  
Constitutional Court, decision dated 25.01.2001 and numbered 2000/76-2001/9.  
Constitutional Court, decision dated 27.03.2002 and numbered 2001/385-2002/40.  
Constitutional Court, decision dated 17.09.2002 and numbered 2002/52-2002/84.  
Constitutional Court, decision dated 22.10.2002 and numbered 2002/60-2002/97.  
Constitutional Court, decision dated 22.10.2002 and numbered 2002/138-2002/96.  
Constitutional Court, decision dated 22.10.2002 and numbered 2001/412-2002/95.  
Constitutional Court, decision dated 11.03.2003 and numbered 2003/8-2003/9.  
Constitutional Court, decision dated 01.04.2003 and numbered 2003/19-2003/12.  
Constitutional Court, decision dated 16.04.2003 and numbered 2003/24-2003/35.  
Constitutional Court, decision dated 07.06.2005 and numbered 2004/12-2005/35.  
Constitutional Court, decision dated 10.11.2005 and numbered 2005/125-2005/74.  
Constitutional Court, decision dated 29.11.2005 and numbered 2004/102-2005/96.  
Constitutional Court, decision dated 29.11.2005 and numbered 2004/115-2005/92.  
Constitutional Court, decision dated 28.02.2008 and numbered 2008/11-2008/64.  
Constitutional Court, decision dated 14.01.2010 and numbered 2009/91-2010/10.  
Constitutional Court, decision dated 25.02.2010 and numbered 2008/75-2010/40.  
Constitutional Court, decision dated 28.02.2013 and numbered 2011/21-2013/36.  
Constitutional Court, decision dated 29.01.2014 and numbered 2013/66-2014/19.  
Constitutional Court, decision dated 26.05.2016 and numbered 2015 /7-2016/47.  
Constitutional Court, decision dated 18.01.2018 and numbered 2016/180-2018/4.  
Constitutional Court, decision dated 14.02.2018 and numbered 2016/47-2018/10.  
Constitutional Court, decision dated 13.10.2022 and numbered 2021/133-2022/120.

### *The Decisions of Court of Accounts*

Appeals Board of the Court of Accounts, decision dated 03.11.2021 and numbered 43675/50376.  
Appeals Board of the Court of Accounts, decision dated 03.11.2021 and numbered 43709/50379.

Appeals Board of the Court of Accounts, decision dated 22.12.2021 and numbered 48419/50654.

Appeals Board of the Court of Accounts, decision dated 01.07.2020 and numbered 43596/47927.

Appeals Board of the Court of Accounts, decision dated 15.11.2017 and numbered 41725/43666.

### *The Decisions of Council of State*

Tax Litigation Chambers Board of the Council of State, decision dated 24.11.1995 and numbered 1995/16-1995/280.

4th Chamber of the Council of State, decision dated 04.02.2015 and numbered 2014/3506-2015/189.

### **Legislations**

The 1974 Budget Law No. 1823 / 1823 sayılı 1974 Yılı Bütçe Kanunu.

The 1989 Fiscal Year Budget Law No. 3512 / 3512 sayılı 1989 Mali Yılı Bütçe Kanunu.

The 1990 Fiscal Year Budget Law No. 3595 / 3595 sayılı 1990 Mali Yılı Bütçe Kanunu.

The 1991 Fiscal Year Budget Law No. 3690 / 3690 sayılı 1991 Mali Yılı Bütçe Kanunu.

The 1993 Fiscal Year Budget Law No. 3859 / 3859 sayılı 1993 Mali Yılı Bütçe Kanunu.

The 1994 Fiscal Year Budget Law No. 3941 / 3941 sayılı 1994 Mali Yılı Bütçe Kanunu.

The 1997 Fiscal Year Budget Law No. 4219 / 4219 sayılı 1997 Mali Yılı Bütçe Kanunu.

The 1998 Fiscal Year Budget Law No. 4316 / 4316 sayılı 1998 Mali Yılı Bütçe Kanunu.

The 1999 Fiscal Year Budget Law No. 4393 / 4393 sayılı 1999 Mali Yılı Bütçe Kanunu.

The 2001 Fiscal Year Budget Law No. 4611 / 4611 sayılı 2001 Mali Yılı Bütçe Kanunu.

The 2002 Fiscal Year Budget Law No. 4726 / 4726 sayılı 2002 Mali Yılı Bütçe Kanunu.

The 2003 Fiscal Year Budget Law No. 4833 / 4833 sayılı 2003 Mali Yılı Bütçe Kanunu.

The 2004 Fiscal Year Budget Law No. 5027 / 5027 sayılı 2004 Mali Yılı Bütçe Kanunu.

The 2005 Fiscal Year Budget Law No. 5277 / 5277 sayılı 2005 Mali Yılı Bütçe Kanunu.

The 2007 Central Government Budget Law No. 5565 / 5565 sayılı 2007 Yılı Merkezî Yönetim Bütçe Kanunu.

The 2015 Central Government Budget Law No. 6583 / 6583 sayılı 2015 Yılı Merkezî Yönetim Bütçe Kanunu.

The 2016 Central Government Budget Law No. 6682 / 6682 sayılı 2016 Yılı Merkezî Yönetim Bütçe Kanunu.

The 2017 Central Government Budget Law No. 6767 / 6767 sayılı 2017 Yılı Merkezî Yönetim Bütçe Kanunu.

The Constitution of the Republic of Turkey No. 334 / 334 sayılı Türkiye Cumhuriyeti Anayasası.

The Constitution of the Republic of Turkey No. 2709 / 2709 sayılı Türkiye Cumhuriyeti Anayasası.

The Court of Accounts Law No. 6085 / 6085 sayılı Sayıştay Kanunu.

The General Accounting Law No. 1050 / 1050 sayılı Muhasebei Umûmiye Kanunu.

The Law on the Procedure Collection of Public Receivables Law No. 6183 / 6183 sayılı Amme Alacaklarının Tahsil Usulü Hakkında Kanun.

The Public Fiscal Management and Control Law No. 5018 / 5018 sayılı Kamu Malî Yönetim ve Kontrol Kanunu.

The Public Procurement Law No. 4734 / 4734 sayılı Kamu İhale Kanunu.

### **Online Sources**

Constitutional Court. *1876 Kânûn-ı Esâsî*. Retrieved from <https://www.anayasa.gov.tr/tr/mevzuat/onckei-anayasalar/1876-k%C3%A2n%C3%BBn-i-es%C3%A2s%C3%AE/>, 11.01.2022.

Grand National Assembly of Turkey. *Adalet ve Kalkınma Partisi Grup Başkanvekilleri Yozgat Milletvekili Bekir Bozdağ, Samsun Milletvekili Suat Kılıç, Kayseri Milletvekili Mustafa Elitaş, Giresun Milletvekili Nurettin Canikli, İstanbul Milletvekili Ayşe Nur Bahçekapılı ve 3 Milletvekilinin; Sayıştay Kanunu Teklifi ve Avrupa Birliği Uyum ile Plan ve Bütçe Komisyonları Raporları (2/594)*. Retrieved from <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c079/tbmm23079007ss0510.pdf>, 11.01.2022.

Grand National Assembly of Turkey. *Kamu Mali Yönetimi ve Kontrol Kanunu Tasarısı ve Plan ve Bütçe Komisyonu Raporu (1/692)*. Retrieved from <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c032/tbmm22032026ss0302.pdf>, 21.12.2022.

Grand National Assembly of Turkey. *Meclisi Áyan Zabıt Ceridesi*. 4 (1). 18 March 1336 (1920) Thursday. Retrieved from <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/MECLISIYAN/mad04ic01c001/mad04ic01c001ink020.pdf>, 01.10.2022.



