

THE EVALUATION OF RESTRUCTURED LOCAL GOVERNMENTS IN TURKEY WITHIN THE CONTEXT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT

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ABSTRACT

In Turkey, local governments have been reconstructed in order to provide effective and productive delivery of the services by local governments, in parallel with European practices. This restructuring process brings very important changes to the functional, institutional, fiscal, and the manpower structures of local governments in Turkey. Therefore, the restructured local governments need to be re-evaluated within the context of the European Charter on Local Self-Government, one of the very important standards regarding the autonomy of local governments. Consequently, this article aims to re-evaluate restructured local governments in Turkey within the context of the Charter.

ÖZ

Türkiye'deki yerel yönetimler, etkin ve verimli bir şekilde hizmet sunmaları ve Avrupa'daki ülke uygulamalarına paralel bir yapıya kavuşturulmaları amacıyla yeniden yapılandırılmıştır. Bu yeniden yapılanma süreci, Türkiye'deki yerel yönetimlerin işlevsel, kurumsal, mali ve personel yapısında çok önemli değişiklikleri

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beraberinde getirmiştir. Bu yüzden, yerel yönetimlerin özerkliğine ilişkin çok önemli bir metin olan “Avrupa Yerel Yönetimler Özerklik Şartı” bağlamında, yeniden yapılandırılan yerel yönetimlerin tekrardan değerlendirilmesi gerekmektedir. Dolayısıyla bu çalışma, Türkiye’de yakın zamanda yeniden yapılandırılan yerel yönetimlerin Özerklik Şartı bağlamında değerlendirilmesini amaçlamaktadır. Bu doğrultuda, öncelikle yerelleşme eğilimi ve yerel yönetimler ele alınacak, daha sonra Özerklik Şartı ve öngörülleri açıklanacak, söz konusu metin karşısında Türkiye’nin durumu değerlendirilecek ve son olarak Türkiye’de yeniden yapılandırılan il özel idaresi, belediye ve büyükşehir belediyeleri Özerklik Şartı’nın öngörülleri bağlamında değerlendirilecektir.

Keywords: Localization, Local Governments, Local Autonomy, Local Democracy, European Charter on Local Self-Government.

Anahtar Kelimeler: Yerelleşme, Yerel Yönetimler, Yerel Özerklik, Yerel Demokrasi, Avrupa Yerel Yönetimler Özerklik Şartı.

INTRODUCTION

The economic, political, technological, and social developments experienced all over the world have brought about benefits that local governments can provide that are vital to the principles and concepts critical to democratic government, such as participation, autonomy, transparency, local democracy, and effective and productive delivery of public services, along with the attainment of the so-called principles and concepts to the agenda. In the light of these developments, many countries have restructured their public administration mechanisms in general, and the local governments in particular, within the context of “decentralization.”

The developments in question are affecting the administrative structure of Turkey, whose membership negotiations with the European Union are still underway. Therefore, Turkey needs to implement the standards both in order to provide effective and productive delivery of the services by local governments in parallel to the European practices and to provide more autonomous, democratic, participative, and transparent structures for these local governments.

When considered from a historical perspective, it can be seen that there have been a number of studies carried out for this specific purpose. In accordance with the objective of decentralization, the latest legal arrangements regarding local governments in Turkey are the Special Provincial Administration Law No. 5302, Municipality Law No. 5393 and Metropolitan Municipality Law No. 5216. These arrangements do bring very important changes to the functional, institutional, fiscal, and the manpower structures of

the local governments in Turkey and aim for more autonomous, transparent, democratic, and participative construction of local governmental structures. Therefore, the restructured local governments need to be re-evaluated within the context of the European Charter on Local Self-Government, one of the very important international standards regarding the autonomy of local governments.

I. THE TENDENCY FOR LOCALIZATION, LOCAL GOVERNMENTS AND TURKEY

Today both developed and developing countries are in the process of radical changes and transformation in the economic, political, administrative and social areas. It is possible to say that this multi-dimensional transformation process moves under the guidance of the “tendency of globalization” and of localization, whose personnel, institutions and approaches, and what is perceived to be its complementary tendency, have the capacity to transform people, institutions, and approaches as effective as globalization.

The trends in globalization and localization change services and the way they are delivered within the structure of public administration, thereby bringing up the need for the reconstruction of public administration. These days, almost every state accepts the approach of decentralization, with local autonomy as the common denominator in reconstruction efforts, as they reorganize their governments with this approach.

Today, in many countries, subsidiarity and local governments are one of the hot discussion topics. Increasing public opinion and the strong pressures of local communities for more participation in the decision-making process have caused local authorities to come face-to-face with new demands.¹ Throughout this process of transformation, as the demands for local participation increase, the effectiveness of local governments increases as decentralization emerges as a concept to restrict the authority of the central government.² Moreover, increasing interest in concepts such as local governments, decentralization, local autonomy and subsidiarity has affected academicians while central-local relations or intergovernmental relations have become an important topic of several studies and special issues of several journals.³ Concepts like

¹ Robin Hambleton, *Modernising Political Management in Local Governments*, 37 URBAN STUDIES 931, 931 (2000).

² Gerhard Banner, *COMMUNITY GOVERNANCE AND THE NEW CENTRAL-LOCAL RELATIONSHIP* 217 (Blackwell Publishers, Oxford, 2002).

³ B. G. Peters and J. Pierre, *Developments in Intergovernmental Relations: Towards Multi-Level Governance*, 29 POLICY AND POLITICS 131 (2001); F. Pieter Wagenaar and Mark Rutgers, *Caught*

decentralization and local autonomy are also key elements in the study of intergovernmental relations.⁴

Throughout this process, as local government structures are emphasized despite the seemingly more logical concept that the “global leads the local” more easily in this emphasis, it is not an obstacle to the development of the local governments.⁵ With this purpose, it can be seen that international organizations and developed countries give special priority to the concepts of subsidiarity, decentralized construction, local democracy, and participation of the non-governmental organizations in the local policy-making process, local autonomy, and governance. Consequently, the trends of autonomy and subsidiarity are becoming more and more important.⁶ The idea that a truly free and democratic society will not be possible without the principle of local self-government has become more widely accepted.

Local autonomy, both as the key concept of this article and as the main theme of the local government literature, needs to be examined separately. Wolman and Goldsmith defined local autonomy as the ability to act independently from supervision of a central administration and the capacity to self-govern, without feeling the need for central government, while at the same time fulfilling local duties and responsibilities in the systems where decentralization was accepted as a principle.⁷ This autonomy has two aspects: the first aspect is related to the local governments’ relations with the center; within the framework of these relations, local governments may not be expected

Between Polis and Empire: On Centralization and Decentralization in Public Administration Theory, 26 ADMINISTRATIVE THEORY AND PRAXIS 509 (2004); Paul Carmichael and A. Midwinter, *Regulating Local Authorities. Emerging Patterns of Central Control*, 3 POLITICAL STUDIES REVIEW 235 (2005); R. Agranoff, *JPART Symposium Introduction: Researching Intergovernmental Relations*, 14 JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY 443 (2004).

⁴ Frederik Fleurke and Rolf Willemse, *Measuring Local Autonomy: A Decision-Making Approach*, 32 LOCAL GOVERNMENT STUDIES 71, 71 (2006).

⁵ Şerif Öner, *Küreselleşme Sürecinde Yerellik: Demokratik ve Katılımcı Yerel Yönetimin Kurumsallaşması [Locality in the Globalization Process: Institutionalization of Democratic and Participatory Local Government]*, in AVRUPA BİRLİĞİ İLE BÜTÜNLEŞME SÜRECİNDE TÜRKİYE’DE YEREL YÖNETİMLER [LOCAL GOVERNMENTS IN TURKEY IN THE INTEGRATION PROCESS INTO THE EUROPEAN UNION] 121, 134 (Bekir Parlak and Hüseyin Özgür (ed.), Alfa Publishing, Istanbul, 2002).

⁶ Gavin Shatkin, *Obstacles to Empowerment Local Politics and Civil Society in Metropolitan Manila, The Philippines*, 37 URBAN STUDIES 2357, 2360 (2000).

⁷ H. Wolman and M. Goldsmith, *URBAN POLITICS AND POLICY: A COMPARATIVE APPROACH* 45 (Blackwell Publishing, Oxford, 1992).

to be independent of the center. Independence is a different concept from that of autonomy. The second aspect is related to the relationship of the local government with the local community, which is the public; autonomy is considered to be a way of governing in order to cease or decrease the inconvenient bureaucratic operation of governing from the center.⁸

Local autonomy is one of the long-surviving concepts related to sub-central administrations studies. It is not possible to either comprehend the political dimension of local governments or to understand central and local relations without first understanding local autonomy in real terms. In other words, local autonomy and local democracy are embedded within each other.⁹ As a matter of fact, local autonomy and local democracy are used synonymously. In practice, local self-government and local democracy cannot be separated. From a historical perspective, local democracy has been developed through the practices of local government and local politics.¹⁰

Local governments are in a more advantageous position than other public authorities, at least in fulfilling two important functions. First, local governments turn out to be a special means to manage the democratic but politicized conflicts that pave the way for the attainment of participation at the local level.¹¹ Second, they function as public institutions with a role in the local service production-distribution and in the solution of problems related to local interests.

Local governments, by limiting to the local level the political participation demands concentrated in the central government, largely contribute to the legitimacy of the political system in an important way. From this point of view, besides being service-producing administration bodies, the local governments,

⁸ Mustafa Ökmen, *Uyum Sürecinin İdari-Politiği: Avrupa Birliği ve Türkiye Perspektifinde Küreselleşme-Yerelleşme Dinamikleri* [Administrative-Politics of the Cohesion Process: Globalization-Localization Dynamics in European Union and Turkey Perspective], in AVRUPA PERSPEKTİFİNDE TÜRKİYE [LOCAL GOVERNMENTS IN EUROPEAN PERSPECTIVE] 43, 56 (Hüseyin Özgür and Bekir Parlak, eds., Alfa Publishing, Istanbul, 2006).

⁹ Lawrence Pratchett, *Local Autonomy, Local Democracy and The New Localism*, 52 POLITICAL STUDIES 358, 358 (2004).

¹⁰ Gerry Stoker, *Redefining Local Democracy*, in LOCAL DEMOCRACY AND LOCAL GOVERNMENT 188 (L. Pratchett and D. Wilson, eds., Macmillan Publishing, Basingstoke, 1996).

¹¹ Jon Pierre, *Models of Urban Governance: The Institutional Dimension of Urban Politics*, 34 URBAN AFFAIRS REVIEW 372 (1999).

as the school of politics, function as the basic units of democracy, autonomy, and plurality.¹²

The fundamental values of local governments can be expressed by the concepts of freedom, equality, and welfare; these concepts developed from the principles of early classical liberalism.¹³ Here, the expression of freedom is the freedom of the local community. Local governments foster that freedom by carrying the power from the center to the local units and providing the distribution of political power to the local communities.¹⁴

Equality in local governments is made possible by participation. Local governments contribute to political participation by paving the way for the participation of the local community to direct their own lives – that is political participation. Due to administrative and political participation at the local level, local authorities get the chance to provide the most appropriate service to the public in a more effective way. While Robert Dahl emphasized that the most realistic method of participation is to be attained through local governments, he also stated that this participation at the local level determines the best methods for the concept of democratic participation.¹⁵ In addition, participation is also an important element with respect to the accountability of local authorities. Without participation, citizens will not be able to hold leaders accountable. Consequently, if citizens are to hold their local authorities accountable and if their local authorities are to be responsive, citizens must participate through established local institutional channels.¹⁶

As is clear, one of the most important movements to be marked with globalization is localization and the most important demonstration of localization is local autonomy and participation. Boudreau, on the one hand, while evaluating localization as a means for nations to keep their cultures alive,

¹² Mustafa Ökmen, *Yerel Yönetimlerde Özerklik Eğilimleri, Avrupa ve Türkiye [Tendencies of Autonomy in Local Governments, Europe and Turkey]*, in AVRUPA BİRLİĞİ İLE BÜTÜNLEŞME SÜRECİNDE TÜRKİYE'DE YEREL YÖNETİMLER [LOCAL GOVERNMENTS IN TURKEY IN INTEGRATION PROCESS TO EUROPEAN UNION] 99, 102 (Bekir Parlak and Hüseyin Özgür, eds., Alfa Publishing, Istanbul, 2002).

¹³ Dillys Hill, *DEMOCRATIC THEORY AND LOCAL GOVERNMENT* 209 (Allen and Unwin, London, 1974).

¹⁴ Ökmen, *supra* note 12, at 102.

¹⁵ Robert Dahl, *The City in the Future of Democracy*, 61 AMERICAN POLITICAL SCIENCE REVIEW 953, 953-54, (1967).

¹⁶ Paul Posner, *Local Democracy and Popular Participation: Chile and Brazil in Comparative Perspective*, 10 DEMOCRATIZATION 39, 42 (2003).

he, on the other hand, underlined it as a phenomenon that is likely to give rise to micronationalist movements.¹⁷ While the relevant literature argues that these developments have the possibility to threaten the nation-state centric view, the transfer of authorities of the nation-state to organizations either at supranational or subnational levels still continues.

Due to the globalization of the world, in many aspects people need to describe themselves in a way only that they themselves are able to understand. When localization is achieved, people emerge from where they live and become a part of it; however at the same time, they want to see themselves differently. For this reason, the more the world is globalized, the more it is going to be localized.¹⁸

Together with the localization trend, on the one hand, the nature of the governing-governed relationship keeps changing; transparency, participation, accountability, and productivity are adopted as fundamental principles in the delivery of public services. On the other hand, due to the institutionalization of democracy, enlargement of the types and area of the administrative participation, and the application of decentralization at the residential level within the context of getting closer to the public during the provision of services, local governments become more important.

At the beginning, the localization trend was perceived to strengthen local governments by transferring the authority, responsibility, and resources that were concentrated in the central government; however, as time went by, it was observed that the description and the true nature of the concept expanded. Today, in addition to strengthening local governments, increasing the facilities of the local non-governmental organizations, supporting the local media, overcoming the obstacles experienced by the entrepreneurs, increasing the effective participation of the local community in the decision-making process, strengthening local government unions, increasing local governments' ability to cooperate with the international organizations and unions, and even transferring authority from the provincial units to the local governments can all be considered to be within the trend of localization.¹⁹

¹⁷ Julie-Anne Boudreau, *The Politics of Territorialization: Regionalism, Localism and Other Isms... The Case of Montreal*, 25 JOURNAL OF URBAN AFFAIRS 180 (2003).

¹⁸ Ökmen, *supra* note 8, at 59.

¹⁹ Bekir Parlak, *Küresel Gelişmeler ve Avrupa Birliği Uygulamaları Ekseninde Yerelleşme [Localization Within the Context of Global Developments and Practices of the European Union]*, in TEORİDEN PRATIĞE KAMU YÖNETİMİ [PUBLIC ADMINISTRATION: FROM THEORY TO PRACTICE] 1, 7 (Talat Arslan, ed., Aktüel Publishing, Istanbul, 2005).

Similar to the trend all over the world, the European Union, as a supranational organization in Europe, has been transforming administrative structures in a way that overrides the classical institutionalism.²⁰ The European Union has been trying to reorient the integration process in a healthy way with a kind of “Europeanization of the European Governments” approach by considering national-regional, transnational, and supranational dynamics all together. In the process by which “Europeanization” is fundamentally accepted as “remodernization,” the understanding of public administration is generally questioned and priority is given to subnational and local/regional governments in the central-local relationship. In other words, while Europe is being “remodernized,” it accepts “localization” as the focal point in the dynamic interaction of national, supranational, and subnational actors.²¹ A fundamental prerequisite of this acceptance is local autonomy. This is why the European Union has continuously emphasized this concept in its legal regulations since the establishment of the Union.

The concept of localization is mentioned in international documents, such as the European Charter on Local Self-Government (1985), the Single European Act (1987) and the Maastricht Treaty (1992); some principles and institutions are constructed in this direction. One of the typical examples of such institutions is the Committee of Regions, established within the framework of European Union, which guides the member countries’ local and regional governments to have a greater effect on the Union’s decision-making process.²² The “subsidiarity” principle, generally and preferably meant to be the provision of public services by the units closest to the public,²³ is the best example of these adopted principles.

²⁰ John Peter, *The Europeanization of Subnational Governance*, 37 URBAN STUDIES 877, 877 (2000).

²¹ Andrew Massey, *Modernization as Europeanization: The Impact of the European Union on Public Administration*, 25 POLICY STUDIES 19, 19-20 (2004).

²² Kadir Koçdemir, *Avrupa Birliği Hukuku ve Mahalli İdareler (European Union Law and Local Governments)*, 426 TÜRK İDARE DERGİSİ [JOURNAL OF TURKISH ADMINISTRATION] 56, 79 (2000).

²³ TOBB (Turkish Union of Chambers and Commodity Exchanges), MAHALLI İDARELERİN YENİDEN YAPILANDIRILMASI [RESTRUCTURING OF LOCAL GOVERNMENTS] 24-25 , (TOBB Publications, Ankara, 1996); Muhammet Kösecik, *Avrupa Birliği’nin Bütünleşme Sürecinde Yerel Yönetimler [Local Governments in Process of European Union Integration]*, in AVRUPA BİRLİĞİ İLE BÜTÜNLEŞME SÜRECİNDE TÜRKİYE’DE YEREL YÖNETİMLER [LOCAL GOVERNMENTS IN TURKEY IN THE INTEGRATION PROCESS INTO THE EUROPEAN UNION] 1, 10 (Bekir Parlak and Hüseyin Özgür, eds., Alfa Publishing, Bursa, 2002); Ruşen Keleş, *Hizmette Halka Yakınlık (Subsidiarity) İlkesi ve Yerel Yönetimler [Principles of Subsidiarity and Local Governments]*, 4 ÇAĞDAŞ YEREL YÖNETİMLER [MODERN LOCAL ADMINISTRATION] 3-7 (1995).

Contrary to the overall winds of change in the world, one witnesses a backwardness in public administration mechanisms in general and in the context of local governments in Turkey in particular. In history, especially after the “Constitutional Declaration” (Tanzimat Fermanı), the Ottoman Empire attempted to carry out reforms based on ideas taken from France, which had some centralist tendencies. It can also be observed that local governments started to emerge during the same period. Moreover, the local government tradition in Turkey is seen to be as old as centralism.²⁴ However, the main aim of the reform was not to establish local councils and administration but to strengthen the central government. In this context, local governments were only administrative tools to execute the duties of the central government.²⁵ This is the reason why the fundamental quality of the local governments in Turkey was the lack of orientation skills of a class, which had become stronger at the end of economic and social changes; it is further stated that this quality should be taken into consideration when one deals with the problems related to these institutions.²⁶

In fact, the centralist structure formed as a result of reforms to strengthen the central government, and therefore referred to as defensive modernization,²⁷ has been transferred into the Turkish Republic and survives to this day. The reform efforts carried out in the Republican era (modern Turkey) have been fruitless and the so-called centralist structure has not been softened. Consequently, the legacy inherited has become determinative of central government-local government relations in Turkey.

In the Republican era, special provincial administrations have become local government units, whose existence have been questioned and stated that they

²⁴ İlber Ortaylı, TANZİMAT'TAN CUMHURİYET'E YEREL YÖNETİM GELENEĞİ [LOCAL GOVERNANCE CUSTOM FROM THE TANZİMAT TO REPUBLICAN ERAS] 29 (Hil Publishing, Ankara, 1985).

²⁵ Korel Göymen, Türk Yerel Yönetiminde Katılımcılığın Evrimi: Merkeziyetçi Bir Devlette Yönetişimin Dinamikleri [Evolution of Participatory Behavior in Turkish Local Government: Dynamics of Governance in a Centralist State], 32 AMME İDARESİ DERGİSİ [JOURNAL OF PUBLIC ADMINISTRATION] 67, 68 (1999).

²⁶ İlber Ortaylı, TANZİMAT'TAN SONRA YEREL YÖNETİMLER [LOCAL GOVERNMENTS AFTER TANZİMAT] 4 (TODAİE Publication, Ankara, 1974).

²⁷ Mustafa Ökmen, Serhat Baştan and Abdullah Yılmaz, *Kamu Yönetiminde Yeni Yaklaşımlar ve Bir Yönetişim Faktörü Olarak Yerel Yönetimler* [New Approaches in Public Administration and Local Governments as a Governance Factor], in KAMU YÖNETİMİ (PUBLIC ADMINISTRATION) 23, 54 (Abdullah Yılmaz and Mustafa Ökmen, eds., Gazi Publishing, Ankara, 2004).

should be removed,²⁸ duties have been transferred to the central administration,²⁹ income has been rapidly decreasing,³⁰ and have been separated from the province as a central administration establishment.³¹ On the one hand, municipalities have experienced problems due to the lack of democratic qualities, administrative participation and transparency, fiscal problems and lack of qualified personnel; while on the other hand, they had to face political interventions and manipulations, especially during one specific period.

The developments that have taken place, both in the world and in local governments in Turkey, make the reform of these institutions necessary. The last of the reform efforts in this direction was accomplished in the planning period carried out by the 59th Government (2002-2007). In this context, the Metropolitan Municipality Law No. 5216 (12 July 2004),³² the Special Provincial Administration Law No. 5302 (22 February 2005),³³ and the Municipality Law No. 5393 (03 July 2005)³⁴ were adopted by the Turkish Grand National Assembly.

The purpose of those laws in question was stated to be the formation of effective, strong, autonomous, transparent, and accountable local governments, with an optimal level of institutions, participation, and ability to satisfy the needs of the citizens. With these laws, this article aims to evaluate whether an autonomous, democratic, and harmonious structure, consistent with the practices of other developed countries, has been achieved. At this point, the “European Charter on Local Self-Government” and its principles are accepted as the starting point.

²⁸ Fethi Aytaç, *İl Özel İdareleri Hakkında Düşünceler* [Considerations for Special Provincial Administrations], 1 YENİ TÜRKİYE [NEW TURKEY] 377, 385 (1974).

²⁹ Ruşen Keleş and Fehmi Yavuz, YEREL YÖNETİMLER [LOCAL GOVERNMENTS] 51 (Turhan Publishing House, Ankara, 1989).

³⁰ Bilal Eryılmaz, KAMU YÖNETİMİ [PUBLIC ADMINISTRATION] 135 (Erkam Publishing, Istanbul, 2004).

³¹ Fehmi Yavuz, TÜRK MAHALLI İDARELERİNİN YENİDEN DÜZENLENMESİ ÜZERİNE BİR ARAŞTIRMA [RESEARCH ON THE REORGANIZATION OF TURKISH LOCAL GOVERNMENTS] 148 (TODAİE and DPT Publication, Ankara, 1966).

³² Promulgated in Resmi Gazete (Turkish Official Gazette – “O.G.”) No. 25531, 23 July 2004.

³³ Promulgated in O.G. No. 25745, 04 March 2005.

³⁴ Promulgated in O.G. No. 25874, 13 July 2005.

II. THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT

The European Charter on Local Self-Government (ECLSG or “Charter”) was accepted at the Conference of European Ministers, Assembly of Stockholm, in 1985.³⁵ In the introduction of the Charter, the stated aim of the European Council was the founding of a union at an advanced level to protect the ideals and principles common to the heritages of the Member States.

Local government is one of the basic tenets of a democratic system, reflecting the idea of a citizen’s right to participate in administrative decisions at the every appropriate level. The existence of local governments, fitted out with suitable authorization, will ensure an efficient, clear and participative administrative structure; maintaining and strengthening autonomous local governments is a critical factor in forming a political and administrative structure based on democratic principles and in an administrative sense, a decentralized structure. The ECLSG presents certain basic principles and sets forth standards that States could use to compare structural and functional positions in which local governments are included in order to assess the level of autonomy of the local government.

One of the basic principles articulated in the ECLSG, as pointed out in its second article, is related to the constitutional and legal basis of autonomous local government. Consequently, the concept of autonomous local government should be recognized in domestic legislation, and where practicable, in the national constitution. The third article of the Charter describes “autonomous local governments” – local authorities with the regulatory and administrative right to deliver services through local councils, consisting of elected members acting under their own responsibilities, within the framework of local interests and within the limits of law. According to the fourth article of the ECLSG, the authority and liability of local governments should be determined by constitution and laws. Besides, this guidance does not prevent the granting of authority and liability for certain purposes which are more appropriate for laws from local governments. This “general appreciation right” is stipulated in Article 4. In this sense, within the limits of law, local governments have the right to conduct activities in all subject areas that another institution isn’t charged with or was left out of their (central) authorization. In addition, the powers of local governments are complete and exclusive. In other words, except for the situations stipulated by law, the power in question cannot be impaired or limited by other central or regional authority.

³⁵ ETS No. 122, 15 October 1985.

One of the most basic principles stimulated by the Charter is the “Subsidiarity Principle.” In the context of the principles contained in Article 4, public responsibilities are to be used at levels which are closest to the citizens.

Another principle, accepted in the Charter and discussed in Article 5, protects the boundaries of local governments. In this sense, any change in local boundaries cannot be made without a citizen referendum.

Article 6 of the ECLSG is related to having a sufficient administrative organization and the resources which are necessary for the duties of local governments; this article defers to local governments on this subject. That is to say, local governments can decide on their internal organizational structure for the purpose of harmonizing their organizations with the needs of their local communities and providing effectiveness without harming more general legal principles. Furthermore, pointing out in the same article that the working conditions of the personnel must be adjusted to allow for the employment of qualified personnel, the advantages of adequate payment and promotion are emphasized in order to attract qualified personnel with sufficient education to work for local governments.

Another principle concerning the Charter which is contained in Article 8 is to control the activities of local governments. Administrative inspection of local governments should be made only through the conditions and means that are specified by constitution or law. Administrative inspection of activities of local governments should be made only with a view to the adoption of constitutional principles and in addition, superior authority should inspect local efforts only as to whether they fulfill their duties appropriately or not.

Certain principles are specified about the financial resources of local governments in Article 9 of the Charter. Providing enough financial resources to local authorities, assigning proportional resources to local governments with the duties specified in constitution and law, determining local taxes and fees by law, allowing variations which enable them to follow factual raises which are needed to perform the duty with flexibility, consulting local governments how shared out resources are to be allocated, requiring assignment of donations made to local governments to finance local projects and using national capital markets to finance capital investment in local government, could be stated as the principles of finance for local governments.

Besides, the “right of founding a union and participating in unions of local governments” is accepted as a basic principle and in this sense, it is stated that local governments can associate with other local governments to complete their

duties, become members of unions to protect and improve common profits, and engage in international local governments' unions; local governments can also unite with other state's local governments under conditions determined by law.

The last principle in the Charter is concerned with the legal protection of autonomous local governments and expresses the idea that local governments have the right to apply for court decisions to guarantee autonomous administration as determined by constitution or national legislation.

III. THE EUROPE CHARTER ON LOCAL SELF-GOVERNMENT AND TURKEY

Turkey signed the European Charter on Local Self-Government and this was approved by the Turkish Parliament in 1991 with Law 3723. However, Turkey made reservations to certain articles; however Turkey was not the only country to do so. Indeed, other developed countries neither signed nor affirmed the charter.³⁶ Articles which have Turkish reservations are:³⁷

- Self determination of the inner structure of local governments,
- Permitting administrative oversight if the benefits are proportional,
- Estimating the rise in the cost of services in providing resources to local governments,
- Considering the viewpoints of local governments in distributing resources to local governments,
- Ensuring fiscal support from central governments does not prevent local governments from applying their own policies,
- Founding associations,
- Participating in international associations,
- Cooperating with local governments in foreign countries to defend their rights, and

³⁶ Ruşen Keleş, *Yerel Yönetimler Özerklik Şartı Karşısında Avrupa ve Türkiye [Europe and Turkey In View of European Charter on Local Self-Government]*, 4 ÇAĞDAŞ YEREL YÖNETİMLER [MODERN LOCAL ADMINISTRATION] 3, 19 (1995).

³⁷ Ruşen Keleş, *YERİNDEN YÖNETİM VE SİYASET [DECENTRALIZATION AND POLITICS]* 46 (Cem Publishing, 1994).

- Using authorizations freely assigned to them and applying judgment to protect the principle of autonomous local government.

Although Turkey made reservations to certain provisions in some articles of the Charter when in conflict with the 1982 Constitution, certain principles of the Charter were acceded to directly or seem to be so. As a matter of fact, in Article 123 of the Turkish Constitution, the foundation and duties of administration regarding the central administration and the basis for decentralization are specified; in Article 127, local governments are defined as institutions with the status of legal personality that are to meet the local common needs of the public in provinces, municipalities and villages, and whose decision-making bodies are composed of elected members. In the same article, it was expressed that the foundation, functions and powers of the local governments are to be determined by law in accordance with the principle of decentralization, that a special administrative scheme is to be established for large-scale residential areas and that revenue is to be provided in proportion to their duties. The provision in question, Article 127 of the 1982 Constitution, is in harmony with the Charter, which foresees that functions and powers of the local governments are to be determined by constitution or by law.

Besides, the concept of “autonomous local government,” which is emphasized in the Charter, is not authorized directly in the 1982 Constitution but it is possible to say that the definition of local government contains parallel elements. Services which are the responsibility of local governments, achievements of local citizens and decision-making bodies in power by means of election are emphasized in Article 3 of the Charter. It is possible to find similar elements and emphasis in the definition of local governments in the 1982 Constitution.

However, it has to be noted at this point, that in new laws related to local governments in Turkey, when the areas of local government duties are determined, the category of local common needs which will be assumed by local governments is not determined. This issue is a major problem related to the new laws that were mentioned above.³⁸

The fact that the power and functions of local governments are complete and exclusive, as stated in Article 4 of the Charter and subsidiarity, are not specified in Constitution or law. However it has to be noted here, that in the

³⁸ Ali Ulusoy, *Yerel Yönetimlere İlişkin Yeni Yasal Düzenlemelerin Değerlendirilmesi* [Evaluation of New Laws Concerning Local Governments], Danıştay 2005 Administrative Justice Symposium.

proposed Public Administration Basic Government Bill (Kamu Yönetimi Temel Kanun Tasarısı) which was to guide the laws related to local governments in Turkey, the point of view of the political power and their tendencies on the issue was reflected; although it could not be passed into law because of the veto of the President, the subsidiarity principle was clearly expressed. Therefore, during this period in which Turkey tries to accede to the European Union, there exists the political will power to harmonize the administrative structure of Turkey in line with those of other developed countries.

As a result of this effort, the Special Provincial Administrations Law No. 5302, Municipality Law No. 5393 and Metropolitan Municipality Law No. 5216 were enacted. These laws include considerable arrangements in the context of changes regarding to the personnel system and organizational structure. Therefore, it is necessary to reevaluate the new structure that has been formed by the new laws in relation to special provincial administrations, municipalities and grand city municipalities.

IV. THE CHARTER AND RESTRUCTURED LOCAL GOVERNMENTS

A. Special Provincial Administrations in Context of the Charter

Special provincial administrations, which are constitutional institutions in Turkey, had been authorized by Special Provincial Administration Law No. 3360 before Special Provincial Administration Law No. 5302 was implemented. In the structure before Law 5302, special provincial administrations were institutions that were ignored, whose autonomies were questioned and whose powers and duties were removed and passed on to the center were deprived of all qualities and mechanisms to be accepted as “autonomous.”³⁹

Actually, examining the earlier Law 3360, the establishment of special provincial administrations is a sign of how special provincial administrations had been ignored by central administrations. The law text lost its unity because of the changes that it underwent over the years that turned it into a patchwork law rather than a comprehensive one.⁴⁰ Nevertheless, special provincial

³⁹ M. Zahid Sobacı, *Yeniden Yapılanma Sürecinde İl Özel İdarelerinin Dünyü, Bugünü ve Geleceği Üzerine Değerlendirmeler [Evaluations on Tomorrow, Today and Future of Special Provincial Administrations in the Restructuring Process]*, 14 ÇAĞDAŞ YEREL YÖNETİMLER [MODERN LOCAL ADMINISTRATION] 31, 38 (2005).

⁴⁰ Ahmet Başsoy, *İl Özel İdarelerimiz [Our Special Provincial Administrations]*, 1YENİ TÜRKİYE [NEW TURKEY] 390, 390 (1995).

administrations have become more autonomous under Law 5302 in comparison to earlier arrangements.

Law 5302, which organizes the duties of special provincial administrations by virtue of provincial and municipal boundaries, made significant gains in the context of the “autonomous local government principle” as addressed in the third article of the ECLSG. The new developments and regulations in question can be summarized as follows:

Law 5302 changed the weight of the position of the governor in a special provincial administration.⁴¹ The new law put an end to presidency of the governor in the general provincial council. According to Law 3360, the governor was the president of the general provincial council. Law 5302 allows the election of a person in the council as president. Thus, a procedure which was contrary to the general practices of developed countries and criticized on the account of the fact that it impaired the autonomy of the special provincial administration by certain actors is now gone. A structure that is more conformative to the third article of European Charter on Local Self-Government was therefore established, making a significant step towards the autonomy of special provincial administrations.

With Law 5302 changing the meeting period of general provincial councils (setting the meeting time as the first week of every month), the process of making the decisions of the general provincial council final has been changed and the requirement for those decisions to be approved by the Governor has been lifted. According to Article 15 of Law 5302, the decisions of the general provincial council have to be sent to the Governor within 15 days. Any decisions that have not been sent to the Governor in the allotted time will not come into effect. However, this obligation is only related to the sending of the decisions to the governor. If the governor decides that a decision is contrary to law, the governor remands the decision within 7 days to the general provincial council to be reexamined. Decisions that are not desired to debate again and those that the council insists upon will become final with an absolute majority of the entire number of the members. Therefore, an administrative oversight function is ended partly and an important step has been taken in terms of the autonomy of the special provincial administrations.

⁴¹ Metin Günday, *Kamu Yönetimi Reformunun İdari Yapılanmaya İlişkin Anayasal İlkeler Açısından Değerlendirilmesi* [Evaluation of Public Administration Reform Within the Context of Constitutional Principles Concerning Administrative Structure], Danıştay 2005 Administrative Justice Symposium.

Reasons authorized to annul decisions of a general provincial council are restricted by Law 5302. According to Article 22, if the general provincial council neglects its duties as assigned by law and as a result, delays the duties of special provincial administration or if the general provincial council makes political decisions that do not concern the special provincial administration, the general provincial council can be dissolved by the Council of State upon application by the Interior Ministry.

The meeting of the general provincial council, apart from legally-bound ordinary and extraordinary periods and assembling in another place, have been abolished by the new arrangement. These reasons have already been stipulated in Article 125 of Law 3360. The provision for annulment by reason of “negotiating political problems and having political desires” has been moderated in favor of the special provincial administration. Beyond negotiating political problems, if a special provincial administration makes decisions concerning political problems and these decisions do not relate to the duties of special provincial administrations, this reason for annulment of the decision is available. Annulment of the general provincial council is complicated in comparison to earlier applications and assigned political flexibility to a special provincial administration.⁴² Thus either for the autonomy of special provincial administration or for the local government system in Turkey, a positive step based on the principles of the Charter has been taken.

Once again, with Article 45 of Law 5302, the approval process of the special provincial administration budget was changed and the principle that the budget would be operative with the approval of general provincial council was accepted. In this way, the procedure of obtaining the approval of Ministry of Internal Affairs for the budget as specified in the earlier Law 3360 was abolished. Thus, a step in the administrative oversight of the special provincial administrations was ended and an important step was taken in terms of the autonomy of these bodies.

Significant changes concerning the provincial committees, which are another organizational body of the special provincial administrations, were made with Law 5302, which specified the name of this organizational body, meeting periods and formation process. However, one subject must be made

⁴² Bekir Parlak and Zahid Sobacı, KURAM VE UYGULAMADA KAMU YÖNETİMİ: ULUSAL VE GLOBAL PERSPEKTİFLER [PUBLIC ADMINISTRATION IN THEORY AND PRACTICE: NATIONAL AND GLOBAL PERSPECTIVES] 99-100 (Alfa Publishing, Bursa, 2005); Bahtiyar Akyılmaz, *Yerel Yönetimlerin Seçilmiş Organlarının (Yargı Yolu İle) Organlık Sıfatlarını Kaybı* [Losing Body Status of Local Governments' Elected Bodies], Danıştay 2005 Administrative Justice Symposium.

clear at this point – Law 5302 considers the provincial committee to be an executive body and should include a certain level of expertise.

Although Law 5302 terminated the decision-making authorization of the provincial committees in favor of the general provincial council by changing its assembly period, the expression “...decision making” is seen clearly in certain clauses of Article 26 of Law 5302 that determine the duties and authorizations of the provincial committee.

If the provincial committee is an executive body, certain duties which cause it to have a “decision-making” function should be taken away from the duties of the provincial committee. If it is a decision-making body, for the purpose of consistency with Article 3 of the ECLSG, certain oversight functions must be reexamined.

In Law 5302, changes in the context of the administrative structure of the special provincial administration is important in view of the principle of being able to determine the own internal administrative structure of local governments to ensure an effective management and services compatible with needs as contained in Article 6 of the Charter. As a matter of fact, the administrative structure and staff system stipulated in the new Law 5302 is more flexible than the structure stipulated in Law 3360.

Law 5302 attempts to form an administrative structure able to change relative to the needs of the community and convenient for development. The organization of the special provincial administration consists of units such as a secretary-general, financial affairs, health, agriculture, cultivation, human resources and legal affairs; with the approval of the general provincial council, it is able to form other units if needed.

One aspect that must be considered in the context of the administrative structure of special provincial administrations, which is not mentioned in Law 3360 but introduced with the new Law 5302, is the introduction of three new units - “the secretariat general,” “the inspection commission” (that controls income, expense, account and transactions) and “expertise commissions” (composed of at least 3, but at most 5, members). While, on the one hand, these units are significant tools to maintain administrative participation, mobilize public inspection and keep informed about the latest developments, they are, on the other hand, the basic indicators of initiatives from Law 5302 for the general provincial councils in the context of the administrative structure of the special provincial administrations.

In the new structuring of special provincial administrations, new arrangements are made to provide the efficient and rational staff employment that a large organization requires. The introduction of “regular staff”⁴³ and performance criteria for staff performance are the most definite indicators. In that context, the number of staff of the special provincial administrations will be determined according to normal criteria. Regular staff principles and standards are to be determined in cooperation with the Ministry of Internal Affairs and State Personnel Directory. In addition, Article 36 of Law 5302 permits “contractual staff employment” in certain areas that require expertise and technical knowledge and “staff transfer” from other public associations and foundations to the special provincial administrations. All of these initiatives are important for conformity with Article 6 of the European Charter on Local Self-Government.

The new law has made considerable changes in terms of principles determined within the context of administrative inspection of local governments’ activities’ as stipulated in Article 8 of the Charter. According to Article 38 of Law 5302, the control of special provincial administrations includes the inspection of public work and operations for conformance to laws, as well as financial and performance inspection. Similarly, within the same article, two types of inspections are stipulated: internal inspections and external inspections. Interior inspections are to be made by the internal inspector whereas external inspections are to be made by the Court of Exchequer (Sayıştay). Thus, the extent of inspection stipulated in Article 38 is consistent with Clause 2 of Article 8 of the ECLSG.

Essentially, the statement “superiors can inspect whether local governments carry out their duties appropriately as specified in Article 8 of the Charter implicitly stipulates “appropriate inspections.” The fact that “appropriate inspections” still exists in certain European countries has caused the term “appropriate inspection” to be placed in the Charter. In this sense, the situation in Turkey is more developed than that in certain other European countries. However, what must not be forgotten is that the practice is significant. Hence, the implementation of Article 38 of Law 5302 must be observed over time, particularly with regards to the reasons why governors refer decisions of the general provincial council for legal assessment.

⁴³ The term “regular staff” is used for the Turkish term “norm kadro” because it is closest in meaning in English. However, the term “norm kadro” in Turkish implies more than a regular worker; it refers to a tenured status accorded to civil servants whereby they are entitled to all rights and protections under the legislation affecting civil servants.

However, the financial structure of local governments in Turkey does not seem to agree with the principles regarding the financial resources of local governments as specified in Article 9 of the Charter. As a matter of fact, neither the financial resources of local governments in Turkey, which regulate local taxes and expenditures proportioned by them according to law, nor income resources proportioned with duties is in question. Moreover, the provision of providing “financial resources in proportion to their functions” as stipulated in Article 127 of the 1982 Turkish Constitution has never been implemented. By implication, a special provincial administration as a local government unit is negatively affected by such a mentality.

However, laws to complete Law 5302 and secondary regulations concerning the financial structure of local governments must be implemented in order to be able to clearly evaluate and analyze the financial structure of the special provincial administrations.

An exact congruity to “founding union of local governments and right of participation in unions” principle specified in Article 11 of European Charter on Local Self-Government cannot be observed in Turkey. The principle in question was included in part for use by the special provincial administrations in Turkey. As a matter of fact, according to Articles 62, 64 and 65 of Law 5302, special provincial administrations can be founders or members of international organizations that conduct activities in the areas of their responsibilities and can undertake common activities and service projects with occupation foundation and voluntary foundations in qualification of other public associations. However, special provincial administrations have to have permission from the Ministry of Internal Affairs to become a member of international organizations or to undertake activities and projects with them.

The right to apply for judicial review in order to ensure compliance with the “autonomous administration principle” and the “free use of authorization principle” which are contained in Article 11 of European Charter on Local Self-Government has been recognized for special provincial administrations in Turkey. According to Article 125 of the 1982 Turkish Constitution, it is possible to refer every kind of administrative operation and action to judicial review.

B. Municipalities and Metropolitan Municipalities in Context of the Charter

Municipalities that are the real and classic examples of community administration acquired their legal identities in 1930⁴⁴ but were restructured with the Municipality Law No. 5393 in 2005. Metropolitan Municipalities were formed for the first time in 1984 and were restructured with the Metropolitan Municipality Law No. 5216 in 2004. Therefore, these local government units are required to be reevaluated in context of the principles stipulated in the ECLSG because these new laws have brought about significant developments with respect to the autonomy of the these local government units.

The new structure formed with the new laws should be observed within the context of “autonomous local government concept” as stated in Article 3 of the Charter. The provisions of Law 5393 and Law 5216 that will affect the autonomy of municipality and metropolitan municipalities can be summarized as follows below.

The new laws specify that the elected councils of both local government units are the decision-making body and changed the method of finalizing decisions made by the council. Based on the new procedures, the municipality/metropolitan municipality council makes the decisions and the mayor of the municipality/metropolitan municipality can return for reconsideration any decision that s/he thinks is contrary to law. Decisions can be reconfirmed with an absolute majority of council members. The head of the municipality can then resort to the administrative courts within 10 days for cancellation of such reconfirmed decisions.

Decisions must be sent to the appropriate civilian administrative authority within 7 days after a decision has become final. Decisions which are not sent to the civilian administrative authority do not come into force. However, the only requirement in the law relates to its transfer to the civilian administrative authority. By the way, the requirement for the civilian administrative authority to apply for approval of municipality/metropolitan municipality council decisions has been removed. Consequently, administrative control of the municipality/metropolitan municipality has been partly renounced. However, with the requirement to send final council decisions to the administrative authority, it is possible for the civilian authority to also refer a decision to the administrative courts if it considers the decision to be contrary to the law. This

⁴⁴ Halil Nadaroğlu, MAHALLİ İDARELER [LOCAL GOVERNMENTS] 195 (Beta Publishing, Istanbul, 2001).

new procedure represents a positive improvement in terms of the autonomy of municipalities and metropolitan municipalities.

Municipality Law 5393 reduced the number of reasons authorized for abolishment of a municipality council. According to Article 30 of the new law, if the council is negligent in fulfilling its duties in the time assigned by law, which further causes extra delays or interruptions of municipal affairs, or if the council makes decisions about political subjects which do not involve their duties, the Council of State can dissolve the municipal council upon application of the Ministry of Internal Affairs. Therefore, the former justifications for abolishment based on the council assembling at anytime except ordinary or extraordinary assemblies or in another location that is not authorized by law are removed by implication with Law 5393.

Besides, the grounds for abolishing a council based on “debating political affairs,” has been changed to “making decisions” about affairs that do not relate to the municipal duties. Accordingly, this reason is moderated in favor of the municipal councils. Reducing the grounds for the abolishment of municipality councils, consisting of elected members, is a considerable step in terms of ensuring autonomy and moderating administrative oversight. The reasons authorized to abolish a metropolitan municipality council are not clearly set out in Law 5216 but it would seem that a metropolitan municipality council can be abolished for the same reasons as a municipality council.

A positive improvement occurred, in accordance with Article 25 of Law 5216 and Article 62 of Law 5393, by ensuring the autonomy of these local government units by abandoning the “method of budget approval by the governor” that was a significant application of administrative oversight over the municipality and metropolitan municipality budget finalization process.

The mixed style of assigning municipality functions is internalized in Municipality Law No. 5393 by abandoning the list type in the earlier Municipality Law No. 1580, which limited the duties and responsibilities of a municipality. A significant justification to abandon the list type is that duties and authorizations assigned to municipalities by an inclusive list could respond to economic, social and technological developments.

In the new Law 5393, both areas of municipality services are listed and by including the statement that “a municipality fulfills other local duties and services that are not assigned to any other public institution or foundation by law,” municipalities, compatible with contemporary thinking, can now be regarded as the “general authority” for local services. Consequently, the “full

discretion right” principle contained in Article 4 of the Charter seems to apply now for at least the municipalities. It is not possible to specify a right of this sort for metropolitan municipalities because the duties of metropolitan municipality are specifically listed in Law 5216.

Article 5 of the Charter relates to changing the boundaries of local governments by consulting local communities. Municipality Law No. 5393 partially contains the provisions of the Charter. As a matter of fact, according to Article 8 of Law 5393, a referendum must be conducted in the town or part of the town, or the village or part of the village, which intends to unify with the municipality; the results of referendum are sent to the municipality. The merger occurs if approved by the municipality council within 30 days. However, the expression of “local communities” in the ECLSG includes both the citizens of the town and the citizens of the municipality. Yet, the passage “without referring to a vote of the citizens of the municipality” is written in Law 5393. Consequently, the passage in question must be reexamined in the context of ensuring compliance with the provisions of the European Charter on Local Self-Government.

Based on the provisions of Article 6 of Metropolitan Municipality Law 5216, “municipality law is implemented to unite the municipalities and villages which are in or around the borders of metropolitan municipalities,” it is possible to talk about changes in municipality borders and what is mentioned about unification for municipalities holds for metropolitan municipalities as well.

Changes regarding the administrative structure of municipalities and metropolitan municipalities brought about by the new Laws 5393 and 5216, have an importance in terms of the principles by which local governments can decide on their own interior administrative structure to ensure effective management and services compatible with needs. These are summarized below.

According to Article 48 of Municipality Law 5393, the administrative structure of a municipality is composed of general administrative services, financial services, technology affairs and a municipal police force (“Zabita” - which deals particularly with prices and fair marketing). However, by taking into considering the town population; physical and geographic structure; and economical, social, and cultural features, units such as health, fire, cultivation, human resources, legal affairs and others can be formed based on the needs of the municipality and appropriate “normal cadre principles and standards.” These units are created or disbanded by the municipality council. Thus, municipalities have the ability to create their interior organization through their own decision-making.

Law 5216 authorizes a flexible administrative structure that can change according to the needs of the municipality to carry out local services for the citizens efficiently, sufficiently, quickly, and transparently. According to Article 21 of Law 5216, the administrative structure of a metropolitan municipality consists of a general secretary, department administrations and head offices. Regular staff principles must be taken into consideration on this subject. A decision of the metropolitan municipality council is enough to create, abolish or unite units under Law 5216. The approval process by the Ministry of Internal Affairs, as stipulated in Law 3030 for these processes, has been abandoned. In this way, another administrative oversight process has been removed.

Another change made by Law 5393 and Law 5216 concerning municipality and metropolitan municipality organization is the “specialization commissions” and “inspection commissions” that inspect the income and expenses of the previous year and the accounts, registrations and operations of the municipalities. While these units, on the one hand, are important in terms of administrative participation and ensuring transparency, they are, on the other hand, signs that the councils, as the decision-making bodies of local authorities, expanding their scope with regards to their own internal organization.

Regular staff application is another issue which must be evaluated in terms of the organization and personnel of the municipalities and metropolitan municipalities. With these new laws, different from the previous statutes, Regular staff is developed, and the principles and standards for the cadre are to be jointly developed, with the Ministry of Internal Affairs and the State Personnel Directorate. What is more, provided that they are compatible with the regular staff principles, in addition to “employing contractual personnel” and “seconded officials,” the new laws also make it possible to employ “part-time contractual personnel.” Therefore, it can be said that the impact of a lack of qualified personnel can be diminished in this way.

In Article 54 of Municipality Law No. 5393, the inspection of municipalities is defined as the analysis, measurement and evaluation of municipality service processes and their results with respect to legislation, predetermined aims and targets, performance criteria and quality standards, with the results being announced in the form of a report to the authorities. The inspection of municipalities includes conformity to the laws regarding operations, finances and performances. Conformity to Article 8 of the European Charter on Local Self-Government exists in the bases for inspection since it is referred to in the evaluation of special provincial administrations. However, implementation is diagnostic – implementation of the relevant articles of Law 5393 must consequently be monitored and the transfer of jurisdiction for

challenge of municipality council decisions to the administrative courts and the decisions made by these courts must be analyzed.

Provisions regarding the special provincial administrations in the context of financial structure and resources relative to Article 9 of the Charter are to be developed for the municipalities and metropolitan municipalities. Therefore, what needs to be done on this issue is to wait for the complementary laws and secondary legislation related to this subject to be enacted over time.

Municipalities and metropolitan municipalities can transmit issues damaging their autonomy to the courts and can become founders or members of international organizations and associations with the permission of the Ministry of Internal Affairs. In addition, local governments at the national level can implement common activities and service projects with other public institutions and foundations, professional organizations accepted as public institutions, and other charity foundations. In that context, a “partial” conformity to Article 10 of Charter exists.

CONCLUSION

Turkey has a long tradition of local government dating back almost a hundred and fifty years. The point that differentiates Turkish local governments from the local governments of other developed countries is that Turkish local governments appeared at the end of the efforts to strengthen the central administration through reforms. This is why this situation has the critical role in analyzing the problems that the local governments have experienced over the years.

Today, under the pressure of globalization and localization tendencies, within the context of the winds of change, Turkey needs to reconstruct its centralized administration structure. The new laws concerning local governments, as accepted by the Turkish Grand National Assembly, can be considered to be a reflection of these developments.

With the laws in question, it was desired to establish more effective, powerful, autonomous, transparent, and accountable local governments that have an optimal institutional scale, are participative and are able to satisfy the needs of the citizens. When the new laws are evaluated within the context of the principles of the Charter, one sees that important steps were taken especially within the context of Articles 4, 5, 6 and 8; as a result, these local governments are comparatively more autonomous, participative, democratic, and accountable.

However, it is not possible to say that there is total harmony with the ECLSG, especially within the context of Article 9 (related to the financial autonomy of the local governments) and Article 10 (related to the establishment of union and right to join the unions). Especially, in order to be in conformity with Article 9 and evaluate the financial structures of the local governments in a healthy way, one needs to await the enabling laws and the secondary regulations along with the careful investigation.

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