

**T.C.  
MARMARA ÜNİVERSİTESİ  
AVRUPA BİRLİĞİ ENSTİTÜSÜ**

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ANABİLİM DALI**

**DECENTRALIZATION POLICY OF TURKEY IN THE PROCESS OF  
ACCESSION TO THE EU: THE NEW METROPOLITAN  
MUNICIPALITY LAW**

**YÜKSEK LİSANS TEZİ**

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## ÖZET

Küreselleşen dünyada artık devletlerden merkezde topladıkları yetkileri yerle devretmeleri ve hizmetlerin halka en yakın birim tarafından verilmesinin (subsidiarity ilkesi) sağlanması beklenmektedir. Bu bağlamda, küreselleşme ile birlikte yerelleşme politikaları da ivme kazanmış ve ülkelerin yönetim alanında çeşitli reformlar yapmalarına neden olmuştur. Avrupa Birliği'ne aday ülke statüsüyle Türkiye de çeşitli yerelleşme adımları atmış ve atmaya devam etmektedir. Bu noktada, Türkiye'nin yerelleşme politikalarını AB'ye katılım süreci dışında değerlendirmek pek mümkün olmadığı gibi, süreci etkileyen en önemli dış faktörlerden birisi AB'dir. Bu çalışmanın amacı, 6360 sayılı Yeni Büyükşehir Belediye Yasası'nı örnek olarak inceleyerek, ilgili yasanın AB'nin temel yönetim ilkeleri ile ne kadar uyumlu olduğunu tartışmak ve Türkiye'nin yerelleşme sürecine ne ölçüde etki ettiğini saptamaya çalışmaktır. Türk Kamu Yönetimi ve Yerel Yönetim sisteminin yeniden yapılandırılmasının son örneği 6360 sayılı Yeni Büyükşehir Belediye Yasası'dır. Çalışmamızda T.C. Anayasası ve Avrupa Yerel Yönetimler Özerklik Şartı'na aykırılığı gibi konularla tartışmaların odağı olan yeni yasanın amaçlandığı gibi "Yerelleşme" mi sağlayacağı yoksa "Merkezileşme" eğilimlerini daha da mı güçlendireceği tartışılarak bu yeni yapılanmanın doğuracağı sonuçlar üzerine değerlendirme yapılmıştır. Bu değerlendirmeler neticesinde ise yasanın olumlu-olumsuz sonuçlarına ilişkin yeni bir tartışma alanı yaratılması ve gerekli düzenlemelerin yapılması beklenmektedir.

**Anahtar Kelimeler:** merkezileşme, yerelleşme, subsidiarity, yerel yönetimler, idari reform, büyükşehir belediyesi, avrupa birliği,

## ABSTRACT

In the globalizing world, states are expected to transfer the authorization collected in center to local governments and to ensure that services are given by closest units to the people (subsidiarity principles). In this regard, along with globalization, decentralization policies have gained acceleration and paved the way for states to conduct several reforms in administration field. Turkey, with its condition of being candidate state to the European Union, has made certain decentralization steps as well and continues to do so. At this point, it is not quite possible to evaluate decentralization policies of Turkey outside of EU accession process, while the EU is one of the most important external factors affecting the process. The aim of this study is to examine Law no. 6360 New Metropolitan Municipality Law as an example, to discuss whether relevant law is in accordance with basic administrative principles of the EU and to examine its effect on Turkey's decentralization policy. Latest example of the restructuring of Turkish Public Administration and Local Government system is Law no. 6360 New Metropolitan Municipality Law. In our study, it is discussed whether new law, which is the focus of many discussions in subjects like the Constitution of the Republic of Turkey and European Charter of Local Self Government contradiction, will provide "Decentralization" just like its purpose or strengthen "Centralization" tendencies even more and assessments have been made over the possible results of this new structure. As a result of these assessments, a new discussion field related to the positive-negative results of the law is expected to be created along with required regulations.

**Keywords:** centralization, decentralization, subsidiarity, local governments, administrative reform, metropolitan municipality, european union

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## **LIST OF ABBREVIATIONS**

**e.g:** *exempli gratia*

**AKP:** Justice and Development Party

**CHP:** Republican People's Party

**DBLPA:** Draft Basic Law on Public Administration

**EC:** European Commission

**ECLSG:** European Charter of Local Self-Government

**EEC:** European Economic Community

**EU:** European Union

**EUSG:** European Union Secretariat General

**BLPA:** Basic Law on Public Administration

**IMCD:** Investment Monitoring and Coordination Directorate

**IMF:** International Monetary Fund

**IPA:** The Instrument for Pre-Accession Assistance

**KAYA:** Public Administration Research Project

**MEHTAP:** The Central Government Organization Research Project

**MIT:** National Intelligence Organization

**NATO:** North Atlantic Treaty Organization

**SEA:** Single European Act

**SIGMA:** Support for Improvement in Governance and Management

**TAIEX:** Technical Assistance Information Exchange

**TGNA:** The Grand National Assembly of Turkey

**TİB:** Telecommunication Communication Presidency

**UK:** United Kingdom

**UN:** United Nations

**USA:** United States of America



## **INTRODUCTION**

Countries worldwide are governed by two separate systems: centralization and decentralization. While, aside from a few exceptions, a significant majority of countries employ these two systems jointly, some countries lean more strongly towards centralization and others towards decentralization.

In the process of reviewing the decentralization process in Turkey, one has to thoroughly examine and comprehend the globalization process and the European Union (EU) accession process moving parallel to the decentralization process. While globalization appears to contradict decentralization, in essence these are interactive processes and one can argue that decentralization is an imperative reflection of the globalization process. Within the aforementioned processes, subsidiarity, e.g. the principle of providing services close to the public, arises as a brand new decentralization phenomenon and is often referred to by the EU and other supranational organizations. Additionally, principles of accession, transparency and accountability in administration have attained increasing importance and are cited as notable administration principles by many national and international organizations and associations.

In the process of globalization and decentralization, states are expected to transfer their authority to locals and particularly perform administrative reforms that would result in organization models conforming to the subsidiarity, e.g. providing services through the unit closest to the public, principle. Citizens participating in administration and having their voices heard and the coordination and presentation of services based on their wants and needs in this context bear utmost importance.

The rapid changes and development in the globalized world are no doubt affecting Turkish public administration and public administration organizations within said system. External dynamics alongside internal dynamics are naturally affecting the root of the changes in the Turkish public administration system and a need for reorganization and reform arises where these dynamics clash. New approaches and organization surfacing in the globalization process and the EU accession process are important drivers in the reorganization of Turkish public administration.

Going all the way back to the Tanzimat reform era, western countries has been a significant driving factor in our administrative mentality and organization models. Following the EU membership application, Turkey has undertaken reforms in many contexts for the purpose of conforming to *acquis* and particularly after Turkey gaining candidate status with the 1999 Helsinki Summit the European Union has become an even more influential external factor. Substantial work has been performed and is ongoing in many fields for the purposes of *acquis* conformity.

The EU continues to voice their expectations from Turkey and affects evaluations in the context of *acquis* conformity through the Accession Partnership Documents and the annually published Progress Reports. Meanwhile Turkey undertakes relevant reforms in legislation in the context of basic values and principles mentioned in international agreements based on the evaluations made through these Progress Reports.

In this scope, public administration and local governments are one of the subjects the EU heeds the most important in the context of forming common policies and reforms need to be made in compliance with principles mentioned in basic EU documents and administrative capacity increased. While one cannot bring up comprehensive EU standards in the local government field, principles mentioned in Sigma Reports and White Paper such as reliability, predictability, transparency, efficiency, accountability, accession, integrity, proportion and subsidiarity are also important and give shape to public administration and local government. In this context, the European Charter of Local Self-Government (ECLSG) is the most important and extensive international agreement that defines the principles local governments are to be organized, basic principles for the self-government concept and the subsidiarity principle.

Turkey has for many years failed to undertake extensive reforms in local government; post-2002, however, the country has made various arrangements, some of which have passed into law while others have not. The goal with these changes made after 2002 was to provide a more modern, transparent, accountable, accessible, productive and efficient administration concept in Turkish local government and thus increase the life standards of citizens. Changes undertaken in this context attempted to decrease the administrative tutelage of central government over local governments and decentralize services.

The latest example to the reorganizations and reforms performed to ensure a more democratic, accessible, transparent and efficient Turkish public administration and local government system is the new Metropolitan Municipality Law No. 6360. Said law, reviewed in the context of decentralization reforms, ongoing since 1980s and picking up speed since 2002, brings radical changes to local governments. Borders of municipalities are extended to include provincial civil administration, Special Provincial Administrations closed down to be replaced with Investment Coordination and Monitoring Directorates (ICMD) and this organization brings many significant changes in the authority and duties of governors. All village and town municipalities within the metropolitan municipality are closed down, villages transformed into neighborhoods and enforced to participate in the district municipalities which they function under. All these developments result in direct changes in the way local government units provide services and cause radical changes in their borders and resources. Law no. 6360 not only forms new organizations, but also closes down some existing ones and thus instigates political and legal disputes.

The aim of this study is to examine the reforms made in Turkey on local governments area in Law no. 6360 New Metropolitan Municipality Law example, to discuss whether relevant law is in accordance with basic administrative principles of the EU in public administration field and to examine its effect on Turkey's decentralization policy.

The first chapter of our study will explain basic administration systems of public administration; centralization and decentralization and their variations and other related concepts, the concept of local government, its development, characteristics and how it has gained importance; and the approach to such concepts in Turkey and the principle of subsidiarity.

The second chapter has examined the EU-Turkey relations in scope of local government reforms, the development of the EU-Turkey relations in this context, the initiation of membership discussions with Turkey and the story of transformation of the EU-Turkey relations developing during said process, and will expand on the EU's decentralization policies and basic principles of importance. On the other hand, basic issues of dispute in local governments within Turkey's membership process will be reviewed and the EU's expectations

from Turkey in this context will be laid out through the EU Accession Partnership Documents and Progress Reports.

The third and final chapter of the study will expand on Turkey's reforms in public administration and local governments. In particular, legal regulations presented before 2002 which have imposed radical changes and their successful and unsuccessful aspects will be reviewed, then the new law no. 6360 of 2012 will be evaluated and a basic frame will be provided with discussions and criticisms of the reasons, basic principles and the new additions and changes of the radical changes imposed by this law on local governments and the Turkish administrative system. It will be discussed whether the new law, instigating disputes with issues such as its noncompliance with the Turkish Constitution and the ECLSG, will bring "Decentralization" as intended or strengthen "Centralization" tendencies and the potential results of this new organization will be evaluated.

# **1. PRELIMINARY CONSIDERATIONS: CENTRALIZATION, DECENTRALIZATION AND LOCAL GOVERNMENT**

Today, regardless of whether a public administration is governed by a unitary or federal system, there exists two types of administrative organization: "Centralization" and "Decentralization". Countries are not governed simply by centralization or decentralization principles; both systems preside within the administrative organization jointly and complementarily. Local governments are important within the decentralization system and thus remain the closest units to public in providing public services and are first degree organizations in many countries.

This section of our study will first shortly explain centralization, decentralization and local government and their sub classifications and other related concepts, followed by discussions of the position of such models and concepts within Turkish legislation, forming a conceptual framework to provide integrity to this study.

## **1.1. Conceptual Framework**

Governments around the world are classified as two main categories based on which level their public authority leans towards, e.g. whether public authority, resource or personnel focuses on centralization or decentralization: "Centralized Governments" and "Decentralized Governments". Aside from a few exceptions, countries around the world all employ centralized and decentralized administrative systems jointly.<sup>1</sup>

One has to first know and comprehend relevant concepts in order to understand the decentralization process and the influence of the EU on said process. In this context, it will be appropriate to expand administrative organization models of governments and local governments, the workspace for decentralization. This chapter of our study will explain centralized and decentralized administrative models and expand on concepts such as "devolution", "delegation", "privatization", "local government", "subsidiarity", "local autonomy" and "local government".

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<sup>1</sup> Bekir Parlak and Cantürk Caner, **Karşılaştırmalı Siyasal ve Yönetmel Yapılar**, Ankara: Orion Kitabevi, 2013,



### 1.1.1 Centralization

Centralization indicates the performance of decisions and activities for public services by central government and organizations within the hierarchy of central government in order to attain unity and integrity within public services.<sup>2</sup> According to White, centralization means that, the greater administrative power may be vested in the hands of officials of the central government, with a consequent diminution of the authority and discretion of officials in lower governmental levels.<sup>3</sup> Centralization is also used with other meanings like the following; it may refer to the relations between headquarters and field in any given jurisdiction, as a description of the relative amount of freedom left to field agents or the trends in this relationship.<sup>4</sup>

Since one cannot expect all public services to be executed by the capital in this administrative method, such services are performed by provincial organizations within the same hierarchical structure. Additionally, all resources are collected in the center. Practices such as deconcentration and discretion define the strictness of the application of central government.

Centralized governments converge all public services in the center and execute these services through the center and organizations presiding within the hierarch of said center. Turkey, Old Eastern Bloc Countries, most Middle Eastern and African countries, Greece, Bulgaria and France can be cited as examples to centralized governments. The centralization levels of these countries vary based on their historical, political, social and geographical characteristics.<sup>5</sup>

Centralization has two types: political and administrative. Political centralization indicates a single legislative power and government in the country while administrative centralization indicates centralization of public authority. Political centralization is the expression of a unitary state. Countries such as Turkey, France and Japan employ political centralization. One cannot consider the existence of administrative centralization in a country

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<sup>2</sup> Bilal Eryılmaz, **Kamu Yönetimi**, Kocaeli: Umuttepe Yayınları, 2013, p.106

<sup>3</sup> Leonard D. White, **Introduction to the Study of Public Administration**, New York: The Macmillan Company, 1955, p.37

<sup>4</sup> Ibid.

<sup>5</sup> Parlak and Caner, p.4-5

without political centralization. It is also not possible however to claim that administrative centralization is a natural result of political centralization. United Kingdom (UK) employs administrative centralization alongside the currently present political centralization. Both political and administrative centralization can be argued to exist in Turkey.<sup>6</sup>

### **1.1.2 Decentralization**

Decentralization as a term not only defines an administrative organization method but also a process that indicates transferring authority and responsibilities to the local organizations. This section of the study will first focus on decentralization primarily as an administrative organization model and then its indications as a process will be explained in subtopics.

Instead of attempting to govern participation and services from a single source, decentralization embraces an organization model that will ensure participation of the public and sharing of authority on a local level. This method of government organization has taken place in literature as the Anglo-American system. Model countries of this system are Great Britain and United States of America (USA).<sup>7</sup>

While centralization denotes unity and single-type administration on a national basis, decentralization indicates variety and participation.<sup>8</sup> According to Tortop, decentralization is “passing administration of public services to autonomic public legal entities separate from central government.”<sup>9</sup> While decentralization is supported and largely practiced in countries where pluralist democracy has been internalized, countries with various political concerns prefer decentralization to remain weak and centralization to stay dominant.

In some countries, decentralization is focused on less due to various concerns and centralization dominates. Particularly if in the current system an opposition exists to policies of central government, government may take a negative stance against formation of a strong

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<sup>6</sup> Eryılmaz, p.107

<sup>7</sup> Ahmet Hamdi Aydın, **Kamu Yönetimine Giriş**, Ankara: Seçkin Yayıncılık, 2013, p.140

<sup>8</sup> Aydın, p.141

<sup>9</sup> Nuri Tortop, **Mahalli İdareler**, Ankara: Yargı Yayınları, 1994, p.11

organization that may threaten local governments' increase of power and ability to realize their policies.<sup>10</sup>

Central governments in states where policies of cultural change, modernization and westernization are followed preferring to govern their process-related policies through administrative units bound to central government who will follow such policies without question is yet another reason for decentralization being undermined. Turkey has progressed with a similar perspective in its modernization and westernization process and remains one of the example countries where decentralization has yet to gain adequate strength. Fears of dominant political mentality in countries of this sort can often result in anti-democratic practices.

One of the most important reasons for avoiding practice of the decentralization model in countries with populations varying in terms of region, religion, language and race is the threat of autonomy demands. This situation may bring alongside a political organization against the structure of unitary state and similar to a federation. As such unitary states take a more centralized stance that avoids placing initiative in the local due to such threats.

The essential idea of the decentralization model is the fulfillment of commonly located needs of region public through organizations in their location. While these organizations are self-governed in subjects such as decision making, finance and personnel, they are subject to the inspection of central government. This inspection authority is called "administrative tutelage".

Decentralization in its shortest definition is the partial transfer of political and administrative authority to authorities outside of central government. Decentralization, just like centralization, is divided into two as "political" and "administrative" and as a natural consequence creates different political and administrative models.<sup>11</sup>

Political decentralization corresponds more to federal state models. Political decentralization denotes the sharing of political power between central government and

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<sup>10</sup> Eryılmaz, p.121

<sup>11</sup> Ibid., p.114

decentralized units.<sup>12</sup> Political decentralization is an administration method that includes autonomous or semi-autonomous statuses granted to local governments without national identities. These units are called various titles such as states, federal states, cantons, land and republic and are different from local governments with public legal entities of unitary states.<sup>13</sup>

Where political decentralization is present in a country, administrative decentralization is also present. This arises as a natural consequence of political decentralization.<sup>14</sup> Administrative decentralization indicates execution of certain public services by public legal entities of autonomous status and subject to special budgets operating outside the hierarchy of central government.

According to Debbasch, political decentralization is a concept concerning the structure of the state due to sharing of executive, legislative and judicial powers as a tool for regulating use of political power. Administrative decentralization does not involve sharing of authority and concerns only the administrative space.<sup>15</sup> Ensuring participation, one of the most important factors in democratization as targeted with administrative decentralization, is providing efficient and effective public services through the formation of a balanced structure between the needs of the public and local services. Administrative decentralization policy can be employed in two ways, namely service (functional) and geographical (territorial) decentralization:

Geographical (territorial) decentralization indicates execution of authorities of central government regarding execution of certain administrative tasks by administrations such as region, province, district and neighborhood whose decision making bodies have been assigned through election and whose activities are limited to a particular geographical area.<sup>16</sup>

Service (functional) decentralized administration bodies, the second branch of political decentralization policy, are bodies formed outside of government to perform a certain service and have a separate public legal entity. As remarked by Debbasch, while geographical

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<sup>12</sup> Aydın, p.152

<sup>13</sup> Mustafa Ökmen and Bekir Parlak, **Kuram ve Uygulamada Yerel Yönetimler**, Ankara: Orion Kitabevi, 2013, p.25

<sup>14</sup> Halil Nadaroğlu, **Mahalli İdareler**, İstanbul: Beta Basım Yayım, 2001, p.23

<sup>15</sup> Charles Debbasch, **Science Administrative**, Dalloz, 1989, p.227 cited in: Ramazan Şengül, **Yerel Yönetimler**, Kocaeli: Umuttepe Yayınları, 2013, p.8

<sup>16</sup> Eryılmaz, p.119

decentralized bodies are based on political expectations, service decentralized bodies are targeted towards providing efficient and effective services. This is why the drive towards self-governance is stronger and more prioritized in geographical decentralization.<sup>17</sup>

The most important feature that distinguishes service decentralized bodies from geographical decentralized bodies is that, while service decentralized bodies are autonomous units in scope of the principle of unitary state, service decentralized bodies e.g. "Public Institutions" such as universities and Higher Education Council are devoid of financial and administrative autonomy exercised by local governments as organizations with a single type of function.

We had previously stated that the concept of decentralization not only expressed as an organization model but also as an idea or process. When expressed as a process, decentralization appears in various forms. According to Rondinelli and Nellis decentralization refers to; “the transfer of responsibility for planning, management, and resource raising and allocation from the central government to:<sup>18</sup>

- field units of central government ministries or agencies,
- subordinate units or levels of government,
- semi-autonomous public authorities or corporations,
- area-wide regional or functional authorities, or
- Non-governmental private or voluntary sector”.

As can be deduced from Rondinelli and Nellis's definition, decentralization has multiple types. According to World Bank and United Nations (UN) resources decentralization is classified into four types:<sup>19</sup>

- Devolution
- Deconcentration
- Delegation

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<sup>17</sup> Şengül, p.10

<sup>18</sup> Rondinelli and Nellis, ‘Extending Urban Services in Developing Countries: Policy Options and Organizational Choices’, **Public Administration and Development** 6(1): p.1-21 cited in: Rondinelli et al, ‘Analysing Decentralization Policies in Developing Countries: A Political-Economy Framework’, **Development and Change**, Vol.20, 1989, p.58-59

<sup>19</sup> Birgül Ayman Güler, **Devlette Reform Yazıları**, Ankara: Paragraf Yayınevi, 2005, p.68

- Privatization

### 1.1.2.1. Types of Decentralization

The first type of decentralization is “devolution”. Among all the definitions of the devolution, UN’s definition of the concept can be adopted. According to the UN, the first type of decentralization is, “autonomous lower-level units, such as provincial, district, local authorities that are legally constituted as separate governance bodies”. It is stated in the report that,<sup>20</sup>

the transfer of authorities to such units is often referred to as devolution and is the most common understanding of genuine decentralization. Through devolution, the central government relinquishes certain functions or creates new units of government that are outside its direct control.

As a rule, it is impossible for local government units or other units based on deconcentration to exist against the center. However contrary cases can be observed in certain countries. For example, when considering that communes are historically older than central government in Switzerland, one might argue that their rights are not granted by central government.<sup>21</sup>

According to the UN, the second type of decentralization is,<sup>22</sup>

sub-ordinate lower-level units or sub-units, such as regional, district or local offices of the central government or service delivery organization. These units usually have delegated authority in policy, financial and administrative matters without any significant independent local inputs. This type of arrangement is most often referred to as deconcentration and involves very limited transfer of authority. It includes the transfer of authority for specific decision-making, financial and management functions by administrative means to different levels under the same jurisdictional authority of the central government. This is the least extensive type of administrative decentralization and the most common found in developing countries.

Deconcentration is a concept that is often confused with decentralization yet does not denote decentralization. Deconcentration is merely a tool for remedying the shortcomings of decentralization. As a tempered version of centralization, it indicates delegation of certain authorities by the center to its own officers where it falls short.<sup>23</sup> This allows for the use of

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<sup>20</sup> UNDP, Decentralization: A Sampling Of Definitions, 1999, [http://web.undp.org/evaluation/evaluations/documents/decentralization\\_working\\_report.PDF](http://web.undp.org/evaluation/evaluations/documents/decentralization_working_report.PDF) (28.05.2014), p.6

<sup>21</sup> Ruşen Keleş and Fehmi Yavuz, *Yerel Yönetimler*, Ankara: Turhan Kitabevi, 1989, p.17

<sup>22</sup> UNDP, p.7

<sup>23</sup> Nadaroğlu, p.22

initiative in order to make certain decisions on behalf of the center without consultation of the center to reduce bureaucracy and facilitate faster resolution of urgent business. Deconcentration is the weakest form of decentralization and usually preferred in centralist countries.

As in the devolution and deconcentration concept, definition of the UN for concept of delegation can be considered as one of the most relevant definitions in the literature. According to UN, the third type of decentralization is,<sup>24</sup>

semi-autonomous lower-level units, such as urban or regional development corporations to whom aspects of governance are delegated through legislation or under contract. This is general variant of decentralization that stops short of devolution, but involves significant delegation of authorities and responsibilities. Delegation refers to the transfer of government decision-making and administrative authority and/or responsibility for carefully spelled out tasks to institutions and organizations that are either under government indirect control or semi-independent. Usually, delegation is by the central government to semi-autonomous organizations not entirely controlled by the government but legally accountable to it, such as state owned enterprises and urban or regional development corporations.

The fourth type of decentralization is Privatization and it is argued to be the most widespread type of decentralization. Although the concept of privatization is defined with various forms in the literature, according to FAO;<sup>25</sup>

If the central government is willing to give up a direct hand in policy formulation and control it may attempt to achieve the objectives of both production and allocative efficiency by transferring the ownership and/or control of the public service's assets to the private sector. In this case, decentralization takes the form of privatization. Typically, privatization also implies that the services are allocated through the market system with the consumer paying for the service being delivered but government may still subsidize or tax certain services to achieve its objectives.

### **1.1.3 The Principle of Subsidiarity**

The concept of subsidiarity e.g. "new decentralization" differs from classical decentralization. While classical decentralization indicates transfer of duties, authority and resources from central government to local governments within the nation state, ergo strengthening of local governments in comparison to central government, the new decentralization concept e.g. subsidiarity, newly on the agenda with the globalization process, foresees transfer of authorities of central government such as decision-making, planning resource finding etc. not only to local governments but also to provincial organizations of the

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<sup>24</sup> UNDP, p.7

<sup>25</sup> FAO, What is Decentralization?, <http://www.fao.org/docrep/005/y2006e/y2006e05.htm> (28.05.2014)

central government and semi-autonomous institutions, volunteer institutions such as foundations and associations, trade bodies and companies. As a new concept of decentralization, subsidiarity strengthens local governments however essentially targets and allows transfer of authorities to market forces.<sup>26</sup> Surveying the history of this policy, literature takes us all the way back to Aristothales and Thomas von Aquinas and their depictions of humans and society and is rumored to have been based on Christian social teachings and developed in the context of Catholic social teachings in the 20th Century.<sup>27</sup>

The principle of subsidiarity has first been used in 1954 by Mendes France to express the transformation into a federation without using the word federation.<sup>28</sup> Politically, it has first been defined as follows in clause 3 article 4 of ECLSG, released for signing on October 15, 1985 by the European Council:<sup>29</sup>

Public responsibilities shall generally be exercised, in preference, by those authorities that are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

When considering the rise of the principle of subsidiarity in the EU, one can observe the issue of deconcentration and the resulting confidence crisis. In a period where member countries and their autonomous nature have led to a lack of confidence in the union and concerns about centralization, the principle of subsidiarity has surfaced as a new administration model. Three important situations have contributed to the EU including the principle of subsidiarity in its agenda. The first of these is the Common Market program resulting in serious regulations in the field of politics however the impossibility of the union creating and executing all these regulations. The second is the perception of the principle of subsidiarity as a reaction against globalization. The third is the Common Market program allocating the union as a first degree decision making authority and the resulting need for cooperation and task sharing with member countries and forming this relationship within certain rules.<sup>30</sup>

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<sup>26</sup> DPT, 8. Beş Yıllık Kalkınma Planı Yerel Yönetimler Özel İhtisas Komisyonu Raporu, Ankara, 2001, p.10

<sup>27</sup> Mehmet Özel, “Kamu Yönetiminde Yeni Bir Örgütlenme İlkesi: Yerellik (Subsidiaritaet)”, **Çağdaş Yerel Yönetimler**, Vol.9, No.3, (July, 2000), p.26-27

<sup>28</sup> M. Akif Özer, **Avrupa Birliği Yolunda Türk Kamu Yönetimi**, Ankara: Platin Yayınları, 2006, p.47

<sup>29</sup> *European Charter of Local Self-Government*, 1985,  
<http://conventions.coe.int/Treaty/en/Treaties/Html/122.html>. (27.02.2013)

<sup>30</sup> Özel, p.34



With the reluctance of the EU in intervening with internal affairs of nation states and in order to protect the sovereignty areas of states, subsidiarity became a principle for the first time in 1991 with the Treaty of Maastricht, and was established as one of the basic principles and administrative models of the EU.

Relevant article of the Treaty on European Union is as follows:<sup>31</sup>

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

While having more of an economic depiction in the ECLSG, the principle of subsidiarity denotes within the Treaty of Maastricht, signed in 1992, a political provision aiming to protect local democracy and freedoms.<sup>32</sup>

The principle of subsidiarity has two aspects: negative concept and positive concept. The negative concept indicates that higher social units cannot intervene in lower organizations provided these organizations satisfactorily fulfill certain services. Positive concept indicates that higher social units can intervene to the extent that lower organizations fail to provide a certain service. Higher organizations are not a substitute for lower organizations; they only aid lower organizations in fulfilling their needs themselves.<sup>33</sup>

The principle of subsidiarity places the individual in the center of society. The main idea of this principle is the limitation of intervention of political authority to entities ranging from individuals to families, local society to groups of varying sizes to the extent that these entities fail to fulfill their various needs. The principle allows the provision of needs only where the individual cannot manage to obtain them. This indicates that this principle is similar to the liberal state system.<sup>34</sup>

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<sup>31</sup> Maastricht Treaty, Article 3/b, <http://www.eurotreaties.com/maastrichtec.pdf>, (02.06.2014)

<sup>32</sup> Nadaroğlu, p.71

<sup>33</sup> Şengül, p.22

<sup>34</sup> Eryılmaz, p.126

The goal expected by definers of this principle is the determination of authority and task sharing between the EU and member states and, in this context, closing the gap between decision making mechanisms and citizens as much as possible, protect national identities and sovereignty areas as well as rights of member states and thus facilitate embracing the integration process of Europe.<sup>35</sup> Strengthening of local governments is one of the main goals of this principle.

The principle of subsidiarity in summary indicates providing services by the unit closest to the public and is planned to be applied based on the principle of proportionality. It also has functions such as defining authority, determining borders of authority and guaranteeing such authority. The principle defines and borders intervention areas of central governments and local governments outside the EU.

#### **1.1.4 Local Government**

Local government is a political and legal concept. Local government is a notion going all the way back to 12th century Europe that is financially autonomous, uses resources at its own initiative, and with the provision of a legal entity to this structure allows the liberation of provinces. In the modern sense, it is known that local governments exist against strengthening local governments. Throughout history, local governments have risen through a region or province gaining financial and administrative autonomy. Local governments are one of the most important factors in the development of 20th century European democracy.<sup>36</sup>

The tradition of local government has not surfaced in the same period and with the same dynamics across all countries. Various differences exist between countries in terms of periods and application. As an example the Mans Region, first commune to appear in France, has gained this status in 1066 however local governments have gradually lost power in France. In the modern sense, the formation of a solid local government tradition dates to the French revolution. Local governments in Austria and Germany meanwhile have experienced a perpetual evolution until the present day. It would be safe to claim that Britain has been one of the most important countries in this context. Local government tradition, developing

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<sup>35</sup> Ibid.

<sup>36</sup> İlber Ortaylı, *Tanzimattan Cumhuriyete Yerel Yönetim Geleneği*, İstanbul: Hil Yayınevi, 1985, p.9-10

incessantly since the 11th century, has been the biggest contributor in the development of modern democracy.<sup>37</sup>

According to Bennet, the development of local government in European countries is bound up in the origins of government and the state itself, and in the adaptation of government to new forces of democratization and representation. Western Europe has developed a long history of liberal democracy with a variety of local government administrative structure.<sup>38</sup>

Local governments are both political institutions and contributing to the progress of democracy, conceived as the primary schools of democracy by John Stuart Mill and Alexis de Tocqueville, and also administrative agencies that are in charge of providing local public services to local communities. In addition to the professionalization of administration of local government as service delivery bodies constitutionalism, as understood in the sense of formal electoral representation at all levels of local government, is one of the fundamental characteristics of local democracy. Combining both of these features, the commune has been, throughout the western history, a basic unit and the fundamental building block of local democracy.<sup>39</sup>

International Encyclopedia of the Social Sciences defines local governments as; “A public body, as a subdivision of a state or regional government, delegated and authorized to define and perform a limited number of public policies in a relatively small area.”<sup>40</sup> According to Güler, local government is "one of the forms of organization where state's land-based and territorial public power is directly exercised by local community forces."<sup>41</sup> According to Keleş, while local self-government indicates administration of local community

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<sup>37</sup> Ibid., p.10-11

<sup>38</sup> Robert J. Bennett, “European Local Government Systems”, in Robert J. Bennett (ed.), **Local Governmnet in the New Europe**, London: Belhaven Press, 1993 cited in: Ruşen Keleş, “Local Governance and Democracy”, in Uğur Ömürgönülşen and Uğur Sadioğlu (ed.), **Local Governance Today: European and Turkish Experience in Local Politics, Democracy and Governance and Reciprocal Lessons**, Ankara: TBB Yayınları, 2014, p.15

<sup>39</sup> Ruşen Keleş, “Local Governance and Democracy”, in Uğur Ömürgönülşen and Uğur Sadioğlu (ed.), **Local Governance Today: European and Turkish Experience in Local Politics, Democracy and Governance and Reciprocal Lessons**, Ankara: TBB Yayınları, 2014, p.15-16

<sup>40</sup> David L. Sills and Robert K. Merton (Ed.), **International Encyclopedia of the Social Sciences**, Vol IX, London: Macmillan, 1968

<sup>41</sup> Birgül Ayman Güler, **Yerel Yönetimler Liberal Açıklamalara Eleştirel Yaklaşım**, Ankara: TODAİE Yayını, 1998, p. 261

by agents they have elected, local government denotes an administration unit under the supervision of a local assembly authorized to impose financial liabilities.<sup>42</sup>

One may argue that local governments have ascended to a whole new level with decentralization that progresses simultaneously with globalization. On the other hand, the inability of the large scale and sluggish structure of central government to respond to increasing problems arising from rapid urbanization has caused a rise in the significance of the role of local governments. The EU embracing the principle of providing public services through organizations closest to the public (subsidiarity) and member and candidate states striving to comply with this principle has sped up the process of strengthening local governments even further. In this scope, it has become an important policy for local governments, whose functions have expanded as a prerequisite for decentralization policies in public service presentation, to vie for functional and geographical decentralization, explore alternative service presentation methods and develop variable service presentation structures and processes also in providing local services. Today local governments are taking shape through consideration of global dynamics alongside national dynamics. International organizations, international economical, political etc. relations, global power dynamics are changing the scope and progression of local government organization, and international documents increasingly including central governments in their scope of interest and playing a determinative role in sculpting national local governments.<sup>43</sup>

## **1.2 Centralization and Decentralization in Turkish Legal Framework**

Perception and application of the terms centralization and decentralization vary amongst countries. Administrative organization in Turkey is divided into two as centralized and decentralized and due to historical conditions centralization is stronger and more dominant than decentralization.

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<sup>42</sup> Ruşen Keleş, **Yerinden Yönetim ve Siyaset**, İstanbul: Cem Kitabevi, 2011, p.22

<sup>43</sup> H. Ömer Köse, “Yerel Yönetim Olgusu ve Küreselleşme Sürecindeki Yükselişi”, **Sayıştay Dergisi**, Vol.52, 2004, p.36-37

According to article 123 of the Turkish Constitution; "Establishment and duties of government are based on centralization and decentralization." Basic of the establishment of central administration has been regulated in article 126 of the Constitution and cites:<sup>44</sup>

Turkey, in terms of the establishment of a central administration, and based on economical circumstances and necessities of public services, is divided into provinces; and these provinces are divided into other graded sections. Administration of provinces is based on the principle of deconcentration. In order to attain efficiency and harmony in undertaking public services, a central administration body may be established. The tasks and authority of this body shall be regulated by the law.

Central administration bodies consist of President, Prime Minister, Board of Ministers, Ministries and Ministers.

The principle of centralization is not used singularly in any country and is generally employed alongside the principle of decentralization while also applying the principle of deconcentration.<sup>45</sup> Turkey is one of the example countries for this case. However due to the establishment conditions centralization is much more dominant and prioritized compared to decentralization.

Deconcentration and decentralization, as cited in the Constitution, depict different meanings despite appearing similar and often being confused. In Turkey, the principle of deconcentration is exercised based on provinces in Turkey and this principle has resulted in the formation of governorships.

In central administration bodies based on deconcentration, hierarchical higher organizations can often terminate or change the decisions of lower organizations. On the other hand, while central administration bodies have the authority to supervise decentralized administration bodies (administrative tutelage) this power of supervision over these bodies is not as effective as for bodies based on centralization and deconcentration.<sup>46</sup> One can argue that the principle of deconcentration is always susceptible to the intervention of the center and that a substantial hierarchy is present.

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<sup>44</sup> T.C. Anayasası

<sup>45</sup> Yusuf Karakılçık, **Yeni Yerel Bölgesel Gelişmeler Işığında Yerel Yönetimler**, Ankara: Seçkin Yayınevi, 2013,p.22

<sup>46</sup> Ökmen and Parlak, p.33

Devolution indicates central government delegating rule-making authority to units elected by local public through granting them financial and administrative autonomy. In this sense, devolution indicates delegation of authority from the center and provincial organizations to local governments. Due to extreme centralist practices since the start of the Republic period, Turkey has failed in efficiently devolution. Despite the substantial focus on local governments in the Constitution, their significant dependence on the center and provincial organizations is an obstacle before the strengthening of local governments.

### **1.3 Local Governments in Turkey: Structure and Functions**

Upon investigating the historical development process of local governments, one can observe that they branch out to the government not based on necessity but through transfers. Turkey has taken after the French model when structuring local governments.

Local governments are a part of decentralization. The principle of decentralization is classified into two as political and administrative decentralization, while administrative decentralization branches into two as service decentralization and geographical decentralization. Geographical decentralized bodies indicate "local governments".

The legal presence of local governments has been registered with the Constitution. According to article 127 of the Constitution;<sup>47</sup>

Local governments are public legal entities established through election by voters in order to provide the commonly located needs of the public in provinces, municipalities or villages whose establishment principles have been defined by law and decision making bodies in the same manner also indicated by law. Establishment, tasks and authorities of local governments are regulated by the law in accordance with the principle of decentralization.

Three types of local government exist in Turkey. These are municipalities serving urban regions, villages as rural communities local government institutions and special provincial administrations serving the local community within provincial borders. A new municipality model has been established in 1984 for residences of metropolitan municipality nature. Neighborhood administrations, a part of the municipality model, while similar to local government institutions in some manners lacks legal entity and are not considered as local

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<sup>47</sup> T.C. Anayasası

governments within our system.<sup>48</sup> These organizations, with their financial and administrative autonomy, are liable to fulfill the local and common needs of people living within the regions they are responsible and authorized for. While local government institutions are a part of a country's administrative integrity, they are nevertheless under the supervising tutelage of central administration.<sup>49</sup> According to Eryılmaz, despite the fact that services performed by local governments are versatile, functions performed by service decentralized bodies are limited and generally of a single type.<sup>50</sup>

Local governments, despite operating under central government in ECLSG to take and execute autonomous decisions, retain financial autonomy and encourage participation of the public in the government.

The formation of a local government tradition is a must for the development of a democratic and participant administrative approach. While a local government tradition has yet to arise against the long history of centralization in Turkey, we can still argue that serious progress has been made. Following governors elected at a local level, local government administration now assigns all bodies ranging from the village headman, the smallest local government unit, to the metropolitan municipality mayor through election.

On the other hand many organization and reform efforts have been made particularly since the planned development period in order to strengthen local governments however most have failed to have constructive effect and efficiency in their effort to solve short term problems. Central government's wishes to retain power and extreme centralist approach has had influence over this situation and despite all internal and external factors local governments have yet to reach desired strength even today, with many problems still at large regarding their financial and administrative self-governance.

#### **1.4 The Principle of Subsidiarity in the Context of Decentralization in Turkey**

The notion of decentralization can shortly be described as the strengthening of local governments, a part of public administration, against central government in terms of tasks,

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<sup>48</sup> TÜSİAD, *Yerel Yönetimler: Sorunlar Çözümler*, İstanbul, 1995, p.25

<sup>49</sup> R. Cengiz Derdiman, *Yeni Düzenlemelere Göre Yerel Yönetimler*, İstanbul: Aktüel Yayınları, 2005, p.11

<sup>50</sup> Eryılmaz, p.120

authority, responsibility and sources of income.<sup>51</sup> While in the classical sense decentralization indicates transfer of authority, tasks and resources from central government to local governments, in the modern sense it denotes central government transferring a significant portion of its administrative authorities such as planning, decision making, executing and public revenue collection to provincial organizations, local governments, federal units, semi-autonomous public organizations, public vocational institutes or voluntary organizations (such as associations or foundations).<sup>52</sup>

The notion of decentralization has begun coming into effect as of 1970s even in centralist countries. This effect has surfaced at times as deconcentration, at times as devolution and at times as privatization. According to a perspective, decentralization arises as the opposite of centralization and with the goal of reducing central government, which privatization policies particularly on the rise after 1980 may be considered in this sense, while another perspective displays decentralization as a complementary concept with centralization.

Rapid rise in population and disproportional growth of cities since 1970s and the accompanied rise in public needs have led the public and governments to various pursuits. Decentralization appears as a pursuit for a solution in the face of central government failing to respond to these needs due to its sluggish nature and the increase in bureaucracy. In this context, in order to ensure efficient and effective presentation of services and simultaneously ensure public participation and democratization, the notion of decentralization foresees strengthening of local governments and delegation of authority from the center to local.

When reviewing the process of decentralization in Turkey the principle of subsidiarity appears particularly within the EU integration process and aims to create a balance between member states, local governments and the EU and prevent extreme centralism. Decentralization is the framework for the principle of subsidiarity and within the EU, particularly post-1980 the process of decentralization has been attempted to be expressed and exercised with this principle. In this context, decentralization in Turkey as a candidate country has reflected in legislation and reforms as the principle of subsidiarity. The principle is taken as basis in strengthening local governments and while some authors approach this

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<sup>51</sup> Ökmen and Parlak, p.65

<sup>52</sup> Eryılmaz, p.123



positively, others voice concerns about potential negative results for Turkey due to structures and practices that may to contrary the Constitution and argue that its application may not be entirely plausible due to this reason.

In the Public Administration Dictionary, the principle of subsidiarity is one that prescribes the intervention or authority of an upper authority only to the extent where close office or authority falls short and bears a meaning similar to that of general competence policy.<sup>53</sup> According to Üskül, the principle of subsidiarity denotes separation of authority amongst different administrative levels formed to fulfill public needs and execution of authority by the administration closest to the public need requiring fulfillment, and lower organization transferring authority to the upper organization only in case of absolute necessity.<sup>54</sup> According to Güler, neoliberal state establishes its co-governance structure based on the principle of subsidiarity. Demands for more authority, resources and power for local governments are the most prominent factors in this new model.<sup>55</sup>

Many authors comment that the principle of subsidiarity forms the basics of federalism due to its thought and approach system and therefore is easy to exercise in countries governed by the federal system, but equally difficult to practice in unitary states. Özer, indicates that service decentralization principle of federalism resides in the public sphere and the principle of subsidiarity can include federalism. However the author comments that regardless of the type of organization, any state can practice the principle of subsidiarity and unitary or federal systems are in no way a necessity.<sup>56</sup>

Regarding this opinion, it may not always be accurate to claim that unitary states where the principle of subsidiarity is to be applied are undergoing a preparation for federalism as many authors criticize. Of course it's not easy to make assumptions in these subjects and claiming the opposite opinion to be wrong would be unwise and fairly bold.

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<sup>53</sup> Serije Sezen, Turgay Ergun, Ömer Bozkurt (Ed.), **Kamu Yönetimi Sözlüğü**, Ankara: TODAİE Yayını, Vol.283, 1998, p.227 cited in: Özcan Karakılçık and Ayşe Özcan, “Yerellik (Subsidiarite) İlkesinin Türk Yerel Yönetim Dizgesinde Uygulanabilirliğinin İrdelenmesi”, **Çağdaş Yerel Yönetimler**, Vol.14, No.4, (October 2005), p.10

<sup>54</sup> Zafer Üskül, “Subsidiarite İlkesi Üzerine Düşünce Alıştırmaları”, **Yeni Türkiye**, Vol.1, No.4, Ankara: Yeni Türkiye Yayını, 1995 p.23 cited in: Özcan Karakılçık and Ayşe Özcan, “Yerellik (Subsidiarite) İlkesinin Türk Yerel Yönetim Dizgesinde Uygulanabilirliğinin İrdelenmesi”, **Çağdaş Yerel Yönetimler**, Vol.14, No.4, (October 2005), p.10

<sup>55</sup> Güler, 2005, p.68

<sup>56</sup> Özer, 2000, p.29-33

On the other hand, another important concept considered alongside the notion of decentralization and the principle of subsidiarity is "local self-government". According to Keleş, local self-government is "the ability of a local community to perform processes of a local nature alone through their own bodies and having at disposal enough resources to allow for this performance." Local self-government has two sides. The first of these concerns the relations of local bodies with the center and these benefit from a wide scope of autonomy, yet are not entirely independent from the center. Independence is a concept different than autonomy. The second aspect concerns the relations of local governments with the public. This indicates a situation where elected persons are able to appropriately represent the public and the method of representation allows for the election of such persons.<sup>57</sup>

Local self-government has become one of the administration philosophies of the EU as well. Many official documents refer to this subject. Council of Europe also places particular importance in local self-government. Many draft resolutions voice the necessity for local self-government to be included in the constitution.<sup>58</sup> In this context the Council has developed their opinions and the ECLSG has been accepted in the Congress of the Council of Europe in 1985. The relevant charter is one of the essential reference sources when it comes to local self-government.

Often cited in scope of the principle of subsidiarity, the notion of autonomy comprises the essence of the ECLSG and is also included in article 3/B of Treaty of Maastricht. The ECLSG with its content regarding financial and administrative autonomy of local governments has impacted local government legislation of Turkey just as it has that of EU member states.<sup>59</sup> Its effects on legislation will be separately discussed in the upcoming sections of the study.

In the words of Keleş and Mengi, the aforementioned the charter defines local self-government as a method of administration that presides within the borders defined by the law

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<sup>57</sup> Keleş, p.52

<sup>58</sup> Ruşen Keleş, "Yerel Yönetimler Özerklik Şartı Karşısında Avrupa ve Türkiye", **Çağdaş Yerel Yönetimler Dergisi**, Vol.4, No.6, (November 1995), p.54

<sup>59</sup> Ökmen and Parlak, p.66-67

and under its own responsibilities which has the right and ability to regulate a significant portion of public activities aimed towards service needs of the local public.<sup>60</sup>

As indicated by Delcamp, the level of self-government may vary between countries and self-government is recognizable both on a constitutional and legal level. Additionally, constitutions of many states such as Italy, Japan and Germany refer to the concept of self-government.<sup>61</sup>

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<sup>60</sup> Ruşen Keleş and Ayşegül Mengi, **Avrupa Birliğinin Bölge Politikaları**, İstanbul: Cem Yayınevi, 2013, p.80

<sup>61</sup> Alain Delcamp, “Les Institutions Locales En Europe (Que sais-je?)”, PUF, 1990 cited in: Şengül, 2013,p.16-17

## 2. THE IMPACT OF THE EU-TURKEY RELATIONS ON REFORMING LOCAL GOVERNMENT IN TURKEY

According to Habermas, the process of globalization that expands beyond just the economic field forces us to get used to a brand new perspective and this perspective shows us the constriction of social spheres, that people are subject to common risks and that a common fate is coming to life. According to Castells, we're faced with the paradox of politics progressively becoming decentralized in a world shaped by progressively globalized processes.<sup>62</sup> In this context, when we examine the emergence of the notion of the EU in the political sense, the development of the notion of globalization dates to almost the same period. The economical, social, political and communal effects of globalization on our lives correspond to both positive and negative events. Meanwhile decentralization is presented as a formula that may minimize the negative impacts of globalization as cited in the aforementioned discussions. Multiculturalism, one of the basic values of the EU, is the basic grounds for decentralization and constitutes a stand against standardization. In this context, decentralization aims to emphasize local values, prevent standardization and thus create a democratic social sphere.

Decentralization developments in the EU affect not only the public and local governments of member states but also those of candidate states. Turkey as a candidate state has shown many reform efforts during the harmonization process and one of the most significant influences during and before such efforts has been the EU. While a determinative actor for many years in the Turkish public administration and local governments field, the EU has gained even more importance and influence with the initiation of the EU negotiations. The EU has listed expectations and actions to be performed for harmonization and evaluated these with the Accession Partnership Documents and Progress Reports. In light of these Turkey, particularly post-2002 has undertaken serious reforms towards strengthening and organizing local governments. This section of our study will expand on primarily the development of the EU-Turkey relations, influence of decentralization on the EU and basic

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<sup>62</sup> Jurgen Habermas, **Küreselleşme ve Milli Devletlerin Akıbeti**, (Çev.), Medeni Beyaztaş, İstanbul: Bakış Yayınları, 2008, p.67; Manuel Castells, **Enformasyon Çağı: Ekonomi, Toplum ve Kültür İkinci Cilt (Kimliğin Gücü)**, (Çev.) Ebru Kılıç, İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2006, p.86 cited in: Murat İnce, "Küreselleşme ve Yerelleşme: Çelişki mi?", **Gazi Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi** Vol.11, No.1, 2009, p. 268

discussion subjects regarding local governments during the negotiations process in order to review decentralization developments in both the EU and Turkey.

## **2.1. The EU- Turkey Relations**

The notion of establishing a union in Europe dates to centuries ago and many thinkers have voiced that the way to establish permanent peace in Europe is to assemble European states.<sup>63</sup> In this context one might argue that the EU arises as a peace project. We can argue that this notion has substantialized politically in the 21st century with the cold war era. While their relations go back many eras, Turkey has embraced economical, political and cultural cooperation with Europe as a state policy in the republic period and in this context has become one of the first countries to take action for becoming part of the European Economic Community (EEC). This section will expand on the EU-Turkey relations and Turkey's EU full membership process.

### **2.1.1. The EU-Turkey Relations until Helsinki Summit**

Efforts of Turkey that began all the way back in the Ottoman Empire period towards reaching the state of modern civilizations and in this context getting closer to the West has picked up speed in the Republic period and concrete steps have been taken in this subject first with the United Nations (UN) membership in 1945, European Council membership in 1949 and then the North Atlantic Treaty Organization (NATO) membership in 1952. Following membership with these unions, Turkey has also applied on July 31, 1959 to be a member of the EEC, established in 1958.

Having applied to be an EEC associate on July 31, 1959, Turkey's application was accepted by the EEC Council of Ministers and suggested signing a partnership agreement until membership conditions have been met. Towards this goal, the EEC and Turkey signed on September 13, 1963 the Ankara Agreement e.g. "Agreement Creating an Association between the Republic of Turkey and the European Economic Community" which took effect on January 1, 1964.

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<sup>63</sup> M. Serdar Palabayık and Ali Yıldız, **Avrupa Birliği**, Ankara: ODTÜ Yayıncılık, p.4-5

This agreement, where the final goal was defined as Turkey's membership, stipulated three stages for the partnership. These stages were listed as Preparatory, Transitional and Final Stages. During the first of these stages, namely "Preparatory", Turkey has not taken on any liabilities and this period was stipulated to be a minimum of five and a maximum of ten years. During the preparatory period, it had been agreed upon that the EEC would financially assist Turkey towards the goal of Turkey obtaining adequate economic power to fulfill its obligations in the future.<sup>64</sup>

"Transitional Period", second stage of the association, started with the Additional Protocol signed on November 13, 1970 and came into effect on January 1, 1973. In the meantime the Preparatory Period had ended and parties made certain concessions and aimed to realize a "customs union".<sup>65</sup> With the Additional Protocol, based on the Customs Union notion, the community determined conditions for the Transitional Period and resolved topics such as free circulation of industrial products, agricultural products and persons between parties.

The EEC-Turkey relations failed to develop between 1970 and 1980 due to political and economical reasons within Turkey and relations were officially suspended with the 1980 military coup. Turkey managed to open to the outside world only with the reestablishment of civil administration in 1983 and the Association Council met for the first time in 1986.

Turkey made a membership application on April 14, 1987 without waiting for the completion of periods stipulated in the Ankara Agreement only to be faced with a negative response from the European Commission (EC). Following the Commission's negative response, Turkey initiated efforts to complete the Customs Union and negotiations were finalized with the signing of the Association Council Decision dated March 6, 1995. The relevant decision initiated the Customs Union between Turkey and EEC as of 1.1.1996 and following the five year "Preparatory Period", the twenty-three year "Transitional Period" has also been completed.<sup>66</sup>

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<sup>64</sup> M. Hakan Keskin, **Doğru Sanılan Yanlışlarla Avrupa Birliği**, ABGS, 2010, p.218

<sup>65</sup> S. Rıdvan Karluk, **Avrupa Birliği ve Türkiye**, İstanbul: Beta Yayınları, 2003, p.551

<sup>66</sup> Nurettin Bilici, **Avrupa Birliği ve Türkiye**, Ankara: Seçkin Yayıncılık, 2013, p.80-81

During the process following the completion of the Customs Union, EC has prepared "Agenda 2000" Report in order to evaluate the deepening and expanding process of the EU which was approved on July 15, 1997.<sup>67</sup> While this report indicated that Turkey cannot be included in the expansion process due to political and economical issues, within the same year membership negotiations were initiated for five Central and Eastern Europe countries and Greek Cypriot Administration in the Luxembourg Summit, and Turkey was depicted as "eligible" for full membership yet not included in the expansion process.<sup>68</sup>

### **2.1.2. Helsinki Summit and the Beginning of the Accession Negotiations**

Following Turkey's completion of the Customs Union, the first step towards full membership was taken in the Helsinki Summit of 1999. Turkey was declared a candidate state in this summit and membership negotiations were not initiated only with Turkey amongst the thirteen candidate countries.<sup>69</sup>

After the Helsinki summit, Progress Reports were periodically issued every year by the EC which evaluated not only political criteria but also *acquis* compliance in other fields as well. The first Accession Partnership Document for Turkey was prepared and approved by the European Council on March 8, 2001. The first National Program prepared with the goal of realizing priorities in the Accession Partnership Documents was approved by the Turkey on March 19, 2001. As negotiations progress, the EU issues new Accession Partnership Documents while the Turkish side prepares new National Programs in light of the regulations and expectations in these new documents.<sup>70</sup>

On the other hand, the conditions for full membership have been determined in the June 21-22 1993 Copenhagen Summit<sup>71</sup> and it was stated in the Helsinki Summit that accession negotiations with Turkey will begin upon Turkey's fulfillment of the "Copenhagen Criteria".<sup>72</sup> In addition to the Copenhagen Political Criteria, one of the aspects Turkey has most struggled with in the process of membership, special conditions have been added for the

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<sup>67</sup> İrfan Kaya Ülger, *Avrupa Birliği El Kitabı*, Ankara: Seçkin Yayıncılık, 2003, p.163

<sup>68</sup> Bilici, p.81

<sup>69</sup> Karluk, p.781

<sup>70</sup> Bilici, p.84

<sup>71</sup> Ibid., p.82

<sup>72</sup> Karluk, p.771

solution of Border Problems and the Cyprus Problem in the Helsinki Summit regarding Turkey's full membership.<sup>73</sup>

After the Helsinki Summit, a turning point in the EU-Turkey relations, Turkey has approved and executed eight harmonization packages and two constitutional change packets between 2002 and 2004, announced the ninth harmonization package in 2006 and undertaken many legal and legislative arrangements aside from these in order to comply with the Copenhagen Political Criteria. On the other hand, political criteria indicate not just compliance with legislation but effective realization of said legislation.<sup>74</sup>

The first harmonization package was approved in the Assembly on February 6, 2002, the European Union Secretariat General (EUSG) operating under the Prime Ministry was established in 2000 to perform these acquis conformity efforts in coordination and this secretariat has later been transformed into the Ministry of the European Union.

The progress Turkey has made within said harmonization process in order to comply with the EU criteria was responded to by the EC on October 6, 2004 and the declared progress and influence reports cited that Turkey now fulfills the political criteria. After all these developments, the European Council advised the monitoring process of Turkey to be concluded on March 2004 and negotiations were decided to be initiated with Turkey as of October 3, 2005 on the Brussels Summit of December 17, 2004.<sup>75</sup>

Following the acceptance of the Negotiating Framework Document on June 29, 2005 and its presentation to the Council, this document was approved by the Council on October 3, 2005 and following the declaration of acceptance by Turkey, with the Intergovernmental Conference in Luxembourg on the same date, Turkey's accession negotiations with the EU officially started.

Negotiations with Turkey are exercised under 35 different topics called chapters and the discussion of negotiation topics take place in two stages as the "Screening Process" and "Negotiations Process". Screening Process involves comparison of the EU acquis with Turkish legislation, while the Negotiation Process begins with the preparation of a "position

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<sup>73</sup> Bilici, p.83

<sup>74</sup> AB Bakanlığı, Siyasi Reformlar–I, [www.ab.gov.tr/files/rehber/04\\_rehber.pdf](http://www.ab.gov.tr/files/rehber/04_rehber.pdf) (18.05.2014)

<sup>75</sup> Keskin, p.244-246



document" and evaluates Turkey's *acquis* compliance throughout negotiations with the Progress Reports periodically published annually.<sup>76</sup> The screening process for Turkey began with the Explanatory Screening Summit regarding the "Science and Research" topic on October 20, 2005 and Screening Meetings, defined as the first stage of the negotiations, ended on October 12-13, 2006. Since the start of negotiations with the EU until today, 14 chapters have been opened to negotiation and only the "Science and Research" chapter has been temporarily closed down on June 12, 2006. There are currently 13 open chapters and the last one to open amongst these is the "Regional Policies and Coordination of Structural Instruments" chapter opened to negotiation on the Intergovernmental Association Conference that took place between Turkey and the EU in Brussels on November 5, 2013.<sup>77</sup>

There are 35 chapters in scope of negotiations and 8 of these are suspended due to Additional Protocol not having been expanded to South Cyprus (Turkey not including South Cyprus in the Customs Union and refusing to open air and seaports to South Cyprus vessels), and 5 due to France's blockage of opening said chapters due to their being directly related to membership. In this context, 13 of 35 topics are under negotiation, while 12 are blocked from being opened and 10 await opening for negotiations.<sup>78</sup>

## **2.2. Decentralization of the Administration in the European Union**

While international organizations establish their relations through cooperation, the tendency towards globalization has resulted in the establishment of these relations through integration. In terms of protecting nation states and local public against positive and negative effects of this process, decentralization represents an important notion. Decentralization has become a subject often cited in legal text as one of the EU's building blocks particularly in the post-1990 integration process. Local and regional governments have increased their importance and influence in the integration process, while legal regulations have exacted significant changes in administration methods.

According to Massey, the EU considers national, regional, transnational and supranational dynamics in integrity and is going through a process called "re-modernization".

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<sup>76</sup> Bilici, p.88-89

<sup>77</sup> İKV, Türkiye'nin Avrupa Birliği'ne Katılım Müzakerelerinde Son Durum, <http://www.ikv.org.tr/icerik.asp?konu=katilimmuzakereleri&baslik=Kat%FD1%FDm%20M%FCzakereleri>. (10.05.2014)

<sup>78</sup> Bilici, p.90-91

Within this process generally public administration is questioned and subnational and local-regional governments are prioritized in center-local relations. The focal point of this re-modernization is the concept of decentralization.<sup>79</sup>

Goldsmith and Klausen have indicated that Treaty of Maastricht and 1996 Intergovernmental Conference has been determinative in terms of relations between the EU organizations and local and regional governments and that Treaty of Maastricht emphasizes the concept of subsidiarity.<sup>80</sup> The principle of subsidiarity is the benchmark of the process of administrative decentralization in the EU and this principle has legalized the decentralization process.

Studies towards decentralization of administration in the EU paved the way for transformation and reforms in member states along with candidate states. Especially there are many Western states achieving success by conducting several administration reforms and taking decentralization steps after being member of the union. Finland, Czech Republic, Poland are some of these countries.

Czech Republic became member of the EU in 2004 and while being a candidate in the past, they have approved PHARE 1997, 1998, 1999, 2000, 2001 and 2002 projects due to liabilities arising from Copenhagen criteria. While 1998 and 2000 projects were focusing on the modernization of central administration, PHARE 2001 project was predicting transfer of regional and municipal authorities and thus decentralization.<sup>81</sup>

Finland became member of the Union in 1995 and the most important steps for decentralization were taken in 2010 with the initiation of restructuring regional state administration system. While Finland was divided into 20 regions (cities) before, as many duties undertaken by the cities are undertaken by regional governments, the importance of district governments gradually decreased and as a result, in 2010, district governments, which are the rural unit of center, were removed. With the mentioned reforms, local governments

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<sup>79</sup> Andrew Massey, "Modernisation As Europeanisation: The impact of the European Union on Public Administration", **Policy Studies**, p.19 cited in: Karakılıç, 2013, p.304

<sup>80</sup> M.J.F. Goldsmith and K.K. Klausen (eds.), **European Integration and Local Government**, Cheltenham, UK: Edward Elgar, 1997, p.4-5 cited in: Yeşeren Eliçin Arıkan, "Bütünleşen Avrupa'da Yerel Yönetimler", **Görüş Dergisi**, (March 2004), p.39

<sup>81</sup> Mehmet Zahid Sobacı, "Çek Cumhuriyeti'nde Yerel Yönetimler", Murat Okcu and Hüseyin Özgür (Ed.), **Dünyada Yerel Yönetimler** in (163-192), Ankara: Seçkin Yayıncılık, 2013, p.188-189

have been strengthened in Finland and central government has earned a structure having only regulating and coordinating units. On the other hand, there are indicative articles in Constitution regarding autonomy of local governments in Finland. Local governments have an important place within country economy as well, while nearly one third of total public spending and two third of the public consumption spending are made by local governments. Finland stands forward among Northern European countries in terms of decentralization experiences.<sup>82</sup>

Public administration reforms in Poland, which became full members of the EU in 2004, have been conducted towards europeanization, modernization, democratization and decentralization purposes. Within the framework of decentralization policies, authorization and duties of local governments have been increase and resources have been provided in order for them to fulfill their duties more actively and efficiently. On the other hand, studies have been conducted in order to make local governments autonomous in administrative and financial fields. It wouldn't be wrong to say that proper grounds is created and many of its functions are fulfilled in Poland in order to apply local democracy and participative democracy.<sup>83</sup>

Economical, social and political integration, the establishment goal of the EU, affects administration systems of member countries significantly and local governments have a significant place within this influence. Since the EU lacks a political and administrative capacity in itself, it considers local governments, close to citizens to perform policies and undertaking a substantial part of public services in its own national administration systems, as an important actor in applying integration policies and uses these governments accordingly.<sup>84</sup>

At this stage, it would be wise to expand on the EU's local government approach and important policies and applications regarding local governments.

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<sup>82</sup> Mustafa Çelen, "Finlandiya'da Yerel Yönetimler", **Çağdaş Yerel Yönetimler Dergisi**, Vol.22, No.2, April 2013, p. 83.

<sup>83</sup> Önder Kutlu and Sefa Usta, "Polonya'da Yerel Yönetimler", Murat Okcu and Hüseyin Özgür (Ed.), **Dünyada Yerel Yönetimler** in (507-543), Ankara: Seçkin Yayıncılık, 2013, p.540

<sup>84</sup> Mustafa Ökmen, "Uyum Sürecinin İdari-Politiği: Avrupa Birliği ve Türkiye Perspektifinde Küreselleşme-Yerelleşme Dinamikleri, H. Özgür and B. Parlak (Ed.) in **Avrupa Perspektifinde Yerel Yönetimler**, Bursa: Alfa Aktüel Yayınları, 2006, p.61-62

### **2.2.1. Approach to Local Authorities of the European Union: Principles and Practices**

Local governments, allowing the public to participate in administration in European states and defined as units closest to the public, have certain basic principles as institutions that require development and autonomisation.<sup>85</sup> The EU member and candidate states are aimed to form public administration systems within certain standards and to thus obtain institutionalization within the EU. All member and candidate states naturally have varying administrative system, however using defined principles and policies an effort is being made to establish a common administrative approach if not an administrative model.

While at this stage ECLSG (1985), Treaty of Maastricht (1992), establishment of the Committee of the Regions (1993) and the Congress of Local and Regional Authorities are significant developments, European Principles for Public Administration report published by the Support for Improvement in Governance and Management Programme (SIGMA) in 1998 defines basic principles member and candidate states are expected to abide by in their public administration systems. These principles are as follows; <sup>86</sup>

- Reliability and Predictability
- Openness and Transparency
- Accountability
- Efficiency and Effectiveness

In the same manner, the study called "White Paper" published by the European Commission in 2001 additionally includes the principles of;<sup>87</sup>

- Participation
- Coherence
- Proportionality
- Subsidiarity.

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<sup>85</sup> Aydın, p.159

<sup>86</sup> Mustafa Ökmen and Kadri Canan, "Avrupa Birliği'ne Üyelik Sürecinde Türk Kamu Yönetimi", **Yönetim ve Ekonomi Dergisi**, Vol.14, No.1, (2009), p.150

<sup>87</sup> Balcı, p.123

Another document including the principle of decentralization is the Single European Act (SEA). SEA (1987) is important in the sense of the collection of many separate administrative documents in a single document and the demand of administrative harmony being obtained based on regulations included within the scope of this agreement. Treaty of Maastricht (1992) and Treaty of Amsterdam (1997) both also emphasize the principle of decentralization and Treaties of Copenhagen (1993), Madrid (1995), Luxembourg (1997), Amsterdam (1997) actually see the practice of said principles.<sup>88</sup>

Strengthening of Administrative Capacity is yet another factor of the EU harmonization process. First evaluations in terms of legal capacity and administrative capacity began in 1997 and the EU has formed various support mechanisms such as the TAIEX (Technical Assistance Information Exchange) and twinning programs in order to expand administrative capacities of the EU member states. EC, meanwhile, has requested the establishment of EU units within Ministries to obtain administrative harmony and in this scope the EU units have been formed in various ministries and organizations.<sup>89</sup>

While discussing the place of local governments within the EU, The Principle of Subsidiarity, Regions Committee, White Paper on Governance, Regional Policies and Fund Assistance, Treaty of Lisbon, pre-membership preparatory processes and ECLSG are among topics that may be reviewed. On the other hand, the EU Constitution draft aims to strengthen local governments yet said constitution is yet to be executed. In this context it will be wise to shortly mention relevant topics.

As decentralization is monitored globally directly by the World Bank, within the EU this situation has been substantialized in the contest of the principle of subsidiarity. The principle of subsidiarity has resulted in regional and local governments of states gaining strength against their own nation states.<sup>90</sup> While the existence of the principle of subsidiarity is one of the most important developments in terms of the decentralization process in the EU, since we have included detailed explanations in the first chapter we won't be expanding on it any further in this chapter.

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<sup>88</sup> Ökmen and Canan, p.153

<sup>89</sup> Özer, p.178-196

<sup>90</sup> Güler, p.244

Another significant EU-wide study about decentralization is the White Paper on Governance prepared in 2001 in order to ensure internalization of the principle of subsidiarity on an EU scale and create a framework approach to the union's expanding structure. Said paper has paved the way for decision making mechanisms to become more participant and pluralist on an EU scale and in this scope have been accepted as the seven basic factors of good governance. According to this, participation, transparency, accountability, subsidiarity, proportionality of decisions, forming complementarity policy areas, science-based policy development were taken as basis<sup>91</sup> and these principles are also considered to be taken as basis by the EU in decentralization and local governments.

The EU uses structural funds in order to ensure member states are economically integrated and develop and improve in harmony with all union regions. <sup>92</sup> Aside from these, compliance funds and other funds also exist within the context of the union's regional policies. EC has decided to merge all its fund contributions applied to eliminate regional development variations under the IPA (The Instrument for Pre-Accession Assistance) roof for the 2007-2013 period. IPA's goal is to support member states in complying with the EU criteria, rules and policies and projects such as development of democracy and human rights, corrections in public administration, support of civil society and obtaining sustainable development receive prioritized assistance from the IPA. Turkey is one of the member states that will obtain support from the IPA.<sup>93</sup> In this scope, local governments have been allocated a substantial fund and structural funds are an important instrument in terms of the EU's regional policies.

Executed in 2009, Treaty of Lisbon has been a breath of fresh air for local governments and in this scope, regional and local governmental units were considered alongside member states and equal to central government, and when defining member states, central, regional and local levels were mentioned unlike the previous legislation. Also in

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<sup>91</sup> Fikret Toksöz et al., **Yerel Yönetim Sistemleri**, İstanbul: Tesev Yayınları, 2009, p.28

<sup>92</sup> Muhammet Kösecik, “Yerel ve Bölgesel Yönetimler Açısından Avrupa Birliği Bütünleşme Süreci ve Anayasası”, H. Özgür and B. Parlak (Ed.) in **Avrupa Perspektifinde Yerel Yönetimler**, Bursa: Alfa Aktüel Yayınları, 2006, p.17

<sup>93</sup> Keleş and Mengi, p.147-156

scope of the principle of subsidiarity as regulated by article 5 of said agreement, it is indicated that the EU will provide services only when a member state fails to provide such a service.<sup>94</sup>

With the Copenhagen Criteria, the embracing and execution of the EU acquis has become a prerequisite for the EU membership, in this scope local and regional governments which perhaps have a larger role than central governments in applying these policies have been approached with great emphasis and member states were requested to strengthen their administrative capacities. In this context, the EU acquis imposes certain principles and provisions for local and regional governments as well and legal regulations affecting the operation of local and regional government are binding for member states. Acquis provisions of the EU which affect local and regional governments are classified under the following titles:<sup>95</sup>

- Public Tenders
- Local Taxes
- Consumer Protection
- Environmental Law
- Incentives, Competition Law and Municipal Concerns
- Local Elections
- Legal Framework on Social Policies

It would be beneficial for the ECLSG to be reviewed in a separate chapter as it is one of the basis-forming documents in our study.

#### **2.2.1.1. The European Charter of Local Self-Government**

Developed based on the efforts of strengthening local governments, defending their autonomy, and establishment of a Europe based on decentralization and democracy principles, the European Charter of Local Self-Government (ECLSG) has been opened for

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<sup>94</sup> Toksöz et al., , p.29

<sup>95</sup> Bekir Parlak, “Avrupa Birliği Düzenlemelerinde ve Seçilmiş Ülkelerde Yerel Yönetimler”, H. Özgür and B. Parlak (Ed.) in *Avrupa Perspektifinde Yerel Yönetimler*, Bursa: Alfa Aktüel Yayınları, 2006, p.210-211

signature by the Council of the Europe on October 15, 1985 and executed on September 1, 1988.<sup>96</sup>

The ECLSG is the principal regulation on the operation mechanisms of local governments in the EU and with the relevant regulation based on the principles of strengthening local governments and decentralization, it grants local governments the right to regulate and govern a substantial part of public works under their own responsibility and for the benefit of the local population within the borders determined by law.<sup>97</sup>

The EU has begun paying particular importance to local governments especially with the integration process picking up speed in and after 1990, and accepted the subsidiarity and proportionality principles with the Treaty of Maastricht. In this scope, the subsidiarity principle has become one of the main principles of the EU and in this process, "ECLSG" has become a basis for the EU member states and EU organizations.<sup>98</sup>

This charter imposes important principles for local governments. Topics of protection of local government borders, conditions for exercising local responsibilities, administrative supervision of activities of local organizations, financial resources of local organizations, right of local organizations to form unions and join unions and legal protection of local self-governments have been regulated with articles within this charter.<sup>99</sup>

Due to its granting a highly extensive autonomy, the ECLSG has become a fairly international document and after the signature of this charter many European states have undertaken public administration and local government reforms. At this stage, one might argue that the Council of Europe's close watch of developments in states accepting the charter of autonomy and having international experts issue evaluation reports has had an influence in this situation.<sup>100</sup>

States signing the ECLSG need to pay attention that their regulations ensure that local governments have extensive autonomy, tasks and authorities of local governments are defined by constitution, these authorities cannot be emaciated by central government, that

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<sup>96</sup> Aydın, p.162

<sup>97</sup> ABİFM, AB ve Yerel Yönetimler, <http://abifm.ibb.gov.tr/avrupa-birligi/ab-ve-yerel-yonetimler>, (23.03.2014)

<sup>98</sup> Toksöz et al., p.24

<sup>99</sup> Ökmen, p.74-76

<sup>100</sup> Toksöz et al., p.24



local governments form their own internal organization, have required financial resources, consist of elected bodies instead of assigned and provide the decentralization principle.<sup>101</sup>

### **2.3. Major Debates Related to Local Government during the Accession Process**

The EU's influence on Turkish Public Administration has increased upon Turkey obtaining candidate status after the Helsinki Summit. The initiation of membership negotiations has only made this influence stronger and providing recommendations in the Accession Partnership Documents, also called roadmaps, the EU has begun evaluating legal regulations and developments taking place in the accession process through the Progress Reports. Necessary actions for *acquis* compliance regarding public administration and local governments have been recommended and subjected to positive-negative evaluation both in the Accession Partnership Documents and the Progress Reports.

Just like member states, the EU expects candidate states to, despite states not embracing a single type of local government system, abide by certain common values and to make certain reforms in this context. Due to becoming a candidate state, Turkey is also undergoing harmonization work in this scope and a significant portion of these harmonization attempts comprise of policy fields regarding locals and local governments.

The EU requires Turkey to develop its administrative capacity and embrace an administration system that is democratic, efficient, participant, accountable and transparent, the basic principles of the EU. Since Turkey falls short of the European states when faced with these values, compliance with the EU's expectations and legal texts where such expectations are worded bears utmost importance. Within said legal texts, Accession Partnership Documents and Progress Reports are the most important. In light of these developments, our study will focus first on the EU's expectations from Turkey and then Turkey's efforts in harmonization.

#### **2.3.1. Accession Partnership Documents**

The Accession Partnership Document is an important document defined by the European Commission as "a roadmap" and which unilaterally determines the full membership

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<sup>101</sup> Emine Akçadağ, Avrupa Yerel Yönetimler Özerklik Şartı ve Türkiye, BİLGESAM, 2011, p.1

strategy of Turkey. The EU lists with the Accession Partnership Document the policy instruments and priorities a member state should apply as well as its own conditions. The first Accession Partnership Document for Turkey was accepted by the European Council in 2001. The document refers to speeding up the modernization of public administration, performing privatizations, undertaking administrative regulations that will ensure regional development and formation of functional structures on a regional level.<sup>102</sup>

With the suggestion of EC, Accession Partnership Document for 2001 has been reviewed and accepted in 2003 by the European Council. Accession Partnership Document dated 2003 emphasizes particularly on privatization of public organizations and increasing administrative capacity. "National Programs" formed by Turkey in regards to the updated Accession Partnership Document dated 2001 and 2003 stipulate exercising reforms that will facilitate administrative harmony with the EU and increase administrative capacity.<sup>103</sup>

Accession Partnership Document suggested by the EC in 2005 and accepted in 2006 includes under the Public Administration topic the subjects of continuing reforms in public administration and personnel policy to obtain wider accountability, efficiency and transparency, formation of local government that is efficient, transparent and participant and formation of an "Ombudsmanship" system that is fully functional.<sup>104</sup>

Revised Accession Partnership Document dated 2008 makes similar referrals under the Public Administration title just like in the previous document. This document repeats and emphasizes topics of monitoring reforms in public administration and personnel policies, reform of central government to strengthen local governments, delegation of authority to local governments and necessity to provide adequate financial resources, formation of an Ombudsmanship system and acceptance and practice of relevant legislation in the Court of Accounts for short term targets.<sup>105</sup> Medium term priorities list goals such as the sustenance of

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<sup>102</sup> Accession Partnership Document, European Commission, 2001

<sup>103</sup> Uğur Ömürgönülşen and M. Kemal Öktem, **Avrupa Birliği'ne Üyelik Sürecinde Türk Kamu Yönetimi**, Ankara: İmaj Yayınevi, 2007, p.103

<sup>104</sup> Accession Partnership Document, European Commission, 2006

<sup>105</sup> Accession Partnership Document, European Commission, 2008

the privatization process and sustenance of the public finance system under 35 topics based on their prescribed realization term.<sup>106</sup>

### **2.3.2. Expectations from Turkey in Progress Reports**

The EU's direct and extensive effect on the Turkish public administration has begun with the declaration of Turkey as a candidate state in the Helsinki Summit of 1999 and the EU has during this new process listed policy instruments and priorities Turkey is required to apply with the EU Accession Partnership documents. Progress Reports have started to evaluate Turkey's accepted legislation, approved international agreements, made decisions and execution measures based on this series of policy and priorities.<sup>107</sup>

Despite the lack of defined, codified the EU rules addressing national public administrations, progress reports are important as an analysis tool for application and validity status for the regulations such as 'European Administrative Space', 'European Administrative Norms and Standards', 'European Administrative Institutions and Rules' for the relevant state.<sup>108</sup>

While Turkey's first Progress Report had been devoid of expectations regarding local governments, Progress Reports published between 2000-2004 indicate a lack of development on a regional and local government basis, a need for weakening supervision of the center over the local, strengthening administration capacity and undertaking certain structural changes and suggesting undertaking legal regulations in order to strengthen public administration and local governments, these reports state that no progress has been made in the aforementioned areas.

2004 Progress Report includes legal regulations in the field of local governments, stating that despite Basic Law on Public Administration (BLPA), Special Provincial Administration Law and Municipality Law outside of the Law on Metropolitan Municipalities having been accepted in The Grand National Assembly of Turkey (TGNA), these laws were sent to the TGNA by the President for reconsideration and that the Assembly should review

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<sup>106</sup> Keskin, p.266

<sup>107</sup> Ömürgönülşen and Öktem, p.102-103

<sup>108</sup> Metin Bulut, "Türk Kamu Yönetiminin Dönüşümünde Etkili Bir Araç: Avrupa Birliği İlerleme Raporları", *Sayıştay Dergisi*, Vol.82, 2011, p.105

these laws immediately. On the other hand, it's stated that relevant laws have the goal of turning the centralist, hierarchic, reticent administrative structure into a decentralized, participant, transparent, responsible structure. It is emphasized that in case reform efforts are successful, Turkey's administrative culture will modernize which will reflect positively on the EU membership process.<sup>109</sup>

Progress Report 2005 reviews developments in the Public Administration sub topic and states that progress has been made with regional and local reforms, however these are not yet adequate. Commenting that BLPA will result in redistribution of tasks and duties amongst central and local government, rationalize administrative structures and cause government to be more sensitive and transparent to the public, emphasizing that rejection of the relevant law by the President is damaging to the reform process. Meanwhile it has been stated that the Municipality Law, Special Provincial Administration Law, Local Administrative Unions Law and the previously approved Law on Metropolitan Municipalities are important for creating a modern public administration that aims for an efficient, goal-oriented and transparent local government. The report also emphasizes that aforementioned developments are positive for Turkey however with all the shortcomings a secondary legislation regarding these laws should be created.<sup>110</sup>

Progress Report 2006 indicates that while the creation of “Ombudsmanship” is a positive development, authority has yet to be delegated from the centre to the local. The report emphasizes that despite the achievement of certain legal progress in public administration reforms, more progress is required when it comes to decentralization.<sup>111</sup>

Progress Report 2007 states that some progress has been attained in legislative reforms concerning public administration and public services, and limited progress in key subjects such as implementation and capacity development, and that reduction of bureaucracy, increase in transparency, strengthening accountability and increasing financial resources and authority of local governments should receive more attention and repeats just

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<sup>109</sup> Ayşegül Mengi, “Avrupa Birliği’ne Uyum Sürecinde Yerel Yönetimlerle İlgili Düzenlemeler”, in Ayşegül Mengi (Ed.), **Yerellik ve Politika, Küreselleşme Sürecinde Yerel Demokrasi**, Ankara: İmge Kitabevi, 2007, p.105

<sup>110</sup> Progress Report, European Commission, 2005, p.12-14

<sup>111</sup> Progress Report, European Commission, 2006

like previous reports that no progress has been made in the Draft Basic Law on Public Administration (DBLPA).<sup>112</sup>

Progress report 2008 criticizes the politicization of high level assignments and indicates the necessity of resolving certain issues regarding the public administration reform. Reducing the load on the government, attaining simplification, realizing regular impact assessments, developing administrative procedures, strengthening transparency and forming markets and developing coordination systems are counted as some of these problems. The necessity for an extensive draft law on civil service has been pointed out and generally the limited progress in public administration reforms and the need for modernization of the public service system has been emphasized.<sup>113</sup>

Progress Report 2009 indicates once more that a series of important problems such as reduction of bureaucratic processes, performing regulatory impact analyses, creating administrative methods, increasing transparency and forming policies and developing coordination systems are still ongoing. It is additionally remarked that progress is extremely limited in public administration reforms and that a series of significant efforts are required when it comes to privatization of public services. It has been emphasized that priorities include encouraging a reduction in bureaucratic processes and simplification of governance, and further development of a public service that is professional, independent, accountable, transparent and capacity based.<sup>114</sup>

Progress Report 2010 states that while some progress has been made particularly in the establishment of Ombudsman, protection of personal data and information access, it also indicates that more effort is required particularly in Public Financial Administration and application of the Supervision Law and in subjects of public services reforms.<sup>115</sup>

Progress Report 2011 indicates a lack of progress when it comes to delegation of authority to local governments. It has been remarked that despite some progress in legal reforms regarding public administration and public services, there are still no results in the

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<sup>112</sup> Progress Report, European Commission, 2007

<sup>113</sup> Progress Report, European Commission, 2008

<sup>114</sup> Progress Report, European Commission, 2009

<sup>115</sup> Progress Report, European Commission, 2010

establishment of Ombudsmanship and political support is needed for decentralization and public administration reforms.<sup>116</sup>

Progress Report 2012 denotes that progress has been made in terms of delegating authority to local governments yet no developments exist in terms of removing administrative tutelage, and that an extensive public reform ensuring merit based promotion is required. Consequently, it has been emphasized that reforms related to public administration legislation have had progress, and the establishment of Ombudsmanship is an important step in protecting the rights of citizens and ensuring public administration accountability. It has been remarked that external auditing and public financial administration and control is stronger, however the latest changes in the Law on the Court of Accounts causes serious concerns regarding the independence and efficiency of Court of Accounts audits and control, and that more political support is required for an extensive reform addressing civil servants.<sup>117</sup>

The latest published Progress Report 2013 repeats expectations from previous progress reports and adds that limited progress has been achieved especially in terms of delegating authority to local governments. It has been indicated that Law on Metropolitan Municipalities, approved in November 2012 has expanded the scope of municipal authorities, which results in partially meeting the European Council criticism indicating the weakness of certain small municipalities in their capacity to provide public services. It has however also been stated that said even said regulation does not meet reform requirements in public administration. It has been emphasized that European Council recommendations in strengthening municipalities through delegation of authority or allowing them to collect their own income have been overlooked, that external auditing and public financial administration and control should be strengthened; that all public organizations should strive to increase transparency and accountability and that the need for an extensive public administration reform continues to exist.<sup>118</sup>

Turkey has enacted many legal regulations towards strengthening local governments within the EU harmonization process particularly after the initiation of negotiations after 2004 and continues to perform similar arrangements. However when we consider Progress Reports,

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<sup>116</sup> Progress Report, European Commission, 2011

<sup>117</sup> Progress Report, European Commission, 2012

<sup>118</sup> Progress Report, European Commission, 2013

particularly those after the start of negotiations, as basis, we can argue that the EU demands an extensive public administration and local government reform yet legal regulations and processes performed by Turkey are unsatisfactory and fall short of the EU standards.

### **3. PUBLIC ADMINISTRATION AND LOCAL GOVERNMENT REFORM IN TURKEY**

While public administration reforms and local government regulations in Turkey go way back in a long historical process, these have intensified over the years what with globalization and foreign expansion policies brought on by the EU membership process.

Many regulations have taken place in the planned period regarding organization of local governments in Turkey. Aside from inclusion of needs and musts in terms of public administration and local governments in the Development Plans, many efforts such as the establishment of a Local Government Ministry have been made and many projects such as The Central Government Organization Research Project (MEHTAP), Internal Order Project and Public Administration Research Project (KAYA) have been performed and supported. Particularly the establishment of first Metropolitan Municipalities in 1984 is an important event for local governments. Efforts aside from the establishment of Metropolitan Municipalities and changes enacted over time in relevant legislation have also been made however no notable and structural change has taken place until 2004.

Having gone through an intensive reform process in the field of public administration and local governments in 2000s, Turkey has seen not only national economical, political and social developments influencing this reform process but new developments in the globalized world and the EU becoming great actors in this process as well. Rapid urbanization, cumbersome nature of central government and bureaucracy, as well as regional imbalances due to rising democracy and participation demands are some of the internal reasons creating a need for reforms in local governments. Just as much as supranational unions and organizations such as World Bank, IMF (International Monetary Fund) and UN, globalization and decentralization dynamics and the EU as one of the most important external factors have defined the need for reforms and acted as a driving force.

The EU member states have undertaken extensive public administration reforms based on regional administrations, local self-governance and local governments with the EU integration process, having started in 1990s the EU member states in Eastern Europe and



1980s for all others.<sup>119</sup> In accordance with the general competence policy, all services not stipulated by law to be provided by other organizations being fulfilled by local governments and this situation being provided in light of the principle of subsidiarity and The ECLSG in Europe has encouraged, even forced Turkey to move in this direction and shape its local government reforms in the same scope.

The last of these regulations has been the Law on Metropolitan Municipalities no. 6360. This law has enacted extensive changes and caused many positive and negative criticisms by persons of interest. Since the new law has been brought to the agenda and created on grounds of decentralization, it remains an important aspect for our study and is informative in terms of Turkey's current status and ongoing path in terms of decentralization due to being a recent development. Reviewing reforms made within the process of the EU negotiations starting from 2002 and observing the status attained with law no. 6360 will be enlightening in terms of evaluating Turkey's latest status in terms of strengthening local governments and decentralization efforts.

### **3.1. Legislative Regulations after 2002**

Turkish Public Administration and local governments have been subjected to significant administrative reform programs in the 2000s, especially after 2002. Institutional structures, administrative processes and relations between the government and the governed, reshaped during the reform process, have been enriched within the framework of the “governance paradigm”, “sense of new public management” and especially the principle of subsidiarity. In this process, the administrative system has become more decentralized, the interaction between the private sector and the government (particularly local governments) have increased and civil society have become more and more significant actor as a consequence of the ongoing administrative reform process in Turkey.<sup>120</sup>

While the EU has many expectations imposed on Turkey's need for administrative reforms, many subjects such as strengthening administrative capacity, weakening supervision of the center on local governments and establishing new organizations through certain

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<sup>119</sup> Toksöz et al., p.27

<sup>120</sup> Uğur Ömürğönülşen, “Preface”, in Uğur Ömürğönülşen and Uğur Sadioğlu (ed.), **Local Governance Today: European and Turkish Experience in Local Politics, Democracy and Governance and Reciprocal Lessons**, Ankara: TBB Yayınları, 2014, p.viii

structural changes are also emphasized. In this context, Turkey has attempted to make many legal regulations on local governments in scope of public administration particularly after 2002, and while some succeeded others have failed.

Taking Accession Partnership Documents issued during the process of administrative harmonization of Turkish public administration with the EU and Progress Reports comprising evaluations as criteria, many law and legislative arrangements have been made in order to comply with the EU's political criteria. In this scope constitutional changes have been enacted in 2001 followed by the issuance of various harmonization packages. In order to manage this process well, EUSG, turned into the EU Ministry in 2011, has been established alongside the EU Harmonization Commission.

Having prepared draft laws approaching a dozen since 1990s, the Ministry of Internal Affairs has during the preparation of separate drafts in subjects such as Special Provincial Administrations, Villages, Municipalities, Metropolitan Municipalities, Municipal Revenue etc. issued a framework draft law under the name "Draft Law on Enacting Changes in Laws Concerning Local Governments". While attempting democratization in local governments for the purpose of the EU integrity, the Ministry has also sought solutions for urgent problems such as municipal revenue and zoning, however, has failed to create a draft in the meantime that ensures delegation of authority from center to the local as required by the ECLSG.<sup>121</sup>

Having risen to power as a result of the 2002 elections, Justice and Development Party (AKP) government remarked in the government program read in the TGNA, a need for "reforms" exists in public administration and local governments and sharing of tasks, authorities and resources between central government and local governments will be redefined in accordance with the principles of efficiency, effectiveness and modern administration based on our unitary state system. The government has acted quickly and established the Basic Law on Public Administration Working Group and within the same year published the book titled "Changes in Administration for Administrating Change" focusing on needs for reorganization and listing suggestions for solutions.<sup>122</sup>

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<sup>121</sup> Keleş, p.501

<sup>122</sup> Ibid., 501-502

Brought to TGNA the same year and approved in July 2004, reorganizing public administration with all components, financial structure, personnel etc. in various fields of central and local government and emphasizing a market oriented, decentralized, customer oriented and goal oriented administration approach, DBLPA<sup>123</sup> has an important place amongst reorganization efforts due to stipulating an extensive change in the Turkish administrative system and displaying basic perspectives regarding public administration.

DBLPA was approved by Assembly on 15.07.2004 with the header "Law on Basic Principles and Reorganization of Public Administration no. 5227" yet was vetoed by the President with the grounds of conflicting with the unitary state structure of the Republic of Turkey and sent back to the TGNA. Said draft has not been on the TGNA's agenda or passed into law since.

Reviewing the principles and regulations generally stipulated by the DBLPA, it is first and foremost arguable that it brings a different approach than that of traditional bureaucratic administrative approach and stipulates a strong decentralization. This aspect has caused it to be subject to many criticisms, most of which have focused on its inconsistency of constitution, unsuitability with unitary state and unitary state principle, that public administration will become marketable, relinquish social state and replace this with a regulatory state model, change the status of public personnel and weaken supervision.<sup>124</sup>

General grounds for the draft law indicates that the new administrative approach houses a structure that is respectful of the market, utilizing market instruments to the extent possible, emphasizes local and decentralized administration bodies and civil society organizations, focuses on prioritized areas in scope of the strategic administration concept, is performance and quality oriented, requires a horizontal organizational structure and delegation of authority and deems important the principles of transparency and accountability.<sup>125</sup> On the other hand, the first article of the draft explains its purpose and defines this as the formation of a public administration that is participant, accountable and is based on human rights and freedoms, determination of tasks, authorities and responsibilities

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<sup>123</sup> Karakılıç, p.258

<sup>124</sup> Zahid Sobacı, **İdari Reform ve Politika Transferi- Yeni Kamu İşletmeciliğinin Yayılışı**, Ankara: Turhan Kitabevi, 2009, p.180

<sup>125</sup> Ömer Dinçer and Cevdet Yılmaz. **Kamu Yönetiminde Yeniden Yapılanma 1: Değişimin Yönetimi için Yönetimde Değişim**. Ankara: Başbakanlık, 2003, p.30-31

of central governments and local governments in order to perform fair, quick, quality, efficient and effective public services, reorganization of central administrative bodies and the reorganization of basic principles and provisions regarding public services.<sup>126</sup>

Amongst the basic principles of the DBPLA regarding the establishment and operation of public administration, unitary state principle, consistent growth, participation, transparency, accountability, predictability, subsidiarity, simplification of procedures and orientation to needs of those receiving services and the results of such services have become the basis; and it has been stated that tasks, authorities and responsibilities shall be delegated to the unit most suitable and closest to those benefiting from such services.<sup>127</sup> These principles are brand new for the Turkish public administration and contain traces of the "New Public Management" approach. On the other hand, these principles are amongst those expected by the EU to be complied with and implemented in terms of public administration and local governments.

One of the most notable topics in the DBLPA is the one-by-one listing of the tasks, authorities and responsibilities of central government and the remark that remaining tasks would be performed by local governments. This remark is a regulation that stipulates delegation of authority from center to the local as has been remarked by the EU for years and is a significant development in terms of Turkish administrative history. It has also been strictly remarked that provisions against the decentralization principle cannot be enacted in any charter, legislation and similar regulations in subjects concerning tasks, authority and responsibilities of local governments. When reviewing these developments, DBLPA stipulates decentralization at a significant extent, refers to the principle of subsidiarity, and points to a market and customer oriented, decentralized administrative structure per the "New Public Management" approach under the influence of neo liberal policies.

DBPLA has been vetoed by the President and thus failed to pass into law, however its stipulated changes have been reflected and implemented through a series of laws later

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<sup>126</sup> Sobacı, p.180-181

<sup>127</sup> Kamu Yönetiminin Temel İlkeleri ve Yeniden Yapılandırılması Hakkında Kanun

enacted. Some of the other laws stipulating changes in the structure and operation of public administration are as follows:<sup>128</sup>

- Law on Right to Information no. 4982
- Law on Civil Service Ethics Board no. 5176
- Law on Public Financial Administration and Control no. 5018
- Law on Local Government Unions no. 5355
- Law on Special Provincial Administration no. 5302
- Law on Metropolitan Municipalities no. 6360
- Law on The Ombudsman no. 6328

Within 2004, aside from DBLPA, the "Law on Metropolitan Municipalities no. 5216", "Law on Special Provincial Administration no. 5302", "Law no. 5393 on Municipality " have also been approved in the TGNA. Those except the "Law on Metropolitan Municipalities" has been vetoed and returned to the Assembly by the President. The "Law on Special Provincial Administration" has been approved by the Assembly subject to certain changes in 2005, "Municipality Law" terminated by the Constitutional Court on grounds of material incompliance with the TGNA Bylaw provisions, but through reconsideration of the TGNA has been approved under the name " Law no.5393 on Municipality" on the same date (July 3, 2005) as "Special Provincial Administration Law no. 5302".

Law on Metropolitan Municipalities no. 5216 has defined metropolitan municipality borders in Istanbul and Kocaeli as the provincial administrative boundaries. The widespread idea is that that in an environment where service decentralization is accepted and attempted to be implemented, efforts to expand the span of authority of local governments is contradictory and that the implementation of a narrow-scope service and span of authority model particularly in larger cities like Istanbul and Izmit will allow for efficient and effective operation of services.<sup>129</sup>

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<sup>128</sup> Karakılıç, p.259

<sup>129</sup> Sedef Zeyrekli and Rengül Ekizceleroğlu, "Avrupa Birliği Bağlamında Hizmette Yerellik (Subsidiarite) İlkesi ve İlkenin Türkiye Açısından Ele Alınışı", **Çağdaş Yerel Yönetimler Dergisi**, Vol.16, N.3, (July 2007), p.42

It can be observed that Law on Special Provincial Administrations no. 5302 allows special provincial administrations to be more autonomous, efficient and participant, that the administrative tutelage level is minimized and task scopes of special provincial administrations is expanded.<sup>130</sup> When defining special provincial administrations, this law emphasizes on the administrative and financial autonomy of these units. According to Güler, this autonomy-focused definition will allow special provincial administrations to use the authority to establish and implement law-like rules without being subject to any approval of central government.<sup>131</sup>

Law no. 5393 on Municipality states "Municipal services are presented in places closest to citizens using the most suitable methods." thus emphasizing the principle of subsidiarity in terms of authority. Law on Public Financial Administration Control no. 5018 shows a transmission from a strict, uncompromising structure to an accountable, transparent and efficient central government approach, while Law on Right to Information no. 4982 shows that the government is becoming subject to inquiries by individuals.<sup>132</sup>

As stated in the KAYA Report, the obstacle before reorganizing local governments in Turkey is not just the lack of democracy and strength in local governments but also their inability to provide efficient and effective services. Therefore, in order to form local governments which provide more autonomous, participant, transparent, accountable, efficient and effective services, special provincial administrations, municipalities and metropolitan municipalities in Turkey have been reorganized with legal regulations. Aside from mentioned internal factors, the tendency to decentralize in context of globalization around the world and Turkey's EU membership process are amongst important external factors influencing Turkey's reforms.<sup>133</sup>

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<sup>130</sup> Emin Barlas and Berkan Karagöz, "Subsidiarite İlkesi: Kavramsal Bir Çerçeve", **Sosyal Bilimler Araştırmaları Dergisi**, Vol 1, 2007, p.170

<sup>131</sup> Birgül Ayman Güler, "Kamu Yönetimi Yasa Tasarısı: Toplumsal Eşitlik ve Yönetim", *Kamu-Yerel Yönetim Reformu ve Türkiye*, Türkiye Ekonomi Kurulu Tartışmalı Toplantı, 2004/2 cited in: Zeyrekli and Ekizceleroğlu, p.44

<sup>132</sup> Barlas and Karagöz, p.170-171

<sup>133</sup> TODAİE, "Kamu Yönetimi Araştırması-Genel Rapor", 1991, <http://www.todaie.gov.tr/pdf/KAYA.PDF>, (29.05.2009) cited in: Sobacı, p.187

### **3.2. Decentralization within the Framework of Law no. 6360**

The globalization furor, having sped up since the 1980s, has resulted in the surfacing of an organization where more integration with international entities is stipulated. This new organization has created the need for a reorganization of public administration alongside principles such as subsidiarity, participation, democracy, transparency, efficiency and effectiveness in terms of decentralization. On the other hand, when reviewing policies of reorganizing Turkish Public Administration system and strengthening local governments, we can observe that globalization and the EU harmonization process are important external factors that influence these regulations. The EU Progress Reports and basic approaches have been the basis to regulations of reorganization of Turkish public administration and local governments and principles and policies have been attempted to be integrated into the system in light of the harmonization process.

The EU expects member and candidate states to form their public administration systems within certain standards and to thus obtain industrialization within the EU. Naturally administration systems of all member and candidate states are different; however the defined principles and policies attempt to form a common understanding even without the presence of a common administrative model.

Within the integration of the EU, local governments have an important mission in spreading and implementing the EU norms to member and candidate states. With the principle of subsidiarity; which was made official the first time with the Treaty of Maastricht, the EU aims to authorize units closest to citizens in service provision and strengthen local governments. In this context, municipalities have the most important role in providing services by organizations closest to the public throughout the state and thus take on significant responsibilities.

The consequence of rapid urbanization and overexpansion of cities and the resulting unplanned and unorganized expansion outside of municipal borders has been the pursuit of a new model in administrating metropolitans.<sup>134</sup> The main reason for developed and industrialized western countries pursuing different metropolitan models is the elimination of

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<sup>134</sup> Keleş, p.304

disorder and self-discretion in terms of authorities and tasks amongst units.<sup>135</sup> As for our country the notion of metropolitans has started out with the Republic period and the most important development in terms of the modern day has been the Law on Metropolitan Municipalities no. 3030, issued in 1984, based on the regulation of article 127 of the 1982 Constitution that allows special administration form in large residential areas. Nothing notable has occurred until 2004 regarding metropolitan municipalities, while the Law on Metropolitan Municipalities no. 5216 was issued in 2004, establishing a regulation that expands the borders of Istanbul and Kocaeli provinces outside the provincial administrative boundaries as a small experiment on "province scale" metropolitan administration.

While metropolitan municipalities form an important branch of decentralization today, the latest of the important legal regulations introducing extensive changes to the Turkish administration history with the aim of decentralization is the new Law on Metropolitan Municipalities no. 6360. The new Metropolitan Municipality Law has imposed many extensive changes in metropolitan administration and caused many positive and negative criticisms. Despite the implementation of this new law, which we will expand on as an example of the decentralization process, being quite recent, its grounds and basic principles, its innovations and regulations, and subjected criticisms and its contribution to the decentralization process are the main topics of our study.

### **3.2.1. The Grounds and Basic Principles of Law No. 6360**

The final piece of the local government reform, also called the "Neverending Symphony", is the new Metropolitan Municipality Law no. 6360. The primary resource we have consulted in what this law indicates and the purposes of its imposed changes are the general grounds text for the law and the law itself. After reviewing the law from its original source, we will go over relevant criticisms using different sources.

“The Law No. 6360 on the Establishment of thirteen Metropolitan Municipalities in 13 Provinces and 26 Districts and Amending Certain Laws and Decree Laws”, which as an extension of other organization attempts performed in the name of decentralization within the EU membership process and which we've defined above can be defined as an extensive

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<sup>135</sup> Ruşen Keleş, “Yeni Anakent (Büyükşehir) Belediyeleri Oluşturulmalı mı?”, **Yerel Politikalar Dergisi**, Vol.1, N.2 (May-August 2012), p.9



reform in the field of local governments, was approved in TGNA on November 12, 2012 published in the Official Gazette on December 06, 2012 and No. 28489.

On 14.3.2013, "Law on Amending in the The Law No. 6360 on the Establishment of Thirteen Metropolitan Municipalities in 13 Provinces and 26 Districts and Amending Certain Laws and Decree Laws" no. 6447 was accepted in the TGNA. Article 1 of this law states that<sup>136</sup>,

The line "Thirteen" in the title of " The Law No. 6360 on the Establishment of thirteen Metropolitan Municipalities in 13 Provinces and 26 Districts and Amending Certain Laws and Decree Laws " has been changed to "Fourteen", and the line "Twenty Six" to "Twenty Seven" and the line "Ordu" has been added after the "Muğla" line in the first clause of its first article, through which, with the addition of Ordu, the number of provinces made metropolitans has risen to 14.

The general grounds for the Law states that the goals are to develop an efficient, effective, citizen oriented, accountable, participant, transparent and local to the extent possible and through development of this new administrative approach and service quality, increasing citizen satisfaction and also ensuring more citizen participation in public administration. At the same time, the grounds for said law state that planning and coordination failed and scale economies could not be utilized in areas with multiple local governments, resulting in wasted resources. The difficulty of small scale local governments with limited resources resolving increasing problems such as industrialization, transportation and environment has also been indicated, and in turn the necessity of strong administrative structures that can produce ideal services "on an optimal scale" with have municipal borders as administrative provincial borders in terms of administration, planning and coordination has been emphasized.

In addition to all these grounds, it has been emphasized that the latest metropolitan municipality had been established 12 years ago, and many social, economical and governmental changes had occurred in the period since and the establishment of metropolitan municipalities arises as a necessity.

### **3.2.2. The Scope of the Law No. 6360**

Law no. 6360, having come into force through publication on the Official Gazette on December 6, 2012, has started its implementation as of the local elections dated March 30,

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<sup>136</sup> Law no: 6447, Article 1

2014 and caused radical changes in local governments and provincial administration system. The metropolitan municipality experience, ongoing since 1984, has entered a new era and brought critical changes in important units of local governments. Regarding this topic, we will first focus on what kind of amendments and regulations this law includes and then review criticisms of said regulations as well as their contributions to decentralization.

Through this Law, the borders of metropolitan municipalities of Aydın, Balıkesir, Denizli, Hatay, Malatya, Manisa, Kahramanmaraş, Mardin, Muğla, Tekirdağ, Trabzon, Şanlıurfa, Van, Ordu cities have been turned into metropolitan municipalities, Adana, Ankara, Antalya, Bursa, Diyarbakır, Eskişehir, Erzurum, Gaziantep, İzmir, Kayseri, Konya, Mersin, Sakarya, Samsun have been expanded to the administrative provincial borders just like those of Istanbul and Kocaeli provinces. Aside from metropolitan municipalities, borders of all districts have also been arranged to include the administrative borders of these districts. The regulation executed in 2004, also known as the "Pergel Law", where metropolitans operate services within set radiuses, has been terminated with the new law.

The new Law removes the legal entity of town municipalities and villages including forest villages which reside within the borders of a metropolitan municipality, while at least one district is established in provinces to become metropolitan municipalities, provinces not receiving the metropolitan title see the legal entity of its towns with a population under 2.000 terminated. In this context, with the addition of the Ordu province, the legal entity of 30 Special Provincial Administrations, 1076 town municipalities and 16.500 villages have been retracted and towns within metropolitan municipality borders being included in district municipalities with their neighborhoods, and villages within said borders being included as such as neighborhoods, and towns with terminated legal entities in non-metropolitan municipalities being turned into villages has been stipulated. Special Provincial Administrations whose legal entities have been removed have been purged before the latest local elections alongside their town municipalities and villages. Other metropolitan municipalities outside Istanbul and Kocaeli and their affiliated administrations have been decided upon to set aside an amount from their investment budgets at least up to 10 percent for a period of 10 years to the infrastructure services for residence areas newly included within their municipality borders.

Villages and towns losing their legal entities and metropolitan municipality borders extending to administrative provincial borders has resulted in the need for certain regulations in the definition of the tasks of metropolitans regarding rural areas. With the delegation of tasks and responsibilities to metropolitans regarding rural areas, article 7 of Law no. 6360 has added to the Metropolitan Municipality Law no. 5216 the article "Metropolitan and District Municipalities may engage in any activity or services to support agriculture and stockbreeding".<sup>137</sup>

It is indicated that a certain increase will apply to funds allocated to administrations as a result of all these integrations. Substantial regulations have been enacted in shares to be transferred from general budget tax revenues. According to article 25 of this law, 1,50 percent of general budget tax revenues collection total is allocated to non-metropolitan municipalities, 4,50 percent to district municipalities in metropolitans and 0,5 percent to special provincial administrations. Also, excluding special consumption tax, 6 percent of the total general budget tax revenue collection total within metropolitan municipality borders and 30 percent of shares spared for district municipalities within metropolitans over the general budget tax revenue collection total is stipulated to be allocated as metropolitan municipality share. Article 26 indicates that while 60 percent of the above 6 percent metropolitan municipality share is transferred to the metropolitan municipality account, 70 percent of the remaining 40 percent is distributed to the population and 30 percent amongst metropolitan municipalities based on the surface area.<sup>138</sup>

According to Koyuncu's analysis of the subject, when comparing the current system and changes brought on by the new law, there are notable financial changes such as those below;<sup>139</sup>

- Increase of shares allocated for metropolitans from general budget tax revenues collected within the borders of a metropolitan municipality increasing from 5% to

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<sup>137</sup> YAYED, "Bütünşehir Kanunu Ne Getirmektedir?", 2012, <http://www.yayed.org/id287-incelemeler/buyuksehir-kanunu-ne-getirmektedir.php> (16.03.2013)

<sup>138</sup> On Dört İlde Büyükşehir Belediyesi ve Yirmi Yedi İlçe Kurulması ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun, Article 25

<sup>139</sup> Emre Koyuncu, "Yenilenen Yerel Yönetim Sisteminde Belediye ve İl Özel İdarelerinin Genel Bütçe Vergi Gelirlerinden Alacakları Payların Karşılaştırılmalı Analizi", *TEPAV*, 2012, p.3 [http://www.tepav.org.tr/upload/files/1352878676-4.Yenilenen\\_Yerel\\_Yonetim\\_Sistemi\\_Karsilastirmali\\_Analizi.pdf](http://www.tepav.org.tr/upload/files/1352878676-4.Yenilenen_Yerel_Yonetim_Sistemi_Karsilastirmali_Analizi.pdf) (22.03.2013)

6%, the share allocated for metropolitan municipalities being decreased from 70% to 60% and the addition of the surface area criteria in addition to the population criteria to factors implemented for the sharing of remaining sum amongst metropolitan municipalities,

– General budget tax revenue share of metropolitan district municipalities increasing from 2.50% to 4.50% and general budget tax revenue shares of other municipalities decreasing from 2.85% to 1.50% and in its distribution based on socioeconomic development index, the formation of municipality groups of equal population numbers aside from district groups of equal numbers,

– One thousandth of general budget tax revenues collection total being allocated as an equalization fund in the Ministry of Finances budget, to be used for municipalities with a population up to 10.000,

– Finally, share of special provincial administrations going from 1.15% of their general budget tax revenue to 0.05%.

While articles 14 and 15 of Law no. 6360 has added the line "neighborhoods with a population of less than 500 cannot be established within municipality borders" to article 9 of the Municipality Law, and the population criteria required for new town establishment through separation in places with a metropolis in article 12 has been reduced from 50.000 to 20.000.

Another change brought on by the new law is that forest villages whose legal entities have been retained despite residing within the borders of metropolitan municipalities have also had their legal entities taken away and transformed into neighborhoods. Article 16 of the Law states that,<sup>140</sup>

Rights, responsibilities and privileges provided to forest villages and forest villagers with legislation remain. These neighborhood residents and if applicable other title holders continue to benefit from locations such as meadows, summer and winter pastures used by villages, village affiliates and municipalities turned into neighborhoods by joining a municipality under the provisions of Pastures Law no. 4342 dated 25/2/1998.

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<sup>140</sup> Law no. 6360, Article 16

Another subject of note regarding Law no. 6360 is that the estate tax stipulated to be collected in accordance with the Real Estate Tax Law and taxes, fees and shares to be collected in accordance with the Law on Municipal Revenues from villages whose legal entities have been removed as of the execution date of the law cannot be collected for a period of five years. Additionally, it has been stipulated that fees for drinking and utility water in such places cannot exceed 25% of the lowest tariff for a period of five years. Said law has changed the tax foundation of metropolitan municipalities and imposed the necessity to receive less taxes from and bring more services to large rural areas. On the other hand, rural areas included in urban areas will be faced with new and high tax rates despite the stipulated five-year period.<sup>141</sup>

Another change we're faced with when comparing with the current law is that, while Article 14 titled duties and responsibilities of the municipality in Municipality Law no. 5393 states that,<sup>142</sup>

Metropolitan municipalities and municipalities with a population over 50.000 establish shelter for women and children", article 17 of the new law no. 6360 changes this statement to "Metropolitan municipalities and municipalities with a population over 100.000 are obligated to establish guesthouses for women and children. Other municipalities may also open guesthouses for women and children in light of their financial situation and service priorities.

Same article also cites that metropolitan and district municipalities can,<sup>143</sup>

when necessary provide in kind and in cash support to amateur sports clubs, provide with the decision of the city council awards to students, sportsmen, technical directors and trainers with outstanding success or degrees in national and international competitions" and once more as subject to city council decisions "may provide drinking and utility water to shrines at a discounted rate or free of charge.

The law has eliminated Special Provincial Administrations in provinces with 30 metropolitan municipalities, while not enacting any changes in non-metropolitan provinces. This has resulted in a dual structure. In this context, one of the most notable changes is the establishment of the "Investment Monitoring and Coordination Directorate" (IMCD), planned as a substitution for special provincial administrations removed from 30 provinces and expected to function as a control mechanism for central government.

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<sup>141</sup> Hüseyin Gül and Seda Batman, "Dünya ve Türkiye Örneklerinde Metropolitan Alan Yönetim Modelleri ve 6360 Sayılı Yasa", **Yerel Politikalar Dergisi**, V.1, N.3 (January-June 2013), p.35

<sup>142</sup> Law no. 6360, Article 14

<sup>143</sup> Ibid., Article 17

Article 34 of Law no. 6360 states that,

The Investment Monitoring and Coordination Directorate has been established under the governorship to actively perform, monitor and coordinate investment and services of public agencies and institutes, coordinate and perform emergency call, disaster and emergency aid services, promotion of the province, when required performing and coordinating investments of central government in rural areas, undertaking representation, ceremony, awarding and protocol services, guiding public agencies and institutes in the province and supervising all of the above. Working methods and principles of investment monitoring and coordination directorates are determined by the legislation released by the Ministry of Internal Affairs.

Administration of this directorate is performed by the governor or a deputy governor assigned by the governor.

"Coordination, supervision and monitoring and in emergencies actual performance of all aid and support provided by the central government is provided by the investment monitoring and coordination directorate."<sup>144</sup> It is thought that this article provides IMCD with a function as the provincial organizations of the central government and a control mechanism of central government and, harsh criticisms are made regarding this newly established unit based on the statement,<sup>145</sup>

In case where investments and services meant to be performed by public agencies and institutions in the province have been found by governor or relevant ministry to be hindered and this situation has negative effects on the health, peace and happiness of the public as well as public order and safety, the governor provides an appropriate period and requests the performance of these services and investments. In case of failure to perform service and investments in provided time period, the governor may request other public agencies and institutions in the province to perform these or have these performed through the investment monitoring and coordination directorate.

### **3.2.3. Criticisms on Law No. 6360**

Law no. 6360 has imposed significant and radical changes in local government and particularly in provincial administration systems and these changes have instigated many positive and negative criticisms.

Law no. 6360 has mostly been criticized under a negative light by the opposition and academia both in terms of methods and content. A regulation where deep seated changes such as terminating the existence of public administrative units, the basis for this law, being issued and executed without allowing the public, civil society organizations, academia and

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<sup>144</sup> Law no. 6360, Article 34

<sup>145</sup> Ibid.

opposition to discuss said law has been criticized in terms of methods and is argued to contradict the "citizen oriented", "transparent" and "participant" principles cited among the grounds for this law.

The subject of "optimal scale", often referred to by the Law and presented as one of the main instruments, is one of the disputable subjects. The Law emphasizes that this optimal scale is compliant with the tendencies in the modern world, and that reducing number of administrative levels and units and reaching an optimal administrative area in this manner is a coveted administrative reform practice; the opinion that this strives to obtain the most economical services and investments and attain "area and population optimization" is one of the positive criticisms.<sup>146</sup> Another perspective is that optimal scale is depicted as a population of 50.000 in literature and it thus appears difficult to provide efficient and effective services to cities of millions. One might argue that the law has resulted in the surfacing of a dual structure in the local government system. On the other hand it is thought that the incompatibility between the model stipulated by the law and the groundwork where the model is to be implemented may cause an even more complex structure and this complexity may result in interruptions and, let alone benefiting from a scale economy, cause waste of resources. The difficulty municipalities who currently already have capacity and resources problems and failed to provide efficient services even in their previous small scales are likely to have in providing efficient, economical and timely services on a larger scale is a notable factor. As long as financial concerns are not resolved, coordination of services will become more and more difficult as the scale increases and causes interruptions in services and increases in some service items. The increase in scale will cause an anti-democratic concentration of authority and thus centralization on a local level.

There are concerns regarding that provisions of this law may exceed the provincial administration system, particularly in metropolises. The removal of Special Provincial Administrations, an important part of the provincial system and providing the budget for said system, may debilitate provincial administration, the backbone of administrative government in Turkey, unless the created gaps are somehow bridged. With this aspect, the law may cause the weakening and loss of influence of organizations that are to implement the "objectivity of

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<sup>146</sup> Ökmen and Parlak, p.315

state and superiority of law" in the field. Weakening of the provincial administration system may induce difficulties in terms of attaining public order and cause local democracy to weaken as well.<sup>147</sup> While it was argued before the 2004-2005 reforms that Special Provincial Administrations should be closed down due to reasons such as these administrations having lost their functions and lack efficiency and effectiveness, this reform has suddenly brought on a substantial expansion of their tasks and authorities. Considering the small amount of time that has passed and the inability to fully measure the effects and conclusions of regulations enacted in said period, the sudden removal of Special Provincial Administrations in metropolitans gives the impression that scientific research and analysis was inadequate and consequences were not predicted when preparing these regulations.

Some authors indicate that with the law, if metropolitan municipalities, strengthened in terms of revenue, use the facilities of the Special Provincial Administration they have taken over well, this may result in better service provision for village and fields whom have received lesser services thus far and that shares transferred to municipalities from general budget tax revenues being distributed based on surface area instead of population is a positive innovation.<sup>148</sup> On the other hand, it is thought that this increase in the authority of metropolitan municipality mayors and municipality borders being expanded outside provincial administrative borders will increase the authority of the mayor and authority and powers concentrated in a single person will result in the weakening of local democracy and induce centralization on a local level.

It is discussed that closing down municipalities and turning villages into neighborhoods stipulates a model that intensifies centralization; and that the expansion of scale will cause an increase in controlling authority instead of aiding the development of democracy. Serious criticisms include that this new organization, allowing direct intervention of central government in local government, strengthens centralization and provincial assemblies comprised of elected persons influential in making decisions and preferences on

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<sup>147</sup> Ökmen and Parlak, p.317

<sup>148</sup> Ibid.



local investments being replaced by persons assigned by the government are in conflict with the decentralization principle of article 127 of the Constitution.<sup>149</sup>

Some argue that the law will provide housing integrity on a provincial scale and that this is a positive development. It is remarked that district municipalities' ability to resolve issues with the nearby metropolitan municipality instead of central government for large scale plans and planning and implementation in this manner will be considered as a whole with a new and expert approach.<sup>150</sup> On the other hand, while it is thought that extensive administration provides a productive foundation for the creation of an "integrated strategic plan" involving economical, social and cultural plans in addition to physical plans on a provincial level; it is also argued that these expectations may be fruitless considering problems experienced in the zoning applications field in the previous system.<sup>151</sup>

Another argument surfacing about the law is that this is a regulation that lays the groundwork for the Presidency system that the ruling party wants to replace the parliamentary system with. As grounds for this claim, it is argued that the presidential system cannot operate based on the current provincial administration system and deconcentration principle and requires state organization and that the changes invoked with the law create an administrative system suitable for this purpose.<sup>152</sup> It is often commented that as a result of the duties and responsibilities of Metropolitan Municipality Mayors expanding to provincial scale, provinces are moving into the presidential system and centralization principle is thus abandoned and de facto decentralization principle embraced, and that this situation constitutes an inconsistency to the Constitution. It is thought that this weakens the state's unitary structure and lays the groundwork for the presidential system. On the other hand, according to Keleş, the regulations imposed by laws no. 3030 and 5216 already grant a highly extensive authority to municipality mayors and it is wrong to perceive and present this as preparation for the presidential system. These authorities are those granted to metropolitan municipality

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<sup>149</sup> Mehmet Soğancı, "Büyükşehir Belediyesi Kanunu Değişikliği Üzerine Basın Açıklaması", 2012, p.1, [http://www.tmmob.org.tr/genel/bizden\\_detay.php?kod=8518&tipi=3](http://www.tmmob.org.tr/genel/bizden_detay.php?kod=8518&tipi=3), (17.04.2014)

<sup>150</sup> AK Parti Genel Merkezi Yerel Yönetimler Başkanlığı, "Sorular ve Cevaplarla Yeni Büyükşehir Belediye Yasası" 2012, p.13, [www.akparti.org.tr/.../akparti\\_buyuksehir\\_yasasi.pdf](http://www.akparti.org.tr/.../akparti_buyuksehir_yasasi.pdf), (02.06.2013)

<sup>151</sup> Ökmen and Parlak, p.316

<sup>152</sup> Birgül Ayman Güler, "Büyükşehir Kanunu İle Başkanlık Sisteminin Alt Yapısı Oluşturuluyor", 13.11.2012, [http://www.egeninse.com/88632-birgul\\_ayman\\_guler\\_buyuksehir\\_kanunuyla\\_baskanlik\\_sisteminin\\_alt yapisi\\_kurulacak\\_koyler\\_ranta\\_acilacak](http://www.egeninse.com/88632-birgul_ayman_guler_buyuksehir_kanunuyla_baskanlik_sisteminin_alt yapisi_kurulacak_koyler_ranta_acilacak), (24.04.2013)

assemblies and what matters is which objective factors define the desired scale when creating new metropolitan municipality models.<sup>153</sup>

The gravest criticism regarding the new law indicates that this law aims to covertly establish "Autonomous Regions". In this scope, it is argued that the law eliminates the partially democratic format of the provincial administration model through formation of new and assigned regional governments. On the other hand, it is also argued that purge of provincial assemblies elected democratically by the public and transfer of their tasks and authorities to governors assigned by the government expands the scope of the authority and tasks of governorships yet contradicts the "advanced democracy" argument.<sup>154</sup>

While it is argued that said regulation may introduce Turkey to regional administration and is a preparation for federalism, it is also thought that expansion of duties and authorities of governorships and metropolitan municipalities through legislative power indicates strengthening of regional administrations on a provincial level, which may over time pave the way to autonomy. It is argued that autonomy is not just the expansion of authorities and tasks of regional administration, but that while the number of metropolises increases from 16 to 30 in scope of this law, metropolitan municipalities are obtaining adequate financial sources for themselves through a 100% increase in the taxes collected from the public. Concerns exist that the ability of metropolitan municipalities to, according to law, seize parking lot revenues and impose additional taxes on the public for water, road, electricity and sewage services at their discretion may constitute grounds for regional autonomy.<sup>155</sup>

The established "Investment Monitoring and Coordination Directorate" is one of the most criticized practices. While IMCD is not a local government unit by its establishment and nature, it is thought that IMCD is also not part of a state legal entity and may cause schisms in administrative relations.<sup>156</sup> While it is remarked that IMCD renders assigned governors even more powerful and that this will cause an even stronger return of the "administrative tutelage" authority, IMCD being granted the authority to perform investments of central government in

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<sup>153</sup> Keleş, p.12

<sup>154</sup> Mehmet Çağırıcı, "Yeni Büyükşehir Belediyeler Yasası Ne Getiriyor?", 15.11.2012, <http://www.politikadergisi.com/makale/yeni-buyuksehir-belediyeler-yasasi-ne-getiriyor>, (24.05.2013)

<sup>155</sup> Karakılıç, p.205

<sup>156</sup> YAYED, "Büyükşehir-Bütünşehir Tasarısı Hakkında YAYED Görüşü", 2012, p.1 <http://www.yayed.org/uploads/yuklemeler/BSB-YAYED%20G%C3%B6r%C3%BC%5%9F%C3%BC.pdf>, (27.01.2013)

the field "when required" and perform tasks subject to the authority of other organizations "when they fail to fulfill their duties" is one of the developments that is a cause for concern. In this context, the concern that said unit will serve as an important instrument that increases the authority of central government to supervise local organizations is prevalent and it is remarked that this is an inconsistency to the Constitution and ECLSG and results in strengthening central government even further.<sup>157</sup>

The IMCD regulation also redefines powers of the governor and establishes a strong governorship office. This renders assigned governors stronger and more authorized than elected municipality mayors. An assigned public servant governing the directorate has paved the way for the prime ministry to provide control to ministries not through subsidiary organizations but directly through the directorate on a local level. No control mechanism currently exist that may prevent the governor and IMCD under his leadership to make political and biased decisions with services benefiting central government. Working methods of the directorate have not been defined by law and instead was opted to be determined by a directive.

The law also imposes changes in the borders of some metropolises and various criticisms have surfaced concerning this subject. Particularly the affiliation of neighborhoods such as Çayyolu, Ümitköy, Konutkent and Yaşamkent in Ankara, previously affiliated with Yenimahalle Municipality, with the Çankaya district and neighborhoods in Istanbul such as Ayazağa, Maslak and Huzur, previously affiliated with the Şişli district, being affiliated with the Sarıyer district instigates concerns that border changes in certain districts are an election investment and have political grounds. According to Keleş, the issuance of this regulation right before local elections and this new situation indicating that border changes will benefit the ruling party raises suspicions that this regulation is of a political nature and constitutes an election winning strategy by creating new voting regions.<sup>158</sup>

At this point, many comments have been made indicating that border changes are in inconsistency to the law and international treaties. Particularly concerning the statement "Borders of local governments shall not be changed without approval of local community

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<sup>157</sup> Karakılıçık, p.206

<sup>158</sup> Keleş, p.11

residing within such borders", cited in article 5 of the ECLSG and undisputed by Turkey, no referendum has taken place and local community has not been consulted in regions where border changes are applicable, and thus many criticisms exist in agreement that this situation constitutes an inconsistency to the Charter.

Criticisms also include that this law, by means of closing down town municipalities and removing village legal entities, terminates the decentralization practice and will create new central and strong regional governance points around certain metropolitan municipalities.<sup>159</sup> While the number of elected officers in metropolises was previously 100.000, due to the closing of provincial assemblies, town municipalities and village headmen, this number has reduced to 10.000. This creates a situation contradictory to the local participation principle. Another serious complaint regarding the law is that while assigned officers are granted strong tasks and authorities, the number of elected public servants decreases significantly. The idea that, contrary to the democratic government approach often cited in the law's grounds, the new regulation imposes anti-democratic practices is also often voiced.

Villages are local government units with deep historical roots and a functional and important status within the Turkish administration system. It is thought that agricultural and stockbreeding activities of peasant will be limited in villages whose legal entities have been stripped with the new regulation and that new financial obligations will cause further troubles for peasants in performing these activities. This will cause peasants, already in economic distress, to become even poorer. Considering the situation in our country, where immigration from villages to cities is already dominant and agricultural activities are proportionally shrinking, it must be considered that this may result in peasants selling their lands to abandon villages and the formation of many socio-economic problems as a result. Additionally, the stripping of legal entities of forest villages may result in peasants abandoning agricultural and stockbreeding activities due to increased financial liabilities and in the long term these fields becoming a means of profit.

On the other hand, it is argued that the termination of legal entities of villages with the new regulation results in natural resources, meadow lands considered to be common

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<sup>159</sup> Çağırıcı, p.1

property of villages to easily become tradable or a means of profit by zoning for construction; and problems with misuse of mines and natural resources may come to a head.<sup>160</sup>

Purging of villages and municipalities is incompliant with the principle of subsidiarity. This is due to the elimination of administration units closest to the public in the Turkish administration system and the execution of this change without consulting the public going against local democracy as well as violating the EU norms and European documents. The ECLSG, article 4: "Public responsibilities will be exercised generally and preferably by offices closest to the citizens". Article 5: "Borders of local governments cannot be changed outside of the extent of legislation and without consulting relevant local communities through a referendum where possible." European Urban Charter-II, article 13: "Cities and towns of Europe are responsible of creating an urban governance model that considers the new demands of democracy particularly concerning participation. These residences are assets for the democratic revival of our communities of which we are in dire need." As can be deduced from these citations, law no. 6360 contains critical inconsistencies of European Documents and standards.<sup>161</sup>

While public services are supposed to be provided by units closest to the public, this regulation distances the servicing unit from the public. The law undermines local democracy and will induce centralization in the local level through concentration of power in a single center. The regulation eliminates the divide between rural and urban and stipulates their governance from a single source. With the closure of town and villages, the already constricted participation of the public to government will be reduced to nil with extended distances (as regions where the distance between the village and center exceeds 200 km). This conflicts with the grounds for this law and contrasts the principles of subsidiarity and public participation in administration. There are also suspicious at this point whether public services can be operated in an efficient and effective manner.

Some of the criticisms involve that during the preparation of said law, a regulation stipulating such extensive changes in administrative system that influence such a large area

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<sup>160</sup> Güler, 2012

<sup>161</sup> M. Akif Çukurçayır, "Büyükşehir Yasa Tasarısı İdare Sistemini Tamamen Değiştiriyor", 18.10.2012, [http://www.zaman.com.tr/yorum\\_yorum-makif-cukurcayir-buyuksehir-yasa-tasarisi-idare-sistemini-tamamen-degistiriyor\\_2004032.html](http://www.zaman.com.tr/yorum_yorum-makif-cukurcayir-buyuksehir-yasa-tasarisi-idare-sistemini-tamamen-degistiriyor_2004032.html), (03.04.2014)

has not been shared with the public and issued without adequate discussion regarding the subject, which conflicts with principles of transparency and accountability.

It is under discussion at which extent the law complies with provisions of the Constitution regulating administration and local governments, and the law has been taken to the Constitutional Court with the claims that some provisions violate certain provisions of the Constitution. It is also thought that, aside from its ambiguity, the law also prevents citizens from attaining public services with equal opportunities due to the dual legal system it presents. It can be argued that the Constitution stipulates a central government based structure, and that central government is assigned as a general officer while local governments are rendered special officers within this structure; however law no. 6360 limits duties and authorities of central government to reduce its status to a special officer and assumes local governments as general officers, which is contradictory to constitutional principles.<sup>162</sup>

While the Constitution stipulates "special administrative methods for large cities", law no. 6360 stipulates a regulation where metropolitan municipalities will operate for the "entire province" outside of metropolises. Constitution also states that local administrations are comprised of 3 types as separate provinces, municipalities and villages and that elimination of legal entities of villages by law is an inconsistency to the Constitution. On the other hand, it is criticized that termination of entities of constitutional local governments without consultation of local public constitutes an inconsistency to the modern state and local government principles of the law and international treaties.<sup>163</sup>

Meanwhile CHP (Republican People's Party) has taken action for the termination of law no. 6360 in the Constitutional Court. As a result of the suit, Constitutional Court has decided upon the partial termination of law no. 6360; canceling 27 clauses of Law no. 6360 regarding that shares in expenses of construction, repair and expansion of roads which have yet to be deducted as of the date of execution of said law may not be collected by municipal assemblies, and rejected the rest of CHP's demands for termination.<sup>164</sup> After expanding on

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<sup>162</sup> Bülent Serim, "Bütünşehir Yasası Federal Sisteme Hazırlık mı?", Odatv, (13.11.2012), p.1

<sup>163</sup> Birgül Ayman Güler, "Anayasa Mahkemesi Daha Ne Kadar Bekleyecek?", Yön, 24.08.2013, p.1

<sup>164</sup> Sabah Gazetesi, "Anayasa Mahkemesi'nden İptal Kararı", 13.09.2013, <http://www.sabah.com.tr/Gundem/2013/09/13/anayasa-mahkemesinden-buyuksehir-karari>, (13.11.2013)

criticisms regarding the law, it would be beneficial to review what kind of contributions it indicates or fails to indicate for decentralization.

#### **3.2.4. Contributions to Decentralization of Law No. 6360**

The new law aims to take the reform efforts ongoing since 2002 a step further. Strengthening of local governments in scope of decentralization is naturally important, however the direct-indirect and positive-negative consequences of regulations should be thoroughly considered in the process of issuing reforms. Before a regulation as such that imposes extensive changes in the administrative structure of a country passes into law, technical evaluation and public discussions should take place and the requirements of a democratic administrative approach need to be exercised.

It would not be wrong to claim that the new stipulated system contains factors of concern in terms of participation and democracy. Of concern is the reduced participation of citizens in politics or government on a local basis, distance increasing within the participation mechanism and significant regression in terms of closeness to elected persons. When aiming for ensuring more efficient citizen participation in decision making mechanisms, ease and distance of participation have become difficult issues. This situation constitutes an inconsistency to the EU criteria, primarily the "closeness of service to citizens" principle known as "subsidiarity". There also exists an inconsistency to relevant articles of the ECLSG and The European Urban Charter. In its present state, it would be difficult to claim that the law serves "decentralization". Despite the expansion of authority, expansion of the scale alongside it will cause further troubles for persons living at a distance to municipalities where even in the current situation service provision is difficult to obtain any kind of public services. Particularly when considering the conditions of our country where dispersed residences exist and sometimes hundreds of kilometers span between the center and nearby districts and villages, it becomes difficult to speak of ensuring participation, efficiency and effectiveness and therefore decentralization. The law also grants excessive authority to metropolitan municipality mayors and assigned governors and may cause a loss of influence for district municipalities within metropolitan municipalities and instead of decentralization, encourage further centralization.

Many authorities believe that law no. 6360 comprised various shortcomings in terms of methods even at its draft state. Primary criticisms are about the law being sent directly to the Council of Ministers without a draft stage where the public could access, criticize and contribute to said law. Additionally, the model has been approved for application in all metropolises across the country without adequate discussion on whether Istanbul and Kocaeli implementations have been successful. It is believed that while the law closes and establishes organizations and imposes significant changes in the borders and resources of organizations, the effects of these changes on the budget have not been adequately calculated. In light of these developments, it can be observed that a political sense based on good governance principles does not exist.<sup>165</sup>

Two basic changes are particularly notable amongst all the developments considered in scope of the law. The first is that the entire area has been included within municipality borders with the removal of Special Provincial Administrations in provinces which are metropolitan municipalities, and in this context the difference between rural and urban has been eliminated in terms of service provision. The law closes down county municipalities in provinces which are metropolitan municipalities, villages in these locations transformed into neighborhoods, and municipalities in other provinces with a population under 2000 have been transformed into villages. Second concern is about the establishment of IMCD under the governor's authority in metropolitan provinces and the increase of governance capacities of governorships. Upon consideration of the consequence of these two basic changes brought on by the law in terms of democratic operation, participation and subsidiarity, one may argue that these two principles contradict each other in practice. This contradiction is that the governmental scale that requires efficient participation is not economical enough for the provision of certain services.<sup>166</sup>

A look at the practice once more emphasizes this contradictory situation. While, for example, principal documents such as ECLSG suggest decentralization and subsidiarity, one can on the other hand notice "regionalism" in Europe. The EU encourages its members to establish regional governments and decentralization and regionalism are considered to be

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<sup>165</sup> Emre Koyuncu and N. Tunga Koroğlu, "Büyükşehir Tasarısı Üzerine Bir Değerlendirme", (November 2012), p.2, [http://www.tepav.org.tr/upload/files/1352462517-9.Buyuksehirler\\_Tasarisi\\_Uzerine\\_Bir\\_Degerlendirme.pdf](http://www.tepav.org.tr/upload/files/1352462517-9.Buyuksehirler_Tasarisi_Uzerine_Bir_Degerlendirme.pdf), (21.01.2013)

<sup>166</sup> Ibid., p.2-3



complementary principles. While strengthening and delegating authority to local governments, countries have also established regional governments in order to resolve problems of scale and coordination. France, which Turkey takes after in its local administration structure, is a similar example to this case. Therefore practices which are seemingly contradictory are the consequence of the pursuit of a particular balance to the problems of participation/decentralization and scale/coordination. It is argued that these balancing efforts are risky in terms of excluding and even ignoring Regional Development Agencies including trade associations and similar civil actors from this process; suspicions on whether coordination issues in cities overly large in terms of surface area or population can be resolved with the metropolitan model on a provincial basis, and participation becoming even more troublesome while inter-municipal democratic participation mechanisms expand at the expense of lower organizations such as neighborhoods and that Turkey differs from European examples.<sup>167</sup>

Aforementioned pursuit for balance and region administrations cause concerns due to various reasons in the Turkey example and opinions exist on the stance that regulations of the law set out with the goal of decentralization can inevitably bring along regionalism and that this is a dangerous development in terms of Turkey's internal dynamics. A great number of people voice concerns that this may lead to a schism in the country due to its sociocultural and ethnic background.

According to Koyuncu, the law fails to provide content for increasing the capacity of local governments' ability to generate their own revenues and instead increases dependence on the center by increasing transferred shares.<sup>168</sup> We can argue that this aspect of the law induces local dependence on central government instead of decentralization.

General ground for law no. 6360 indicates that an administrative structure will be built which is more efficient and effective in terms of service provision and that this structure will ensure participation in democratic life. The law brings about significant changes in the administrative structure, financial system, political geography, representation and

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<sup>167</sup> Ibid., 3

<sup>168</sup> Emre Koyuncu, "Yenilenen Yerel Yönetim Sisteminde Belediye ve İl Özel İdarelerinin Genel Bütçe Vergi Gelirlerinden Alacakları Payların Karşılaştırmalı Analizi", (November 2012), *TEPAV*, [http://www.tepav.org.tr/upload/files/1352878676-4.Yenilenen\\_Yerel\\_Yonetim\\_Sistemi\\_Karsilastirmali\\_Analizi.pdf](http://www.tepav.org.tr/upload/files/1352878676-4.Yenilenen_Yerel_Yonetim_Sistemi_Karsilastirmali_Analizi.pdf), (21.01.2013)

participation, personnel structure, service provision and zoning and planning regulations. It is predicted that a reduction in rural population will have important consequences, the effects of which can only be clearly observed in the upcoming years.<sup>169</sup>

As a different approach to the subject, Güler claims that the law will induce neither decentralization nor centralization, and that the law serves the purpose of regionalism.<sup>170</sup> Meanwhile Keleş states that this regulation strengthens centralism on a local basis, that change concerning revenue distribution is a prime example of this situation and that this regulation goes against decentralization speeches the government has been defending for the past 10 years.<sup>171</sup>

It is arguable whether law no. 6360, due to its issuance without adequate technical discussions and full prediction of consequences to be borne by a majority of the regulations, causing serious suspicions in terms of transparency and accountability as important concepts within the decentralization process and unpredictable consequences in terms of efficiency, effectiveness and citizen oriented approach, can ever truly contribute to decentralization. Upon reviewing the discussions, as many authors have also stated, it would not be wrong to claim that concerns exist regarding the compliance of regulations with the internal dynamics of the country, compliance with international treaties and the Constitution and added problems in citizen participation and access to municipality services on a local basis.

Meanwhile, there are other legislation changes that strengthen centralization even more simultaneously with Law no. 6360. These regulations, which are particular concern to the public, include articles that will interrupt decentralization policies and strengthen centralization. While the law related to making change in Law no. 6532 MİT (National Intelligence Organization), which entered into effect after Law no. 6360, gave extraordinary authorizations to National Intelligence Organization and provide privileges to MİT members, Law no. 5651 brings new regulations related with internet and provides extraordinary authorizations to Telecommunication Communication Presidency (TİB). Mentioned

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<sup>169</sup> Ferit İzci and Menaf Turan, “Türkiye’de Büyükşehir Belediyesi Sistemi ve 6360 Sayılı Yasa İle Büyükşehir Belediyesi Sisteminde Meydana Gelen Değişimler: Van Örneği”, **Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi**, 2013, Vol.18, No.1, p.119

<sup>170</sup> Birgül Ayman Güler, “Bütünşehir Belediyesi TBMM Komiston Konuşmaları”, Ankara, 12.11.2012, p.142, <http://www.birgulaymanguler.net/files/BUTUNSEHIR.pdf>, (17.05.2014)

<sup>171</sup> Ruşen Keleş, “Anakentlerin Dünü, Bugünü ve Yarını”, **Kentsel ve Bölgesel Araştırma Sempoiumu-3**, 6-7 December 2012, Gazi Üniversitesi, Ankara.

legislative changes provide extraordinary authorizations to public enterprises and officials and pave the way for collecting the power in one hand, meaning center and strengthen the centralist structure even more.

In this framework, we cannot ignore new economic order in globalizing world. International economic order affects decentralization discussions on a large scale as well. In addition to developing technology and increasing communication possibilities; openness, transparency, accountability principles also gain importance. On the other hand, despite all these developments, the increase of domineeringness tendencies is also another observed development. Same situation is also valid for European countries. Increasing domineering tendency around the world shows itself in EU countries like Britain and France.

## CONCLUSION

In this study, decentralization process experienced in Turkey within accession process to the EU and the effect of The New Metropolitan Municipality Law no. 6360 on this process are examined. While doing this, basic concepts like centralization, decentralization and local government and subsidiarity are explained, how these concepts are present within legal legislation of Turkey are also examined. Then, the view of the EU on local governments and what type of principles gain importance within decentralization process being stated; while examining the expected changes in legal legislation and practices by the EU within the negotiation process started with Turkey are examined within the context of Accession Partnership Documents and Progress Reports. Lastly, legislative regulations made in Turkey on public administration and local government fields after 2002 are explained and basic research subject of the study, new Law no. 6360 is also examined. In this regard, the basis of the law and its possible changes along with its basic principles are explained, academicians and people, who are expert in this field, discussed over evaluations made on law text regarding critics towards the law and whether the law makes any contribution to decentralization process.

The need for continuous change and reform is felt in governing structures of all countries around the world in order to keep up with changing internal and external conditions. Increasing service quality and establishing citizen satisfaction constitute one of the basic functions of the state while having a political side and carry importance for the presence of the government. Centralization and decentralization are not applied separately in countries and both systems are integrated with each other. In certain countries, centralization gains weight while decentralization becomes dominant in others. This situation is affected by cultural and political history of those countries, while being shaped around socio-cultural structure and certain traditional elements.

In this framework, we cannot ignore new economic order in globalizing world. International economic order affects decentralization discussions on a large scale as well. In addition to developing technology and increasing communication possibilities; openness, transparency, accountability principles also gain importance. On the other hand, despite all these developments, the increase of domineeringness tendencies is also another observed

development. Same situation is also valid for European countries. Increasing domineering tendency around the world shows itself in EU countries like Britain and France.

Centralization and decentralization principles are applied together in Turkey but by administration tradition, centralization becomes more dominant. Bureaucratic structure and paperwork of centralization system make difficult to serve efficiently, timely and sufficiently. Thus, the chance experienced in administration structures in current conditions affects Turkey as well, arousing a need for restructuring due to internal and external triggering factors. Increasing population and fields requiring to get service along with accompanying problems cause central administration body to lose its efficiency, while local governments to gain importance together with centralization system. Even though centralist government understanding is efficient in Turkey, there has to be a coordinated working order between central and local governments and capacities of local governments have to be expanded and certain authorities and responsibilities have to be transferred to local governments, which are closer to people, in order to offer public services efficiently and in a modern manner according to needs and demands of the people. In this regard, the EU makes recommendations to Turkey in this direction and it is the strongest triggering external factor at the moment.

The EU supports decentralization process in its structure, while giving importance to local governments as well. In this context, decentralization is one of the building blocks of the EU, included frequently in legal documents and reports. Local and regional governments increase their weight and importance within integration process, while reaction force of central governments is expected to weaken. Within decentralization process, especially subsidiarity principle in international organizations and the EU side have an important place, being one of the basic administration principles in the passing years. As a result of the authorization-sharing problem of the EU, subsidiarity principle aroused as a tool to prevent excessive reaction and intervention to internal affairs of member states by the EU, to protect national sovereignty spaces of member states and people in local level and it is actually a stance against centralism. As part of the principle of subsidiarity, member and candidate states are expected to shape their administration structure so as to serve from the closest unit to the people by increasing the participation of people in the government. With the subsidiarity principle, the authorization is predicted not only to be transferred from central

administration to local governments but also to voluntary organizations like foundations and associations, occupational organizations and companies and in this regard, local governance is tried to be achieved.

The EU doesn't reveal a common administration structure on behalf of member states in order not to intervene to their internal affairs, while preferring common principles to be followed in administration through several reports and legal documents in order to establish consolidation in a democratic and participative ground. Member and candidate states are expected to shape their administration structures in the light of these principles. European Charter of Local Self Government (ECLSG) prepared by European Council, Maastricht Agreements, establishment of the Committee of the Regions, the Congress of Local and Regional Authorities are important developments in decentralization process, while SIGMA Report called European Principles for Public Administration and the study called White Paper published by European Commission defined basic principles which should be followed by member and candidate states within public administration system.

Turkey is expected to shape its administration structure in the light of relevant principles as it is a candidate state to the EU. In this regard, the EU expects Turkey to conduct certain reforms. In this framework, Turkey has brought several harmonization packages during the years, giving importance to these studies in the process started especially after Turkey's announcements as a candidate state in Helsinki Summit. The EU has published Accession Partnership Documents as a "road map" and Turkey has answered to this movement with National Programs and the progress and arrangements made by Turkey are evaluated through Progress Reports. In relevant documents, the EU lays importance on strengthening administration capacities of related local governments, weakening the control of central government on local governments, establishing and applying a democratic, participative, transparent, accountable and efficient administration understanding.

During the republic era of Turkey, for local governments field, many studies were made especially in planned development period. Setting off with the purpose of reform, several reports, government programs and development plans were prepared but these studies couldn't find area of practice. When Turkey has reached to the level of being candidate state to the EU and with the initiation of negotiation process, the importance of the studies and

regulations has increased considerably and these regulations are now expected to be successful in practice as well. In this framework, new legal regulations related to local governments have been made in Turkey especially after 2002. In this context, Turkey has targeted restructuring public administration and local governments around modern administration philosophy. In this purpose, a number of laws were enacted after 2002 including the Municipality Law no.5393, Metropolitan Municipality Law no.5216, Law on Special Provincial Administration no. 5302. Besides these, many other laws have been enacted and listed laws have great importance. Certain laws were vetoed by the President, while others were changed with new regulations without seeing whether they were successful or not in practice.

Law no. 6360, which is the last regulation in this field after legal regulations conducted in Turkey in public administration and local government fields after 2002, is one of the developments evaluated within the decentralization process of Turkey and it forms the basis of our study. There have been serious changes in metropolitan level in Turkey with the regulations made after 2002 and the laws put into effect in 2002, however more radical changes have been made with Law no. 6360 and 14 new metropolitan municipalities have been established, while closing down many village and town municipalities and ending provincial special administrations in cities with metropolitan municipalities. A single type of structure has been established in metropolises. The radical changes brought along caused many positive and negative criticisms and these were focusing on result point instead of their principles or purpose.

There are many criticisms related to the law, briefly these are; contradiction to European Charter of Local Self Government, contradiction to the unitary state principle of the Constitution, not being discussed sufficiently in front of public, preparation of territorial administration to presidency system, bringing strong mayors and one man system, possible separatism by paving the way for regional administration and federal system under the names of local self-government and local democracy, possible rent with the changes in zoning plan, taking vested rights of people from their hand without asking and possible burden on people living in villages, which are turned into neighborhoods with new financial difficulties, certain changes are made with political worries and vote expectations.

When we examine the changes brought by the law, it won't be wrong to say that it will excessively strengthen certain units of local governments, while totally removing others, however while doing all these changes without any consideration for balance, it may increase the tendency towards centralization under the name of decentralization. For example, units elected by the people are closed, while units like the Investment Monitoring and Coordination Directorate (IMCD), which is chaired by appointed administrators like the governor instead of elected ones, are being established. For the ground of the law, there is a claim that we couldn't benefit sufficiently from scale economy and cause waste of resources, thus by closing down sub-units of services and supplying efficient and coordinated service from single center. While increasing the scale is thought to make coordination easier (there is a thought for strengthening as well), on the other hand it makes difficult for people to efficiently participate and the practice of subsidiarity principle. While optimal scale has not been set forth, on top of it there are certain data like 50 km on optimal scale in the literature and even though there are municipalities with 50 km scale having difficulty in supply service to people, it will become much difficult for these municipalities to take service to distances increasing up to 250 – 300 km. Also, increasing service area is beyond the control power of many municipalities converted into metropolitan municipalities. On the other hand, making many cities with different structures and socio-cultural qualities single type and closing down units closer to people with the cause of scale economy are in contradiction with democratic administration understanding. The law changes and closes borders of many local governments. With the relevant change, there is a contradiction to European Charter of Local Self Government (ECLSG), where Turkey is also a side. Due to relevant condition, border changes cannot be made without a referendum participated by the people. However, there wasn't such a voting in the latest agreements, many villages and town municipalities were closed and changes were made in the municipal borders without even discussing sufficiently in front of the public. On the other hand, subsidiarity principles, which is referred frequently by the Charter is showed inconsistency and by closing down administration units closer to people, their participation possibilities are limited. With current condition, the law presents a reverse condition to democratic, participative, transparent administration principles as stated by the law. Maybe we will experience the biggest results of the law in this field. Due to socio-economic structure of Turkey, considerable part of the population lives in rural parts and if we consider that their living conditions are hard and transportation opportunities are limited, the



participation of the people to administration, which is already low, will become much lower. Also, new burdens are brought on people with local administration units, which are closed down, emerged or changed status.

Due to the contents of the law, there are questions whether it is prepared with the philosophy of “let’s experience and see” without thinking of the future too much in many fields and how to establish equality for citizens to reach to service with its double-sided law system, creating certain inconveniences for developing an efficient, equal administration practice. With metropolitan municipality borders expanding to provincial civilian borders, district municipalities are weakened and metropolitan municipalities have become as if they are regional authority with their increasing duties and responsibilities. It is thought that it may harm unitary state structure with its double-sided and parted structure. Also, despite claiming to have decentralization purpose, it is seen that subsidiarity principle, which is referred frequently by the EU is showed inconsistency, while democratic and participative administration understanding is becoming inefficient. Chaired by an appointed administrator like governor, a unit like Investment Monitoring and Coordination Directorate, which is equipped with serious rights, it may be possible to make direct and excessive interventions by the central government to service flow and possible problems. With its current condition, the law increase centralist tendencies and without any decentralization, it makes local governments to be centrally controlled much more than before.

With the law, radical changes have been made in local government system, which has an important place in Turkish administration system. Positive and negative results of the Law no. 6360, which came into effect after March 2014 election, changes should be made about the possible problems without any delay. A balanced service should be supplied to people according to their needs in growing residential areas with increasing duties and responsibilities. Coordination should be established between metropolitan municipalities and district municipalities and all work should be in the best interest of the people. Mayors and Governors, whose powers and responsibilities are increased with the law, should be prevented to act like one man according to their own interest and metropolitan municipality model, which has become single type, should be reconsidered by conserving socio-economic and cultural structures of cities.

Local governments in European countries are shaped over public welfare and the need for the services, when we look at the regulations in our country, we meet with subjective reasons and despite solving any problems at current condition, they may bring new problem areas. It may be beneficial if studies and legal regulations of the future should be conducted under these findings and lights within the framework of international administration principles with objective reasons, by considering demands and needs of the people.

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