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Local Governments in Turkey: identifying improvements and deficiencies through the lens of the European Charter of Local Self-Government

di Mattia Zeba¹

Sommario

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Abstract

Since the early 2000s, the Republic of Turkey has undergone significant reforms of its central and local administrative systems. These have been highly influenced, if not boosted, first by the legal framework of the Council of Europe and later by the accession process to the European Union. The European principles have indeed guided a general empowerment of local governments. However, last years have shown an 'authoritarian drift' of Turkish internal politics accompanied by an increase of power for the central government at the expense of weakened local institutions.

The essay analyses the structure and hierarchy of Turkish local governments, as well as its founding principles and evaluates its reformist efforts in the light of the principles contained in the European Charter of Local Self-Government, highlighting improvements and deficiencies with a chronological and evolutionary approach.

¹ Eurac Research - Institute for Minority Rights. Il presente lavoro è stato sottoposto a referaggio secondo la *double blind peer review*.

1. Introduction

Since the end of WWII, local authorities in Europe have increasingly gained political and legal recognition in national and international law. Indeed, the European institutional framework came forth as standard-bearer of local democracy: first, the Council of Europe (CoE) and then the European Union (EU) have given fundamental importance to decentralisation, codifying the principle of subsidiarity at international level. Furthermore, through the integration process and the accession procedures, European principles have spilled over to neighbouring countries, triggering reforms at social, political and administrative level.

In this context, Turkey has become prime example of how administrative reforms are shaped by historical, political and social factors of national or international origin. In fact, Anatolia has always been a bridge not only between two continents but also between two cultures: from the Ottoman Empire to the Turkish Republic, its political history has been tied both to that of the neighbouring Muslim countries and to Western Europe. For this reason, Huntington² classified modern Turkey as a “torn country”, that is, “a society which was Muslim in its religion, heritage, customs, and institutions but with a ruling elite determined to make it modern, Western, and at one with the West”. For this reason, Turkish administrative history has been marked by 'westernisation' since, at least, the nineteenth century, first influenced by the French system and most recently by European principles. Consequently, most of Turkish local institutions are shaped on the model of their European counterparts and Turkish administration consequently has partly abided

by European principles and rules, enhancing civil participation in local institutions and allowing locally elected organs to define their own policies according to their particular necessities.

Unfortunately, what seemed to be a sincere and effective step towards democracy and autonomy of local institution has been made void by the new authoritarian course of Erdoğan's AKP. This ideological shift has had repercussions at multiple levels, from international alliances down to local politics, which have severely compromised Turkish relations with Western countries.

The following analysis will first tackle the main theoretical principles that dominate the academic debate on local governance. It will then depict the current structure of Turkish local administration, describing each institution through its own reference law, outlining its internal architecture and listing its main duties. Finally, it will quantify the level of democracy and public participation in Turkish local authorities through the implementation of the European Charter of Local Self-Government (ECLG), open for signature in 1985 and ratified by Turkey in 1992. This will be useful not to examine the degree of Turkey's compliance with international legal instruments, but also to identify the main deficiencies of local institutions.

2. Theoretical principles

Before approaching the historical analysis of local governance in Turkey, it is fundamental to lay out some important concepts with regard to the relations between local and central institutions.

² S. P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, New York, 1996, p. 74.

2.1. General Principles

Decentralisation has been defined as “the process that contributes to the functioning of the principle of subsidiarity”³. Indeed, the sense and scope of decentralising efforts stem directly from the need of subsidiarity, intended as “the principle of the provision of public or urban services by an administrative body in the governance system closest to citizens demanding services”⁴. European institutions have been traditionally very sensible towards subsidiarity: CoE and EU have highlighted this principle as a core value in the European legal framework. In fact, Art. 4 Par. 3 of the ECLG establishes that

Public responsibilities shall generally be exercised, in preference, by those authorities which 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.

Furthermore, Art. 5 Par. 3 of the Treaty of the European Union (TEU – 2007) states that

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Member states have therefore relied on

³ H. Gül, *A Discussion on the New Model of Metropolitan Municipality in Turkey: Towards More Decentralisation and Autonomy?*, in K. Göymen, O. Sazak (eds.), *Centralization Decentralization Debate Revisited*, Istanbul, 2013, pp. 347-373, at p. 352.

⁴ Ibid.

decentralisation to implement subsidiarity in their national systems. However, this does not mean that decentralising measures are univocal and homogeneous. Rondinelli⁵ and Cariño⁶ distinguish between four different forms of decentralisation policies:

i. *Deconcentration*: It refers to the territorial shift of workload and some authority from centre to lower levels within a centralized administrative structure.

ii. *Delegation and intergovernmental contracting*: They refer to the transfer of managerial responsibilities for specifically defined functions to public enterprises or special purpose organizations outside the directly controlled regular bureaucratic out the functions and duties given to them. They often act as the agents of local or central government and indirectly controlled by the centre. The government continues to hold ultimate responsibility for these functions and duties. [...]

iii. *Devolution*: It refers to the establishment or empowerment of autonomous local authorities separate from the central government. These local government units have authority to perform necessary functions to meet the needs of their communities.

iv. *Privatization or contracting-out to private sector*: In this type of decentralization some of the governmental functions are carried out either by contracting out to the private sector or by

⁵ D. Rondinelli, *Government Decentralization in Comparative Perspective: Theory and Practice in Developing Countries*, in *International Review of Administrative Science*, 47(2), Brussels, 1981, pp. 133-145.

⁶ L. Cariño, *Five Alternative Forms of Decentralization of Services*, in R. J. Bennett (ed.), *Local Government and Market Decentralization: Experiences in Industrialized, Developing, and Former Eastern Block Countries*, New York, 1994, as cited by H. Gül, *A Discussion on the New Model of Metropolitan Municipality in Turkey*, cit., p. 352-353.

establishing partnerships between the private and public sector.

Furthermore, decentralisation can be categorised in relation to its aims. Wolman⁷ distinguishes between political, administrative and economic decentralisation: political decentralisation means “the dispersal of policy-making or decision-making power”; administrative decentralisation refers to “the delegation of administrative discretion to make some decisions at the lower levels of government without the approval of the centre”; finally, economic decentralisation “is related the use of the market mechanism to provide services to citizens”. Similarly, Treisman⁸ identifies three types of decentralisation:

1. Administrative decentralization: At least one policy is implemented not by the central government directly but by locally based agents appointed by and subordinate to the central government. The agents are appointed by and subordinate to the central government. The agent has no right to overrule the central government’s instructions or appeal them to some other body
2. Political decentralization: This can be realized by reducing the scale of government, which in turn increases citizen participation and cultivates civic virtue. It also enhances electoral accountability because voters have better information about local and central government

⁷ H. Wolman, *Decentralization: What It is and Why We Should Care*, in R. J. Bennett (ed.), *Decentralisation, Local Governments, and Markets: Towards a Post Welfare Agenda*, Oxford, 1990, as cited by H. Gül, *A Discussion on the New Model of Metropolitan Municipality in Turkey*, cit., p. 353.

⁸ D. Treisman, *The Architecture of Government: Rethinking Political Decentralization*, Cambridge, 2007, as cited by T. Köroğlu, *The Problem of Scale in Local Governments*, in K. Göymen, O. Sazak (eds.), *Centralization Decentralization Debate Revisited*, Istanbul, 2013, pp. 292-305, at 293-294.

performance. Furthermore, dividing responsibilities among multiple levels makes it easier for voters to attribute credit or blame among them, and voters in small groups can coordinate better on a voting strategy.

- a. Decision-making decentralization: At least one subnational tier of government has exclusive authority to make decisions on at least one policy issue.
 - b. Appointment decentralization: Government officials at one or more subnational tiers are selected and appointed by residents of that government’s jurisdiction, independent of higher-level governments.
3. Fiscal decentralization: Decision-making decentralization on tax or expenditure issues. Subnational governments account for a large share of total government revenues or spending.

However, decentralisation must not be confused with the autonomy enjoyed by sub-entities, which is in fact a consequence of the decentralisation process. Wolman & Goldsmith⁹ define local autonomy as “the ability to act independently from supervision of a central administration and the capacity to self-govern, without feeling the need for central government, while at the same time fulfilling local duties and responsibilities in the systems where decentralization was accepted as a principle”.

Following the conceptual path that stems from the subsidiarity principle and finds its goal in the autonomy of local institutions, Nalci Aribaş, Karatepe & Kiliç¹⁰ have identified what they

⁹ H. Wolman, M. Goldsmith, *Urban Politics and Policy: A Comparative Approach*, Oxford, 1992, as cited by B. Parlak, M. Z. Sobaci, M. Ökmen, *The Evaluation of Restructured Local Governments in Turkey within the Context of The European Charter on Local Self-Government*, in *Ankara Law Review*, 5(1), Ankara, 2008, pp. 23-52, at 26.

¹⁰ N. Nalci Aribaş, S. Karatepe, Ö. Kiliç, *A review of*

call “steps of subsidiarity”: “a) Devolution of the authority from centre to different local units; b) Determinate authority for central government; c) Public services proportionally closer to citizens; d) Decision-making as close to the citizen as possible; e) Specialization of some services; f) Powerful elected leader; g) Enhance the capacity of local administration; h) Autonomous local governments”. However, it is very unlikely that central governments are prone (or even prepared) to strictly follow this path: in most of the cases, local governance is a combination of some of these steps in a non-consequential succession.

2.2. Principles of Turkish Public Administration

The main constitutional principles of Turkish public administration are the principle of integral unity of the administration; the principles of centralisation and decentralisation; and the principle of devolution of wider powers.

The principle of integral unity of the administration aims at the integrity of public entities: Art. 123 of the 1982 Turkish Constitution¹¹ states that “the administration forms a whole with regard to its structure and functions”. In order to achieve this unity, local administrations are put under the tutelage of central government, as established by Art. 127: “The central administration has the power of administrative tutelage over the local administrations in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the

integrity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs properly”.

Art. 123 also establishes that “the organization and functions of the administration are based on the principles of centralization and decentralization”. The central or ‘general’ administration has the aim of providing services throughout the whole country and is organised in the form of capital administration and its local branches in the provinces. As stated in Art. 127, the local or ‘special’ administration refers to “public corporate bodies established to meet the common local needs of the inhabitants of provinces, municipal districts and villages, whose principles of constitution and decision-making organs elected by the electorate are determined by law”.

Finally, the principle of devolution of wider powers (Art. 126) or deconcentration refers to the delegation of some duties from central to local level and “authorizes governors and senior officials of the provincial branches of central administration to take and implement decisions on certain issues”¹².

3. Current Basic Legal Framework

The basic legal framework for Turkish local administration consists of those reference laws that regulate the functioning and competences of local branches of central administration and local administrative units. The former are governed by the principle of devolution of wider powers, being therefore extensions of the central government: they are Regional Organisations and Provincial Organisations, including also District and Sub-District Administrations. Local

Turkey’s “New Metropolitan Municipality Law in Terms of the Subsidiarity Principle, in Humanities and Social Sciences Review, 3(3), New Britain, 2014, pp. 173-180, at 176.

¹¹ The Grand National Assembly of Turkey, *Constitution of the Republic of Turkey*, 7 November 1982.

¹² N. Kapucu, H. Palabiyik, *Turkish Public Administration: From Tradition to the Modern Age*, Ankara, 2008, p. 108.

administrative units are governed by the principle of decentralisation and are therefore local governments: they can be divided into Special Provincial Administrations (SPAs), Metropolitan Municipalities, Municipalities, Villages and, to some degree, Neighbourhoods (*mahalle*).

3.1. Local Branches of Central Administration

3.1.1. Regional Organisations

As established by Art. 126 of the Constitution, “central administrative organizations comprising several provinces may be established to ensure efficiency and coordination of public services”.

Law #5449 of 2006 sets out “the principles and procedures regarding the establishment, duties, authorities and coordination of the Development Agencies” (Art. 1), which “shall be established by the decision of the Council of Ministers upon the proposal of the Minister responsible for the State Planning Organization on the basis of regions” (Art. 3). Regional Development Agencies have, among others, the duty “to improve the cooperation between public sector, private sector and non-governmental organizations; to provide the efficient usage of resources in appropriate location; to accelerate the regional development in harmony with national development plans and programs by activating the local potential; to ensure the sustainability; and to minimize the inter- and intra-regional development differences”¹³. RDAs are composed of a Development Council, an Administrative Board, a General Secretariat and Investment Support Offices (Art. 7). The Development Council “shall

be established in order to enhance the cooperation among public institutions, private sector, non-governmental organisations, universities and local governments in the region and to direct/guide the agency”; with regard to its structure, it “shall be composed of maximum 100 members representing the provinces in a balanced way” (Art. 8). The Administrative Board has, among others, the duty “to accept the annual work programme and submit it to the Under-secretariat of State Planning Organisation for approval, to revise the budget according to the needs during the year, to approve annual financial report and the results of final budget, to submit six-month interim report and annual activity report to the Under-secretariat of State Planning Organisation, to approve the budget of the Agency and submit it to Under-secretariat of State Planning Organisation, to approve the proposals concerning giving support to the programmes, projects and activities submitted by the General Secretariat and the aids to individuals and organisations” (Art. 11); its structure however differs in relation to the size of the Agency (Art. 10):

In the regions composed of one province, Administrative Board consists of governor, mayor of metropolitan municipality, Chairman of the Provincial Council, Chairman of the Chamber of Industry, Chairman of the Chamber of Commerce and three representatives of private sector and/or NGOs who are selected by Development Council; in the regions composed of more than one province, it consists of governors of all the provinces, mayors of metropolitan municipalities or mayors of provincial municipalities where there is no metropolitan municipality, Chairman of the Provincial Council and Chairmen of Chambers of Commerce and Industry as one for each province.

¹³ Y. Toktaş, H. Sevinç, E. Bozkur, *The Evolution of Regional Development Agencies: Turkey case*, in *Annales Universitatis Apulensis Oeconomica*, 15(2), Alba Iulia, 2013, pp. 670-681, at 675.

The General Secretariat is “the executive body of the Agency” (Art. 12) and it is headed by the Secretary General; its main duty is that to implement the decisions of the Administrative Board. Finally, Investment Support Offices are composed of “maximum five experts, one of which is coordinator” and “shall be established in the provinces of the region with the decision of the Administrative Board” (Art. 6); their main duty is “to follow and coordinate centrally the permission and licence transactions of investors in private sector” (Art. 16).

However, RDAs have shown various structural problems that impair their functioning and effectiveness. Financial resources allocated to RDAs are not sufficient for the fulfilment of their duties and RDAs are therefore little more than an agency of the Ministry of Development, abiding to a centralist structure and mentality. In order to be successful instead, they “should work independently from central, local and regional managements, mobilize the potency of region and devise site-specific projects about providing developments in social, cultural and economic fields”¹⁴.

3.1.2. Provincial Organisations

As established by Art. 126 of the Constitution, “in terms of central administrative structure, Turkey is divided into provinces on the basis of geographical situation, economic conditions, and public service requirements; provinces are further divided into lower levels of administrative districts”.

Law #5442 of 1949 regulates the functioning of

¹⁴ P. Savaş-Yavuzçehre, *A Comparative Analysis Of The Regional Development Agencies In Europe And Turkey*, in *European Scientific Journal*, May 2016 Special Edition, pp. 357-370, at 368.

provinces (*vilayets*) and other lower civil administrative units, i.e. districts (*ilçe*) and sub-districts (*bucak*), providing guidelines for the establishment, abolishment and naming of these institutions.

The main organs of provincial administration are the Governor, the Provincial Administrators and the Provincial Administration Council. The Governor is appointed by the Council Of Ministers after nomination by the Ministry of Interior and after the approval of the President of the Republic. He is the head of both general and special administration and therefore the highest agent of central administration in the province (Art. 9). Although he acts as representative of the Ministry of Interior, “he is the administrative superior of the officials of other ministries employed in the province” and consequently “responsible for directing and coordinating the work of [...] the national ministries and agencies with the exception of judges, public prosecutors of the Republic, military units, plants and institutions”¹⁵. All communiques have to go through governor's office, since his main duty is to maintain harmony between central and local government services. Each province hosts the headquarters of central Ministries, whose heads are the Provincial Administrators: e.g. the National Education Provincial Administrator, the Health Provincial Administrator, the Security Provincial Administrator, the Agriculture Provincial Administrator, etc. They are appointed by the respective Ministry after consultation with the Governor, from whom they receive orders and to whom they are responsible. Provincial Administrative Councils are an adjunct agency of the Governor and include “provincial administrators of legal affairs, public

¹⁵ A. Polat, *The Turkish Province as an Administrative Division of Central Government*. Ankara, 1973, p. 58.

works, health, agriculture, and veterinary”¹⁶.

District administration mirrors the structure of provincial administration. Except for the central district of the province, which is directly administered by the provincial governor, each other district is composed of a District Governor (*kaymakam*), District Administrators and a District Administrative Council: their appointment and duties are also the same as in provincial administration, but at a lower level of authority.

Finally, sub-district administration comprises the head of the sub-district, a sub-district assembly and a sub-district commission. They are not established by law, but by an administrative decision of the Ministry of Interior and after approval of the President. However, “in practice no sub-districts are established today and no new appointments are made for any vacant position of head of a sub-district”¹⁷.

3.2. Local Administrative Units

3.2.1. Special Provincial Administrations

Until the introduction of Law #6360 of 2012 on Metropolitan Municipalities, SPAs had been the largest kind of local administration unit. In any case, they are the highest administration tier in those provinces where they are still in place.

SPAs are regulated by Law #5302 of 2005, which defines them as public entities “having administrative and financial autonomy, established to meet the common local needs of the people in the province and whose decision-making body is elected by voters” (Art. 3). SPAs provide a wide range of services which are considered of “local and common nature” (Art. 6):

¹⁶ N. Kapucu, H. Palabiyik, *Turkish Public Administration*, cit., p. 121.

¹⁷ Ibid.

[Within provincial boundaries] a) services that are related to youth and sports, health, agriculture, industry and trade; except for those metropolitan municipalities whose boundaries are the boundaries of the province, provincial environmental plan, public works and settlement, conservation of soil, prevention of erosion, culture, arts, tourism, social services and aids, provision of micro credits to the poor, day care centres and orphanages; provision of land-lots to primary and secondary education institutions, construction, maintenance, and repair work of the buildings, as well as services to respond to other needs within the boundaries of the province;

[Outside municipal boundaries] b) services that are related to land development planning and control, road, water, sewer, solid waste, environment, emergency aid and rescue (...); supporting the forest villages, forestation, establishment of parks and gardens outside the municipal boundaries.

Organs of the SPAs are the General Provincial Council, the Provincial Executive Committee and the Governor. The General Provincial Council is the decision-making body of SPAs, whose members are directly elected by the citizens of the province. Their main duties are listed in Art. 10: among others, to deliberate and adopt the strategic plan, investment and work programs and performance criteria for activities and staff of the SPA; to adopt the budget and final accounts; to elect the members of the provincial executive committee and specialist commissions; to adopt regulations to be issued by the SPA; etc. The General Provincial Council shall also elect “from among its own members by balloting the council chairman, the first deputy chairman, the second deputy chairman and four secretaries, two of whom are alternates for a term of office covering

the first two years; the chair committee elected after the first two years shall remain in office until the first nationwide local elections” (Art. 11). The General Council can finally elect a specialist commission comprising three to five members (Art. 16). The Provincial Executive Committee is chaired by the Governor and consists “of five members to be elected by the general provincial council every year from among its own members by balloting for a period of one year, and five members to be selected by the governor every year from among the heads of units one of whom shall be the head of the fiscal services unit” (Art. 25). Its main duties are, among others, to review the strategic plan, the annual work program, the budget and the final accounts and inform the general provincial council of its opinion. (Art. 26). Finally the Governor is the head of both general and special provincial administrations “and representative of [SPA] legal entity” (Art. 29). His duties are listed in Art. 30:

- a) As the top administrator of the special provincial administration, govern the organization of the special provincial administration and protect the rights and interests of the special provincial administration;
- b) Govern the special provincial administration in accordance with the strategic plan, formulate the institutional strategies of the special provincial administration, prepare, implement, monitor and appraise the budget and the performance criteria for activities and staff of the special provincial administration in accordance with such strategies, and submit reports on such subjects to the general provincial council;
- c) Represent, or appoint a deputy to represent, the special provincial administration with government offices, at State ceremonies and

before the judicial authorities whether as claimant or respondent;

d) Chair the provincial executive committee; [...]

h) Implement the resolutions of the general provincial council and the executive committee;

i) Implement the budget, and approve budget transfers that lie outside the purview of the council and executive committee;

j) Appoint the special provincial administration’s staff; [...]

o) Perform duties and exercise powers as conferred by laws on the special provincial administrations which do not require resolutions by the general provincial council or the provincial executive committee.

The second most important figure of SPAs is the Secretary General, which is appointed by the Ministry of Interior upon proposal of the governor and “shall arrange and execute the services of the special provincial administration on behalf of and in accordance with the directives of the governor and pursuant to the provisions of the legislation, resolutions of the general provincial council and executive committee, goals and policies of the special provincial administration, the strategic plan and the annual working program” (Art. 35).

SPAs are subject to internal and external supervision, covering “the legal compliance of acts, and financial and performance auditing” (Art. 38). Furthermore, the Governor “shall draw up an activity report [...], indicating the activities conducted in accordance with the strategic plan and the performance goals, the goals and the extent of their achievement against the performance criteria determined and the reasons for any deviations therefrom” (Art. 39).

The budget of SPAs is prepared in accordance with the provincial strategic plan, while “the

governor and other officials with disbursement power shall be accountable for spending the budget appropriations efficiently, economically and appropriately” (Art. 44).

Lastly, Art. 42 lists SPAs' main revenues:

- a) Taxes, duties, charges and contributions for the special provincial administration stipulated in laws;
- b) Apportionment of tax revenues under the general budget;
- c) Payments made by authorities funded under the general and special budgets;
- d) Revenues obtained from lease, sale and other uses of movable and immovable property;
- e) Fees to be collected for services provided, according to the fee schedules determined by the general provincial council;
- f) Revenues from interest and fines;
- g) Donations;
- h) Revenues obtained through enterprises, shareholdings and activities of all kinds;

3.2.2. Metropolitan Municipalities

Law #5216 of 2004, as amended by Law #6360 of 2012, constitute the reference law governing the establishment and organisation of Metropolitan Municipalities in Turkey. Art. 3 of Law #5216, as amended by Art. 4 of Law #6360, defines a Metropolitan Municipality as “a public entity having administrative and financial autonomy whose boundaries are provincial boundaries, providing coordination between municipalities within the borders of the province, discharging its statutory duties, responsibilities and exercising statutory powers, and whose decision-making body is elected by voters”. Second-tier municipalities are defined as “a district municipality located within the boundaries of a metropolitan municipality” (Art. 3, Law #5216). Art. 5 of Law #6360, amending Art. 4 of Law #5216, establishes that provincial municipalities

in provinces with a total population of more than 750.000 may be converted into metropolitan municipalities by law. Main duty of metropolitan municipalities is that of preparing the metropolitan municipality’s strategic plan, annual goals, investment programs and, accordingly the budget (Art. 7, Law #5216). According to the same provision, district municipalities “exercise duties and powers other than those conferred by laws solely on metropolitan municipalities and those listed in the first paragraph”.

Metropolitan municipalities' organs are the Metropolitan Council, the Metropolitan Executive Committee and the Metropolitan Mayor. The Metropolitan Council is “the metropolitan municipality’s decision-making body and comprise members elected according to the principles and procedures provided for by the relevant law” (Art. 12, Law #5216). The Council is chaired by the Metropolitan Mayor, whereas district mayors are its natural members. Furthermore, the Metropolitan Council can set up specialist commissions “of five to nine persons from among its own members” (Art. 15, Law #5216). The Metropolitan Executive Committee “to be chaired by the mayor, shall comprise five members elected by the metropolitan council by balloting from among its own members for a term of one year, and five members appointed each year by the mayor from among the heads of units where such appointees shall include the secretary general and the head of the fiscal services unit” (Art. 16, Law #5216). Finally, the Metropolitan Mayor is the head of the Metropolitan Municipality and represents its legal personality; he is elected directly by the voters residing within the boundaries of the metropolitan municipality (Art 17, Law #5216). According to the following provisions the

Metropolitan Mayor has, among others, the following duties:

- a) As the top administrator of the municipal administration, govern the municipal organization and protect the rights and interests of the city and the municipality;
- b) Govern the municipality in accordance with the strategic plan, formulate the municipality's institutional strategies, prepare, implement, monitor and appraise the budget and the performance criteria for municipal activities and staff in accordance with such strategies, and submit reports on such subjects to the municipal council;
- c) Chair the metropolitan council and executive committee and implement their decisions;
- d) Take the necessary steps to ensure that the duties and services required of the metropolitan municipality by this Law should be performed in an effective and efficient manner;

Metropolitan Municipality Administration consists of "the General Secretariat, divisions and branches": the Secretary General and his assistants "shall manage the metropolitan municipality services on behalf of the mayor under his instructions and responsibility in accordance with the laws and regulations and with the municipality's goals, policies, strategic plan and annual programs" (Art. 21, Law #5216). Lastly, Law #5216 lists in Art. 23 revenues of metropolitan municipalities, which ranges from entertainment taxes to parking fees.

3.2.3. Municipalities

Law #5393 of 2005 defines a municipality as "a public entity having administrative and financial autonomy, which is established to meet common local needs of inhabitants of a town and whose decision-making body is elected by voters" (Art.

3). Municipalities can be established in settlements with a population of 5,000 or more and at provincial and district centres; villages can combine and form a municipality, provided that "their residential areas [are] located no farther than 5,000 metres away from the residential area of the settlement which is to be deemed the centre and have a total population of 5,000 or more" (Art.4). Towns, villages or parts of them can merge into another town if the distance of their residential areas to the residential area of the town to be merged is not greater than 5,000 metres (Art. 8). Law #5393 also provides for the termination of municipalities' legal personality: Art. 11 establishes that "if the residential area of a municipality or village is located less than 5,000 metres from the boundary of the provincial municipality or district municipality to which it is attached or from the boundary of a municipality with a population of 50,000 or more, and if the general land development scheme or basic infrastructure services so require, the legal personality of that municipality or village shall be terminated and the municipality or village shall be merged into the larger municipality by a joint decree upon a proposal from the Ministry of Interior after consulting the opinion of the Council of State"; furthermore, "municipalities whose population falls below 2,000 shall become villages by a joint decree upon a proposal from the Ministry of Interior after consulting the opinion of the Council of State". The main duties of municipalities are listed in Art. 15:

- a) Engage in activities and initiatives of all sorts to meet the common local needs of the town's inhabitants;
- b) Within the municipality's statutory purview, issue regulations, impose and enforce municipal bans and impose statutory penalties;

- c) Issue statutory permits and licenses relating to the activities of natural and legal persons;
 - d) Assess, accrue and collect the municipal taxes, duties, charges, fees and contributions pursuant to special laws; collect or cause to collect payments other than taxes, duties and charges which are to be collected for natural gas, water, sewer and other services under private law provisions;
 - e) Without prejudice to vested rights, supply potable, utility and industrial water; ensure the disposal of waste water and rainwater; establish or cause to establish and operate or cause to operate necessary facilities for that purpose; and operate or cause to operate springwater facilities;
 - f) Provide public transport, and to this end, establish or cause to establish and operate or cause to operate public transport systems of all sorts, including buses, maritime and waterway vessels, underground systems and rail systems;
 - g) Provide or cause to provide all services relating to the collection, transport, sorting, recycling, disposal and storage of solid waste;
- [etc.]

Municipal organs are the Municipal Council, the Municipal Executive Committee and the Mayor. The Municipal Council is “the municipality’s decision-making body and comprise members elected according to the principles and procedures provided for by the relevant law” (Art. 17). Among its duties, it shall “deliberate on and adopt the strategic plan, investment and work programs and performance criteria for municipal activities and staff; adopt the budget [...]”; and “deliberate on and approve the municipality’s land development plans [...]” (Art. 18). Furthermore, the Municipal Council have the power to “elect the chair committee of the municipal council and the members of the executive committee and specialist commissions”; to “adopt regulations to be issued

by the municipality”; and to “decide to form unions with other local governments and join or withdraw from existing unions of this kind” (Art. 18). Finally, the Municipal Council also elects the Chair committee (Art. 19) and can set up specialist commissions of three to five persons from among its members (Art. 24). The Municipal Executive Committee is composed of five to seven members (according to the size of the municipality) from among the Municipal Council, the Fiscal Services Unit and the heads of units (Art. 33). As laid out in Art. 34, the Municipal Executive Committee have, among others, the power to “review the strategic plan, the annual work program, the budget and the final accounts and inform the municipal council of its opinion”. Finally, the Mayor is “the head of the municipal administration and represent its legal personality” (Art. 37). Its main duties, as listed in Art. 38, are the following:

- a) As the top administrator of the municipal administration, govern the municipal organization and protect the rights and interests of the municipality;
 - b) Govern the municipality in accordance with the strategic plan, formulate the municipality’s institutional strategies, prepare, implement, monitor and appraise the budget and the performance criteria for municipal activities and staff in accordance with such strategies, and submit reports on such subjects to the municipal council;
 - c) Represent, or appoint a deputy to represent, the municipality with central government offices, at State ceremonies and before the judicial authorities whether as claimant or respondent;
 - d) Chair the municipal council and executive committee;
- [...]
- h) Implement the resolutions of the municipal

council and executive committee;

i) Implement the budget, and approve budget transfers that lie outside the purview of the council and executive committee;

j) Appoint municipal staff;

k) Oversee the municipality and affiliated entities and municipal enterprises;

[...]

p) Perform duties and exercise powers as conferred by laws on municipalities which do not require resolutions by the municipal council or the municipal executive committee.

The Mayor also appoints a deputy mayor among the municipal councillors “to act for him in periods of leave, sick leave or absence on any other reason” (Art. 40) and is vested with the responsibility of drawing up the strategic plan in accordance with the development plan and program and with the regional plan if any, before submitting it to the municipal council; furthermore “he shall likewise draw up the annual performance program and submit it to the council” (Art. 41).

3.2.4. Villages

Village administrations are the oldest basic unit of Turkish local administration. Traditionally, villages are settlements which cannot acquire or still have not acquired municipal status: for this reason, their population is generally under 5,000 and over 150. Reference law for village administration is Law #442 of 1924, which defines their tasks, powers, organs and revenues. Organs of villages are the Village Society, the Council of Elders and the *mukhtar*. The Village Society consists in “voters who have resided in the village for not less than six months and who are older than 18 years” and “elects the council of elders’ members and the mukhtar directly from

among its members”¹⁸. The Council of Elders fulfils executive and decision-making functions, takes decisions on the enforcement of laws and monitors discussions. Village Law distinguishes between natural and elected members of the Council: natural members are the principal of the village school, the village imam, the village health official and the village midwife; 8 to 12 members according to the size of the village are then directly elected by the Village Society. Finally, the *mukhtar* is the head of both the Council of Elders and of village administration as a whole; being a civil servant whose wage is paid by the central government, he is the representative of the state in the village; he is directly elected by the Village Society “from amongst those villagers with no legal restrictions”¹⁹.

With regard to village services, Law #442 distinguishes between “obligatory” and “voluntary” services: the former are usually provided by the central government and consists of health and sanitation services, public works, road and water services, and works related to agriculture and building schools; the latter comprise all those services related to the improvement and development of the village. Lastly, revenues of village administrations differ considerably from those of other local administrations:

- a) *Imece* – a concept which describes the action of villagers coming together around a project and doing physical work for no money;
- b) *Salma* – a maximum of 20TL is collected annually from every household depending on their economic circumstances and the degree of

¹⁸ N. Kapucu, H. Palabiyik, *Turkish Public Administration*, cit., p. 161.

¹⁹ Ivi, p. 162.

their usage of village services²⁰.

Furthermore, villages also rely on aids, gifts, donations and *waqfs*' revenues.

3.2.5. Neighbourhoods

Neighbourhoods differ from other local administrations because of their lack of legal personality, budget or staff and of a comprehensive legal framework. As of today, four different laws have tackled the issue of their formation, organisation and duties: Law #4541 of 1944 on the "Formation of Headmanship and Council of Elderly of Neighbourhoods in Cities and Towns"; Law #2108 of 1977 on "Funds and Social Security of Headmen"; Law #2972 of 1984 on the "Elections of Neighbourhood Administrations, Headmen and Elders' Councils of Villages and Neighbourhoods"; and Municipality Law #5393 of 2005.

According to Law #4541, neighbourhood administration is "the smallest residential, social and administrative unit located in municipal boundaries, whose mukhtar and council of elders are elected by its residents"²¹, as well as "an agency assisting local town administrations in providing public services"²². Law #4541 also establishes that the Council of Elders shall be composed of one *mukhtar*, four actual members and four auxiliary members (Art. 2). Art. 9 of Municipality Law #5393 states that "neighbourhoods located within the boundaries of a municipality shall be established, abolished, combined, divided, and their names and boundaries shall be determined and altered by a resolution of the municipal council and the

approval of the provincial governor after consulting the opinion of the district governor"; with regard to the duties of the *mukhtar*, "the master shall, with voluntary participation of neighbourhood residents, identify common needs, enhance the neighbourhood's quality of life, conduct relations with the municipality and other public entities, deliver opinion on matters of interest for the neighbourhood, cooperate with other institutions and perform other duties as prescribed by laws". The Council of Elders, instead, is "an administrative body which assists the mukhtar in management of the neighbourhood"²³. Law #2972 regulates the elections of neighbourhood's organs: since there is however no formal regulation concerning the election of neighbourhood administration, any candidate can declare its candidacy at the election, although political parties are excluded from the run.

With regard to the neighbourhood's budget, Law #2108 states that "central government appropriates certain amount of funding for headmen"²⁴; furthermore, Law #5393 establishes that "the municipality shall provide the necessary assistance in kind and support, within the limits of its budgetary resources, to meet the needs of the neighbourhood and the master's office and resolve any problems" (Art. 9).

Lastly, Law #4541 defines the duties of neighbourhood administrations, although these generally consist in routine works: census and citizenship, military recruitment, general elections, land registries, official communications, etc.

4. Turkey & the European Charter of Local Self-

²⁰ Ivi, p. 163.

²¹ Ivi, pp. 163-164.

²² K. V. Gül, *Köy ve Mahalle İdaresi*, Ankara, 1980, as cited by Ivi, p. 164.

²³ N. Kapucu, H. Palabiyik, *Turkish Public Administration*, cit., p. 166.

²⁴ Ivi, p. 167

Government

Turkey has long been identified as a bridge between Europe and the Middle-East. Although culturally belonging to the latter, it has taken part to different Western-led organisations (NATO, CoE) and has a long history of talks with the EU regarding its future accession to the Union. Erdoğan's years have undoubtedly changed this attitude, realigning Turkey towards other international actors. However, Turkish administration still embrace those principles contained in the ECLG. The ratification of the Charter in 1992 have indeed significantly boosted reforms at local level. It is therefore important to evaluate the current Turkish administrative framework in light of the provision of the Charter, paying specific attention to the latest reforms of AKP's governments.

4.1. The European Charter of Local Self-Government

4.1.1. Historical Background

Opened for signature on October 15, 1985, the ECLG has become the main international legal instrument for the recognition, democratisation and empowerment of local authorities in Europe. However, its original impulse dates back to the 1950s, a period of ideals and boundless hopes.

On October 1, 1950, a group of mayors and "municipal enthusiasts"²⁵ met in Seelisberg, Switzerland, with the conviction that "in a Europe torn and tested by two great wars, the municipalities could and should be an incomparably powerful factor of reconciliation,

cooperation, economic and social progress and peace"²⁶. The Seelisberg Declaration constituted the footprint of what soon became the Council of European Municipalities, founded in Geneva in January 1951. Two years later, the European Charter of Municipal Liberties was adopted in Versailles: it set out the "Conditions for Municipal Liberties" and the "Definition of Municipal Liberties", precluding provisions that would be included in the current Charter, whose history however belongs to a different institutional environment.

The ECLG was drafted and adopted under the auspices of the CoE, an international organisation founded in 1949 under the Treaty of London. Based in Strasbourg, it commits to human rights, democracy and the rule of law: its main institution is the European Court of Human Rights but its scope has been widened by a series of seminal conventions (the Charter of Local Self-Government itself, the European Cultural Convention, the European Social Charter, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, etc.). The main decision-making body is the Committee of Ministers, which comprises the Ministers of Foreign Affairs of all 47 member states or their permanent representatives in Strasbourg. The main representative body is the Parliamentary Assembly (PACE), which is composed of national parliamentarians of the member states from both government and opposition parties. With regard to CoE's institutions in the field of local autonomy, a Conference of Local Authorities of Europe was first established in 1957; it then started to accept not only local authorities, but also representatives of European regions, thus changing its name in Conference of

²⁵ E. Milhaud, *From Seelisberg to Versailles: The European Municipal Assembly and the European Charter of Municipal Liberties*, in *Annals of Collective Economy*, 24(3), Oxford, 1953, pp. 261-270, at 263, as cited by C. M. G. Himsworth, *The European Charter of Local Self-Government: A treaty of Local Democracy*, Edinburgh, 2015, p. 16.

²⁶ Ibid.

Local and Regional Authorities of Europe in 1975, in Standing Conference of Local and Regional Authorities of Europe in 1979, and finally in Congress of Local and Regional Authorities (CLRA) in 1994; in 2011 the Congress was further reformed in order to enhance the impact of its action. Beside this representative assembly, the CoE has entitled a section of the Committee of Ministers to deal with local and regional democracy: the European Committee on Local and Regional Democracy (CDLR) was first established in 1967 and comprises representatives of the relevant government departments of member states. However, these two institutions may have had different, if not conflicting, interests and agendas with regard to local autonomy:

Because the Congress represents directly the local and regional sector, and the CDLR and the directorate within which it operates represent the intergovernmental interest in local and regional government, their interests overlap but also tend to conflict. Despite their shared attachment to democracy, the two institutions diverge over the means by which democracy is to be secured and especially over how autonomy at local and regional levels – the cornerstone of the Charter’s guarantees – is to be implemented. This has led to a degree of discord over the years which has become especially evident in this current period of financial crisis and reform in the Council of Europe²⁷.

Moving back to the emergence of the ECLG, the first significant document adopted by the Conference of Local Authorities of Europe was Opinion No. 6 of January 1957 on the Protection

and Development of Local Autonomy. The Opinion anticipated many of the points later tackled by the Charter, such as provisions related to financial resources, administrative controls, judicial reviews, etc. In 1961, it was then cited by Recommendation 295 of the Parliamentary Assembly on the protection and development of local autonomy, stressing on the importance of democratic and financially stable local communities.

A second Recommendation (No. 615) was issued in 1970 under the name of “Declaration of Principles of Local Autonomy”: this time, the document was drafted by the European Conference of Local and Regional Authorities in tandem with the Committee on Regional Planning and Local Authorities, in a moment when the European society was moving “towards an ever acuter appreciation of the essential role of the basic units of society and towards an ever more active participation of these units in the management of national and international affairs”. However, the Recommendation failed to gain a positive reception by the Committee of Ministers because of “a too general and sweeping character for any firm action to be taken on”; furthermore, “a mere non-binding declaration of principles could not do justice to the importance of local autonomy or to the nature of the threats to which it is exposed” (ECLG Explanatory Report).

Thus, the Conference started to work on a draft Charter through its Committee on Local Structure and Finance. Concluded and submitted to the Committee of Ministers in 1981 (Resolution 126), the new document was then transmitted to the Conference of European Ministers responsible for local government, which met in Lugano in October 1982. The conference consequently asked “the Committee

²⁷ C. M. G. Himsworth, *The European Charter of Local Self-Government*, cit., pp. 12-13.

of Ministers of the CoE to instruct the Steering Committee for Regional and Municipal Matters (CDRM), in contact with the Conference of Local and Regional Authorities of Europe, to make the necessary changes to the draft ECLG in accordance with the comments concerning the form and the substance made during the conference, so that it may be submitted to them for approval at their next conference" (ECLG Explanatory Report). The revision of the draft Charter was therefore managed by a Committee of Experts on Local and Regional Structures, which held two main meetings in April and November 1983. The following year, "the steering committee (CDRM) invited them to conclude the revision of their texts for the submission to the Conference of Ministers to be held in Rome in November 1984 where the final text was duly approved"²⁸.

4.1.2. The Text of the ECLG

The Charter stresses the importance of local governments as "one of the main foundations of any democratic regime" (Preamble). In order to safeguard and reinforce local autonomy, "the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution" (Art. 2): the Charter does not impose an explicit obligation on Member States "to incorporate the Charter's terms into domestic law"²⁹, but it establishes that the principle of local self-government "should be enshrined in written law" (Explanatory Report). With regard to the concept of local self-governance itself, Art. 3 states that "local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of

public affairs under their own responsibility and in the interests of the local population", a right that "shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them"; Art. 3 also provides for the possibility of means of direct citizen participation (i.e. referendums), "where it is permitted by statute".

The "scope of local self-government" is laid out in Art. 4, which establishes that "powers and responsibilities of local authorities shall be prescribed by constitution or statute" and that they shall have full discretion to exercise their powers, which may not be undermined by the central authority, unless provided for otherwise by the law. The Charter also highlights the principle of discretion in the case of delegated powers and a duty of being consulted for all the matters that concern directly local authorities. Art. 4 finally contains probably the most forward-looking provision of the Charter, that is, "the first articulation in an international treaty of the principle of subsidiarity"³⁰: paragraph 3 establishes that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen".

The following articles comprise all those measures needed to guarantee the function of local entities and the effectiveness of their action. The Charter therefore tackles issues such as protection of local authorities' boundaries (Art. 5), their internal structure (Art. 6), their responsibilities (Art. 7), their financial resources (Art. 9), their right to associate (Art. 10), their right of recourse to judicial remedies (Art. 11) and the administrative supervision by the central government (Art. 8).

²⁸ Ivi, p. 29.

²⁹ Ivi, p. 34.

³⁰ Ivi, p. 45.

In 2009, the Committee of Ministers approved an Additional Protocol on the Right to Participate in the Affairs of a Local Authority, which “denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities” (Art. 1) through the measures and procedures provided for in Art. 2.

4.2. Turkey & the ECLG

4.2.1. Ratification and Reservations

Turkey signed the ECLG in 1988 and ratified it in December 1992. As confirmed by Himsworth, “Turkey appears to be the only state to have confirmed its commitment to the Charter to the permitted minimum of twenty paragraphs”³¹: Art. 2, Art. 3.1 – 3.2, Art. 4.1 – 4.2 – 4.3 – 4.4 – 4.5, Art. 5, Art. 6.2, Art. 7.1 – 7.2, Art. 8.1 – 8.2, Art. 9.1 – 9.2 – 9.3 – 9.5 – 9.8 and Art. 10.1. Turkey has limited the application to the Charter to very few principles, therefore ignoring some crucial provisions: among others, Art. 4.6, which establishes a rights to be consulted if matters concern the local authority; Article 6.1, which allows local institutions to determine their own internal structure; Article 9.5 – 9.6 – 9.7 on the financial diversification of local revenues, on the nature of their resources and on the related freedom of discretion; Article 10.2 – 10.3, which extends the right to associate at international level; and Article 11 on the right of recourse to judicial remedies.

4.2.2. Improvements

Although the Turkish Constitution clearly states that state administration is based also on the principle of decentralisation (Art. 127), it does not openly recognise neither the principle of autonomy of local governments, not that of subsidiarity. However, during the period in

which Turkey and Europe seemed sincerely committed to the 'Turkish accession path', Erdoğan's leadership did show the will “to harmonize the administrative structure of Turkey in line with those of other developed countries”³². Indeed, some scholars³³ have recently highlighted that some reservations placed on the Charter could have become legally removable.

For example, Art. 4.6 of the Charter has been partly implemented by Art. 20 of Law #5355 on Local Administrative Unions, which states that nationwide unions, though only one for SPAs and another for municipalities, “may be founded to represent the respective groups of local governments in order to protect the interests of local governments, assist their development, train their personnel and provide opinion in legislative preparations on local governments”. It is important to stress that this does not mean neither that consultation has become compulsory, nor that administrative unions have acquired any sort of binding power; Law #5355 grants local authorities the mere opportunity to give opinions on matters which could concern them.

Conversely, Municipal Law #5393 may have *de facto* removed the reservation on Art. 6.1 of the ECLG: in fact, Art. 48 establishes that, “where necessary, in the light of the town's population, physical and geographical structure, economic, social and cultural characteristics and

³² B. Parlak, M. Z. Sobacı, M. Ökmen, *The Evaluation of Restructured Local Governments in Turkey*, cit., p. 37.

³³ See, for instance, M. Zorluoğlu, *Yeni Yerel Yönetim Mevzuatı ve Avrupa Yerel Yönetimler Özerklik Şartı*, in *İdarecinin Sesi Dergisi*, 146, July-August Issue, Ankara, 2011, pp. 47-49; I. O. Sayan, B. Övgün, *The Autonomy of the Local Governments in Turkey: A Continuous and Concurrent Discussion*, in *Humanities and Social Sciences Review*, 3(2), New Britain, 2014, pp. 443-454.

³¹ Ivi, p. 72.

development potential, units of health care, fire fighting, land development planning and control, human resources, legal affairs and other necessary units may be established as appropriate in accordance with the principles of job position standards"; furthermore, "such units shall be established, abolished or combined by resolutions of the municipal council". In this case, new Turkish legislation has therefore enhanced local autonomy in the view of "ensuring effective management" (Art. 6.1 ECLG).

Law #5393 also considers those "activities which are deemed incompatible with the holding of local elective office" (Art. 7.3 ECLG): in particular, Art. 28 specifies that "during his term of office and for a period of two years following the end of his term of office, the mayor may not either directly or indirectly enter into a contract with, or act as a broker or representative for, the municipality or its affiliated entities".

With regard to the 'right of international association', Art. 18(p) and Art. 74 of Law #5393 have substantially voided the reservation on Art. 10.2 – 10.3 of the Charter, although municipal activities in this area "shall be conducted in a manner consistent with Turkey's foreign policy and with international treaties, and be subject to prior authorization by the Ministry of Interior" (Art. 74).

Finally, Art. 125 of the 1982 Constitution establishes that "recourse to judicial review shall be available against all actions and acts of administration"; however, "the acts of the President of the Republic in his/her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review". Although Sayan & Övgün³⁴ claim that

³⁴ I. O. Sayan, B. Övgün, *The Autonomy of the Local Governments in Turkey*, cit., pp. 443-454.

the reservation on Art. 11 of the Charter could be anyway removed, other scholars³⁵ have pointed out how constitutional restrictions on judicial review are far-reaching and controversial, thus undermining the rule of law.

4.2.3. Recommendations

Since the ratification of the ECLG, Turkey has been monitored by the CLRA in the implementation of the Charter's provisions. In 1997, the Congress issued Recommendation 29 on the state of local and regional democracy in Turkey, stressing on different problems still at stake in the Turkish administrative system:

[...] important parts of the Turkish legislation concerning local and regional authorities are rather old (1924, 1930 or even dating back to the Ottoman Empire, as far as the provincial structure is concerned) [...];

[...] the Turkish system of local and regional government has been created within the framework of a very centralised State, having been modelled in particular on the system that was in force in France during that period; [...]

[...] in the approximately 36,000 Turkish villages, local democracy does not function to the same extent as it does in municipalities and metropolitan municipalities [...];

[...] special provincial administrations are still submitted to a very centralised system which lacks democratic legitimisation for the Governor [...];

[...] local government finance does, on the whole, not provide sufficient means for the autonomous functioning of local and regional government [...];

³⁵ I. Ö. Kaboğlu, S.-I. G. Koutnatzis, *The Reception Process in Greece and Turkey*, in H. Keller, A. Stone Sweet (eds.), *A Europe of rights: the impact of the ECHR on national legal systems*, Oxford, 2008, pp. 451-530, at 470.

[...] local and regional government is under heavy State control including matters of expediency of local decisions, and possibilities for dismissal of Mayors.

As marked before, Turkey significantly improved its local system with AKP's reforms in the early 2000s, as confirmed also by Congress' Recommendation 176/2005. However, and in Congress' opinion, many issues persisted, in particular regarding over-centralism, the indiscriminate power of administrative supervision, inadequate financial resources, central interferences in the right to associate and the persistent underdevelopment of SPAs. In the following years, the Congress became concerned also with threats to the civil liberties of Turkish administrators. Consequently, Recommendation 229 was issued in 2007, pointing out the following deficiencies in the functioning of local democracy in Turkey:

- a.* the Turkish authorities permit a restrictive interpretation of "Turkish identity" which limits the cultural rights and freedoms of those Turkish citizens who use languages other than Turkish;
- b.* the measures taken against local authorities for using languages other than Turkish in the provision of public services are not being applied consistently to all languages;
- c.* the Municipality Law allows courts to prosecute mayors and municipalities and remove them from office for having made "political" decisions; whereas Article 3, paragraph 1, of the European Charter of Local Self-Government foresees that local government "has the right and the ability (...) to regulate and manage a substantial share of public affairs under their own responsibility";
- d.* Turkey has not signed and ratified the Council of Europe's Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages;

In order to better understand Turkish 'aversion to diversity', it is important to recall the first lines of the Preamble of 1982 Constitution which affirm "the eternal existence of the Turkish Motherland and Nation and the indivisible unity of the Sublime Turkish State". The memory of the Ottoman implosion is still very vivid in Turkish politics: every step in the direction of local autonomy, either cultural or administrative, is perceived as a threat to the indivisibility of the Turkish State. This is also the reason why the first and most drastic reforms of AKP's governments were vetoed by the President, who feared an excessive empowerment of local authorities.

From 2007 to 2011 the Congress drafted Recommendation 301/2011, which, drawing from the previous texts and basing its conclusions on monitoring visits carried out between 2009 and 2010, issued a comprehensive list of problems in the functioning of Turkish local authorities.

- a.* the period of rapid legislative developments in 2004-2005 has been followed by a period of reduced activity and the pace of reforming change in the field of local and regional democracy has slowed;
 - b.* the provisions on administrative tutelage have been maintained in Article 127 of the Turkish Constitution and other laws and thus remain an obstacle to the general Turkish decentralisation project;
 - c.* the way that the existing criminal and anti-terrorism legislation is being implemented has a disproportionately destructive effect on the functioning of local and regional democracy in Turkey and on the human rights of local and regional elected representatives;
- [...]
- f.* the new Villages Law has not yet been finalised despite the fact that many former municipalities have lost that status and become villages through the recent Law No. 5747 of 2008 on establishing districts at the borders of metropolitan municipalities, which has

amended other legislation;

[...]

i. although the governor has been removed from the presidency of the General Council, his position remains distinctly anomalous as he is the chairman of the Special Provincial Administrations' executive committee and this puts the autonomy of provincial government into question in a situation where the Special Provincial Administration's chief executive is, in effect, an appointee of the central government; [...]

These came however before the 'authoritarian drift' that has characterised Turkish internal politics since the 2013 protests of Taksim square. Indeed, the last years have raised new concerns with regard to civil rights and the democratic endurance of the Turkish State. Following the resurgence of the Kurdish issue and the new threat posed by Islamic fundamentalism, the PACE, through the Monitoring Committee on the Honouring of Obligations and Commitments by Member States, drafted a report (Doc. 17078) on the functioning of democratic intuitions in Turkey. The text condemns in particular the "the arrests and destitution of democratically elected mayors in south-east Turkey" and "the announced preparation of legislation which would empower the Governor to appoint 'trustees' and replace mayors suspected of committing terrorism-related crimes". The report was issued just a month before the July coup, which further worsened the already unstable socio-political situation in the country.

Finally, after the removal of elected mayors throughout Turkey and their replacement by government's appointees, the Congress of Local and Regional Authorities of the Council of Europe adopted a recommendation (397/2017) and a resolution (416/2017), asking the Committee of Ministers to invite the Turkish authorities to:

- a. rescind the legislative measures on "mayors appointed by the central authorities" and restore the capacity of municipal councils to choose a replacement mayor, if the mayor is removed from office;
- b. ensure that the arrest of a local elected representative is a decision duly substantiated in domestic law, taken in conformity with the standards of the Council of Europe;
- c. examine, with a view to their release, the situation of local elected representatives currently in pre-trial detention in order to ensure that it is in conformity with the European Convention on Human Rights and, where appropriate, proceed with their immediate release;
- d. revise the ministerial instructions of 11 November 2016 with a view to decriminalising the appointment of co-mayors;
- e. revise the Turkish legislation to align its definition of terrorism with European standards, notably the case law of the European Court of Human Rights;
- f. take appropriate measures to ensure that Congress members and Turkish members of the Group of Independent Experts on the European Charter of Local Self-Government are free to carry out their work and can circulate freely for this purpose.

This followed two fact-finding mission in Turkey (3-4 October and 18-20 December 2016) that pointed out, among other issues, that "the attempted coup has therefore made it possible to the Turkish authorities to conduct a policy of seeking out the parties that it identifies as being responsible for terrorist activities, on a scale that is causing concern and may itself be a destabilising factor for the country" (Explanatory memorandum).

5. Conclusions

Both scholars and international institutions have therefore identified some unsolved issues in the framework of Turkish local administration.

First and foremost, Turkish local institutions lack in financial autonomy. As pointed out by Yilmaz³⁶, “in Turkey, it is hard to mention that there is a common ground and approach between the financial size of local governments and its share in fiscal expenditures of the central government”. Indeed, the largest part of Turkish administrative system strongly depends on the centre: for example, “more than 50% in average of municipal resources are tax shares and transfers from the state budget”³⁷, while local taxes account only for a 10%³⁸; furthermore, SPAs levy no own tax revenue and must therefore rely mostly on fees, fines, donations and shareholdings (Law #5302, Art. 42). This constant financial shortage does not agree with both Art. 9 of the ECLG and Art. 127 of the Turkish Constitution itself: the latter, in fact, stipulates that “administrative bodies shall be allocated financial resources in proportion to their functions”, a provision which has never been implemented by the central government³⁹.

Secondly, Turkish local authorities are still very much subject to administrative tutelage by

central bodies, as established by Art. 127 of the Constitution. Although the reforms of mid-2000s have significantly improved the autonomy of local governments, shifting from a system dependent on central approval to one based on modern auditing practices (Law #5018 on Public Financial Management and Law), there are still issues concerning the structure and scope of supervising activities. Local councils, heads of local administrations and internal auditors conduct internal audit of local institutions: governors and mayors are responsible for operating internal control and audit, while provincial and municipal councils (except for town municipalities with a population smaller of ten thousand) have the duty to elect an auditing committee, who works directly under the mayor/governor. However, this structure may be prone to create power imbalances:

To sum up, internal auditors will help heads of administration to improve the functioning of administrations under their authority and to prevent abuses or misuses. To that extent, they will reduce the stuff for external control. But, only as far as the head of the administration is not himself at the origin of bad practices⁴⁰.

Furthermore, the concept of supervision is still too broad. Art. 127 of the Constitution establishes that “the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom an investigation or prosecution has been initiated on grounds of offences related to their duties”. However, Art. 30 of Municipal Law #5393 and Art. 22 of Provincial Law #5302 state that local councils may be dissolved also if they have taken “resolutions on

³⁶ H. Yilmaz, *Yerel Yönetimlerde Planlama, Bütçe, Borçlanma ve Denetim Süreçlerinin Yeni Yasalar Çerçevesinde Değerlendirilmesi*, in *Sayıstay Dergisi*, 55, 2004, pp. 3-40, at 6, as cited by M. O. Partal, *Local Government Borrowing Practices in Turkey*, in *Turkish Public Administration Annual*, 39-40, Ankara, 2013, pp. 23-48, at 23.

³⁷ G. Marcou, *Local Administration Reform in Turkey: A legal appraisal based on European principles and standards*, Ankara, 2006, p. 48.

³⁸ A. Kablan, *Financial resources of municipalities in Turkey*, in *International Journal of Finance and Banking Studies*, 2(1), Istanbul, 2013, pp. 21-30, at 29.

³⁹ B. Parlak, M. Z. Sobaci, M. Ökmen, *The Evaluation of Restructured Local Governments in Turkey*, cit., p. 42.

⁴⁰ G. Marcou, *Local Administration Reform in Turkey*, cit., p. 64.

political issue". In addition, Art. 55 and Art. 56 of Law #5393 convey an unclear and blurry definition of 'supervision': as noted by Marcou⁴¹, "according to article 54, the purpose of supervision (assist municipalities, and guide them) 'shall be achieved by impartially analysing, comparing and measuring the processes and results of municipal services in compliance with the laws and regulations, with pre-established objectives and targets and with performance criteria and quality standards"; while "according to Art. 55, 'supervision shall cover the lawfulness of the tasks performed and the procedures conducted, and financial and performance auditing". The recent detention of elected mayors and their replacement by government appointees in over 40 municipalities⁴² eventually confirm the concern related to the abuse of supervising powers. Thirdly and lastly, Law #6360 has dramatically changed the administrative landscape in most of Turkish provinces. Ignoring *in toto* the principle of subsidiarity, the central government dissolved 30 SPAs, about 1500 town municipalities and more than sixteen thousand villages⁴³ without consulting the local population, thus violating Art. 5 of the ECLG. Consequently, rural population declined from 22,7% to 8,2%⁴⁴ as an effect of the overlapping of provincial and metropolitan borders; SPAs were abolished and

⁴¹ Ivi, p. 67.

⁴² see Council of Europe, *Council of Europe Congress rapporteurs complete fact-finding mission to Turkey*, Directorate of Communications, Press Release CG039, 2016.

⁴³ H. Akilli, H. S. Akilli, *Decentralization and recentralization of local governments in Turkey*, in *Procedia – Social and Behavioral Sciences*, 140, Amsterdam, 2014, pp. 682-686, at 684.

⁴⁴ H. Kızılaslan, T. Ünal, N. Kızılaslan, *Effects of New Metropolitan Law No. 6360 to Rural Development in Turkey*, in *Journal of New Theory*, 13, Tokat, 2016, pp. 76-85, at 81.

substituted with IMCDs, thus shifting from locally elected institutions to a centrally administered units; and metropolitan municipalities had to take over some of the duties of SPAs: in this context, "the provision of rural services is an issue of concern since metropolitan municipalities have never had experience in rural regions to the present day, especially on agriculture and animal husbandry"⁴⁵. Furthermore, the Metropolitan Council has become much more crowded, therefore losing power at the advantage of the Metropolitan Mayor: indeed, "metropolitan municipality mayors gradually become authoritarian figures and political parties in power becomes able to shape their policies regarding local governments and urban areas from the top"⁴⁶. Likewise, the role of the provincial governor in IMCDs has been redefined and enhanced, in particular with regard to supervising powers⁴⁷.

In the end, Law #6360 might have jeopardised the whole reform process initiated by Erdoğan in the early 2000s. It would be incorrect to

⁴⁵ O. Zengin, *An Analysis of Turkey Regarding the Decentralization and Local Government Reform*, in *4th International Conference on European Studies: Social, Economic and Political Transition of Balkans, Proceedings Book*, Tirana, 2013, pp. 538-548, at 547.

⁴⁶ M. K. Bayırbağ, *Continuity and Change in Public Policy: Redistribution, Exclusion and State Rescaling in Turkey*, in *International Journal of Urban and Regional Research*, 37(4), pp. 1123-1146., as cited by H. Doruk Köse, *New Public Management and the Strong Mayor: The Cases of Adana, Eskişehir and Şanlıurfa Metropolitan Municipalities*, Master's thesis, Middle-East Technical University, Ankara, 2016, p. 69.

⁴⁷ Z. Önez Çetin, *The Critical Analysis of Transformation of Turkish Metropolitan Municipality System*, in *Yönetim ve Ekonomi Araştırmaları Dergisi*, 13(3), Balıkesir, 2015, pp. 1-24, at 14.

underestimate the significance of AKP's local agenda: Turkey has undoubtedly improved local democracy, implementing many provisions of the ECLG, even outside the scope of its own reservations. However, the new legislation poses a threat to a substantial number of principles, provided for by the ECLG:

The principle of Subsidiarity: the law damages this principle through the abolishing of county municipalities and as a result of this law compels citizens to go farther cities to apply for municipal services and receive them.

The Principle of Public Participation: abolishing villages and turning them into new neighbourhoods prevent citizens to choose their village headman who have legal entity to organize village's/ county's needs.

The Principle of Self-economic Representation: with the law, Turkey's local governments are split into two as the ones that have metropolitan municipalities and others.

The Principle of Referendum: the ruling party had to run referendums to evaluate the effective need of abolishing county municipalities.

The Principle of Legal Entity: villages whose boundaries are located in Metropolitan municipalities are transformed into neighbourhoods with losing their legal entities⁴⁸.

Law #6360 raises concern also because it breaches not only international law, but also Turkish own Constitution: Art. 127 establishes that "local administrations are public corporate bodies established to meet the common local needs of the inhabitants of provinces, municipal districts and villages", a provision which is clearly

against the 'standardisation' of the metropolitan model. Indeed, with the spread and codification of the metropolitan model, the central government have found a way to devolve some duties to lower-levels and thus increasing their efficiency, but also a way to reduce the actors at play: by organising the whole territory as a simple two-tier system and by establishing tutelage-like competences for the metropolitan level, central administrators have therefore replicated those power imbalances already existing between central and local administration.

In order to secure social cohesion in modern Turkey, it is therefore important to foster the political dialogue and enhance public participation in a context of respect for fundamental freedoms and the rule of law.

⁴⁸ E. Çeştepe, *An Analysis of Law No 6360 through What ruling wants, What main opposition objects*. "New Turkey New Cities, UPL 503/METU, 2014/15-1, Final assignment, January 2015.

