



The Effects of European Negotiatory State of Turkey on Local Management

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Abstract

Turkey as a negotiatory state with EU takes a step to make some important legal and structural reforms aiming to transform the local governments as well as public administration both for the sake of the EU negotiation process and meeting the existing problems. The local governments which should be autonomous intrinsically has been perceived an extention or prolongation of the central government within the outback country for long years and the matters of the executive and fiscal autonomy and guardianship inspection remained their vehemence in socio-political agenda. In this study, the questions of how EU Progress Reports as pushing powers and providers of the legal and structural transformation did influence the executive and fiscal autonomy of the local governments in Turkey and the current matters of autonomy as well as peculiar offer of this problem during the EU integration process will be analysed.

Keywords: Local governments, autonomy, executive and fiscal autonomy, EU Commission and Progress Reports

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1. Introduction

1.1 *The Content and Extent of EU Progress Reports for Turkey*

The autonomous local governments are inventd as the sui generis institutions by the Western European societies in tarnsition from federalism to capitalism. In these societies, autonomous local governments are the essential and inevitable components of the democratic order organized from the bottom to top (Yalçındağ, 1992:3). The system of devolution and decentralization, essentially, has been defended because this system is believed to produce effective and efficient local services and derserve to be free thanks to its peculiarity (Pierre, 1990:38). The Cardiff Summit of EU Council held on June 1998 welcome the declaration of the Commission to present the regular progress reports per each individual candidate country pertaining with their covered

stages at the end of 1998. EU Council decided that the Report will be depended upon the 28th Article of the Association Agreement and the resolutions of Final Declaration of Luxemburg Summit of EU Council (Yıldırım, 1993:149). However, the 28th Article of the Association Agreement promised to reevalute the Turkey's participation process into the EU when Turkey takes steps which will provide the stipulations and criteria and overtake the repsonbilities necessary for the full-membership (Görmez, 1995:330).. December 1997 Luxemburg Summit had a resolution to give Turkey a new integration strategy to get Turkey closer to the EU in every field of the life. At the same time, EU Council added that this strategy is considered under the Copenhagen Criteria and 29 April 1997 resolutions of the Council and 28th Article of the Associaton Agreement with Turkey .

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This Report can be seen as the response of the Commission against the demands of the Cardiff EU Council. For this reason, the structure of the Report takes notice of the final declaration of Copenhagen Summit which was held in 1993 (Yaşamış, 1993: 13). The Report briefly includes the matters such as past history of Turkey-EU relations within the Association Agreement, analyzes the existing situation in respect of political criteria referred by the EU Commission such as democracy, supremacy of law, and the protection of minority rights, evaluates the position of Turkey in respect of economic stipulations such as market economy, competition capacity and the blocking of monopolies and oligopolies, considers the legal position of Turkey in respect of absorbing the EU acquis communautaire or legal framework (Tortop, 1996: 14). and finally proposes the Turkey's futuristic perspective in respect of private reference into the European strategy put on the Commission issues of March 4, 1998.

1.2 The Executive and Fiscal Autonomy in Local Governments

It is witnessed that the rapid development of local democracies in accompanying with the increasing authorities of political, economic and administrative points at the end of the last quarter of 20th century. This development emerged in 1970s, gained momentum in 1980s and influenced all over the world in 1990s (Bardhan, 2006:1). The new concepts have been invented and opened into debate in line with this recent and rapid developments such as 'governance', 'new public administration', 'community association', 'participation in multi-level', and 'participation in multi-actor' (Denters 2005, 11). The development and promotion of local governments led to the emergence and settlement of an understanding of democratically deliberative and participatory governance.

In the discipline of public administration, the changing process has been initiated in 1980s and prolonged until now has influenced deeply the understanding of public administration in Turkey as various countries and led to the legal and structural transformation (Çoker, 1993:7). The most important step in this changing the novelties suffered the control mechanisms and its implementations. The old-fashioned inspection in classical public administration contains the punishment of the personnel who committed the mistake was replaced by the understanding of inspection consist of preventive approach to take precaution before creating the mistakes and faults and depending upon the guidance function for employees and result and process-based parameters.

Local governments as the main parameter of the public administration are governing bodies which has the separate entity and autonomy as well as public entity (Yıldırım, 1993:149). Central government attempts to control and take under provision the local governments in order to prevent the abuse of the authorities given by the central government contrary to the legal rules and the common interests, unity and the integration of the state and create the harmony and coordination in the state services. Local governments are bound to be supervised by the central government because it is the direct representative of the central government. Nevertheless, overcontrol and excessive surveillance of the local governments may lead to prevent the development of the potential governance capacity of the local governments. However, the guardianship inspection of the central government over the local governments can be hampered by the convenient balance between the local autonomy and benefits expected from the inspection.

The regulations concerned with the guardianship inspection over the local governments put in an appearance in Constitution and the laws. The extents, aims and the constraints of the guardianship inspection should not be directed into the propriety control because of the ambiguity of the legal framework. However, the guardianship inspection of local governments may give harm their local autonomies. For this reason, this surveillance should be in minimum level and in accordance with the legal framework. In this presentation, the influence of the transformation within the understanding of the control over the guardianship inspection of the local authorities and how this transformation led to some legal and structural changes and existing problems and their ways of solution concerned with this transformation will be subjected into the detailed analysis.

New public administration understanding emerged as a reaction and alternative of traditional and classical approach turned into the paradigm which is prevalent, transforming, directing and interpreting the changes in the activities, structure of the economic and executive system in 1980s (Bilgiç, 2003:36). This paradigm transformation in the discipline of the public administration since 1980s became effective in Turkey and implemented into the legal regulations in 2000s. This transformation suffered in the scope of the public administration reflected into the inspection mechanism with the peculiarities of focusing on the factual truths and convenience with the legal regulations, adequacy on the new requirement and conditions and referring the

contemporary inspection techniques and mechanisms.

Under this information, the local governments transformed into the local agencies shaping the state policies in accordance with the necessities and the needs of the local population as well as contributing branches in promoting the local democracies by means of popular participation (Pierre, 1990, 34). The local government reforms which were initiated in 1960s in Western Europe overpread into the agenda of all Central European countries and finally aimed to strengthen the local democracies and provide the participation (Vetter, 2002, 13). It is strongly argued that the local government reforms changed the minds and approaches of the people in grasping the understanding of the administration and politics since 1970s and led the people open to participation by widening the participation channels into the local democracies (Inglehart, 2010, 67).

1.3 Local Autonomy Problems Determined in Progress Reports

There would be no progress in accepting the Referential Code for Public Administration Reform vetoed by the President of the Republic. As a result of this veto, the devolution of power couldn't be realized from the central government into the local authorities (Köseçik, 2007: 691). In addition, the decentralization in taxation was also not realized.

In 2007 Progress Report it is determined that there would be no progress in Frame Draft Law of Public Administration aiming the decentralization into the local authorities and the restructuring of the central government (EU Commission, 1998: 32). At the same time, there would be no more step to fiscal resources into the local authorities. Generally, it can be mentioned from some minor developments in legal reforms concerned with the public administration and public services and some limited progress in some key issues such as implementation and capacity. It is necessary to give priority in lessening the bureaucracy, increasing the transparency, strengthening the political accountability and increasing the fiscal resources and authorities (EU Commission, 2000: 11).

In accordance with the items of the Progress Report, some matters should be solved about the public administration reform such as palliating the responsibility of the administration, providing the simplicity in governmental issues, improving the executive procedures, strengthening the transparency and the creating the synchronization systems together with the policy implementation (EU Commission, 2001a: 79). Progress Reports mostly criticized the ratio of women as major or another positions in different levels of local governments. In line with this factuality, in city

councils as the place and functional platform where aim to increase the popular participation into the local governments, the devolution of power and decentralization couldn't be improved in the decision-making process of local authorities (EU Commission, 2003a: 123).

The principles of the transparency and political accountability as well as the internal and external inspection mechanisms couldn't have a chance for adequate and satisfactory implementation. Especially some mayors are not volunteer to announce some municipality resolutions such as the publicizing the construction master plans. It means that the subsidiarity, devolution of power and decentralization is far principles to be implemented in local authorities (EU Commission, 2004: 16--17). In accordance with the Report, strategical plans, performance indicators, fiscal control systems, project management, crisis management, environmental management and information technologies couldn't be emerged yet (EU Commission, 2005: 114).

The clear rules and principles couldn't be established for the creation of a firm, company and legal entity in order to serve the public service by the municipalities. These rules are supposed to lessen the possibilities to spend the public expenditure for the employment of the party supporters without any effective control mechanism (EU Commission, 2007: 7).

Especially there would be no progress in the devolution of fiscal resources into the local authorities. For this reason, the municipalities are strongly bound to the allocated incomes distributed by the central government (EU Commission, 2008: 7). Unfortunately, the implementation of the European Council Congress for Local and Regional Management 2007 couldn't be realized especially the using of the non-Turkish languages in public services and giving allowance for mayors to make political decision without any fear to be subjected of the judicial proceeding or prosecution. In addition, the arrestment of some selected Kurdish mayors and local representatives supporting PKK is seen as a serious problem for the sake of the local governments (EU Commission, 2008: 9).

The European Council Congress for Local and Regional Management 2007 has accepted a report composed of the resolutions which contain some recommendations concerned with the improving the regional and local democracy in Turkey (EU Commission, 2007: 11). This report which stipulates the revision of obligations pertaining with the Local Autonomy Charter of Turkey in order to remove the many reservations put by Turkish government and includes the Framework Agreement of European Council on the Protection of National Minorities and European Charter of Regional and Minority languages has been ratified

by Turkish Parliament on March 24, 2011 (EU Commission, 2010: 9-11). Under these circumstances, an attempt to create a new Constitution led the reform agenda including the devolution in local governments into the further developments. Nevertheless, it is argued that the determinance expressed for the sake of the EU integration process couldn't be reflected for the implementation of national plans adequately. There would be no improvement in decentralization issue and fiscal transfer in local government. In 2011 Progress Report, it is inevitably declared that the more political support has been stipulated for the public administration reform, the urban transformation, land use planning and decentralization as well as creating the Ombudsman Institution. The enforcement of city councils designed to induce the popular participation has been operated in limited effect and extent. As expressed by the The European Council Congress for Local and Regional Management 2007, we can witness some developments in removing the legal guardianship with the local administrative issues and using the languages in public services except Turkish language. Nevertheless, Turkish judicial system had some incoherent and inconsistent resolutions in allowing the multilingual character of the municipalities and courts. In spite of some verdicts of non-prosecution and acquittance, some mayors and members of municipality assembly had subjected of the judicial prosecution because they used different languages excluding Turkish language. Ministry of Internal Affairs temporarily suspended some mayors, members of municipality assembly and provincial general assembly even the elected mayors of Van, Şırnak, Silopi, İdil, Uludere and Cizre as 55 local government representatives. After the enforcement or entering into force the Third Judicial Reform Packet, the decision of removal for Siirt mayor has been stopped (EU Commission, 2011: 12).

1.4 The Influence of Progress Reports on Local governments and Existing Situation

Even though the EU Commission Progress Reports of Turkey has the decisions concerned with the recommendation towards the settlement of the problems witnessed in the negotiation process and their solutions, it provides great contributions for the legal and structural transformation of local governments in Turkey. The regularly released Reports since 1998 indicates that the legal and structural transformations related with the local governments was closely followed and some problems were repeated in every reports insistently. It is seen that Turkey has achieved to solve problems partially but she hesitated about the

regulations which will provide the executive and fiscal autonomy for the local governments. Glancing over the legal regulations entered into force since 2003, it is witnessed that the concepts executive and fiscal autonomy have been ensured within the framework of the local government laws (Provincial Special Administration Law, 2005: Art 3, Municipality Law, 2005: Art.3). It can be said that even though the local governments had the executive and fiscal autonomy expressed in legal regulations, they couldn't make progress in creating their own bodies independently, making decision freely and constituting their own resources and spending them.

It has been criticized some failures such as inability in entering into force the Framework Law for Public Administration Reform in 2003 and vetoing the Framework Law for Public Administration Reform in 2004 by the President of Turkish Republic and failure in amending this framework law in the future, as a result of these series of failure, the decentralization and devolution of power from the central governments into the local authorities couldn't be realized. In the later progress reports, these failures were expressed repeatedly but nothing had been changed.

The principle of the decentralization and closeness into the people in the local services has been clearly placed in local government laws. The most important point is to present the local services for the people into the closer place and with the most convenient methods in accordance with the local government laws ((Provincial Special Administration Law, 2005: Art 6, Municipality Law, 2005: Art. 14). Nevertheless, the problems have been continuing in implementing the regulations placed in the Law. The inspection of the guardianship for the local governments has been lessened but not removed completely. In spite of the fact that the inspection of the guardianship over the operations or transactions of the local governments has been lightened, the method of allowing the permission was persisted in many topics (Ünal, 2013: 60). It is inevitably necessary to have the local governments with local autonomy to make decision independently and implement these decisions freely. Moreover, these inspections committed for the sake of "public interest" and "meeting the exigencies of the local needs". This reality will lead to shift the inspection of guardianship into the on-site supervision. As a result, it necessary to avoid such a kind of ambiguous words and notions both in Constitution and laws in order to prevent the power exceeding. However, the inspection of the guardianship should be limited with the legality audit and fixed the extent, aim and restriction of the guardianship.

2. Conclusion

It can be argued that Turkey as a negotiatory state with the EU suffered an important transformation in the scope of public administration as well as other socio-political areas. In analyzing the triggers of these transformation, we can define the expectations and the recommendations of the EU. Local governments as the probably most important scope of the public administration is much impressed area by the developments and changes which were experienced from EU negotiation and membership process.

European Council Progress Reports have declared an inspiring and clear recommendation towards the solutions of the problems witnessed in local governments. Turkey has relatively achieved to adapt into the legal and structural transformation process since 1998. Even though these progress reports are advisory, Turkey is supposed to consider these reports and make amendments in convenience with these regulations in order to last the negotiations with the EU. The main parameters of the reports are directly relevant with the executive and fiscal autonomy of the local authorities, decentralization, devolution of power, the creation and spending right of fiscal resources in local authority level.

Under these circumstances, in order to solve the problems determined in progress reports, it is required to guarantee for Turkey the autonomy of the local government in Constitutional regulations and amendments because Turkey is on the stage of EU membership and under the preparation of new civilian and democratic Constitution. Therefore, Turkey needs to improve the local democratic level and strengthen the democratic local authorities as well as end the inspection of the guardianship taking place in Constitution with ambiguous details. The inspection of the guardianship should be regulated with the laws and these laws should allow the local governments to create its decision-making process and bodies by itself and implementation of the taken decisions by the local governments with full autonomy by developing their abilities to govern and rule. Therefore, the authority of inspection and guardianship mechanisms to approve and permitting should be removed as early as possible.

As another precaution, the articles of the European Charter of Local Governments which were under the reservation of Turkey must be approved and the mentality contrary to the executive and fiscal autonomy and the understanding of the inspection of the guardianship shifting into the on-site inspection must be totally removed. The provision of the resources in proportion with the increasing authority and tasks of the local governments should be guaranteed as a Constitutional amendment. Otherwise, without any

fiscal autonomy, the central governments may threaten the autonomies of local governments and attempt to make them dependent and non-functional. In line with the globalization, the local governments transformed into the more important actors with their more effective and efficient services, competition power, executive and fiscal autonomy, and diversified tasks. Under these facts, Turkey should perceive the executive and fiscal reforms stipulated by the EU as the opportunities of improving the local democracy and accelerate the legal and structural transformation of the local governments.

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