

TESEV GOOD GOVERNANCE PROGRAM

Suggestions on the New Constitution for Local and Regional Government



TESEV
GOOD GOVERNANCE
PROGRAM

Suggestions on the New Constitution for Local and Regional Government

Prof. Dr. Oktay Uygun

TESEV
PUBLICATIONS

Suggestions on the New Constitution for Local and Regional Government



Türkiye Ekonomik ve Sosyal Etüdler Vakfı
Turkish Economic and Social Studies Foundation
İyi Yönetişim Programı
Good Governance Program

Bankalar Cad. Minerva Han
No: 2 Kat: 3
Karaköy 34420, İstanbul
Tel: +90 212 292 89 03 PBX
Fax: +90 212 292 90 46
info@tesev.org.tr
www.tesev.org.tr

Author:
Prof. Dr. Oktay Uygun

Editor:
Fikret Toksöz (TESEV)

Translated (from Turkish) by:
Bilge Kahramanyol, Emre Dönmez

Production: Myra
Cover Design: Rauf Kösemem
Page Layout: Gülderen Rençber Erbaş
Coordination: Sibel Doğan
Preprint Coordination: Nergis Korkmaz

TESEV PUBLICATIONS

Copyright © June 2012

All rights reserved. No part of this publication may be reproduced electronically or mechanically (photocopy, storage of records or information, etc.) without the permission of the Turkish Economic and Social Studies Foundation (TESEV).

The opinions expressed in this publication belong to the authors and may not entirely or partially match with the institutional opinions of TESEV.



This project is funded
by the European Union



This publication has been prepared with the support of the "Technical Assistance to Civil Society Organizations Project" (TACSO) which is funded by the EU. The content of this publication is in responsibility of TESEV and in no way may be considered to reflect the views of TACSO and the European Union. Furthermore, TESEV would like to convey its appreciation to the Open Society Foundation, Friedrich Ebert Foundation and TESEV Advisory Board for their contributions in the preparation of this publication.

Contents

FOREWORD,	5
METHODOLOGY,	8
INTRODUCTION,	9
LOCAL GOVERNMENT AND DEMOCRACY,	10
PRINCIPLES TO BE OVERSEEN,	11
SCALE FOR DECENTRALIZED GOVERNMENT UNITS,	12
THE PRINCIPLE OF DECENTRALIZATION,	14
FUNDAMENTAL PRINCIPLES,	16
COMPETENCIES AND RESPONSIBILITIES,	17
SELF GOVERNMENT AND TUTELAGE,	18
SUGGESTED GOVERNMENT MODEL,	19
A. Regional Government,	19
B. Provincial Government,	20
C. District Government,	20
D. Municipality, Village and Neighborhood Government,	21
E. Unions of Decentralized Governments,	21
F. Relations Between Decentralized Government Units,	22
DECREASING CENTRALIZATION AND OTHER REGULATIONS CONCERNING DEMOCRATIZATION,	23
A. Use of Mother Tongue in Education and Public Services,	23
B. Citizenship Right,	23
ANNEX I,	25
I. Constitutional Regulations,	25
II. Legal Regulations Concerning the Competency of Government Units,	27
ANNEX II,	28
Regional Units,	28

Appreciation

We would like to convey our gratitude to the advisory board members for their contributions to this report which includes an evaluation for localization and regional government in light of the new Constitution preparations, together with concrete suggestions. The diligent work carried out by the rapporteur of the board and author of this report, Prof. Dr. Oktay Uygun, is beyond any praise. We would also like to thank the Project Assistant, Emre Dönmez for his work in organizing the meetings of the board and carrying out the requested research. We hope this endeavor will contribute to the new constitution preparation process ...

Foreword

Fikret Toksöz, TESEV Good Governance Program Director

Turkey has been debating the preparation of a new constitution for a long time. Majority of the discussions are focusing on the improvement of human rights, democracy and strengthening of the state of law. Nevertheless, during the embodiment of human rights discussions, the executive branch of governmental mechanisms has been neglected in terms of strengthening of the state of law. The most important tool of the executive power, public administration, its structure, functions and responsibilities are hardly mentioned.

If not for the autonomous government request lately suggested by the Kurdish Movement, nobody seems to be interested in raising the issue of how public administration should be structured for the actualization of a democratic state of law based on human rights. However, the autonomy request of the Kurds also poses a danger of pulling the discussions for restructuring public administration as a whole to a regional government focus. Another drawback for the issue to be raised in context of regional autonomy is that, this area carries a potential to be manipulated with ideological speculations instead of rational arguments.

Yet, localization, in relation to the restructuring of public administration, is among the hottest topics of the recent years. Restructuring of public administration and localization, in addition to political, administrative and legal requirements, presents itself as a necessity in terms of many aspects. This necessity can be categorized under two main topics:

INTERNAL AND EXTERNAL DYNAMICS

Internal Dynamics

Turkey has been going through a transformation with an increasing cumulative momentum and complexity for many years now. This has deeply been affecting the governmental structure as well. It is possible to group these factors under several topics.

a. Economical Structure Change:

In order to understand this change, it is important to understand the course followed by the economical impact distribution of the sectors establishing the Gross Domestic Product in the recent years. According to a report prepared by the SPO (State Planning Organization) in 2010, in the period of 2005-2010 the share of the Agriculture Sector within GDP has gone down from 7% to 5.9%. In return, industry and service sectors have grown up. Sectors apart from agriculture have close relations to urban environments. It is evident that local governments need to be equipped with more competencies and responsibilities in order to be able to respond to the demands of the sectors besides agriculture.

b. Rapid Urbanization

Domestic migration from the 50's on has changed the rural-urban balance in Turkey entirely. Around 75% of the population lives in urban cities. Furthermore, urbanization is continuing to advance. For example, while in 2004 the urban population of Turkey was 60.3%, today this figure has gone up to the above mentioned 75%. The need to respond to the demands of urban residents makes it inevitable for the centralized government to decentralize and localize.

However, it is impossible to institute this localization with the existing constitution.

c. Regional Inequality

Dissolving regional economical, social and cultural differences in Turkey has been one of the top agenda items for all governments since the founding of the Republic. However, despite all efforts, regional inequalities have not been able to be overcome and the differences between the west and the east have continued to grow. Turkey has been talking about regional plans and regional development for the last 50 years. Nevertheless, the centralized government approach has not been able to solve regional inequalities. Consequently, delegation of issues such as development and the struggle against poverty to local governments have become inevitable.

d. The Over Weighing Centralized Government

Turkey, with its centralized government tradition, has been dealing with even minor local problems through the bureaucracy in Ankara. Until recently, this approach functioned to a certain extent. However, with reasons related to rapid population growth, urbanization and improvement of education level, the competencies of the centralized government has fundamentally decreased and lost its effect. This has had its effect on the parliament as well. Members of the Parliament have been left inadequate and ineffective in terms of responding to the requests of the public and have incurred prestige losses. Surveys conducted in terms of identifying the most trustworthy institutions in the eyes of the public showed trust towards MP's at lowest levels, while mayors scored higher on the lists. Having to program and allocate budgets for even the irrigation or school construction issues in Hakkari or Çankırı from all the way in Ankara have slowed progress and reduced public trust for MPs. Until the 1980s, this clientalism worked positively for politicians, but since then, this tendency has reversed. In addition, since central governments did not use methods such as delegation or conferral of their competencies, local governments have become units which only refer public requests to

Ankara through official correspondence. As a result, the ponderous and ineffective approach of central government in light of resolving local problems has made localization inevitable.

e. Increasing Request for Democracy and Strengthening of Civil Society

Following the years after the coup in 1980, Turkey has experienced a period of restricted civil rights and freedoms. The rights and freedoms restricting content of the 1982 Constitution have had an important effect on this result. During the 1990s, the developments in communication tools and the opportunities they provided helped carry democracy and human rights to the agenda in Turkey. The dissemination of democracy and human rights ideas also helped the strengthening of civil society. Besides professional bodies, associations and foundations dealing with local problems began showing up all around the country. The increasing democracy and human rights requests of the public, together with the necessity to include civil society to decision making mechanisms during the EU accession process are among the fundamental reasons why decentralized government has become essential rather than the centralized one.

External Dynamics

Economy, social and cultural structure and politics in a country, together with its resulting government are not affected solely by its own dynamics, but rather by developments of the external world as well. In the context of Turkey, these external dynamics may be categorized under two topics:

a. Globalization

Globalization has been felt with much more impact throughout the world since after the 1980s. First, globalization was perceived as only the restructuring of economy in terms of neo-liberal forms, but afterwards, it was seen that globalization was affecting countries in far more aspects than just their economies. Globalization is making its presence felt more and more every day in terms of issues such as ideas, human rights, democracy, culture, poverty and

environment. This process has begun to globalize cities as well. In light of all these effects, while restructuring its political and administrative mechanisms, a country has no choice but to take globalization into consideration.

Globalization, while inactivating nation states, is empowering local and regional approaches. As a result, localization is picking up speed all around the globe.

b. The European Union

The EU, especially with its expansion after the 1990's, has emphasized local government more and more. The Maastricht Treaty signed in 1992, which also established the Euro Zone, introduced the locality and proportionality concepts. Today, looking at EU regulations, it can be seen that two thirds of the acquis is related to local governments. Since Turkey announced its official candidature to the EU in 1999, many steps have been taken to transpose EU standards.

However, Turkey has been unable to respond to the local and regional government regulations foreseen by the EU. Especially in terms of the Council of Europe's European Charter of Local Self-Government, which is mentioned in the acquis and the according to the EU Committee of the Regions decisions, Turkey needs to take more serious steps. However, the existing constitution does not allow localization to be taken further.

CONCLUSION

Localization and regional government, in light of the new constitution preparation process in Turkey, cannot be narrowed down to an attempt to resolve only the Kurdish problem. Even if the Kurdish problem did not exist, Turkey would still need to benefit from the localization concept in order to create a more democratic society taking the above mentioned internal and external dynamics into consideration.

Methodology

This study has been conducted by an advisory board established within the TESEV Good Governance Program. During the advisory board meetings the “subsidiarity” concept, declarations of political parties for the 2011 elections, constitutions of different countries, Council of Europe’s European Charter of Local Self-Government, European Charter for Regional or Minority Languages, EU Progress reports and the “Perception and Expectations of the Kurdish Problem” research conducted by KONDA in 2010 was discussed. During these discussions it was evident that all political parties would need to reconcile concerning the new constitution in terms of local governments in order to create a document which would be able to respond to social, political and economical requests and needs of Turkey.

In this respect, it was also thought that there would be a need to create a regional and local government model for suggestion together with general constitutional principles. In doing so, it was also agreed to make such a suggestion by taking advantage of the already existing structures instead of creating new institutional establishments which would have a serious increasing effect on public expenditures.

Another consensus was concerning the need to structure constitutional suggestions of the advisory board by taking criticisms, view and recommendations of stakeholders both domestically and internationally into consideration. Thus, meetings were held in Ankara, Brussels and Diyarbakır. Contributions made during these meetings helped mature this study.

Advisory Board Members

Alpay Filiztekin

Büşra Ersanlı¹

Çağlar Keyder

Korel Göymen

Mesut Yeğen

Oktay Uygun

Sema Erder

Zekeriya Şarbak

¹ Advisory Board Member Prof. Dr. Büşra Ersanlı was taken into custody on October 28th 2011 in relation to the KCK investigations. She was then arrested with a court decision. TESEV published a bulletin concerning the “Transparency of the KCK Investigations”, criticizing the fact that KCK investigation arrest details were being kept confidential and underlining the need to share this information with the public.

Introduction

In Turkey, public administration is based on the principle of centralism. The central public administration, in addition to resuming majority of the competencies and responsibilities, also has strong tutelage over decentralized government units. The roots of this philosophy of centralism go back to the founding dates of the state. Although the 1921 constitution delegates public competencies mainly to local governments, in reality central governments have been the determining factor. Conflicts between the text and the actual were resolved three years later with a new constitution. The 1924 Constitution was adopted with a centralized state structure and a target to create a homogenous society.

When the rigid centralism and efforts for homogenous society in the founding years of the state started to become evident, the ruling elites, worried about division of the country and erosion of the official state ideology, rejected all kinds of initiatives aiming to reduce the power of the center. In the Political Parties Law of the 1961 and the 1982 Constitutions, advocating for federalism, regional autonomy or different languages and cultures were considered as a means to shut political parties down. Even the most moderate reforms intending to reduce centralism were considered as violations of the principle of the unity of the state and its nation.

Although a strong and central power was an inevitable necessity during the founding of the state, today in order to continue the unity of the country and the democratic regime, to be able respond to universal standards with a human rights perspective, competencies are needed to be delegated to

decentralized government units. Rigid central policies no longer harness feelings of solidarity, unity and integrity among our citizens, on the contrary, most of the time they result in conflicts between different cultural identities. As a general observation, it can be said that the centralized structure mainly creates problems in these areas: 1) restricts the ability of the public to be included in government, 2) reduces the effectiveness and efficiency of public services, 3) reduces the democratic accountability of public institutions and 4) makes it difficult to develop policies intending to acknowledge and protect the different language and cultures of our country in line with a modern human rights and democracy approaches.

The problems stemming from the central government structure and efforts to create a homogenous society have been referred to as the “Kurdish problem” during the recent years. Although the Kurdish problem does have significant importance in this respect, it would be more appropriate to evaluate the issue in terms of restructuring the state in the framework of modern legal and political principles, thereby accelerating its social, economical and cultural developments. Henceforth, this report is suggesting a public administration reform which would delegate public competencies to decentralized government units, increase the participation of the society to all levels of government, contribute to social solidarity, comply with EU accession targets and be based on standards declared by international agreements. Such a reform to decrease centralization can not only be achieved through various law changes, it needs to be rooted in a constitutional change.

Local Government and Democracy

Local governments have two fundamental characteristics in democratic countries: First, local governments are democratic, participatory and autonomous public units which allow local societies to govern themselves. Second, these units resume responsibility in terms of providing for the public services that locals need. Local government in Turkey, instead of being democratic and autonomous units which allow local citizens to participate, are more like technical-administrative units which serve the central government. It would be difficult for a country to establish a consistent democratic structure at national level without establishing a democratic decision making mechanism at local level. Thus, securing the autonomy of local government units is not only important in terms of increasing the effectiveness and efficiency of public services, but

also in terms of strengthening the democratic regime trying to be structured. Local government units need to be structured in the New Constitution in line with their importance, and their administrative and financial autonomy needs to be secured.

The importance of local governments in terms of democracy is underlined in the European Charter of Local Self-Government of which Turkey is a signatory. The Charter mentions (in article 4/3) the principle of providing public services through units most responsive to public (subsidiarity) and underlines the importance of including local societies to decision making processes. Providing public services through local governments equipped with real competencies and autonomy is expressed as a means to strengthen democracy.

.

Principles to be Overseen

In order for a public administration reform aiming at decreasing centralization to meet the expectations and be implemented in reality, the following issues need to be taken into consideration:

- 1) Government units should be structured with scales to be able to support social, economic and cultural developments and be equipped with competencies and resources proportional to the functions they resume.
- 2) Public administration should be structured according to participation, transparency and democratic accountability principles at all levels.
- 3) The restructuring of public administration, instead of establishing new institutions, should make use of familiar structures, transform them according to local needs and traditional administrative institutions and mechanisms should be preserved if it is possible to make them more functional.
- 4) The new structure should not include more bureaucratic regulations which would make the local government structure even more complicated.
- 5) Regulations should be designed to avoid high expenditures like new staff recruitments, equipment-tool purchases and constructions.
- 6) Regulations should be designed to contribute to social peace.
- 7) Constitutional provisions should not be formulated in order to prevent legislation from attempting to improve public administration.
- 8) Equal representation of women and men in central and local government decision making bodies should be sought.

Scale for Decentralized Government Units

For a reform to be implemented with the above mentioned context, the first issue to be tackled should be the appropriate scale of government units. In Turkey, the largest government units of the central authority are the provinces. Since these provinces were mainly established according to historical compositions, their scale was sustainable in terms of public service organizations during the first years of the Republic and they were a resource of strong local identities. In time, new provinces were established by dividing the old ones with political agendas, so the situation changed. The negative result of the increase in the number of provinces was that most of them were far too small to support socio-economical development and cultural improvements.

In Turkey, while some provinces were becoming smaller in terms of population and area coverage, provinces like Istanbul and Ankara were becoming more and more crowded with more population. These developments were the sign of regional inequalities and they created two main problems. First, planning for issues such as economy, culture, environment and communication and providing effective public services in provinces which became smaller or were already too small began to be more difficult and a need to act at larger scale emerged. On the other hand, a need to establish relatively smaller government units for effective and democratic local management in overpopulated provinces was also felt. The public administration reform needs to be designed to be able to respond to both of these needs. The scale problem can be overcome with regional governments for downsizing provinces. And for overpopulated metropolitan cities like Istanbul, tailored legal regulations can be designed to strengthen local

democracy. Experiences of European countries which have established regional governments for their provinces, like France, may set an example for us. However, the serious difficulties of establishing regional government units in Turkey must also be underlined.

The first difficulty of establishing regional governments in Turkey is identifying the scale criteria for the regions and taking the first steps of the process. Turkey, like Spain, does not have distinct regional identities differentiating with century's worth of historical, ethnic, religious or economic characteristic. Trying to identify which province would belong to which regional government with which common characteristics will be a cause for intense discussions. Another part of such a discussion would be about who would begin this regionalization process. The Spanish Constitution states that a regionalization process can begin with the request of both local and central governments. In Turkey, when the first method is accepted, though it would not be difficult to establish regional governments in the East and the South East where there is a high Kurdish population concentration, the same might not be true for the other regions. For some parts of the country, request from provinces to come together as regions may not arise for a long time. In order to avoid such a situation which would hinder the expected benefit of this public administration reform, instead of waiting for provincial requests, it would be much more effective for the parliament to legally decide on the entire regional establishment by taking expressed requests into consideration and establish the regional governments of these units.

The second major problem in terms of establishing regional governments is the expenditure, complexity and bureaucracy which would be created by adding new government units to existing ones. Thus, government units which would not cause large financial burdens and delay decision making processes need to be designed. Another important issue is the

possibility of flaming political polarization by trying to establish regional governments within the environment we are in today. The following sections will define a model suggestion by taking the advantage and disadvantages of regional governments into consideration.

The Principle of Decentralization

Many changes related with the public administration reform are subject to legal regulation. On the other hand, constitutional changes are needed as well. The first change which needs to be made is concerning the principle of public administration. Instead of the “centralized”, the “decentralized” government principle should be included among the fundamental principles of the constitution. This issue, similar to the first article of the French Constitution, can be mentioned in the third article of our Constitution, which is about the unity of the state. Accordingly, the first three articles of our Constitution may be designed as follows:

Suggestion for Constitutional Regulation:

Form of the State

ARTICLE 1 – The State of Turkey is a Republic.

Characteristics of the Republic

ARTICLE 2 – The Republic of Turkey, which is the common entity of its citizens, is a State of Law based on human rights, pluralism, democracy, secularism and social rights.

Integrity of the State

ARTICLE 3 – The Republic of Turkey is unitary. Its organizational structure is based on the principle of decentralization.

The first suggested article underlines that the State of Turkey is a Republic. This principle has been the first article of our Constitutions since 1924. In order to continue this tradition, the same principle has been kept a separate article.

The characteristics of the Republic have stated as the principles which have been adopted with the 1961 Constitution and are also the ones accepted by civilized nations.

The “pluralism” principle, which is not stated in our previous Constitutions, refers to the reflection of social diversity to the state structure. Differences in the society can use rights to self-organization, freedom of expression, democratic political participation, and influence governmental policies as pressure groups only if the fundamental organs of the government, its principles and functions are willing to accept these differences. Diversity and being different should no longer be perceived as abnormal, harmful or unwanted characteristics, on the contrary they provide cultural richness to our country. The “pluralism” principle which is a part of the fundamental characteristics of the Republic is the expression of this approach as a basic norm. On the other hand, the “democratic state” principle should be perceived as a “pluralistic-freedom based” democracy.

In the 3rd article under the form of the state heading, decentralization has been stated as a fundamental principle for the public administration reform. By organizing decentralized government units and establishing their competencies and responsibilities will be implemented in the context of this principle.

The 1982 Constitution states that these first three articles “shall not be amended”. Since these articles express the fundamental principles which the State is based on, they need to be protected against the temporary majorities of the parliament. Therefore,

constitutional changes should be sought to happen with a 2/3 qualified majority. However, this may not provide sufficient protection in context of our country. Due to the unjust election system in Turkey, a political party with 30-40% vote is able to establish this kind of 2/3 representation. Under these circumstances, a political party with less than half the support of the voters has the authority to change the fundamental principles of the Constitution. In order to avoid such an inconvenience, the change procedures of the fundamental principles of the Constitution may be differentiated from the remaining ones. A high majority of 3/4 may be sought to be able to change fundamental principles. In addition, it would be beneficial to stipulate a condition which makes it mandatory for a presiding parliament to ratify this decision.

Putting constitutional changes to public vote also needs to be reviewed in this context. According to our existing constitution, constitutional changes are subject to public voting automatically according to the results of the parliament vote and the judgment of the President or with the request of the President. This regulation does not provide sufficient guarantee in terms of a minority rejecting the change in the Parliament. Consequently, it would be more effective to decide on a public voting with a request the ¼ of the Parliament members. This method may then contribute to the negotiation and agreement procedures of a constitutional change.

Fundamental Principles

Along with the public administration reform, some principle and regulations, which are not present in the existing constitution, should be placed under constitutional guarantee. In this context, regulations which should be added to the Constitution are as follows:

Keeping in mind that decentralized governments will need to resume most of the public competencies and responsibilities, their importance within the State structure should be underlined. Therefore, names of decentralized government units should be listed in the Constitution as regional governments, provincial governments, metropolitan municipality governments, municipality governments, village and neighborhood governments, and their functions should be identified.

In terms of identifying government units, their competencies, duties and responsibilities, empowerment of local governments which are most responsive to the society in order to provide the most effective public services should be accepted as a constitutional principle.

Financial resources of central and decentralized government units, proportional to the responsibilities they are given through the Constitution and laws, should be identified and placed under financial autonomy guarantee.

Participation, accountability and transparency in administrative functions need to be underlined and keeping records under confidentiality should not be possible in light of rights to legal remedies.

Central governments should be obliged to consult local units and seek their opinion in relation to planning and decision making processes concerning local governments.

In terms of establishing decentralized local unit bodies and their functions, the will of assemblies and boards should be prioritized rather than individual decisions.

Equal representation of women and men in decision-making bodies of local governments should be sought and an acceptable balance should be placed under constitutional guarantee.

Concerning issues related to the local society, both local government units and a certain percentage of local voters should be given the right to request public voting. The principles of this authority and implementation regulations should be identified.

In terms of providing public services, in necessary regions, local governments should be able to provide services in languages other than Turkish.

In order to control public administration apart from the judiciary and be able to manage complaint, request and applications of citizens concerning government, a “Ombudsmanship” body should be established.

Competencies and Responsibilities

In a model which delegates public competencies mainly to decentralized government units, a list of competencies to be exclusively used by central government and the ones to be shared with local units should be identified by law. Any remaining competencies should be left to local governments. In terms of shared competencies, central governments should regulate issues with national significance, identify national standards and leave the specification of details to local units.

Any public competency not mentioned here shall be used by regional, provincial, municipal, village or neighborhood governments. In addition, decentralized local units, parallel to their increasing responsibilities, should be able to name taxes in areas identified by law and be able to make changes to already existing ones within limits set by law in order to enable them to increase their financial resources.

Suggestion for Constitutional Regulation:

ARTICLE (...) Duties and Services Exclusive to Central Government:

- 1) Duties and services related to justice, defense, security, intelligence, foreign affairs and foreign policy.
- 2) Duties and services related to the regulation of economy, treasury, foreign trade, customs and markets.
- 3) Duties and services related to Religious Affairs.
- 4) Duties and services related to Social Security.
- 5) Duties and services related to land registry and cadastre, population and citizenship.
- 6) Duties and services related to Foundations.
- 7) Other Duties and services related to issues of national importance.

ARTICLE (...) Duties and Services to be Implemented in Cooperation with Central and Decentralized Government Units:

- 1) Duties and services related to economical, social and physical planning at national level, implementation of program and projects intending to decrease regional differences.
- 2) Duties and services related to education.
- 3) Duties and services related to health.
- 4) Duties and services related to emergency management and civil protection.
- 5) Duties and services related to the protection of historical and cultural heritage together with the environment.
- 6) Duties and services related to social services and aid.

Self-government and Tutelage

All decentralized government units should be empowered in terms of administrative and financial self government. An important dimension of autonomy is related to the tutelage power of the central government. The supervision competency of the central government should not be designed in order to hinder the autonomy of decentralized units. Hence, as a principle, the supervision competency should not be on expediency, but rather on compliance with laws.

Suggestion for Constitutional Regulation:

ARTICLE () Decision and proceedings of decentralized government units enter into force on publishing or announcement dates. The law shall identify which proceedings of decentralized units will be subject to governorship and district government notification. Governors and district governors shall prepare reports and notify related government units of any legal inconsistencies they may identify, within one month. When necessary, they shall apply to administrative courts for the annulment of such proceedings.

() In cases when decentralized government units are determined to not being responsive to their constitutional and legal obligations by judicial decisions, the government shall act on behalf of these units and their bodies to make the necessary regulations.

Suggested Government Model

In context of the previously mentioned public administration reform principles, decentralized government units may be organized in different ways. Throughout the model suggested, an approach which aims to balance conditions that make it inevitable for regional governments to be established with risks they may entail has been sought. Provincial governments, metropolitan municipalities and municipal governments are the focus of the reform to be realized. The aim is to enable regional governments, which should be given the authority to establish cooperation between provinces and support their cultural, social and economical growth, to be able to increase the competitiveness of their regions at national and international levels and make effective use of their resources.

A. REGIONAL GOVERNMENT

In establishing regional governments, economical potential which would enable them to respond to the responsibilities they will resume needs to be taken into consideration. These regions should be designed as rational geographical areas which would be able to create financial resources to support their employment, which contain suitable transportation and communication means, include at least one or more developed cities and are functional in terms of providing public services. It would be desirable for these areas to also overlap with existing regional identities as much as possible and not result in a division of cultural clusters. However, when cultural identities are made out to be the most important aspect and reference point of establishing regions, then the risk of having regions with no competitiveness ability who can only survive with central government support is faced. Therefore,

regions need to be designed in light of diligent studies and in addition to provincial requests the NUTS regions identified with the law (dated 08.02.2006, no. 5449) concerning the establishment of development agencies should be taken into consideration (Annex II). Once regional governments are established, it would be beneficial to affiliate these development agencies with their related regions.

In terms of establishing regional governments, a general article must be included to the constitution in order to provide the legislator with necessary powers:

Suggestion for Constitutional Regulation:

Regional Government:

ARTICLE (...) (1) Regional Governments shall comprise of Regional Assemblies, President and Executive Boards.

(2) Establishment of Regional Governments, their competencies and responsibilities together with the situations of regions with single provinces shall be regulated by laws.

(3) Regional regulations may be made for issues of which fundamental principles are laid down by laws. Proceeding and decisions of other decentralized government units of a region may not be in conflict with regional regulations.

The legislator will make a choice between different models in terms of establishing regional governments. Regional assembly members and its president may directly be elected by the voters of the region or they may comprise of provincial assembly members and province/town mayors and they may elect their own president. Regions of single provinces may have

different bodies and authorities than the others. These regulations should be detailed in related laws.

B. PROVINCIAL GOVERNMENT

Provincial local governments should be designed as units which would resume most of the public competencies. Henceforth, instead of establishing a completely new body, it would be more beneficial to make use of the existing provincial special governments. Although provincial special governments have assemblies which are elected and they entail a considerable amount of competencies, at the moment they cannot be seen as real local government units with administrative and financial autonomy. Some improvements have been made in the recent years; however governors are still the head of these units and the representative of their legal entities. In order to make provincial special governments more effective and autonomous, the following changes are suggested:

1) Changes concerning the names of the provincial special government units:

Existing NAME	Suggested New NAME
Provincial Special Government	Provincial Local Government
Provincial General Assembly	Provincial Assembly
Provincial Permanent Commission	Provincial Executive Board

2) Provincial Assembly:

In terms of the election of Provincial Assembly members, the already existing method for provincial general assembly members may be used. According to the 1st and 2nd articles of the law concerning the Election of Local Governments, Village Headmen and Elderly Committees, provincial general assembly members are elected by acknowledging each district as one election area and with the use of a proportional representation system including a one to ten barrier approach. In addition to elected members, these

bodies could be made more effective by including the province mayor, all district mayors and town mayors of areas with a population over 5.000 as natural members.

3) President:

According to existing regulations, the head of the provincial special government, which is a local government unit, is the governor. This kind of regulation is against local autonomy. The authority of the governor to be the representative of this unit should be seized and the president of the provincial local government should be elected by its Assembly.

4) Provincial Executive Board:

The existing Provincial Permanent Commissions are comprised of five members appointed by the governor and five member elected by the assembly. Their chairperson is the governor. This body should be renamed as the "Provincial Executive Board". The chairing authority of the governor should end and members should be identified among the assembly members by the "President".

Public services in provinces affiliated to the central government should continue to be provided under the governor's leadership and through provincial directorates. The governor's hierarchical authority over these units should be continued.

The name and units of the Provincial Local Government which would resume most of the public competencies from central government along with new ones should be mentioned in the constitution. Their competencies should be regulated by law. Suggestion:

Suggestion for Constitutional Regulation:

Provincial Local Government:

ARTICLE (...) (1) Provincial Local Governments shall comprise of Provincial Assemblies, Presidents and Executive Boards.

(2) Provincial Assembly members shall be elected by provincial voters. Provincial mayors, all district mayors and town mayors of areas with a population over 5.000 shall be natural members of the Assembly. Assembly members shall be in office for five years.

(3) Presidents shall be elected by Assembly members. Executive Board members shall be identified by the President.

C. DISTRICT GOVERNMENT

Today, since provinces have become much smaller compared to the past and communication and transportation means have developed immensely, it is no longer a must to establish separate local governments at district levels. Indeed, establishing autonomous district governments like the provincial ones would only complicate the administrative structure and add to expenditures due to the high amount of existing districts. Instead, strengthening provincial local governments in terms of providing public services to districts would be much more effective. The provincial local government, when necessary, may respond to its responsibilities through municipalities and village governments. Duties and responsibilities of the central government may be continued as it is today, with the leadership of the district governor and through the district branch directorates.

D. MUNICIPALITY, VILLAGE AND NEIGHBORHOOD GOVERNMENT

Names and bodies of municipality, village and neighborhood governments should be mentioned in the constitution in order to strengthen their autonomy. Although their functionality has been decreased in the recent years, since neighborhood governments are the

most responsive units to the public in cities, they should especially be supported. Neighborhood governments, which have been designed as important units in terms of local democracy with this report, need to be empowered as legal entities. Neighborhood governments do not have financial autonomy, but nevertheless, they should become advisory bodies for central and decentralized governments concerning their actions at neighborhood levels.

At this point, it would be beneficial to remind about the problematic dimensions of existing municipal elections. Today, since mayors are elected with a pluralistic system, it is possible to win an election with 25-30% of the votes. Given that it is difficult to associate this situation with democracy, mayors should be elected either with a two round or transferable vote system. Legal regulations should be designed to emphasize the will of assemblies and their boards rather than individual preferences concerning the establishment and function of decentralized units.

Suggestion for Constitutional Regulation:

Municipal Government

ARTICLE (...) (1) Municipal and Metropolitan Municipality Governments shall comprise of Municipality Assemblies, Executive Boards and Mayors.

(2) Municipality Assembly Members and Mayors shall be elected for five year terms by the voters within related municipality borders. In terms of Assembly Member elections, each neighborhood shall be considered as an election area. Metropolitan Municipality Assembly structures shall be regulated by law.

Village and Neighborhood Government

ARTICLE (...) (1) Village Governments shall comprise of Village Assemblies, Executive Boards and Village Headmen. All residents of a village shall be members of the Village Assembly. The Executive Board and Headmen shall be elected by the Village Assembly.

(2) Neighborhood Governments shall comprise of Neighborhood Assemblies, Executive Boards and Headmen.

E. UNIONS OF DECENTRALIZED GOVERNMENTS

Article 127 (last article) of our constitution states that local governments, in order to carry out certain public services, may come together to form unions. This article should be strengthened and preserved.

According to the nature of the public services to be carried out, public legal entities should also be able to be members of such unions. Suggestion:

Suggestion for Constitutional Regulation:

Unions of Decentralized Governments

ARTICLE (...) Unions of Decentralized Governments may be established in order to carry out public services. Public legal entities within the area of the union may also become members. The establishment levels, competencies and responsibilities of these units together with their financial resources shall be identified by law.

F. RELATIONS BETWEEN DECENTRALIZED GOVERNMENT UNITS

Relations between regional, provincial, municipal, village and neighborhood governments should be regulated by laws. At the moment, there is no such regulation which defines the relations between provincial special governments, municipalities and headmen. The cooperation between these units are tried to be established by governors and district governors. Since the suggested reform includes the increase in the number of decentralized government units along with their competencies and responsibilities, the nature and intensity of the relations between these units will also increase. Regional and provincial government will delegate some of their responsibilities to municipal, village and neighborhood governments. In this case, issues such as the monitoring and auditing of actions together with the equal distribution of financial resources will gain more importance. In order to avoid competency and resource arguments between these units and increase the effectiveness of public services, the relation between decentralized government units should be regulated by law without hindering their autonomy.

Decreasing Centralization and Other Regulations Concerning Democratization

In order for the public administration reform to make a strong contribution to democratization and recognition of cultural differences in Turkey, changes to the Constitution will need to be made concerning issues which are not directly related to public administration. Concordantly, articles of the constitution which need special attention are Article 42/last, concerning education in a mother tongue and Article 66, concerning citizenship.

A. USE OF MOTHER TONGUE IN EDUCATION AND PUBLIC SERVICES

Regulations in Turkey impose certain restrictions on the language rights of citizens whose mother tongues are different from the official language. The most famous one of them all is the 42nd article of the constitution which states that, “No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training and education”. In addition to the articles which restrict the use of education in a mother tongue, there are also restrictions concerning the use of mother tongues in public services. These restrictions which are against citizens protecting and developing their mother tongues and cultures are unacceptable in a democratic state based on human rights. In reference to related international conventions, the state is responsible for guaranteeing the language rights of its citizens with acceptable boundaries related to the unity of the country.

The first step which needs to be taken in this context is the annulment of the 42nd Article of the Constitution that restricts education in a mother tongue. The use of mother tongues other than Turkish in education should be regulated by laws. In terms of

providing public services, especially in local governments, the possibility to work with mother tongues other than Turkish should be allowed.

In this respect, adding a statement such as “providing services in languages other than the official language shall be regulated by law” to the section related with the public administration regulations of the constitution will be effective. Since the use of mother tongues in public services and education is also a matter of human rights, a general regulation should be added to the cultural rights section of the Constitution.

Suggestion for Constitutional Regulation:

Right to Mother Tongue

ARTICLE (...) Language rights of citizens whose mother tongues are different from the official language shall be guaranteed by laws.

Suggestion:

B. CITIZENSHIP RIGHT

The regulation concerning citizenship of our Constitution (article 66/1) includes statements which emphasize ethnic origin or which may be interpreted that way: “Anyone bound to the Turkish state through the bond of citizenship is a Turk”. This regulation identifies who shall be considered Turkish. While there is no need for such identification to be made within an article related to citizenship rights, the fact that this identification contains an ethnic reference has a negative impact on our national unity and social

solidarity. This problem may be resolved with the use of a “rights” based perspective to the citizenship article of the constitution. Accordingly, the article should define who will be considered a citizen, how that shall be achieved or lost, instead of identifying whose Turkish or not.

This way it would be possible for the different ethnic,

Suggestion for Constitutional Regulation:

Citizenship

ARTICLE (...) A child born from a citizen mother and father shall be the citizen of the Turkish Republic. Achievement conditions of citizenship shall be regulated by law. No one shall be deprived of their citizenship rights against their own will.

religious and cultural identities of our country to peacefully come together under a national identity.

ANNEX I

I. CONSTITUTIONAL REGULATIONS

General Principles

Form of the State

ARTICLE 1 – The State of Turkey is a Republic.

Characteristics of the Republic

ARTICLE 2 – The Republic of Turkey, which is the common entity of its citizens, is a State of Law based on human rights, pluralism, democracy, secularism and social rights.

Integrity of the State

ARTICLE 3 – The Republic of Turkey is unitary. Its organizational structure is based on the principle of decentralization.

Public Administration

Principles of Public Administration

ARTICLE (...) (1) Public administration shall comprise of central and decentralized government units.

(2) The competencies and responsibilities of government units, keeping in mind that duties with national characteristics belongs to central government, shall be regulated by law, authorizing the government unit most responsive to the public in terms of providing the most effective public service.

(3) Public legal entities shall be established only through laws or competencies granted by laws.

(4) Financial resources of central and decentralized government units shall be identified proportional to the responsibilities assigned and are guaranteed through the constitution and laws.

(5) Participation to administrative decision making processes and transparency of actions shall be fundamental. Government shall be responsible for promoting participation to decision making processes, justifying their actions, identifying methods and procedures for advocating against their implementations.

(6) The use of mother tongues other than the official language in public services shall be regulated by law.

Ombudsmanship

ARTICLE (...) (1) Ombudsmanship body shall be responsible for investigating the complaint, request and applications of citizens concerning government functions.

(2) The establishment, functions, Duties and competencies of the body within central and decentralized government units shall be regulated by law according to the autonomy principle.

Establishment of Public Administration

Central Government

ARTICLE (...) (1) The structure of the central government shall divide to regions, provinces and districts according to the needs of public services, geographical situation and economic conditions.

(2) The central government shall be represented by regional governors at regional level, provincial governors at provincial level and district governor at district level.

Decentralized Government

ARTICLE (...) (1) Decentralized government units shall be autonomous public legal entities established in order to respond to the local needs of the local society.

(2) Decentralized government units shall comprise of regional governments, provincial governments, metropolitan municipality governments, municipality governments and village and neighborhood governments.

(3) Decentralized governments shall be elected for five year terms. However, elections to these units or their bodies which are to be held one year before or after the general Parliament Elections shall be held together with them.

(4) Review of decentralized government's elected bodies to gain and lose their statutes shall be conducted through judicial methods.

(5) Methods which guarantee consultancy with local governments concerning all planning and decision making processes related with them shall be established by laws.

(6) Given that decentralized government units provide local services through their own financial resources, the areas which they may institute new taxes shall be regulated with laws.

(7) Decision and proceedings of decentralized government units enter into force on publishing or announcement dates. The law shall identify which proceedings of decentralized units will be subject to governorship and district government notification. Governorships and district governments shall prepare reports and notify related governments of any legal inconsistencies they may identify within one month. When necessary, they shall apply to administrative courts for the annulment of such proceedings.

(8) In cases when decentralized government units are determined to not being responsive to their constitutional and legal obligations by judicial decisions, the government shall act on behalf of these units and their bodies to make the necessary regulations.

(9) Women and men shall be represented in the decision making bodies of decentralized government units with at least a 35 percent ratio.

(10) Decentralized government units may choose to submit issues to public vote given they are the concern of the entire local society. Public vote may also be request by the voters. Procedures, principles and boundaries of public voting shall be regulated by laws.

Regional Government:

ARTICLE (...) (1) Regional Governments shall comprise of Regional Assemblies, President and Executive Boards.

(2) Establishment of Regional Governments, their competencies and responsibilities together with the situations of regions with single provinces shall be regulated by laws.

(3) Regional regulations may be made for issues which fundamental principles are laid down by laws. Proceeding and decisions of other decentralized units of a region may not be in conflict with regional regulations.

Provincial Local Government:

ARTICLE (...) (1) Provincial Local Governments shall comprise of Provincial Assemblies, Presidents and Executive Boards.

(2) Provincial Assembly members shall be elected by provincial voters. Provincial mayors, all district mayors and town mayors of areas with a population over 5.000 shall be natural members of the Assembly. Assembly members shall be in office for five years.

(3) Presidents shall be elected by Assembly members. Executive Board members shall be identified by the President.

Municipal Government

ARTICLE (...) (1) Municipal and Metropolitan Municipality Governments shall comprise of Municipality Assemblies, Executive Boards and Mayors.

(2) Municipality Assembly Members and Mayors shall be elected for five year terms by the voters within related municipality borders. In terms of Assembly Member elections, each neighborhood shall be

considered as an election area. Metropolitan Municipality Assembly structures shall be regulated by law.

Village and Neighborhood Government

ARTICLE (...) (1) Village Governments shall comprise of Village Assemblies, Executive Boards and Village Headmen. All residents of a village shall be members of the Village Assembly. The Executive Board and Headmen shall be elected by the Village Assembly.

(2) Neighborhood Governments shall comprise of Neighborhood Assemblies, Executive Boards and Headmen.

Unions of Decentralized Governments

ARTICLE (...) Unions of Decentralized Governments may be established in order to carry out public services. Public legal entities within the area of the union may also become members. The establishment levels, competencies and responsibilities of these units together with their financial resources shall be identified by law.

Cultural Rights

Language Rights

ARTICLE (...) Language rights of citizens whose mother tongues are different from the official language shall be guaranteed by laws.

Citizenship

ARTICLE (...) A child born from a citizen mother and father shall be the citizen of the Turkish Republic. Achievement conditions of citizenship shall be regulated by law. No one shall be deprived of their citizenship rights against their own will.

II. LEGAL REGULATIONS RELATED TO THE COMPETENCIES OF GOVERNMENT UNITS

ARTICLE (...) Duties and Services Exclusive to Central Government:

- 1) Duties and services related to justice, defense, security, intelligence, foreign affairs and foreign policy.
- 2) Duties and services related to the regulation of economy, treasury, foreign trade, customs and markets.
- 3) Duties and services related to Religious Affairs.
- 4) Duties and services related to Social Security.
- 5) Duties and services related to land registry and cadastre, population and citizenship.
- 6) Duties and services related to Foundations.
- 7) Other Duties and services related to issues of national importance.

ARTICLE (...) Duties and Services to be Implemented in Cooperation with Central and Decentralized Government Units:

- 1) Duties and services related to economical, social and physical planning at national level, implementation of program and projects intending to decrease regional differences.
- 2) Duties and services related to education.
- 3) Duties and services related to health.
- 4) Duties and services related to emergency management and civil protection.
- 5) Duties and services related to the protection of historical and cultural heritage together with the environment.
- 6) Duties and services related to social services and aid.

ANNEX II

REGIONAL UNITS

LAW REGULATING THE ESTABLISHMENT, COORDINATION AND DUTIES OF DEVELOPMENT AGENCIES
Dated 08.02.2006 and published in the Official Journal No. 26074 Law No. 5449 Ratification Date: 25.1.2006

12 REGIONS (Provinces of the NUTS I Regions)
TR1: İstanbul
TR2: Western Marmara (Edirne, Kırklareli, Tekirdağ, Balıkesir, Çanakkale)
TR3: Aegean (İzmir, Aydın, Denizli, Muğla, Afyonkarahisar, Kütahya, Manisa, Uşak)
TR4: Eastern Marmara (Bilecik, Bursa, Eskişehir, Bolu, Düzce, Kocaeli, Sakarya, Yalova)
TR5: Western Anatolia (Ankara, Karaman, Konya)
TR6: Mediterranean (Antalya, Burdur, Isparta, Adana, Mersin, Hatay, Kahramanmaraş, Osmaniye)
TR7: Central Anatolia (Aksaray, Kırıkkale, Kırşehir, Niğde, Nevşehir, Kayseri, Sivas, Yozgat)
TR8: Western Black Sea (Bartın, Karabük, Zonguldak, Çankırı, Kastamonu, Sinop, Amasya, Çorum, Samsun, Tokat)
TR9: Eastern Black Sea (Artvin, Giresun, Gümüşhane, ordu, Rize, Trabzon)
TRA: North Eastern Anatolia (Bayburt, Erzincan, Erzurum, Ağrı, Ardahan, Iğdır, Kars)
TRB: Central Eastern Anatolia (Bingöl, Elazığ, Malatya, Tunceli, Bitlis, Hakkâri, Muş, Van)
TRC: South Eastern Anatolia (Adıyaman, Gaziantep, Kilis, Diyarbakır, Şanlıurfa, Batman, Mardin, Şırnak, Siirt)

26 REGIONS (Provinces and Populations of the NUTS II Regions)
TR10: İstanbul Population: 12.915.158
TR21: Edirne, Kırklareli, Tekirdağ Population: 1.511.952
TR22: Balıkesir, Çanakkale Population: 1.617.820
TR31: İzmir Population: 3.948.848
TR32: Aydın, Denizli, Muğla Population: 1.749.326
TR33: Afyon, Kütahya, Manisa, Uşak Population: 2.940.947
TR41: Bilecik, Bursa, Eskişehir Population: 3.508.133
TR42: Bolu, Düzce, Kocaeli, Sakarya, Yalova Population: 3.193.210
TR51: Ankara Population: 4.771.716
TR52: Karaman, Konya Population: 2.224.547
TR61: Antalya, Burdur, Isparta Population: 2.672.429
TR62: Adana, Mersin Population: 3.733.124
TR71: Aksaray, Kırıkkale, Kırşehir, Niğde, Nevşehir Population: 1.496.296

26 REGIONS (Provinces and Populations of the NUTS II Regions)
TR72: Kayseri, Sivas, Yozgat Population: 2.352.971
TR81: Bartın, Karabük, Zonguldak Population: 891.464
TR82: Çankırı, Kastamonu, Sinop Population: 743.029
TR83: Amasya, Çorum, Samsun, Tokat Population: 2.740.686
TR90: Artvin, Giresun, Gümüşhane, Ordu, Rize, Trabzon Population: 2.516.167
TRA1: Bayburt, Erzincan, Erzurum Population: 1.068.446
TRA2: Ağrı, Ardahan, Iğdır, Kars Population: 1.133.660
TRB1: Bingöl, Elazığ, Malatya, Tunceli Population: 1.625.158
TRB2: Bitlis, Hakkâri, Muş, Van Population: 2.022.373
TRC1: Adıyaman, Gaziantep, Kilis Population: 2.414.833
TRC2: Diyarbakır, Şanlıurfa Population: 3.192.329
TRC3: Mardin, Batman, Şırnak, Siirt Population: 1.985.610
TR63: Hatay, Kahramanmaraş, Osmaniye Population: 3.013.790



TESEV

Bankalar Caddesi
Minerva Han, No:2, Kat: 3
34420 Karaköy İstanbul
T +90 212 292 89 03
F +90 212 292 90 46
www.tesev.org.tr