

Report on Local Democracy and Appointment of State Commissioners to Municipalities in Turkey



Union of Southeastern Anatolia Region Municipalities (GABB)

13 February 2017

Prelude

Political history of Turkey evidences that only in military junta periods appointed officials carried out official duties of elected local administrations. Appointed soldiers or bureaucrats had replaced mayors during 1980-83 when military junta was in power. Since 1983, for the first time, a large number of mayors elected by the people started to be dismissed on 11th of September, 2016 and the central government appointed trustees to 27 municipalities.¹ 24 of those municipalities are connected to Democratic Regions Party (DBP). Since more governors or district governors have been appointed as state commissioners to municipalities since September 2016, total number of municipalities seized by the government is currently 77 (out of 103) while 90 co-mayors have been imprisoned and total population affected from this anti-democratic measure is 5.9 million. It is also striking that state commissioners appointed to 4 municipalities connected with the AKP (Justice and Development Party) and MHP (Nationalist Actions Party) were elected by municipal councils, namely by elected people, while those appointed to DBP-led municipalities are governors or district governors. Most appropriate way to define this ongoing process would as follows: local governments, which were elected in 2014 by the people in the Kurdish region are now seized by the central government. That means another critical threshold in ongoing de-democratization process has already been ushered in Turkey. While people in the Kurdish region needs political stability and peace, it is highly likely that this new repressive policy will engender more political instability. Thus hopes within the society towards deescalation of the armed conflict and institutionalisation of peace wanes since appointing trustees to local governments diminishes people's belief in local democracy and rule of law.

¹ In 2007, since Sur Municipality of Diyarbakır implemented multilingualism as a policy, deputy governor of Diyarbakır was appointed as trustee since the court had abrogated the municipal council. In order to access more detailed information on this issue, see "Local Democracy in Turkey: Situation in Sur / Diyarbakır", South-East Anatolia, Report of the Congress Fact-Finding Mission to Turkey, 8-10 August 2007

I. Critical Role of Local Governments

The origin of current political developments is persistence of the Kurdish question in Turkey that has remained unresolved for decades in the absence of peaceful and democratic conflict resolution practices. On this vein, it is a crucial fact that those years witnessed least number of casualties and armed clashes since 1984 coincide the period during which local democracy could function through implementation of relatively democratic rules. Political environment of Kurdish question in Turkey from late 1990s to 2015 witnessed increasing social support for local democracy as well as institutionalization of competitive democratic environment. In other words, burgeoning and maturing local democracy in the region played a transformative role towards the ebb of conflict environment. Level of attention and participation by the people as well as the number and total impact of NGOs on local governments in cities overwhelmingly populated by the Kurds, have been considerably higher compared to other cities in Turkey. People in the region observing that they can govern themselves through democratic means has also strengthened their perceptions and opinions towards possibility of a peaceful resolution for the Kurdish question. On the other hand, one can observe that policies decreasing the level of local democracy in the region also negatively affect people's hopes towards peace and democratization.

The latest municipal election was held in a quite competitive environment, which took place while 2,5-year-long ceasefire (2013-15) between the PKK and the state was still effective, and strengthened voters belief in institutionalised democratic mechanisms. Candidates of Peace and Democracy Party (BDP), that was antecedent of Democratic Regions Party (DBP), won elections in 11 provinces, 68 cities and 23 towns.

In the course election campaign for the municipal bodies in 2014, Peace and Democracy Party emphasized the link between local democracy and peace, promised that multi-culturalist policies to continue and implementing co-mayor system -consisting of one male and one female mayor in all municipalities- in order enhance gender equality, recommending novel social policies to eradicate socio-economic gaps as well as fostering pro-ecological policies both in urban

and rural areas. Another crucial element of the electoral campaign was its commitment to decentralization agenda already suggested by European union and European Council for local governments.



While endeavours of elected co-mayors to fulfill those promises given during the election campaign were in progress, armed conflicts restarted in July 2015 in a more detrimental and destructive manner than before. Since co-mayors and elected municipal council members were detained, arrested or faced various forms of repression, accompanied with re-escalation of armed conflicts, prevented further development and inclusiveness of local democracy in the region. Finally, trustees appointed to municipal bodies on behalf of elected co-

Data on Co-Mayors from DBP as of 24th of February, 2017	
Total Number of Co-Mayors in Prison	90
Total Number of Municipalities Seized by the Government	77
Total Number of Co-Mayors Released After Custody or Facing Jail Time	45
Total Number of Co-Mayors Issued Search Warrant	8

mayors utterly reversed 15-year-long positive momentum that has consistently promoted local democracy in the region.

Operation Appointing State Commissioners

Looking at developments occurred on the day when trustees appointed to municipalities can be helpful to unveil the logic behind this attempt. First of all, any of these municipal bodies were not informed about timing of these “operations”. Moreover, from early hours of morning till the evening, internet access in the region was blocked both for smart phones as well as for computers. Despite people calling internet service providing companies were told that there was a technical problem, it is highly likely that this was a blackout dictated, aiming at managing the crisis which would entail huge public reaction otherwise.



Deputy/district governors appointed as mayors arrived municipal buildings around 7 AM on 10th of September, 2016 with the company of soldiers and/

or police as if there was a security threat requiring to conduct a policing operation. All municipal buildings were surrounded by armoured vehicles and special operation forces and personnel of municipality present protesting this attempt were forced to leave their offices. Moreover, personnel and people who heard these operations gathered in front of municipality buildings and started peaceful protests but they were suppressed brutally and a large number of them were detained on the spot.

Deputy/district governors appointed as mayors, considering the DBP municipal buildings as “institutions to be conquered”, used Turkish flag as a symbol of “victory”, thus dressed those buildings with Turkish flags. In addition to this, majority of those deputy/district governors immediately lifted multilingual signboards (in Kurdish, Armenian, Turkish) hanged on municipal buildings and replaced them with signboards having only writings in Turkish. While appointing deputy/district governors as mayors is an anti-democratic enforcement per se, turning this process into “a war of symbols” evidences that governors consider these appointments as a method of punishment inflicted



upon DBP municipalities. As a result of strong opposition by the Kurds, Armenians and Assyrians claiming that this war of symbols aims at degrading certain ethnic/religious groups, most of those old signboards were brought back but Turkish flags still are hanged on those municipal buildings as a sign of “victory”.



Municipal Law Amendment : Content and Scope

Amendment to enable the central government to appoint bureaucrats on behalf of elected mayors was on the agenda of government by 19 August 2016 as part of Omnibus Bill no. 411. However, the motion for amendment in municipal law was removed from the bill due to effective opposition raised within the parliament. Such development created a relief among people since many thought that the plans for appointing bureaucrats as mayors would not be the case in near future. Nevertheless, a different legislative method was pursued by the government and/or president later on. After the coup attempt on 15th of July, the government declared a state of emergency for three months that allows the president and council of ministers to legislate a motion without being have to bring it to the parliament. On 15th of August, 2016, Decree no.674 was accepted that also included amendments within the Municipal Law.

All rules and practices related to municipal bodies are regulated through Municipal Law no. 5393. Amendments in 38th, 39th and 40th articles of this law are as follows:

- If a mayor, deputy mayor or member of municipal council is suspended from their post “due to crimes related to terror or of riding and abetting terror organizations”², appointments can be done on behalf of them to metropolitan provinces and provinces by Ministry of Interior and by governors to other municipalities (cities and towns). The only eligibility criteria for appointees is to have right to be elected.
- This amendment can also applied retrospectively to those mayors, deputy mayors or members of municipal council who are subjected to ongoing investigations and/or prosecutions. Appointees will replace investigated/prosecuted mayors, deputy mayors or members of municipal council within 15 days.
- After trustee appointments, “Budgetary tasks and accounting transactions of municipalities can be carried out by revenue offices or fiscal directorate by the approval of governors's office”
- After trustee appointments, the municipal council cannot hold meetings without approval of appointed trustees.

² All quotations used in this section indicates direct translations from Decree no. 764.

- After trustee appointments, authority of municipal council, municipal board and commissions within municipal councils can be transferred to officially appointed municipal board member.
- In municipalities and affiliated bodies, “if governor’s office determines negligence of duty that negatively affects war on terror and violent incidents”, those services can be delivered under authority of governor’s office by official institutions which are under mandate of the government. Expenses emerging out to of delivering these services will be projected to the budget of municipality “without being subject to any monetary and budgetary limitations”.
- In municipalities and affiliated bodies, “if governor’s office determines resources of municipalities are used to support terrorist activities and violent incidents directly or indirectly”, movable properties of municipalities can be seized by governor or district governor’s office. In this case, personnel in charge can be dismissed and she/he can only go back to work with the order of office dismissed her/him.



Analysis of Municipal Law Amendment

I. Municipal law amendment used by the government to legitimise appointing bureaucrats as mayors is a violation of the Turkish constitution. Article 127 of the constitution states that “the formation, duties and powers of the local administrations shall be regulated by law in accordance with the principle of local administration”.³ In other words, in any local administrative unit, duties and authorities of local administrations shall not be put into practice at the expense of disregarding willpower of local electorate, that is locally elected bodies. This principle cannot be ignored for the sake of political interests of the central government. Additionally, according to the Turkish constitution, appeals for removing authority of locally elected offices/bodies shall be decided by courts.



Thus, it is violation of the constitution to appoint bureaucrats on behalf of locally elected bodies or members of these bodies whom are investigated/

³ “Constitution of Republic of Turkey”, p. 63, <https://global.tbmm.gov.tr/docs/constitution_en.pdf>

prosecuted for a crime related with their duties but no final decision made about their case.

II. Legal process for any of co-mayors of 25 municipalities have not been finalized yet. Before Decree No. 674 was signed, based on the Municipal Law no. 5393, Ministry of Interior had right to suspend mayors from office until the legal process to be finalized, if they are investigated/prosecuted for charges related to misuse of power. When Decree No. 674 was signed, 33 co-mayors of DBP had already been suspended from office in previous months. On behalf of these co-mayors, deputy mayors were elected with majority vote by elected municipal council members, that is a council functioning as legislative body of municipalities. Thus existing Municipal Law 5393 was functional based on relatively democratic principles and procedures before Decree No. 674 was enacted. While continuation of this procedure was possible, enacting a decree to assume full control upon municipalities evidence that the central government directly aim at dysfunctioning the municipal council whose members were directly elected by the people. In addition to appointing bureaucrats on behalf of mayors, governors have also appointed new municipal council members in various provinces/cities on behalf of elected municipal council members subjected to investigation/



prosecution (i.e. in Lice/Diyarbakır, Iğdır, Batman). Moreover, another

amendment showing that the central government aims at dysfunctioning elected municipal council is preventing municipal councils from having regular meetings without permission of appointed trustees by Decree No. 674.

III. One of the main principles of universal law is ‘newly enacted laws cannot be implemented retrospectively’, that is a principle also recognized by Turkish constitution with Article 38. Within Decree no. 674, it is clearly written that amendments shall be considered as *ex post facto law* and should be applied retrospectively, which is the “legal” reference point for appointing bureaucrats on behalf of elected mayors by the government. Nevertheless, when those appointments realized on 11 September 2016, not mayors under investigation/prosecution but deputy mayors elected after suspensions were in the office. Pursuing this path evidences that the government wanted to bypass the court and ongoing prosecutions . This is also linked with the fact that all DBP-led municipalities have gone through a strict inspection process by inspectors sent by the central government at least once in 2015 or 2016. Those inspectors could not find any activity or irregularities which could be associated with terrorism. Another evidence delineating that the central government aims at bypassing the court is, by Decree no. 674, governors are given authority to dismiss municipal personnel if they decide that any personnel is linked with terrorist activities. Municipal personnel dismissed by governors then can restart to work only with approval of the governor, no matter if the court verdict at the end of investigation/prosecution process find an employee not guilty.

IV. Republic of Turkey signed the European Charter of Local Self-Government in 1992 and articles the charter of accepted by Turkey came into effect by 1993. Article 4.4 that was also accepted by Turkey states that “Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law”. Appointment of trustees on behalf of elected mayors has also violated this article that was also accepted by Turkey. This violation not only occurs through appointing bureaucrats on behalf of mayors but also via dysfunctioning of municipal council elected by the people as well as the court and other related judicial mechanisms. Legislative

power of municipal councils in 25 DBP-led municipalities under control of appointed trustees no longer exist. Power of the municipal councils are transferred to an official who is the appointed member of the municipal board.

Conclusion

Decree no. 674 could be possible due to state of emergency declared for three months in Turkey after failed coup attempt on 15th of June, 2016, which gives power to Council of Ministers to change law with authorisation of the president. Nevertheless, as indicated the constitution, this power can be used for alleviating dynamics which caused declaration of state of emergency. There are no political or judicial links between the coup attempt and appointing trustees on behalf of elected mayors. Municipal Law Amendment relies on a decree but it cannot be legitimised juristically and this is also one of the biggest challenges for democratization process in Turkey in last couple of years. Therefore, future of cities and the people in Turkey have to be determined by the political will of people and thus through their elected representatives within municipal councils in order to engender necessary conditions for political stability, to make realistic hopes emerge concerning an end to the armed conflict and to prevent local democracy from being pushed into an abyss. DBP officials have also suggested that elections to be repeated in those cities or provinces in where municipal bodies are under control of appointed bureaucrats. Any formula that would make democratic procedures work and thus reflect political will the people in the region will play a key role for reaching peace and stability environment needed as well as to reverse the course of ongoing developments.