

The Effects Of The Law No. 6360 On Metropolitan Municipality System In Turkey⁴⁶

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Abstract

Turkey, since beginning of the new millennium, experiences a significant change and transformation related to the structure of local administrations. The Law on Special Provincial Administration (No 5302), the Law on Greater/Metropolitan Municipality (No 5216), the Law on Municipality (No 5393), and the Law on Local Administration Unions (No 5355), which were enacted after 2003, are the examples of arrangements legislated in the field of local administrations. With the Municipal Law No. 6360 on “The Establishment of Fourteen Metropolitan Municipalities and Twenty-Seven Districts and Amendments at Certain Law and Decree Laws” the Turkish metropolitan municipality system has changed considerably. With this law, significant changes were implemented in Turkish metropolitan municipality system with respect to the presentation of administrative, financial, political and public services. These changes had a fundamental impact on both local and central governments. As a result of this law some new innovations occurred in Turkish local and central administrative system. The aim of this study is, to examine the developments in Turkish metropolitan municipal structure within the framework of the basic laws no. 3030, 5216 and 5747, and to discuss the changes implemented with the Law no. 6360 in the system.

Keywords: Local governments, metropolitan municipality system, Law No.6360, Turkey, boarder expansion, abrogation of local government units

Introduction

In the constitutional bylaw no. 127, local administrations are defined as “*public legal entities whose foundation principles are defined by the law and decision making entities are formed by election by the people as indicated by the law to fulfill the local and common needs of the people of*

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the province, municipality or the village.” According to the constitution, local administration units include municipalities, provincial private administrations and villages. With the support of an amendment of the bylaw related to local administrations in 1982 constitution as “for metropolitan areas, specialized forms of administration could be established,” in March 1984, a two-tiered metropolitan municipality system was initiated in three metropolitan centers within the legislation of Statutory Decree on the Administration of Metropolitan Municipalities no. 195. As Derdiman (2012: 53) put it, the Constitutional Court (CC) mentioned these administrations as “local administrations” in their judgement no. 2007/35. Metropolitan municipalities are referred as “decentralized administrative organizations with respect to localities” or “local administrations” in the literature, similar to other “local administration” organizations mentioned in the constitution.

The process started with the Public Administration Fundamental Law, legislated in the parliament in 2003 but vetoed by the President, was the first and most important step towards the realization of the change that started with Justice and Development Party (JDP). Although the law was never came into effect, its spirit was in fact enacted through the changes in primarily the laws on local administrations subsequently. The Law on Municipality (No 5393), The Law on Greater/Metropolitan Municipality (No 5216), The Law on Special Provincial Administration (No 5302), The Law on Development Agencies (No 5449) and the changes enacted in these laws reflect the traces of the Public Administration Fundamental Law.

A significant change as a result of the process described above was the “The Establishment Of Fourteen Metropolitan Municipalities And Twenty-Seven Districts And Amendments At Certain Law And Decree Laws” (no 6360) that was claimed to contribute to the problems of scale, capacity, model, urban and rural infrastructures, settlement and structuring in local administrations in Turkey and enacted on November 12, 2012.

The regulations enacted with the law (No 6360) became the target of the parliamentary and public debate and was criticized heavily in the academic literature due to the claims that it contradicted with the equality principle (Adıgüzel, Tek, 2014: 99), the provinces based on central administration principles could transform into a regional administration as a result of self-government (İzci and Turan, 2013: 135; Ayman Güler, 2012; Çukurçayır, 2012), it was unconstitutional due to the contradiction with the bylaw on establishment of metropolitan cities in the constitution, since metropolitan municipality boundaries were also civilian borders (Gözler, 2013, Derdiman, 2012: 74), it would cause an alienation from the discretion principle of the public services and an increase in costs (Ersoy, 2013; Çukurçayır, 2012; Yılmaz, 2012: 5), representation and complications in public participation (Zengin, 2014), increase in bureaucracy and a powerful

presidential model (Çukurçayır, 2012), and contradiction with European Charter of Local Self-Government (Zengin, 2014; Ayman Güler, 2012), etc.

Furthermore, the law was also perceived positively for the support a local level single stage metropolitan municipality model would provide for service efficiency and prevent waste of resources by preventing foundation of unnecessary administrative units, that it would enable fairer distribution of resources among the rich and poor regions of the province and promote urban integrity (Arıkboğa, 2012: 17), it was in accordance with the modern tendencies on “optimal scale” , its “area and population optimality” in providing economic services and investments, ability to provide better services for residential areas and towns that failed to receive efficient services so far, ability to empower metropolitan district municipalities financially, and based on zoning integrity in the whole province (Parlak, 2013).

The present study investigates the development of metropolitan municipality structures in Turkey within the frameworks of the laws numbered 3030, 5216, and 5747. Furthermore, the changes that occurred in Turkish administrative organization and metropolitan municipality system as a result of the Law no. 6360, which was legislated in 2012 and put into effect following the 2014 local elections, will be discussed including overall positive and negative criticisms attributed to the law.

Development of Metropolitan Municipality System in Turkey

The beginnings of metropolitan municipality organization could be dated back to Ottoman times. During the years that followed 1839 Tanzimat reforms, Ottoman intellectuals who returned from the West requested the organization of municipalities under the influence of western structures. On August 16, 1854, Istanbul Municipality (İzci and Turan, 2013: 118; Ulusoy and Akdemir, 2001: 148) and in 1858, 6th Department of Municipality, which included Galata and Beyoğlu neighborhoods, were established. Istanbul Municipality Administration Charter of 1869 aimed to expand the municipality organization throughout the city and divided Istanbul into 14 municipal departments (Ortaylı, 2000; Ortaylı, 1974: 117). Other incentives to establish municipal organizations outside Istanbul appeared from 1868 and Provincial Public Administration Charter of 1870 made it necessary to establish municipalities in provinces, districts and townships, while 1876 Provincial Municipality Law stipulated the establishment of municipalities in every city and town, and these municipalities to be governed by elected councils and the method of their election to be determined by a separate law (Keleş, 2012: 159-161). Istanbul Municipality Law enacted in 1877 preserved the previous municipal institutions, however increased the number of municipal departments in Istanbul to 20. The Provisional Law on Istanbul

Municipality replaced municipal departments with municipal branches. This system prevailed until 1930 (Özgür and Savaş Yavuzçehre, 2016: 907).

Republican era municipal practices started with the existing Ottoman two-tiered structure that included municipality and the departments established in 1858 in Istanbul, which was a metropolitan urban center even then. The first municipal organization of the Ottoman Empire during its last era in Istanbul was in fact their first attempt in urban area administration (Özgür and Savaş Yavuzçehre, 2016: 908). Enacted in 1930, Municipality Law (No 1580) proposed a single-tier municipal structure in all cities, independent of their scale. In this municipality Law (No 1580), there were certain special regulations for then largest cities, Istanbul and Ankara.

As a result of urbanization and migration of the rural population to cities during 1945 – 1960, populations of Istanbul and Ankara largely increased, rendering the existing municipal law (No 1580) ineffective. Number of municipalities also increased due to the increase in urbanization (Geray, 2000: 25; 1990: 217-218). The old Municipality Law (No 1580) remained in force between 1930 and 2004. One of the steps taken to remove the problems caused by rapid urbanization, urban sprawl, small municipalities, unplanned metropolises, and problems of scale, was the establishment of metropolitan municipalities (Genç, 2014: 2).

Law No. 3030

Metropolitan municipalities became possible as a result of the bylaw (No 127) included in 1982 constitution on local governments, which stated that “*special administration regimes could be established in large metropolitan areas.*” According to the Article 4 of this statutory decree, a metropolitan municipality bearing the name of the metropolitan city and district municipalities bearing the names of the districts would be established. Based on the decree no. 195, Istanbul, Ankara and Izmir metropolitan municipalities were established.

Law no. 3030 depicted that there should be more than one district within a city for a metropolitan municipality to be established. In the second generation, at least two district municipalities were established in the additional 5 metropolitan municipalities (In Bursa, Adana, Gaziantep, Konya and Kayseri). During the validity of Law no. 3030, there were discussions/proposals on different population count criteria, but none of those were legislated into law (Özgür, Savaş Yavuzçehre and Cigeroğlu, 2007: 480-481).

After 1988, regulations on metropolitan municipality establishment based on district municipalities and by individual law were averted with the excuse of the costs necessary to establish a district. Statutory Decree to Establish of Metropolitan Municipalities in Seven Cities (No 504) in 1993

declared the cities of Mersin, Eskişehir, Diyarbakır, Antalya, Samsun, İzmit and Erzurum metropolitan municipalities. District municipalities were not established in these metropolitan municipalities, but first-tier metropolitan municipalities, a new administrative unit that was similar to metropolitan district municipalities in practice, were established. As a result of the statutory decree (No 593) in 2000, Adapazarı became a metropolitan municipality as well (Özgür, *et all*, 2007: 481).

Laws No. 5216 and 5747

According to Metropolitan Municipality Law (No 5216), legislated in 2004, “*Metropolitan municipality means a public legal entity, having administrative and financial autonomy, which comprises at least three district or first-tier municipalities, coordinates the functioning of such municipalities, discharges its statutory duties, responsibilities and exercises statutory powers, and whose decision-making body is elected by voters*” and the first-tier municipality reflects the belde municipalities.

Law No 5216 introduced the criteria of both the scale and population for metropolitan municipality boundaries. The Law reads “City municipalities with a total population of 750,000 or higher in the last census including the urban areas within municipal borders and the urban areas that are at a maximum distance of 10,000 meters to these borders would be transformed into metropolitan municipalities by law based on their physical locations and economic development levels.” Law No 5216 expanded metropolitan municipality zones increased the number of second-tier municipalities under metropolitan municipalities considerably and widened their statutory powers. Expansions of metropolitan boundaries, known as compass regulations, brought into effect with the temporary 2nd article of Metropolitan Municipality Law (No 5216) were 20 km for cities with a population of up to 1,000,000; 30 km for cities with a population of 1,000,000 – 2,000,000; and 50 km for cities with a population of higher than 2,000,000 with the existing governor’s building at the center and within the upper limits of provincial administrative boundaries. However, in Istanbul and Kocaeli, provincial administrative boundaries were accepted as the new municipal boundaries. In short, the law determined the jurisdiction and service areas for 14 metropolitan municipalities, except Istanbul and Kocaeli with a circle.

2008 Law on Establishment of District within Metropolitan Municipality Boundaries and Amendments to Certain Laws (No 5747) was an important regulation for the integration of local governments. The Law provided metropolitan district municipality status for only a few first-tier municipalities, while local-government status of many was rescinded. Forty-three new districts were established in certain provinces as a result of the

Law (No 5747). The Law revoked the legal entity status of first-tier municipalities within metropolitan municipality boundaries, and included neighborhoods and neighborhood sections in district municipalities. As a result, metropolitan municipality system is reorganized based on district municipalities. Furthermore, sub-district organization was abolished with this Law. Sub-district centers and villages were assigned to the cities and districts (Çınar, Çiner and Zengin, 2009: 120-122).

Law No. 6360

Preamble: The preamble of the Law No 6360, which resulted in extensive changes in Turkish metropolitan municipality system, presented to the parliament on October 8, 2012 was as follows (sayilikanun.com, 2016): “*As a result of the establishment of economies of the scale due centralization of services provided in the metropolitan context, it would be possible to provide active, increased and quality services. Providing the services via a larger center with a more ideal scale, instead of providing these services by more than one center that exists today, would decrease unit costs and per capita public expenditures.*” According to the preamble, new metropolitan centers were expected to provide more effective, economic and qualified local services. As stated by Zengin (2014), it was argued that the application of equalizing the metropolitan municipality boundaries and administrative boundaries in Istanbul and Kocaeli improved the integrity and effectiveness of the services, thus, the implementation should be expanded.

The Law defines the metropolitan municipality as follows: “*It is a legal entity limited by the provincial administrative boundaries, that coordinates the district municipalities within its boundaries, fulfills the duties and responsibilities, exercises the power assigned by the law, using administrative and financial autonomy and whose legislative body is elected by the electorate*” (Article 4, Law No 6360). With this Law, the application of metropolitan municipality with powers within provincial administrative boundaries as implemented only in Istanbul and Kocaeli metropolitan municipalities with the Law no. 5216 was expanded to cover all metropolitan municipalities. Metropolitan municipality assignment criteria became easier with this Law when compared to laws nos. 3030 and 5216.

Administrative Structure: The number of metropolitan municipalities increased to 30 as a result of the Law. Metropolitan cities are shown in red in the map shown below. According to the first article of the Law, metropolitan municipalities were found within the provincial administrative boundaries of the cities of Aydın, Balıkesir, Denizli, Hatay, Malatya, Manisa, Kahramanmaraş, Mardin, Muğla, Tekirdağ, Trabzon, Şanlıurfa and Van, bearing the same name with the province, and provincial municipalities of these provinces were transformed into metropolitan municipalities. As Genç

Republic. Furthermore, it has problems with respect to the representation of the local people. Self-elected councils/legislative organs of these people were abolished. Now, the groups that live far from the urban center, in the country determine the formation and representation of decision making organs in the metropolitan city/the main center (Zengin, 2014: 111). The situation is problematic with respect to subsidiarity in services, providing the services by the closest unit to the citizen. Especially, similar to other local services, implementation development plans and subdivision plans should in principle developed by the subsidiary local units (Ersoy, 2013). An increase in public expenditures providing these services is also possible. In geographically large provinces, the capacity of metropolitan municipalities to provide sufficient services in all neighborhoods is also debatable. This condition also constitutes a contradiction with European Charter of Local Self-Government.

The Law transformed all district municipalities within the provincial boundaries of these thirty provinces into metropolitan district municipalities. Twenty-seven new districts were established within the context of metropolitan municipality in 14 provinces that became metropolitan municipalities and dependence alterations were conducted and the total number of metropolitan district municipalities increased from 143 to 519 (Zengin, 2014: 102).

559 belde municipalities where the population was smaller than 2,000 and located outside the realm of metropolitan municipality provinces were transformed into villages. Units that lost their legal identities with the Law such as municipalities, provincial special administrations and villages and local administrative unions that remained without a function were all liquidated before 2014 local elections.

Investment Monitoring and Coordination Directorates: Law no 6360 abolished provincial special administrations in 30 metropolitan municipalities and Investment Monitoring and Coordination Directorates that report to the governor's office were established. The purposes of these units were to conduct, monitor and coordinate investments and services efficiently for public institutions and organizations in metropolitan cities. The duties of these directorates organized in the periphery (Official Gazette, 2014) were to conduct investment, construction, maintenance and repair works for public institutions and organizations, to report efficiency – productivity of services and activities of all departments and relevance of these activities to strategic plans and performance programs, with the only exception of judiciary and military organizations, protection of cultural and natural assets, and will also conduct services related to disaster and emergency aid, emergency call services, promotion of the province, representation, ceremonies, awards and

protocol services⁴⁷. Here, the aim is to create a coordination center that would coordinate public institutions in the province and by placing the organization under the governor, the activity of the governmental organization is being promoted.

Power and Responsibilities: According to the Law, metropolitan district municipalities transfer certain municipal services to metropolitan municipalities and share certain others. In addition, certain services have to be approved/ audited by the metropolitan municipality, and revenues obtained from certain services have to be transferred to metropolitan municipalities. For instance, metropolitan municipality has the power to audit zoning applications of district municipalities. When compared to Law no. 5216, the power delegated to district municipalities has partially increased.

Law no. 6360 amended the article 7 of the Law no. 5216 on powers and duties and stipulated that the following four functions could be delegated to district municipalities or conducted in conjunction with a decree approved by the municipal assembly: i) Construction, procurement, operation, leasing or licensing passenger and cargo terminals, indoor or outdoor parking lots; ii) Identification of cemetery zones, establishment, operation, leasing of cemeteries, burial services; iii) Construction, procurement, operation, leasing all types of wholesale markets and slaughterhouses and licensing and auditing of private wholesale markets and slaughterhouses that would be built as designated in development plan; iv) Cleaning and addressing and numbering services.

Legally and administratively, district municipality is under the authority of metropolitan municipality. This situation could cause different outcomes in practice based on the differences of opinion between the political parties that held these two organizations. In cases where both metropolitan municipality and district municipality represent the same political party there could be cooperation and an increased administrative and financial support, however, when the situation is reversed, lack of assistance by the metropolitan municipality and even stonewalling the district municipality in producing and providing services are possible. This duality, unfortunately, mainly determines the way duties and responsibilities are fulfilled by the administrative units in Turkey (Zengin, 2014: 107).

Water and Sewage Administration General Directorates: Water and Sewage services fell into the responsibility of metropolitan municipality in metropolitan areas. These services are conducted by “Water and Sewage Administration General Directorates (WSAGD)” in metropolitan areas.

⁴⁷ For the duties of *Investment Monitoring and Coordination Directorate* please see: <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2014/04/20140404.htm&main=http://www.resmigazete.gov.tr/eskiler/2014/04/20140404.htm>

WSAGD is a separate organization and a legal entity outside the organization of metropolitan municipality. According to the Council of Ministers decision (No. 2014/6072) published in the Official Gazette dated March 31, 2014 (No. 28958), water and sewage administrations were established in the new metropolitan municipalities.

Financial Provisions: As a result of amendments to the Law on Allocation of a Share from General Budget Tax Revenues for Provincial Special Administrations and Municipalities (No 5779) by the articles 25 – 27 of the Law no. 6360; 1.50% of general budget tax revenues (was 2.85 in 5216) would be allocated to non-metropolitan municipalities, 4.5% (was 2.50 in 5216) would be allocated to metropolitan district municipalities, and 0.5% (was 1.15 in 5216) would be allocated to provincial special administrations. 6% (was %5 in 5216) of the general budget tax revenues within the limits of metropolitan municipalities would be allocated to metropolitan municipalities. 60% of this share (was %70 in 5216) would be credited directly to the metropolitan municipality account, and 70% of the remaining 40% would be distributed based on the population and 30% would be distributed based on the acreage (tbb.gov.tr, 2014). This was positive for fiscal decentralization. Law no. 6360 generally included improvements that benefited metropolitan municipalities. However, for villages that were transformed into neighborhoods, valid from December 21, 2017, tax, fee and share duties were introduced, from which they were previously exempt. This is the price the urbanized villages would have to pay for the termination of their village legal identity. In localities that were transformed from a village into a neighborhood, the rights of the inhabitants were protected based on the forestry legislation. On the other hand, the taxes due for the regular taxpayer in 14 provinces that became metropolitan centers doubled.

The role of metropolitan municipality as determined with the Law was to provide unity and coordination, in addition to a more centralized structure (İzci, Turan, 2013: 133). Regulations were expected to enforce local governments within the context of 2004 process; however, with the legislation of this Law, the tendency towards centralization had increased in Turkey (Görmez, 2013).

Conclusion

With the Law no. 6360, which could be considered within the JDP's Restructuring Public Administration Movement, fundamental changes were implemented not only in metropolitan municipality administration, but also in the current municipality administration, provincial special administration and village administration. With the Law no. 6360, significant changes were implemented that affected the municipal system in administrative structure by abolishment of legal entities, creation of new legal entities, administrative

subordination and change of names, merging, changes in boundaries and division of power; in the financial system by redefinition of the shares of local governments; in presentation of services by matching administrative and municipal boundaries and expansion of service zones. When compared to previous laws nos. 3030 and 5216, it became easier to attain metropolitan municipality status. By transferring the provincial powers to metropolitan municipality, the regulation established centralization at local level.

The coordination and activity in providing services, economics of scale and access to urban services, as mentioned in the preamble for the Law, could be improved as a result of the enforcement of the Law. However, it should be remembered that the new metropolitan mayor would be a more powerful political figure with more authority and fund. It was also observed that concessions were made by the legislation in pluralistic democracy and local autonomy principles by abolishing half of the local government establishments.

All articles of the Law no. 6360 came into force on April 2014 and more than 70% of the nation's population started to live within metropolitan municipality boundaries. After this legislation 30 provinces with enormous differences in geographical and population scales are administered with the same Law on Metropolitan Municipality. The metropolitan municipality model established by the Law no. 6360 is similar to the practices in Istanbul and Kocaeli. Inclusion of provinces with completely different populations, acreage, economic potential and development levels in a system developed after the example of the western provinces that have the highest levels of development, industrialization and urbanization may cause problems in the long run. This may require the system to renew itself in time.

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