

THE PROBLEM OF THE LOCAL ADMINISTRATIONS IN THE GREATER ISTANBUL REGION*

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When the subject of the problem of the local administrations in the Greater Istanbul Region is being discussed, one should, before looking into the solutions and the possibilities provided and secured by the Constitution of 1961 and the present situation, determine the concepts, give the definitions, indicate the areas and investigate the relationships involved in this subject. It is thus only possible to make manifest the position and the place of local government institutions within the general administration pattern, i.e. the general administrative hierarchy, after clarifying the nature of these institutions. Only then can solutions be considered, within the context of these concepts or variations of these concepts, for emerging problems such as the improvement of the special (local) provincial administration, the development of the Istanbul Municipality, the creation of a municipal union, of a local government union, metropolitan administration and so on.

The purpose of this survey is to provide these concepts and definitions, and to clarify the relationships and the areas.

I. CONCEPTS AND DEFINITIONS

1. The Greater Istanbul Region (BIB) :

BIB may be envisaged as an area extending to or even exceeding the limits of the city of Istanbul. It is a local government

(*) Paper presented in the International Seminar on the Urban Management Problems of the Greater Istanbul Region 9 - 12 December 1974, Istanbul.

administration unit, to emerge as one of the 67 provinces created by taking into consideration geographic conditions, economic reasons and the requirements of the public services, in accordance with article 115 of the Constitution under the title "central government"; and also as a unit of local government established to meet the needs of the people living in the province, municipalities and villages within the City (province) in accordance with Article 116 of the Constitution, and assuming a form in keeping with the various possibilities permitted by the Constitution.

The character and area of BIB are at present uncertain. Various alternatives, such as a large and single municipality; a regional organisation resting on the principle of deconcentration; a regional organisation or "metropolitan administration" such as a municipal union or local government union; the improvement of the special provincial administration and the like, are all under consideration.

So far one can say that, today, as far as the concept and the definitions are concerned, such a region has not yet been realised legally. Therefore, as already mentioned above, one can visualise BIB today as an encircling framework reaching the limits of Istanbul Province, and encompassing various types of decentralisation units.

2. Types of Decentralisation :

What do we mean when we say "various types of decentralisation units"?

As cited by Article 116 of our Constitution, local government units are public legal persons established to serve the mutual needs of the people living in the provinces, municipalities or villages, the decision-making bodies of which are elected locally by the people. This definition describes the context of the name and the concept of local government. In fact, decentralisation refers to the granting of power to take decisions to carry out public services in general, to independent administrations which are public legal persons not forming part of the general administrative hierarchy. The principle of decentralisation manifest itself in practice in two forms:

one form of this principle is local government which means the autonomy granted to the people living in a particular locality to protect and manage their own interests merely because they live in that locality.

As also indicated by our Constitution, the units of local government in our country are provinces (special provincial administrations - il özel idaresi), municipalities (belediye) and villages (köy). These are called public authorities and are legal persons undertaking public services in response to the needs of all concerned in the locality. Their area of function is limited to their territorial boundaries.

The second form of decentralisation is public utility services. Service administration is the management of a specific service by a corporation having a legal entity and separated from the central government organisation. Service administration is the result of technical needs. When the State first started undertaking services in the fields of economics and industry, it became impossible to run these undertakings, which were very different from each other, required different processes and were subject to varying regulations, through one body and by way of a single procedure. Thus service administration, and its creation, the public corporations, because its technical characteristics demanded an organisation separated from both the central administrative hierarchy and local government, is the consequence of such a need. These public corporations perform one or more services (universities, professional corporations etc.). Their area of function is limited by one or more services.

Public authorities are legal persons created by local government administration, whereas public corporations are legal persons created by service administration. Local government administration and service administration are similar in that the decisions of both are taken by bodies not subject to the hierarchy of the central government. Also, the power and the competence of all units of decentralisation are determined by law.

II. AREAS OF FUNCTION

1. If it is envisaged that BIB extends to the limits of Istanbul Province, this implies that there is a special provincial administration embracing the whole area. This local administrative unit, which in practice does not at present operate efficiently, is required by Article 116 of the Constitution. The special (local) provincial administration is subject to the Law of the Province (*İdare-i Umu-miyeyi Vilayat Kanunu Muvakkati*). When a new province is created as an administrative level, a special provincial administration unit is also established. (The organs of this are provincial legislative assembly, provincial committee and the executive organ is the Governor (prefect).

The municipalities are the second type of local administration unit foreseen by Article 116. Within the boundaries of BIB, there is the central Istanbul Municipality, its municipal wards and the surrounding contiguous municipalities. A municipality is a commune designed by the Law of Municipalities enacted in 1930. (Its organs are the legislative assembly, municipal executive committee and the mayor).

In the BIB there are also villages. These are a traditional local government unit and a second type of Turkish commune, regulated by the Village Law of 1924. (Its organs are village assembly, village council of elders and the headman).

The area of function and of competence of all these public authorities is limited to their territorial boundaries (not in the meaning of BIB but of local government).

2. There are two distinct types of service administration. Of these public corporations, whose area of competence is limited to one or more services, some perform a service related to the State and thus are closely linked to the State (Universities, Turkish State Railways (TCDD), Turkish Airlines (THY), Post, Telegraph and Telephone Corporation (PTT), The Maritime Bank etc.), some perform services related to a public authority and are linked to that authority (Istanbul Electricity, Tramway and Tunnel Corporation

(IETT), Istanbul Water Administration (ISI). Thus the decentralisation units that are public utility services are differentiated into general and particular depending on the limits of their activities and the local government or the public administration unit they are linked to. The area of function of the general units is not limited to the boundaries of a public authority or area of an administrative unit, and they are linked either directly to the State or to some other public authority. The State or that authority undertakes the administrative tutelage over them. The particular public corporations, on the other hand, are linked to local governments and undertake services in certain specific areas. Therefore, one can see side by side, service administration operating at large and acting as investors in the decentralisation units, and those organisations which act only in certain specific areas. Their area of function and their extent thus change accordingly and the possibility of overlap increases.

III. RELATIONSHIPS

In order to determine the place of these decentralisation units within the General Administrative Hierarchy, one should clarify the relationships and the characteristics of the range. To use the term "general administrative hierarchy" may be misleading, since hierarchy has a special meaning in Administrative Law. Here it would mean a pattern, a range, a sequence, an appearance.

Hierarchy is a type of control mechanism in centralisation; it is a ladder - type relationship, a tie among the civil servants. Therefore it should not be used in connection with local governments, unless it is used as a term indicating the relationships obtaining within every authority and corporation.

The type of control operating in decentralisation is administrative tutelage. This is a power of control exercised by Central Government over the decisions and actions of a decentralisation administration, and to reverse its decisions. It is an administrative supervision. Administrative tutelage is also used by local governments over service administrations within their area. Since administrative tute-

lage is an infringement of local government autonomy, its competence and power are specified by law.

Also deconcentration is an important institution, especially related to the province. The Central Government officials have increased authority and in certain circumstances can take executable decisions (the governor, prefect and sub-prefect).

IV. THE RELATIVE PLACE AND POSITION OF DECENTRALISATION UNITS IN BIB

The largest of these units today is the Istanbul special (local) provincial administration. Also there is the Istanbul Municipality, the municipal wards and neighbouring (contiguous) municipalities. There are also villages.

The Istanbul special provincial administration covers the whole area which can be considered to be a wide circle or a framework encompassing the municipalities and villages. The municipalities form smaller circles placed side by side and sometimes with gaps between them and are situated within the larger circle and even slightly extending beyond its perimeter. Villages are even smaller circles and are located in and between these.

There are provisions in the Law of the Special Provincial Administration and in the Law of Villages (Articles 145, 146 and 47, 48 respectively), to secure cooperation through agreement and the undertaking of mutual projects.

According to Municipal Law, the municipalities, villages and special provincial administrations can form unions to perform one or more of their mandatory or voluntary functions. Article 116/4 of the Constitution provides for this too.

These are horizontal relationship possibilities. The relationships between all the units we have named as circles, are also horizontal. The appearance is one of *inter partes*.

While the place and position of the decentralisation units in the BIB, relative to one another, is one of equal levels, the relationship with the Central Government is effected by administrative

tutelage. Thus, we can say that the governor (the prefect) who is the executive of the special provincial administration, as a consequence of his powers of deconcentration, and also since he has the dual role of representing both the Central Government and the local government exercises with the widest powers in the whole of BIB. He also undertakes the administrative tutelage control over the municipalities and villages.

When we consider the service administrations in the BIB, we see that there are corporations like the Turkish Railways, Post, Telegraph and Telephone, Universities, the Maritime Bank, the Turkish Airlines, investing and performing services, sometimes even extending outside the region and coming from a wider circle and under the administrative tutelage of Ministries rather than the decentralisation units in the BIB. Whereas IETT and ISI are under the control of public authorities in the BIB and, in this sense, have vertical relationships of control with local governments in this frame region.

Many important problems arise, both among the local governments and between local governments and service administrations, as to relationships and areas of competence and sharing of functions. Conflicts of power, confusions of vertical and horizontal relationships and overlapping services, all necessitate a reorganisation.

In the BIB, similar services and activities are undertaken by various local and service administrations, creating, due to this fact only, omitted areas or areas where no services are extended to the people.

In the solving of these various problems, the possibilities and facilities provided by our Constitution should be used to re-regulate. These should be analysed with the existing definitions, functions, relationships, places and positions in mind, and in the light of this survey, a definite and succinct model should be chosen.