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## CENTRAL AND LOCAL GOVERNMENT IN TURKEY

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The judicial life and the political and administrative institutions of Turkey from the beginning of the formation of the Ottoman Empire until today evolved through three radically different phases : (i) Islamic law is the whole law governing political and administrative institutions of the state, (ii) coexistence of Islamic law is the whole law, after the proclamation of the Republic in 1923. With European laws and governmental institutions beginning with the Charter of Liberties of 1839 (iii).

When the Turks adopted the Moslem religion they also accepted Islamic law, and the Ottoman Empire not only applied it from the first day on which it was constituted but contributed to its perfection. The work of the empire's eminent jurists came to form one of the most important sources of this law throughout the Moslem world. The political and governmental institutions of this period resemble those of the Moslem states which preceded the Ottoman Empire. They functioned very efficiently during the rising period of the empire and were a factor of equilibrium in the governmental and political life of the state.

Whereas European laws and institutions had no influence on Turkish political and cultural life during the period of the domination of Islamic law, in the subsequent period, beginning with the *Tanzimat* Charter of Liberties in 1839, their influence manifested itself with growing intensity. The roots of the *Tanzimat* reforms can be traced to the French revolution of 1789, although the actual attempts at reform then made in Turkey were felt only after military defeats. It was only when the Turkish armies, once the winners of many victories, began to sustain serious reverses that the ground was prepared for the declaration of the Charter of Liberties in 1839, the proclamation of the constitution in 1876 and its repromulgation in 1891. But timidly conceived and poorly executed, these reforms did little to change the fate of the Empire.

Nevertheless, the important characteristic of this second period is that it created a judicial duality. Side by side with it ap-

peared and developed certain governmental and cultural institutions based on the European model. There was, for instance, besides the civil laws of Islamic origin, a commercial law adapted from the French commercial code, and laws of Islamic origin, a commercial law adapted from the French commercial code, and laws such as the penal code and procedure. In addition to the old system of religious courts, some courts were established according to the French system. There were also some new schools teaching various liberal arts subjects side by side with the old *Medrese* or religious schools.

The institution of a republican regime in 1923 brought an end to the Ottoman monarchy. The first consequence of this modification was the laicization of the law and the abrogation of the requirement that it conform with Islamic law. With the separation of the state from the church, the office of the Caliphate, all the religious institutions, courts and schools were abolished. Now the European law and institutions constituted the unique basis for the new system.

The starting point for the explanation of the Turkish government is the Turkish constitution. As it is generally known the Turkish state is a republic, and according to article two of the constitution is "republican, nationalist, populist, etatist, secular and revolutionary". The sovereignty belongs to the nation, and the Grand National Assembly of Turkey is the sole representative of the nation on whose behalf it exercises the rights of sovereignty. Both the legislative authority and the executive powers are concentrated and manifested in the Grand National Assembly. Though the Assembly exercises the legislative authority itself, it exercises its executive authority through the President of the Republic, elected by it and a Council of Ministers chosen by the President. The Assembly may at any time control the activities of the government and dismiss it. Judicial authority is exercised by independent tribunals in the name of the nation in accordance with the laws and regulations in force.

The Grand National Assembly of Turkey consists of some 650 members elected by the universal suffrage. According to Turkish electoral law every *vilayet* or county is considered a constitu-

ency and each constituency return members according to its population.

The administrative machinery of Turkey operates at two major levels, one of which handles matters of national scope, while the other attends to matters of a purely local or regional character.

The principal components of the national government are the President of the Republic, the Council of Ministers, the Council of State and the Court of Accounts.

The President of the Republic is the head of the Turkish State. In this capacity, during special ceremonies, he presides over the Assembly and whenever he deems necessary he may also preside over the Council of Ministers. He is elected by the Grand National Assembly from among its members for a term of four years. The President of the Republic cannot participate in the debates and discussions of the Assembly or cast his vote as long as he occupies the position of President. If he is prevented from exercising his functions due to a reason, or if the presidency becomes vacant through death or resignation or for some other reason the Speaker of the Grand National Assembly provisionally exercises the duties of the President of the Republic. The Turkish constitution did not accept the principle of separation of powers, therefore, the President has no power to dissolve the parliament, and can not use his veto for the laws accepted by the Assembly. His position is rather representative than active.

In the hierarchy of central administration next comes the Council of Ministers and the ministries.<sup>1</sup> The Prime Minister is designated by the President of the Republic from among the members of the Assembly, and the other ministers are chosen by the Prime Minister from the members of the Assembly and presented collectively to the Assembly. The ministers forms under the pre-

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1) The number of ministries comprising the national government depends upon the discretion of the Prime Minister. Ministers of State (without portfolio) may be appointed in addition to those who head the principal administrative agencies of the government. The following are the ministries that exist at present : Prime Ministry, National Defense, Foreign Affairs, Interior, Justice, Finance, Public Works, Labour, Economy and Commerce, Customs and Monopolies, State Enterprises, Education, Health and Social Assistance, Agriculture, Communications, and Reconstruction.

sidency of the Prime Minister the Council of Ministers form under the presidency of the Prime Minister the Council of Ministers, which is collectively responsible to the Grand National Assembly for the general policy of the government, and each minister is individually responsible for the affairs falling within his jurisdiction and for the acts of his subordinates, as well as for his general policy.

In the national government there are two other organs. One is the Council of State, the duties of which are to examine and decide administrative cases and conflicts and express its opinion in regard to draft laws and terms of contracts and concessions to be granted by the government. The other is the Court of Accounts, which is attached to the Grand National Assembly and is charged with the control of all revenues and disbursements of the State.

Of all Turkish governmental institutions, the Council of State is, to an American observer, perhaps the most interesting. According to article 51 of the Turkish Constitution: "A Council of State shall be established to deal with and solve the administrative litigations and processes, to give advice on the projects of law, the contracts and specifications of concessions prepared and submitted by the government, and fulfil the functions determined either by the special law, devoted to it, or by the other laws".

Thus, the Council of State, presents itself as a body whose foundations were set by the Constitution itself. The present organization of the Council of State is based on Law No 4904, of May 27, 1946.

The Council of State has both judicial and consultative functions, and it is not only a court of original jurisdiction for cases not covered under subordinate administrative courts but also a Court of appeals from the decisions of lower courts and certain public commissions.

The Council of State is attached to the office of the Prime Minister, and is composed of six sections of which the first three are administrative formations and the other three contentious agencies.

The Council of State is placed under the authority of a President. Each section consists of a chairman and four counsellors. There is also one Chief Commissioner of Government and nine commissioners, who are in charge of presenting conclusions regarding litigation.

Besides the sections, there are two general assemblies, one of them consisting of all the chairmen and counsellors and called "The General Assembly of the Council of State", while the second, under the direction of the President is formed by the three contentious sections jointly and is called "The Plenary Assembly of Contentions".

The members of the Council are elected by the Grand National Assembly from a panel of civil servants nominated by the Prime Minister. Those who serve in a judicial capacity must have legal training and all members are selected from distinguished and high-ranking civil servants.

The law indicates the functions of the Council of State as such:

- (i) To give advice on projects of law, contracts and specifications concerning concessions prepared and submitted by the government, and to examine the projects of regulations pertaining to public administration.
- (ii) To deal with the affairs indicated by the laws and regulations of public administration.
- (iii) To give advice on various questions submitted by the government.
- (iv) To deal with and solve administrative litigation.

The above functions of the Council of State demonstrate that it is nothing else than an administrative organization of consultative character and an administrative court. It is in no way a political assembly.

Finally there is in Turkey a Court of Accounts, whose members are elected by the Grand National Assembly, which examines the accounts of all administrative officers having charge of public money and property, and which thus acquires a large knowledge of the methods of action of the administration in the execution of the provisions of the budget and reports its findings to the legislature.

For administrative purposes Turkey is divided on the basis of geographic conditions and economic relations into *vilayets* (counties), which are administered according to the principle of decentralization and division of functions. Each *vilayet* is in turn divided and subdivided into *kazas* (districts), *nahiyesi* (townships)

and *köys* (villages). Today in Turkey there are 67 *vilayets*, about 500 *kazas*, 1000 *nahiyes* and 36.000 *köys*.

The Turkish system of territorial distribution of administrative functions necessitates the existence of two separate sets of authorities, one for the central administrative and the other for the local administrative work.

Every *vilayet* or county is an administrative region for many matters of central concern and is at the same time a municipal corporation with its own affairs.

In each of these *vilayets* is placed an officer called the *Vali* or governor. The *Vali* is the chief administrative officer in the *vilayet*. Appointed by the President after nomination of the Minister of the Interior and on the decision of the Council of Ministers, he is the representative of the central government. As a central officer he is the subordinate of all the ministers of the national government. He is to see that all the laws and decrees and central instructions sent out by the ministers are put into operation. He appoints and dismisses a vast number of officers employed in the administrative services of the central government in the county. He also represents the central government in the courts whenever it sues or is sued. Finally as an agent of the central government he exercises a large control over the local administration of the municipal corporations within the county.

In the second place the *Vali* is a local officer. He is the executive officer of the local administration of the county. He appoints the officers of the local administration. He is in charge of the financial administration of the county, issuing all orders of payment on the provincial treasury. He directs the execution of all provincial public works. He draws up the budget or estimate of the expenses and receipts and represents the *vilayet* before the courts. As executive of the *vilayet* municipal corporation the *Vali* is to execute the decisions and resolutions of the general council which finally determines how the affairs of the province shall be managed.

By the side of the *Vali* as an organ of the central government is placed a committee called the *vilayet idare heyeti*. This committee, chaired by the *Vali*, is at the same time an administrative coun-

cil and an administrative court. It is composed of the major administrative officers of the *vilâyet*, such as the finance officer, director of legal affairs, education, public works, health, agriculture and veterinary services. As an administrative body, it may advise the *Vali* and at the same time it may make some administrative decisions. This administrative council also serves as an administrative court which hears appeals from all decisions of provincial and village officials. It is in this capacity subordinate to the Council of State.

As it is stated above in Turkey at the level of the *vilâyet* there is a distinction made between provincial and local self-government on the basis whether such a legislative assembly exists, whether it has its own budget, its own corporate body assigned specific duties and responsibilities.

The legislative assembly of the *vilâyet* is the *vilâyet umumi meclisi* (county council). Its members are elected for four year terms from each *kaza* (district), the number of members depending upon the population of the *kaza*. The county council is in session for forty days a year under ordinary circumstances. It may, however, terminate its session before that time or it may be extended for a maximum period of two weeks by the *Vali*. It may also be called into special session by a decision of either the national government or of the *Vali*, or by the county council itself upon the request of 2/3 of its members, which is passed on to the Ministry of the Interior by the *Vali*, who may render an opinion upon it. The final decision, however, rests with the Ministry.

The county council is presided over by the *Vali* and its decisions are subject to approval or disapproval by the national government. If its decisions are disapproved by the *Vali* representing the national government, the final decision rests with the Council of State, which is an administrative court for all such disputes.

The county council has a responsibility over the local self-government budget. The provincial budget is prepared by the *Vali* and after being examined by the executive committee of the county, it is submitted to the county council for approval. The provincial budgets are finally subject to the approval of the council of ministers and the President of the Republic.

In every county as an organ of vilayet corporation there is a body called the *vilâyet dâimi encümeni*. It is chaired by the *Vali*

and consists of four members who are elected for a one year term from different areas where possible by the council from among its own members<sup>2</sup>. It is in operation during the entire year acting for the council when it is not in session. It advises the *Vali* on the budget before it is submitted to the council and on all major questions on which the *Vali* wishes assistance. It audits and approves monthly expense accounts submitted to it by the *Vali* and prepares an annual report on the previous year's work of the county administration.

In the hierarchy of national territorial administration next comes the *Kaza* (district), which is the subdivision of the *vilâyet* (county). It is not an incorporated body and has no elected council. It is headed, however, by a *Kaymakam* (District officer) who has many of the same responsibilities for the *Kaza* which the *Vali* has for the *vilâyet*.

The *Kaymakam* (District Officer), who is directly under the control of the *Vali*, is nominated by the Minister of the Interior, appointed by the Prime Minister and approved by the President of the Republic. Contrary to the *Valis*'s political status, the *Kaymakam* is purely a carrier official.

As the central government's representative in the district and head of the district administration, he supervises the administrative agencies in *kaza* which largely duplicate those of the *vilâyet* administration.

The *Kaymakam*, therefore, is the chief administrative officer in the district. He reports to the *Vali* and assists him in his area. He is the link between the *Vali* and the smaller units of the administrative system.

To assist the *Kaymakam* in his administration of the *kaza* there exists an administrative council called the *Kaza Idare Heyeti*, which is similar to the administrative council in the *vilâyet*. Its members are the *Kaymakam* (Chairman), his clerical assistant, the finance officer, the government doctor, and the heads of education, agriculture and veterinary services. The major function of the committee is to advise to *Kaymakam* on his problems and de-

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1) If the number of members of the council is less than eight, this body may consist of only two members if the council so decides.



cisions. It also hears appeals from the decisions of the heads of subordinate administrative units.

The *Nahiye* is the smallest national territorial unit in the Turkish administration. Those areas which have a common geography, economic interests and local problems may be organized into an administrative division called the *Nahiye*.

The organs of the *Nahiye* are the *Nahiye Meclisi* (Council *Nahiye Encümeni* (Committee), and the *Nahiye Müdürü* (Chief Administrative Officer).

The council is composed of both administrative officers ex-officio, and of representatives from the villages and municipalities. It is composed of *Nahiye Müdürü* (*Chairman*), the health officer, veterinarian, agricultural technician, the chief teacher, one elected representative from each municipal council. The chosen representatives serve for four-year terms and represent their areas in the council. The council is a sort of local self-governing body of the *Nahiye* government. It meets once a year, presided over by the *Nahiye Müdürü*. At times the *Kaymakam* (District Officer) or *Vali* may preside.

The *Meclis* (council) elects a *Nahiye Encümeni* (committee) which is composed of four members. The *Müdür* presides over its monthly meetings. It acts as an advisory body to the *Müdür* and also for the *Meclis* (Council) which meets once a year.

The *Nahiye Müdürü* is the chief administrative officer of the *Nahiye*. He is assigned by the Minister of the Interior, on the recommendation of his Council of Directors, to a particular *vilâyet* (county). He is then appointed to a *Nahiye* by the *Vali*. He is responsible to the *Kaymakam* (District Officer) and through him to the *Vali*. As the official representative of the national administration in the *Nahiye* he supervises, inspects, and reports on the local agencies of the national government. According to the Turkish administrative system there is distinction between the provincial administration and the local administration. The provincial administration is considered as the extension of the national government in the administrative regions. Whereas the local self-government is applied to towns and villages. These self-governing units are considered as corporate personalities, electing their own administrative organs and having separate budgets and properties.

The units of the local government in Turkey are the *Köys* (villages) and the *Belediyes* (municipalities).

Villages in Turkey are the product of a mutual desire for people to live close to each other. Turkish villagers, like people everywhere, have always felt the need for some sort of administrative machinery, which even though necessarily small scale, would nevertheless be independent of national administration. Therefore, ever since the ancient times the more prominent members of each village community have been in the habit of meeting regularly in some central and convenient spot (usually the village mosque) to discuss village affairs and to elect or appoint the elders, the leaders in public worship called the *Imam*, the nightwatchmen, gamekeepers, and so on. Such people were usually paid in kind, with grain and similar agricultural products contributed by every villager.

Decisions concerning matters of common interest, such as communally owned land, road building or the digging of village wells, have always been made by the Elders. Expenses were paid from village funds or property.

Turkish villages have always been organized on a democratic basis, for each village was governed by the organs elected by the villagers themselves.

Although the villages in Turkey have existed for many years as separate economic and social units, it was in 1924, only one year after the proclamation of the Turkish Republic that the Turkish Grand National Assembly passed the Village Law which gave Turkish village administration its present legal aspect and defined the duties and authority of each section of the machinery.

The body that wields the greatest authority in a village is the *Köy Derneği* (Assembly), composed of every man and woman over the age of 18 who has been living there for six months or more. Or to put it in a different way, every villager still in possession of his or her civil and political rights is automatically a member. This ensures that each adult shall be entitled to express an opinion on every matter that concerns the community.

But the village assembly is not always in session, for it meets only from time to time to elect a *Muhtar* (Headman), the members of the Council of Elders, or to take some important decisions.

Therefore it is the *Köy İhtiyar Meclisi* (the Council of Elders) which makes the decisions for the village corporation.

The membership of the Council of Elders depends on population of the village. All villages with a population under 1000 have an eight member council. All villages with a population over 1000 have a council of 12 members. The Council of Elders is presided over by the *Muhtar* (Headman) of the village, who is elected for a term of two years by the Village Assembly.

The Village Law contains two lists of requirements for each village, one obligatory and the other optional. It is the Council of Elders that decides which jobs of common importance shall be tackled and in what order and on how large a scale. The Council of Elders buys land for schools, provides land for landless peasants, decides how much each person is to contribute to meet village expenditure, and is also empowered to sit in judgement on cases of non-payment of debts where the sum involved does not exceed 10 TL. Those who fail to fulfill their share of communal tasks and obligations may be fined by decision of the Council of Elders.

The chief executive officer in the village is the *Muhtar* (Headman). He is also the representative of the national government in the village. Therefore he has a dual responsibility, one for the national government and one for the village.

According to the Village Law his responsibilities for the national government require him to announce the laws and instructions issued by the State, maintain security and order, keep record of births, marriages and deaths, recruit men for the army, notify the authorities of suspected people. On the other hand his responsibilities for the village require him to represent the village in the courts and other occasions, carry out the decisions of the council, collect taxes and pay expenses, make monthly reports to the council, guide the village in all its various activities.

There are two major sources of revenue for the village government, the *İncece*, compulsory service required of the peasants for public work, and the *Salma*, a distribution tax assessed on each person with property in the village. The *Salma* is fixed by law at a 20 TL. maximum, for the wealthiest person decreasing progres-

sively in its application to other persons. Other sources of revenue are the fines, the rental revenue of property belonging to the village, taxes and fees, donations and loans.

The control over expenditures is vested in the Council of Elders. It decides on the nature of the compulsory service, who is to serve from each family, what projects to be undertaken and in what order they are to be undertaken.

From the *Köy* (village) which is the smallest community from the administrative point of view, we proceed to the *Belediyes* (Municipalities) Here too the administrative machinery is based on the principle of decentralization.

As is the case in many other countries, in Turkey, the establishment and proper functioning of municipalities is not optional, but obligatory in all communities with a population of more than two thousand.

In the days of the Ottoman Empire there were no municipal governments in Turkey. Thus part of the municipal functions such as we know them today were undertaken by the local *Kadis* (religious and judicial head of a town) or by the *Vakıfs* (pious foundations).

The first municipal administration in Turkey was organized in Istanbul, and a country-wide Municipal Law was passed in 1876. The present Municipal Law was passed by the Grand National Assembly in 1930.

The municipalities in Turkey are administered by a Mayor, a Municipal Advisory Commission and a Municipal Council.

The term of office of the Municipal Council is four years and its membership is 12 for those municipalities with population up to 3000, increasing as the size of the municipality increases. They are elected by the direct vote of the qualified citizens.

The Municipal Council plays its main role in the area of finance and the budget. Through the budget and its power to approve work programs it can make policy for the municipality.

The municipal council has an Executive Committee called the *Belediye Encümeni*, which prepares matters for its consideration, and which acts for it when it is not in session. The Mayor is the chairman of the executive committee which consists of the heads of the service departments together with members elected

by the council to number not more than half the ex-officio ones, nor less than two.

This committee is advisory to the Mayor, and also the executive body of the council. Its functions concern the budget, making rules for the maintenance of order and government of the municipality, fixing fares and market prices checking the monthly expense accounts, the impositions of fines for breaking local regulations and making decisions on expropriations.

The chief administrative officer of the municipality is the *Belediye Reisi* (Mayor). He is elected by the council, not necessarily from its own members for a period of four years. His function is to carry out the decisions of the decisions of the Executive Committee and the General Council. Thus he enforces the municipal law, rules and regulations, makes contacts with agencies, manages the public properties, and has charge of the budget.

The revenues of the municipalities are indicated at the Municipalities Income Act of 1948. The major sources of revenue may be classified as local shares of national taxes, direct municipal taxes, income from municipality-owned utilities, rented or sold properties, license taxes on private business, taxes on petrol oil, fines, and miscellaneous revenues.

There are also many government corporations in Turkey where etatism is adopted as a constitutional principle. Those corporations cover various fields of economic and social services and differ widely in form and organization.

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