

Trustees vs. Democracy: Constitutional Struggles in Turkey's Local Governance

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Bu makale hakem incelemesinden geçmiştir ve TÜBİTAK–ULAKBİM Veri Tabanında indekslenmektedir.

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Makale geliş tarihi: 13 Nisan 2025 **Makale kabul tarihi:** 5 Haziran 2025

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ABSTRACT

According to the Turkish Constitution, the Interior Minister may remove from office mayors under investigation or prosecution for offences related to their duties as a provisional measure until a final court judgment is rendered. However, the Constitution does not specify the appointee after a suspension, its duration, or other procedural details. Initially, under the Municipality Law, local councils were required to hold elections to replace suspended mayors. This changed in 2016 when, following a state of emergency, an amendment was introduced stipulating that if a mayor is suspended due to a terrorism-related investigation, the local council will not hold elections. Instead, the central government appoints a bureaucrat as a replacement, bypassing the council's authority. This regulation is deemed unconstitutional not only because it allows for the dismissal of mayors for offences unrelated to their duties but also because of its method of implementation. In practice, central government officials, such as provincial or district governors, are appointed as trustees to replace dismissed mayors. These appointments, meant to be temporary, often extend until the next local elections, thus eliminating the distinction between central and local administration and violating constitutional principles.

Keywords: Dismissal of mayors in Türkiye, trustees, offences related to duties, terrorism-related investigation.

Belediye Başkanlarının Görevden Uzaklaştırılması ve Geçici Görevlendirmeler Bağlamında Türkiye’de Yerel Yönetimlerle İlgili Anayasal Sorunlar

ÖZ

1982 Anayasası görevleri ile ilgili bir suç sebebi ile hakkında soruşturma veya kovuşturma açılan mahalli idare organları veya bu organların üyelerinin, geçici bir tedbir olarak kesin hükme kadar uzaklaştırılabileceğini düzenlemektedir. Ancak Anayasa’da uzaklaştırmanın ardından kimin görevlendirileceği, uzaklaştırmanın süresi ve diğer hususlar düzenlenmemektedir. 5393 sayılı Belediye Kanunu uyarınca, görevden uzaklaştırılan belediye başkanlarının yerine belediye meclisinin seçim yapması öngörülmüş iken 2016 yılında ilan edilen olağanüstü hâlin ardından maddeye eklenen düzenleme ile belediye başkanlarının terör soruşturması sebebiyle görevden uzaklaştırılması halinde belediye meclisleri tarafından seçim yapılmaması, İçişleri Bakanlığı tarafından görevlendirme yapılması öngörülmüştür. Söz konusu düzenleme olağanüstü hâl kararnamesi ile getirilmesine rağmen parlamento tarafından kanunlaştırılmıştır. Bu düzenleme görevle ilgili olmayan suçlardan dolayı belediye başkanlarının görevden uzaklaştırılmasına sebebiyet vermesi itibarıyla Anayasaya aykırı olduğu gibi, düzenlemenin uygulanma biçimi de Anayasa’ya aykırıdır. Nitekim görevden uzaklaştırılan belediye başkanlarının yerine valiler, vali yardımcıları ve kaymakamlar gibi merkezi idarede çalışanlar görevlendirilmekte, geçici olması gereken görevlendirmeler bir sonraki yerel seçimlere kadar devam etmekte, Anayasa uyarınca merkezi yönetim ile yerel yönetimler arasında olması gereken ayrılığın içi boşaltılmaktadır. Söz konusu düzenlemenin parlamento tarafından yürürlükten kaldırılması, bunun yapılmaması ha-

linde ise somut norm denetimi yoluyla Anayasa Mahkemesi önüne taşınarak iptal edilmesi gerekmektedir.

Anahtar Kelimeler: Belediye başkanlarının görevden uzaklaştırılması, kayyım, görevle ilgili suç, terör soruşturması.

I. INTRODUCTION

Following the coup attempt on July 15, 2016, in Turkey, a new paragraph was added to the Municipality Law (No. 5393), which stipulated that if an investigation was initiated against mayors regarding terrorism-related offences, they would be removed from office and replaced by individuals appointed by the central government. Subsequent to the implementation of this regulation, a significant number of mayors were removed from office and replaced with trustees who were concurrently serving as governors or bureaucrats for the central government. In this context, Article 127 of the Turkish Constitution is cited as the constitutional basis for the dismissal of elected mayors. According to paragraph 4 of Article 127 of the Constitution:

“Loss of status and objections regarding the acquisition of the status of elected organs of local administrations shall be decided by the judiciary. However, as a provisional measure until the final court judgment, the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom an investigation or prosecution has been initiated on grounds of offences related to their duties.”^[1]

It is evident that the article regulates dismissal as a ‘temporary measure’, and it does not provide guidance on who should be appointed to replace the suspended officials. However, legal regulations and practices regarding temporary appointments should uphold the distinction between the central government and local administrations. Nevertheless, neither the relevant regulations of the Municipality Law nor their implementation aligns with the Constitution.

In accordance with the provisions enshrined within the Turkish Constitution, specifically Article 47 of the Municipality Law stipulates that municipal bodies or members under investigation or prosecution for offences related to their duties may be suspended from office until a final judgment

[1] In this study, the English translation of the articles of the Turkish Constitution was obtained from the official website of the Turkish Constitutional Court (TCC).

is reached. The decision of dismissal must be reviewed every two months, and dismissals not in the public interest must be revoked. Furthermore, Article 45 of the same law specifies that if the office of a mayor becomes vacant for any reason, the provincial governor must ensure that the local council convenes within ten days. In instances where the vacancy or disqualification extends beyond the next election date, a member of the local council is to be elected as the new mayor. In instances where a mayor is suspended, arrested, or prohibited from public service for a period not exceeding the next election date, a deputy mayor is to be elected from among the local council members.

However, following the declaration of the state of emergency in the aftermath of the 2016 coup attempt, an additional paragraph was appended to Article 45 of the Municipality Law via an emergency decree. This stipulated that in the event that a mayor, deputy mayor, or council member were suspended, arrested, or banned from holding a public office on the grounds of terrorism-related offences—or if their office was permanently terminated for the same reason—the central government would appoint a person as their replacement rather than electing someone from the local council. Consequently, if an investigation or prosecution leading to a suspension is terrorism-related, the local council is prohibited from electing a new mayor or a deputy mayor. Instead, a ‘trustee, typically a bureaucrat from the central government, is appointed.

In accordance with Article 119 of the Turkish Constitution, in emergencies, the executive branch can issue decrees on matters necessitated by the state of emergency. These decrees, which have the force of law, are published in the Official Gazette and submitted to the Parliament for approval on the same day. According to Article 148 of the Constitution, emergency decrees cannot be brought before the Turkish Constitutional Court (TCC) for a constitutionality review unless they are approved by the Parliament. Once approved, such decrees may be challenged in the Constitutional Court.

The paragraph added to the Municipality Law by an emergency decree is clearly contrary to the Constitution and should not have been approved by the parliament and transformed into permanent law. However, the Turkish Parliament approved the regulation in question with Law No. 6758, in the same year. Subsequent to its enactment, no lawsuit was filed before the Constitutional Court to challenge the regulation. In conjunction with Article 46 of the Municipality Law, this regulation (Art. 45/2) is applied for replacing elected mayors with trustees. The relevant articles are as follows:

Measures to Be Taken in Case of Vacancy in the Mayor's Office

Article 45: "If the office of mayor becomes vacant for any reason, the provincial governor shall ensure that the local council convenes within ten days. In such cases, the council convenes under the chairmanship of the first deputy chairman; in the absence of the first deputy chairman, it convenes under the chairmanship of the second deputy chairman. If both are absent, it convenes under the chairmanship of the oldest member.

(a) If the office of mayor becomes vacant permanently, or if the mayor's disqualification from holding public office extends beyond the next election date, the council elects a new mayor.

(b) If the mayor is suspended from office, arrested, or banned from public service for a period not extending beyond the next election date, the council elects a deputy mayor.

However, in cases where the mayor, deputy mayor, or a councilor is suspended, arrested, or banned from holding public office for terrorism-related offences or for aiding and abetting terrorism or terrorist organizations, or if their duties are terminated for the same offences, the replacement for the vacancy shall be made by the authorities designated under Article 46. The person appointed must meet the qualifications required to be elected. The provisions of this paragraph also apply in cases where a member of the local council who has been suspended or arrested resigns. In municipalities where a mayor or deputy mayor is appointed pursuant to this paragraph, budget and accounting affairs and trans-

actions may be carried out by the treasurer or property directorate with the approval of the provincial governorship. In such municipalities, the local council cannot convene unless called by the newly appointed mayor. The duties and powers of the local council, the committee, and the commissions shall be carried out by the committee members specified in Article 31 of this law.”

Appointment of a Mayor

Article 46: “If the office of mayor becomes vacant for any reason and the election of a new mayor or deputy mayor cannot be held, the mayor shall be appointed by the Minister of Interior in metropolitan and provincial municipalities and by the provincial governor in other municipalities until the election is held. The person appointed must meet the qualifications required to be elected mayor.’

In this study, it is argued that Articles 45/2 and 46 of the Municipality Law, highlighted in bold above, and their implementation clearly contradict the Constitution. Although no lawsuit has been filed against these regulations before the Constitutional Court through the abstract norm review procedure, it is argued that there is no obstacle to bringing these regulations before the Court through the concrete norm review procedure. In this regard, the arguments are presented by evaluating the regulations using textual, historical, teleological, and systematic interpretation methods. Moreover, it is argued that initiating a concrete norm review against these regulations is necessary according to the Turkish Constitution.

II. EVALUATION USING THE TEXTUAL INTERPRETATION METHOD

Textual interpretation is a process of assigning meaning to a legal norm by analyzing the placement of words, and other linguistic elements. In this regard, textualists care about the objective meaning of the norm.^[2] Accord-

[2] Caleb Nelson, “What is Textualism?”, *Virginia Law Review*, 2005, Volume: 91, 347-418, p. 348.

ing to paragraph 4 of Article 127 of the Turkish Constitution:

*“Loss of status and objections regarding the acquisition of the status of elected organs of local administrations shall be decided by the judiciary. However, **as a provisional measure** until the final court judgment, the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom **an investigation or prosecution has been initiated on grounds of offences related to their duties.**”*

The bolded expressions in this article outline a directive that defines the framework for the suspension of mayors from office. This framework comprises three elements: offences related to duties, initiation of an investigation or prosecution, and the temporary nature of the suspension.

Article 127/4 of the Turkish Constitution explicitly identifies the legal basis for this action, stating it must be “*on grounds of offences related to their duties.*” A well-established legal principle, *expressio unius (est) exclusio alterius* (“The express statement of one (is) the exclusion of the other.”)^[3], suggests that including the concept of duty-related offences implies that the provision cannot apply to other offences.

The notion of ‘duty-related offence’ is also mentioned in other constitutional articles (106/5, 8, and 10; 140/3; 142/2; 148/7). Within the ambit of doctrine, this concept is used to describe offences where the perpetrator must be a public official, or offences committed by public officials abusing their powers or exceeding their authority.^[4] According to the Turkish Constitutional Court, a duty-related offence involves leveraging public authority to commit an offence that contravenes the responsibilities of the office.^[5]

[3] Aaron X. Fellmeth/Maurice Horwitz, *Guide to Latin in International Law*, Oxford University Press, 2009, pp. 102-103.

[4] Burcu Dönmez, “Ceza Muhakemesi Uygulamasında Görev Suçu”, *DEÜHFD Prof. Dr. Şeref ERTAŞ’a Armağan*, 2017, Volume: 19, 2727-2748, p. 2745.

[5] Turkish Constitutional Court, Date: 31/10/2019, E. 2017/1, K. 2019/1. See also Turkish Constitutional Court, Ahmet Çörekçi, App No 2021/30753, 26/01/2023.

Contrary to the Constitution, the Municipality Law expands this scope by stating that:

“(...) in cases where the mayor, deputy mayor, or a councilor is suspended, arrested, or banned from holding public office for terrorism-related offences or for aiding and abetting terrorism or terrorist organizations, or if their duties are terminated for the same offences, the replacement for the vacancy shall be made by the authorities designated under Article 46.”

This provision extends the constitutional framework to include terrorism-related offences and offences involving support for terrorist organizations, regardless of whether they are related to official duties. This clearly contradicts the Constitution’s wording, which confines suspensions to duty-related offences.

Additionally, the terminology in the Municipality Law is ambiguous. Article 3 of the Turkish Anti-Terror Law enumerates ‘terrorism-related offences,’ while Article 4 lists ‘offences committed for terrorist purposes’. It is unclear whether offences like bid-rigging or abuse of authority, when linked to terrorist activities, fall within these definitions. This lack of clarity violates the constitutional principle of legal certainty.

As emphasized by the Turkish Constitutional Court:

“In accordance with the principle of legal certainty, which is one of the basic elements of the rule of law, legal regulations should be clear, unambiguous, understandable, applicable and objective, leaving no room for hesitation or doubt for individuals or public authorities. They should also regulate protective measures against arbitrary practices of public authorities. These qualifications, which must be included in the law, are also indispensable for ensuring the legal security. Consequently, the legal security requires that legal norms are predictable, that individuals can trust the state in all their actions and transactions, and that the state avoids methods that damage this sense of trust in its legal regulations.”^[6]

[6] Turkish Constitutional Court, Date: 04/05/2017, E. 2015/41, K. 2017/98, §§153, 154; Turkish Constitutional Court, Date: 13/07/2023, E.2022/109, K. 2023/125,

However, there are no protective elements in the related paragraph of the Municipality Law, and it fails to meet these standards, creating legal uncertainty.

Secondly, the Turkish Constitution expressly stipulates that suspension is to be regarded as a 'provisional measure' associated with the commencement of an investigation or prosecution. Nevertheless, Article 45/2 of the Municipality Law does not impose any temporal condition on the suspension of office for terrorism-related offences. This omission creates further constitutional inconsistencies.

Thirdly, the inclusion of the phrase 'as a provisional measure' in the Constitution serves to emphasize the temporary nature of suspensions. Even in the absence of this phrase, it could be argued that the temporal nature of the removal could be derived from the phrase 'until the final court judgment'. However, the fact that this phrase has been specially and separately emphasized is indicative of the sensitivity surrounding this issue. Emphasizing it underscores the framers' intent to strictly regulate such measures. In this regard, regulating an issue explicitly which can already be inferred from the text of the Constitution leads a stricter constitutionality review for inferior acts related to this issue.^[7] Therefore, the relevant provisions of the Municipality Law must be treated keeping this in mind. Nevertheless, articles 45 and 46 of the Municipality Law do not limit the duration of suspensions nor provide for reinstatement in the event of acquittal. This omission contravenes the Constitution and undermines the provisional nature of the suspension process.

It is important to note that the regulations do not display the characteristics of being exceptional and provisional as they do not regulate the indispensable conditions such as the period for which the trustee could be appointed or the necessary features which trustees should have. In addi-

§ 26.

[7] Turkish Constitutional Court, Date: 31/10/2013, E. 2013/72, K. 2013/126.

tion, since there is no limit on the suspension period, the regulation allows the municipality to be managed by a trustee until the next elections in practice. Conversely, this situation results in the local administration being managed by the central government, which, under normal circumstances, should only exercise the power of administrative tutelage over the local administrations. In practice, bureaucrats or governors working in the central government are appointed as trustees and by this way, municipalities are managed by the central government.

It is evident that the provision does not contain the necessary guarantees (duration, detailed specifications regarding the person to be appointed, etc.) or limits, and is contrary to the Constitution that requires a distinction between the central government and local administrations. ‘Provisional suspensions’ cease to be provisional and before the elected mayors return to their posts, next local elections are held in practice. The lack of clear limits allows municipalities to be managed by central government-appointed trustees indefinitely, effectively nullifying local autonomy. Appointing provincial governors, deputy governors, or district governors as trustees eliminates the separation between central and local administration, contrary to the Constitution’s guarantees. It clearly undermines the constitutional rule that the decision-making bodies of local administrations should be elected by the voters.

The Turkish Constitution protects the autonomy of local administrations, thereby ensuring that these entities possess the authority to make and implement decisions independently, within the confines of the law. Moreover, such autonomy should not only be recognized by law but also be used effectively. The Constitutional Court has consistently emphasized that:

“As the Constitution distinguishes between the central government and local administrations and stipulates that the decision-making bodies of local administrations take the office through elections, that they are elected for a certain period of time, that their decisions are taken and implemented by their own

organs, that they have their own budgets, and that they are granted powers and privileges such as providing income sources proportional with their duties are indicative of the autonomy of local administrations (...) Autonomy means that individuals and organizations are granted the necessary authority and competence to make and implement decisions regarding their own activities, provided that they remain within the limits determined by law. This also refers to the protection of institutions against external influences. The reason for granting autonomy to public institutions is to ensure that they carry out their activities in accordance with the requirements of the public service and the public interest.”^[8]

Therefore, interventions to the autonomy of local administrations^[9] should only be made temporarily if necessary. According to Article 127 of the Constitution, the removal of the mayor from office is also a temporary measure. The appointments to be made during the implementation of this temporary measure must also be in accordance with the basic principles of the Turkish Constitution, especially the principles of the democracy and the rule of law. However, the current practices surrounding trustee appointments fail to meet these criteria.

While granting the power of administrative tutelage over local administrations to the central government in Article 127 of the Constitution, the framers also established limits and guarantees to prevent this authority from undermining the autonomy of local administrations. It should be emphasized that this article confines the authority to exercise administrative tutelage over local administration bodies or their members only in cases where the offences are related to public duties. Thus, the parliament

[8] Turkish Constitutional Court, Date: 18/01/2024 E. 2023/115, K. 2024/13, §§ 34-35; Turkish Constitutional Court, Date: 18/05/2023, E. 2020/42, K. 2023/99, §§ 60-61; Turkish Constitutional Court, Date: 05/04/2023, E. 2020/103, K. 2023/68, §§ 102-103; Turkish Constitutional Court, Date: 13/12/2022, E. 2019/88, K. 2022/159, §§ 22-23.

[9] Turkish Constitutional Court, Date: 05/04/2023, E. 2020/103, K. 2023/68, § 111.

does not have the power to extend the central government's tutelage authority to offences unrelated to official duties, nor can it grant the central government the authority to replace elected officials with unelected ones when the appointment of other elected individuals remains possible. A law that fails to meet these requirements would exceed the constitutional limits of administrative tutelage and encroach upon the protected autonomy of local administrations.

While members of the local council can elect a deputy mayor to replace a suspended mayor, there is no justification for appointing unelected bureaucrats to manage local administrations. In cases of vacancies arising from dismissal, arrest, or conviction for terrorism-related offences or aiding and abetting terrorism or terrorist organizations, the concern that elections may result in representation of the same political line does not justify taking unconstitutional measures in the governance of local administrations.

As with administrative acts, the primary purpose of laws forming the basis of such acts must be to serve the public interest. However, it is evident that paragraph 2 of Article 45 of the Municipality Law is motivated by political considerations and aims to minimize democratic participation. In terms of the principle of local governance, the public interest can only be realized through the effective participation of local communities in the decision-making process. This regulation contradicts that purpose. Furthermore, it contravenes Article 13 of the Turkish Constitution, which sets forth conditions for restricting rights and freedoms. Even if a public interest was assumed, such a limitation cannot be deemed necessary in a democratic society, as it nullifies pluralistic participation by excluding the public.

As stated by the Turkish Constitutional Court in its previous judgments, the central government has no authority to intervene in local administrations beyond the limited administrative tutelage power specified in Article 127. The phrase 'elected organs', repeated in this article, underscores the

democratic structure of local administrations, emphasizing that bodies, including mayors, must gain power through elections. This ‘strengthens the meaning of the article.’^[10] In this context, Article 127 of the Turkish Constitution mandates that the decision-making bodies of local administrations be elected by the voters. Consequently, the election-based formation of these bodies is a ‘determining factor.’^[11]

According to the Turkish Constitutional Court:

“When the first paragraph of Article 127 of the Constitution is considered together with the second paragraph explaining the principle of local administrations... When the legal structures and functions of local administrations and their purposes are taken into consideration, it becomes clear that they are public entities governed by bodies elected by local people to meet these people’s common needs. The natural consequence of this is that not only the decision-making bodies, but all their bodies should be formed by the voters.”^[12]

The fourth paragraph of Article 127 stipulates that the loss of status and objections regarding the acquisition of the status of elected organs of local administrations shall be decided by the judiciary. According to the same paragraph, the Minister of Interior may suspend members of these bodies who are under investigation or prosecution for an offence related to their duties as a temporary measure until the final judgment. With this exceptional power, the central government was not granted the competence to intervene in local administrations beyond the limited administrative tutelage authority specified in the fifth paragraph of the article.^[13] Consequently, the Constitutional Court annulled a similar regulation by finding

[10] Turkish Constitutional Court, Date: 13/06/1988, E. 1988/14, K. 1988/18.

[11] Turkish Constitutional Court, Date: 22/06/1988, E. 1987/18, K. 1988/23.

[12] Turkish Constitutional Court, Date: 14/06/1988, E. 1988/14, K. 1988/18.

[13] According to paragraph 5 of Article 127 of the Turkish Constitution, *“The central administration has the power of administrative tutelage over the local administrations in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity*

it contrary to Article 127 of the Constitution:

“The contested paragraph regulates the appointment of a mayor on a temporary basis in the event of ‘removal from office’ as regulated in the third paragraph. The problem arises not from the necessity of ‘appointment’ but from the fact that it is made with the proposal of the Minister and the approval of the Prime Minister. Although the suspension from the office is based on the power conferred by the fourth paragraph of Article 127 of the Constitution, the direct appointment replacing the suspended cannot be accepted as a natural result of the suspension. It is impossible for the purpose and meaning of Article 127 to accept the authority empowered to suspend and the authority empowered to appoint as ‘the same authority’. It is unacceptable to extend the tutelage power of the central government beyond the situations limited by the fifth paragraph of Article 127 and to give validity to regulations that appear to negate the principles of local government. The authority to be granted by the hierarchical connection in administrative managements cannot be accepted as valid in autonomous organizations which based on elections... Whether the appointment is temporary or permanent does not affect the result, and since there is always the possibility of opening an investigation and prosecution and suspending for these reasons, a ‘temporary’ appointment can turn into a ‘permanent’ appointment.”^[14]

In addition to Article 127, which is directly relevant to this issue, it should be noted that the dismissal of elected mayors and their replacement with central government agents violates Article 2 of the Constitution, which defines Turkey as a democratic state, and Article 6, which stipulates that sovereignty belongs to the Nation without restriction or condition. The appointment of unelected individuals to lead local administrations clearly contradicts these provisions.

with the principle of the integrity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs properly.”

[14] Turkish Constitutional Court, Date: 13/06/1988, E. 1987/22, K. 1988/19.

III. EVALUATION USING THE HISTORICAL AND TELEOLOGICAL INTERPRETATION METHODS

The historical interpretation method requires examining the legislative history. Although this method can be somewhat subjective, the teleological interpretation method addresses this issue by presupposing a publicly justifiable purpose that motivates legislators to enact a norm, regardless of any private or partisan interests.^[15] In the present case, the constitutionality of the issue can be assessed by combining these two methods of interpretation.

The expression ‘*on grounds of offences related to their duties*’ in Article 127 of the Constitution was deliberately and intentionally included in the text of the Constitution. During the drafting process (*travaux préparatoires*) of the Turkish Constitution, the Constitutional Commission, comprising 15 members under the chairmanship of Prof. Orhan Aldıkaçtı (including Prof. Kemal Dal, Prof. Feyyaz Gölcüklü, Prof. Turgut Tan, Prof. Feyzi Feyzioğlu, Prof. Feridun Ergin, Prof. Hikmet Altuğ, and Constitutional Court member Muammer Yazar etc.), drafted the relevant paragraph as follows:

“However, the Minister of the Interior may, as a provisional measure, suspend the office of local administration bodies or members of these bodies who are under investigation or prosecution on grounds of offences related to their duty until a final judgment.”

Prof. Turgut Tan, an administrative law expert on the Commission, voted against this regulation. He commented:

“Paragraph 5 of the article gives the Minister of the Interior the power to dismiss the elected body of the local administration, which should have been used exceptionally, and should have been regulated in a very limited way. In doing so, it could have been restricted to cases where the acts under Clause 13 of the Draft were committed. Additionally, there should have been a distinction

[15] D. Neil MacCornick/Robert S. Summers, *Interpreting Statutes: A Comparative Study*, Routledge, 2016, p. 519.

between small and large local administrations, with the Council of Ministers being authorized for larger ones.”

Notwithstanding this objection, the draft was submitted to the Consultative Assembly without any changes.^[16] During debates in the Assembly, some members (a group of 38 members, led by Fahri Öztürk) sought to expand the provision to include ‘offences falling under the competence of the State Security Courts.’ In contrast, others, such as Ali Mazhar Haznedar, proposed granting temporary suspension power to the judiciary. Furthermore, Asım İğneciler and three colleagues suggested that the authority to exercise this power should be defined by law. Some members, while Kamer Genç and Azmi Eryılmaz proposed removing the provision from the Constitution entirely.

Supporters of expanding the power to include ‘offences falling under the competence of the State Security Courts’ argued that limiting it to ‘offences related to duty’ would be ineffective in situations where “*municipalities become the headquarters of separatist and destructive organizations acting against the country’s integrity and state.*”

Conversely, those who advocated removing the provision entirely contended:

“With this provision, all the guarantees provided to elected bodies by the first sentence of the first paragraph are taken away. Past examples have shown that no Minister of the Interior will allow a successful mayor from an opposing party to continue their services. The Minister will simply dismiss them from office.”^[17]

[16] The current Turkish constitution was adopted by the constituent assembly formed after the military coup in 1980. The Constituent Assembly, on the other hand, consisted of two wings: the National Security Council, which had the final decision-making authority and was composed of the generals who carried out the coup, and the Consultative Assembly, which was composed of civilians. See: Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present*, Palgrave Macmillan, 2011, pp. 15-17.

[17] This opinion was expressed by the former Prosecutor of the Council of State, Kamer Genç (Danışma Meclisi, 07/09/1982: 703).

In light of these criticisms, the draft article was returned to the Constitutional Commission for review. The revised draft, presented a week later, left it to Parliament to define the offences involved, without specifying limitations in the Constitution itself:

“The principles and procedures regarding the removal of local administrative bodies or members of these bodies as a provisional measure by administrative authorities shall be regulated by law.”^[18]

Upon examining the statements of those who commented on this revised draft, it becomes clear that those who supported expanding the power to include broader categories of offences were satisfied. After incorporating their proposals, the new draft was approved. However, when this version was presented to the National Security Council, it was rejected. The Council reinstated the original draft proposed by the Constitutional Commission, which was ultimately adopted in the referendum.

This chronological flow illustrates that the framers of the Turkish Constitution knowingly and deliberately limited the Minister of the Interior’s power to temporarily suspend mayors to cases where “*an investigation or prosecution has been opened against them on grounds of offences related to their duties.*”

While arguments to expand this power to include offences such as terrorism-related offences were acknowledged and thoroughly debated, the Constituent Assembly ultimately chose to limit the power to ‘offences related to duties.’ This limitation was intentional and deliberate. As a result, applying the historical and teleological methods of interpretation leads to the same conclusion as the textual interpretation: Regulations and removal practices that exceed the scope of the offences specified in the Constitution are unconstitutional.

[18] Danışma Meclisi, 15/09/1982: 384.

IV. EVALUATION USING THE SYSTEMATIC INTERPRETATION METHOD

Systematic interpretation is a method used in legal interpretation to determine the meaning of a legal norm by examining its relationship with the broader legal system in which it exists. This method does not consider the norm in isolation but evaluates its connections with other articles in the law, constitutional principles, international law, and general principles of law. Furthermore, international systematic interpretation refers to interpreting a legal norm in harmony with the international legal order.^[19]

The provisions of the Municipality Law, and the manner in which they are implemented, result in local administrations being governed by trustees rather than elected mayors. This practice infringes upon the right to free elections as guaranteed by the Turkish Constitution and the Additional Protocol to the European Convention on Human Rights. The right to free elections protects not only the rights of candidates but also the rights of voters. Article 67 of the Turkish Constitution safeguards the right to vote, the right to be elected, and the right to engage in political activities, whether independently or through a political party. These rights are essential for establishing and maintaining an effective democracy grounded in the rule of law.^[20]

Accordingly, it is of paramount importance that municipalities are governed by elected representatives. The removal of elected mayors and their replacement by trustees appointed by the central government deprives voters of their rights and bypasses the will of the electorate. This practice contradicts the Turkish Constitution, which mandates that decision-making bodies in local administrations consist of elected

[19] Odile Ammann, *Domestic Courts and the Interpretation of International Law: Methods and Reasoning Based on the Swiss Example*, Brill Nijhoff, 2020, pp.203-208.

[20] Turkish Constitutional Court, Nejdet Atalay, App No 2014/184, 16/07/2014, § 59.

local administration elections held in Turkey emphasize the constitutional principle of democratic governance at the municipal level. Additionally, the appointment of trustees is inconsistent with Article 7, paragraph 1 of the European Charter of Local Self-Government, which Turkey has committed to implementing.^[21] The Charter underscores the importance of local authorities being governed by elected representatives as a foundation of democratic governance.

The principle that municipalities should be governed by elected mayors and city councils is a rule, while the removal of these officials should remain an exception. As a general legal principle, exceptions cannot take precedence over the rule. The current trustee regulations in the Municipality Law were enacted during a state of emergency through an emergency decree. Although the Turkish Grand National Assembly subsequently approved and enacted these regulations, their adoption under emergency conditions raises concerns about their compatibility with the democratic legal order.

As stated by the Turkish Constitutional Court:

“The right to vote, to be elected, and to engage in political activities are among the most fundamental political rights. A democratic state governed by the rule of law must prioritize the effective exercise of these rights. Any regulation that restricts these rights conflicts with the principle of the rule of law. Democracy is fundamentally based on the constitutional guarantee of political rights, particularly the right to vote. Violations of this right inherently undermine the rule of law.”^[22]

The European Commission for Democracy through Law (commonly referred to as the Venice Commission), an advisory body of the Council of Europe, has also raised concerns. In its opinion titled *“On the Provisions of*

[21] Korkut Kanadoğlu, “Yeni Siyasal Rejimin Yerel Yönetimlere Yansımaları”, *Yeditepe Üniversitesi Hukuk Fakültesi Dergisi*, 2019, Volume: 16 (1), 39-54, p. 50.

[22] Turkish Constitutional Court, Date: 13/06/1988, E. 1988/14, K. 1988/18.

the Emergency Decree Law No. 674 of 1 September 2016 Which Concern the Exercise of Local Democracy in Turkey” (No. 888/2017), the Commission stated:

“The provisions pertaining to the functioning of local democracy in Decree Law N° 674 raise similar concerns, both in terms of compliance with the procedural and substantial rules on the state of emergency and with the local self-government principles enshrined in the European Charter of Local Self-Government, to which Turkey is a Party.

It is particularly worrying that, through emergency legislation, the central authorities are enabled, in the framework of the fight against terrorism, to appoint unelected mayors, vicemayors and members of local councils, and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities.

This is all the more problematic as the new rules, whose necessity appears doubtful even in the framework of the emergency regime, are introducing changes of structural nature, which are not limited in time, to the system of local government in place in Turkey, based on the election of local authorities by the local population.

The Venice Commission recalls that local authorities are one of the main foundations of a democratic society and their election by the local population is key to ensuring the people’s participation in the political process. Furthermore, the adequate implementation of the principles of local self-government is instrumental to ensuring a democratic, effective and responsible management of public affairs at the local level.”^[23]

Based on these findings, the Venice Commission urged Turkish authorities to take the following actions:

- *“repeal the provisions introduced by the Decree Law N° 674 which*

[23] Richard Clayton/Regina Kiener/Jan Velaers, “Venice Commission, On the Provisions of the Emergency Decree Law No. 674 of 1 September 2016 which Concern the Exercise of Local Democracy in Turkey”, 2017, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)021-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)021-e)> accessed 27th February 2025, §§ 96-99.

are not strictly necessitated by the state of emergency, in particular concerning the rules enabling the filling of vacancies in the positions of mayor, vice-mayor, local council member, by the way of appointments;

- *ensure that the application of the rules introduced by the Decree Law N° 674 is limited to the duration of the state of emergency, and that any permanent measures affecting local democracy are taken following the ordinary laws and procedures, after proper parliamentary debate;*
- *introduce provisions for adequate judicial review of the measures taken by the governorship in municipalities where special powers are instituted in their respect in the context of the fight against terrorism;*
- *provide adequate rules and framework for the reinstatement of suspended/dismissed local representatives in case the terrorism-related charges do not lead to a criminal conviction.”^[24]*

The Congress of Local and Regional Authorities has similarly criticized the trustee practices in Turkey. It noted that these practices rely on overly broad legal provisions, resulting in unelected central government agents replacing suspended officials without elections. The Congress’ report, published on March 23, 2022, by the Monitoring Committee, stated:

“When a mayor is suspended by the Ministry of the Interior, the province governor, the district governor or another Central Government official is appointed as trustee. A non-elected state agent takes control of the municipality and the local council is prevented from meeting or acting whatsoever. The rapporteurs deem this an unacceptable practice under elementary considerations of local democracy.”^[25]

The Congress urged the Committee of Ministers to call on Turkish au-

[24] Ibid §100.

[25] Vladimir Prebilib/David Eray, “Monitoring of the Application of the European Charter of Local Self-Government in Turkey”, 2022, <<https://search.coe.int/congress?i=0900001680a5b1d3>> accessed 27th February 2025. Also see Jakob Wienen/Yoomi Renström, “Monitoring of the European Charter of Local Self-Government in Turkey”, 2020, <https://rm.coe.int/09000016809cba58> accessed 27th February 2025, § 310.

thorities to:

“b. stop the current practice of suspending mayors without court decisions, make all possible efforts to reconcile the legitimate fight against terrorism with the requirements of local democratic life and, accordingly, use the practice of suspension of mayors with the greatest possible caution and restraint, with the aim to respect the presumption of innocence and the system of democratically elected representatives;

c. discontinue the practice of appointing a governmental trustee in municipalities where the mayor has been suspended and modify the legal framework so that whenever a mayor is suspended, opportunity is given to the council to appoint an interim or acting mayor from among its members, in accordance with the possibility contained in the original version of the Municipality Law of 2005 (Article 45) and until the procedural situation of the suspended mayor is clarified;”^[26]

For all these reasons, a systematic interpretation method also demonstrates that the regulations and practices surrounding the removal of mayors, and the appointment of trustees are unconstitutional.

V. UNCONSTITUTIONALITY OF THE REPLACEMENT PRACTICE

The reasons for the unconstitutionality of the regulations discussed above stem from their insufficiency and lack of the ‘quality of law.’ On one hand, the provisions fail to clarify from whom the central government should make appointments. Additionally, the absence of a requirement to appoint elected individuals, coupled with the lack of a prohibition on appointing unelected persons, constitutes a violation of the Constitution.

Furthermore, a problematic aspect of replacing elected mayors with central government-appointed agents is that the central government does not exercise its powers in a manner consistent with an interpretation in accordance with the Constitution or constitutionally conforming interpre-

[26] Prebilic/Eray, § 5.

tation. These concepts involve interpreting and applying legal provisions in ways that do not conflict with the Constitution and mandate legal interpreters to construe a norm in accordance with the Constitution if doing so is realizable.^[27] In this regard, interpretation of the norm in accordance with the Constitution must be favored over an interpretation that would necessitate striking it down as unconstitutional.^[28]

Had the replacement of elected mayors, for instance, involved appointing a member of the political party holding the majority of seats in the city council, there might have been an attempt—albeit a controversial one—at an interpretation in accordance with the Constitution. Such an approach could be viewed as filling an elected office with another elected individual and applying Articles 45 and 46 of the Municipality Law in harmony with the principles of national sovereignty and democracy. However, this is not the practice in Turkey. Instead, a system that disregards ‘democracy’ and the preferences of the ‘people’s will’ is implemented.

Another unconstitutional aspect arises from practices based on the relevant articles of the Municipality Law. For example, Article 45(2) of the Municipality Law stipulates that in municipalities where trustees are appointed, the city council cannot convene unless called to do so by the trustee. It also allows unelected members of the municipal committee to carry out the duties and powers of the city council, municipal committee, and commissions. In practice, in municipalities where trustees are appointed, city councils are often not convened. Although only mayors are suspended from office, city council members are effectively dismissed *de facto*, thanks to this regulation. This practice violates the Constitution as well. Article 127 of the Turkish Constitution explicitly references local administrative bodies under investigation or prosecution for duty-related offences. How-

[27] Daniel Christian Gosch, “The Emergence of Constitutionally Conforming Interpretation”, *Vienna Journal on International Constitutional Law*, Volume: 19 (1), De Gruyter, 2024, 87-119, p. 88.

[28] Ibid.

ever, the regulation effectively disables the city council, although its members are not implicated in the mayors' alleged acts. Since the scope of this study is limited to mayoral dismissal, this issue is not addressed in detail. Nonetheless, it is another striking example of the constitutional challenges posed by these regulations and practices.

VI. IS IT POSSIBLE FOR THE TURKISH CONSTITUTIONAL COURT TO REVIEW THE CONSTITUTIONALITY OF ARTICLES 45 AND 46 OF THE MUNICIPALITY LAW?

In Turkish law, the constitutionality of laws can be reviewed in two ways. The first method, known as abstract norm review, allows the President of the Republic, the two largest political party groups in Parliament, or at least one-fifth of the total number of MPs to directly petition the Constitutional Court to annul a law due to unconstitutionality in substance. This right must be exercised within sixty days of the law's publication in the Official Gazette. Moreover, annulment lawsuits based on formal issues can only be initiated within ten days after the law's publication.

After the enactment of the Municipality Law regulations, no lawsuit challenging their constitutionality was filed within the specified time. Consequently, these regulations can now only be brought before the Constitutional Court through concrete norm review.

According to Article 152 of the Turkish Constitution, a court may refer a case to the Constitutional Court if it finds that the applicable law conflicts with the Constitution or considers the claim of unconstitutionality raised by a party to be serious. For this procedure to apply, claims of unconstitutionality must be raised in administrative cases challenging mayoral dismissals and trustee appointments. If the administrative court deems the claim serious, it must refer the case to the Constitutional Court and suspend proceedings. Even if no claim is raised, the court may consider the regulations unconstitutional and refer the case *ex officio*.

Despite the longstanding practice of mayoral dismissals and trustee ap-

pointments, these regulations have not been brought before the Constitutional Court through concrete norm review. This could be due to plaintiffs not raising unconstitutionality claims or administrative courts dismissing such claims as insignificant.

The Turkish Constitution requires two conditions to initiate a concrete norm review: (1) the court must believe the provision is unconstitutional *ex officio*, or (2) it must find the unconstitutionality claim made by a party serious. In the second case, the court need not conclude that the provision is unconstitutional; it only examines whether the claim is defensible or arguable under the law. Turkish legal doctrine considers that an impartial and reasonable third party must find the claim coherent and capable of raising doubts about the provision's constitutionality.^[29] If such a claim is made, the court must refer the matter to the Constitutional Court.

Returning to the Municipality Law regulations, it is essential to consider the recommendations of Council of Europe bodies. Article 90 of the Turkish Constitution grants international conventions and their interpreting bodies a special status.^[30] Additionally, a joint press release by

[29] Ömer Emrullah Egeliği, “Somut Norm Denetiminde Anayasa’ya Aykırılık İddiasının Ciddiliği Meselesi”, *Anayasa Yargısı*, Volume: 39 (2), 2022, 213-261; Merih Öden, *Türk Anayasa Yargısında Norm Denetimi*, Yetkin, 2023, p. 215; Özen Ülgen, *Anayasa Yargısında İlk İnceleme*, Beta, 2013, pp. 151-155.

[30] According to the last paragraph of article 90 of the Turkish Constitution, “*International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*” In one of its judgments, the Turkish Constitutional Court stated that, “*International treaties that have been duly enacted hold the force of law. They cannot be challenged in the Constitutional Court on grounds of unconstitutionality. In the event of a conflict between the provisions of duly enacted international treaties and laws concerning fundamental rights and freedoms on the same subject, the provisions of the international treaty shall take precedence.*” In accordance with the last paragraph of the Article 90 of the Constitution, it concluded that an international court decision can implicitly

53 bar associations, led by Turkey's largest bar associations, declared these regulations unconstitutional.^[31] Such opinions reinforce the notion of a 'consistent assumption' that an impartial observer would find compelling.

VII. CONCLUSION

Article 127(4) of the Turkish Constitution limits mayoral dismissal to 'offences related to duties.' In contrast, the Municipality Law expands this scope to include 'terrorism-related offences or aiding terrorist organizations', regardless of their connection to official duties, thus violating the Constitution. Additionally, while Article 127 envisions mayoral dismissal as a temporary measure, the Municipality Law lacks provisions guaranteeing reinstatement if the mayor is not convicted. This omission further contravenes the Constitution.

In practice, mayoral replacements are long-term and involve central government officials, undermining the separation of central and local administration. This practice also erodes the constitutional principle that local decision-making bodies must be elected by voters. Moreover, retaining emergency measures after the state of emergency has ended violates the rule of law.

It is evident that Articles 45(2) and 46 of the Municipality Law are unconstitutional. Various interpretation methods used in this study—textual, historical, teleological, and systematic—consistently reaffirm this unconstitutionality. Furthermore, while it may be legally possible to appoint other individuals after the removal of mayors, the appointment of central

repeal a provision in domestic law. See Turkish Constitutional Court, Sevim Akat Eşki, App No 2013/2187, 19/12/2013, § 44.

[31] Union Of Turkish Bar Associations, "Trustee Practice is an Unlawful Intervention Outside the Guardianship Authority of the Central Administration in the Constitution", <<https://www.barobirlik.org.tr/Haberler/kayyim-uygulamasi-anayasa-da-yer-alan-merkez-idarenin-vesayet-yetkisinin-disinda-hukuka-aykiri-bir--85131>> accessed 27th February 2025.

government bureaucrats as trustees compounds the constitutional violation, making both the relevant legal provisions and their implementation unconstitutional.

The Turkish Parliament should immediately amend the Municipality Law to repeal provisions allowing trustee appointments. If Parliament fails to act, administrative courts must recognize the seriousness of the unconstitutionality claims and refer the matter to the Constitutional Court for review. Even if courts handling dismissal cases do not agree, the gravity of these unconstitutionality claims remains indisputable. As a result, courts are constitutionally obligated to refer such claims to the Constitutional Court.

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