

ADMINISTRATIVE TUTELAGE AND DECENTRALIZATION IN LOCAL GOVERNMENTS IN TURKEY

TABLE OF CONTENTS

INTRODUCTION.....

CHAPTER I.....

1. The Relationship Between Central Government and Local Government

1.1 Central Government

1.2 Local Government (Decentralization)

1.3 The Types of Decentralization

1.3.1 Political Decentralization

1.3.2 Administrative Decentralization

1.3.3 Geographical Decentralization

1.4 Factors Affecting the Development of Decentralization Approach

1.4.1 Political Factors

1.4.2 Economic Factors

1.4.3 Administrative Factors

1.4.4 Social Factors

CHAPTER II.....

2. LOCAL GOVERNMENT AND ADMINISTRATIVE TUTELAGE CONCEPTS

2.1 Local Government

2.2 Administrative Tutelage

2.3 Definitions of Local and Central Governments

2.4 The Concept of Administrative Tutelage

2.5 Place and Source of Administrative Tutelage in Turkish Law

2.6 Reflections of Administrative Tutelage in Foreign Law

2.7 Administrative Tutelage in Supreme Court Decisions

CHAPTER III.....

3. LEGAL ELEMENTS OF ADMINISTRATIVE TUTELAGE.....

- 3.1 Reason.....
- 3.2 Authority.....
- 3.3 Subject.....
- 3.4 Method-Form.....
- 3.5 Purpose.....

CHAPTER IV

4. THE USE OF ADMINISTRATIVE TUTELAGE.....

- 4.1 Authority to Use Administrative Tutelage
- 4.2 Administrative Tutelage Application Method and Procedures
- 4.3 Elements of Administrative Tutelage Control
 - 4.3.1 Administrative Tutelage Control Over Transactions
 - 4.3.2 Administrative Tutelage Control Over Actions
 - 4.3.3 Administrative Tutelage Control Over Organs
 - 4.3.4 Administrative Tutelage Control on Personnel

CHAPTER V

5. Administrative Tutelage Control

- 5.1 Legality Control
- 5.2 Appropriateness Control

CHAPTER VI

CONCLUSION AND SUGGESTIONS

BIBLIOGRAPHY

ABSTRACT

In the context of its organization and duties, the administration, as specified by Article 123 of the Constitution of the Turkish Republic, falls in whole and is governed by Laws. The management organization and activities are focused on centralization and decentralization concepts.

Within this two-level administrative system, Article 127 of the Constitution describes local authorities as "public corporations formed with a view to meeting the common local needs of provincial, regional and village citizens whose decision-making bodies are elected by an electoral body which is defined by the law and whose structural values are also deterred by law."

As stated in the Turkish Constitution, local councils are autonomous entities that create links with local public services outside the central government. The central government not only has the authority "administrative tutelage" over the establishment, duties and powers of local councils, within the context of law principles and procedures, to be governed under the law in accordance with the principle of decentralisation."

This study examines further the concept of Administrative Tutelage and how it is performed in Turkey. Moreover, the study reveals the weak and strong sides of the decentralization in Turkey and gives suggestions about how to bring a better system. The study consists of 6 Chapter. The first chapter explains the differences between the local government and the central government. The second chapter of the study focuses on the concepts of local government and administrative tutelage. The third chapter examines the legal factors of administrative tutelage, where the fourth chapter explains how the administrative tutelage power is used, and who has the right to use it. The fifth chapter briefly describes an important concept, which is administrative tutelage control. The last chapter sums up the discussion and gives suggestions about what can be done.

INTRODUCTION

The country's geographical location, historical perspective and cultural framework have opened the way for the State to become Turkey's main fiscal, political, social and cultural identifier. Ottoman State was a rising day of the day owing to its conquests from the 16th to the 17th century. But it did not catch up with trends in Europe at the beginning of the 16th century. The State then entered a period of discontinuation and decline. Other effects were loss of certain lands and their control. Land loss, which stemmed from the French revolution and started in the Balkans and then in Arab countries, resulted in almost every country's nationalization process. The divergent and regional challenges were seen to be nationalizing practices begun in the late Ottoman period and persisted at the beginning of the Republican period. And such nationalization was performed in a jacobine and hard-line way.

The phase in which the power of the Padishah (Ottoman ruler) started to diminish in the West, differently from that existed, was not focused on organized class systems. The class systems were not identifiable in the region, even after this phase. In the weakening mechanism international dynamics initially were dominant, but in time the government has become influential. The persistence of extra-ordinary situations has led to greater military control on the country's government and the protection in the country has been undermined.

Efforts for westernization and modernization influence the political, social and cultural changes in Turkey directly or indirectly. The main activities of the authoritarian elitists in power were the founding of the contemporary nation state and attempts to establish citizens appropriate for the new system. In this light, urban space architecture has a major role to play in defining the modern emerging culture with the founding of the Republic.

Urbanisation history can be divided into three stages in Turkey, starting in the Republican era: 1) 1923-1950 National-state urbanization, 2) 1950-1980 workforce planning; 3) 1980 and subsequent

infrastructure planning. The most critical characteristic of this urbanization is the transfer of the capital to Ankara. The reason for selection of Ankara as the capital city, is not only choosing a “safe city”, but also the wish of the founders to break the old ties with the former regime. Due to the semi-autonomous, fragile aspect of Ottoman cities against the central government influence, there was a lack of solid transit networks and cities were spatially separated by religiosity (Sengül, 2009: 106-110). However, in race and faith, the new regime decided to unite the nation. The phase of homogenisation required the creation of transport and communication infrastructures that would extend the new nation-new state's cultural and ideological codes to the entire world.

Since Turkey was an agricultural country, steps were attempted to deter citizens from going to urban areas. It can be argued that for this time, the State has made significant improvements to urban space planning. Acts on municipalities, general sanitation, constructions and means, engineering and design were established in the 1930s in order to conform with laws on metropolitan environments (Tekeli, 2009: 158).

When it comes to local governments in our country, the first organizations that come to mind today are undoubtedly special provincial administrations and municipalities. These organizations, which form the basis of local governments, have been implemented in this geography for approximately one hundred and fifty years. From the last period of the Ottoman until today, important changes have been experienced in the structure of duty, authority, income, expenditure, personnel. Finally, in 2005, the Special Provincial Administration Law numbered 5302 and the Municipality Law numbered 5393 made new regulations in many areas, especially the organization, action and operations of these organizations.

One of the most important topics among these changes is the subject of auditing local governments. New forms of auditing have been implemented for the first time, such as internal audit, which is based on guidance and consultancy in the auditing of local governments, and performance auditing, which aims to increase the efficiency and productivity of the personnel. However, in addition to the envisaged new audit types, the point that draws attention today; Although there are some changes in the structure and practice of administrative tutelage control, it is that this control has been in existence for a long time. With administrative tutelage supervision, it is anticipated

that the decisions, actions and transactions of local administrations and their personnel will be provided in a balanced and harmonious manner in accordance with the aims and principles stipulated by the laws at the country level.

Although tutelage control is generally a necessary and useful form of control, when it is applied too strictly, it limits the action area of local governments and prevents the adequate provision of local services. The aim of this study is to examine the administrative tutelage power exercised by the central government over the bodies, personnel, operations and actions of special provincial administrations and municipalities within the framework of the Special Provincial Administration Law No. 5302 and the Municipality Law No. 5393. While explaining the subjects in the study, the current legal regulations are compared with their previous situations from time to time.

Execution of public services and administrative organization in line with two basic principles, namely central administration and local administration, are divided into general administration and local administrations. Unity of purpose and coordination are necessary among these, and according to the 1982 Constitution, the administration is a whole with its organization and duties. The subject of the thesis, administrative tutelage is also one of the tools to ensure this integrity. Administrative tutelage, in a general definition, refers to being subject to the control of administrative authorities outside that institution and over an institution, which is determined by law. In this type of control, the administration is subject to the control of an institution determined by law in order to perform the service properly.

First of all, the concepts of central administration-decentralization, and the integrity of the administration were examined in the study, as these are important components in explaining the administrative tutelage. After discussing the concept of administrative tutelage in general, the difference of administrative tutelage from civil tutelage and hierarchy has been tried to be revealed by comparing it with similar concepts. Since administrative tutelage is an authority, this authority is tutelage. How it will be used in terms of its authorities, the scope and types of administrative tutelage had to be discussed separately. The examination was completed with a conclusion section obtained from all explanations.

CHAPTER I

1. The Relationship Between Central Government and Local Government

According to Article 123 of the Constitution, the establishment and duties of the administration are based on the principles of central administration and decentralization. Turkey has adopted must be understood from this article along with the management principles from both the center spot. The constitutional level, the situation is a reality, also known as the center of gravity being so in Turkey. The idea of transferring the powers of the center to the local, which has gained a wide place in the recent developments and prevailing paradigms in the public administration discipline, is advocated by referring to many reasons and various country practices (Schwartz, 1994: 535). In this context, the relations between the center and the local progress smoothly and in a balanced manner in some countries. The relationships between them contain serious problems and the individual suffers the most from this conflict.

Turkey; It is one of the countries that have problems between local governments and the center and where the weight of the center is felt to a great extent. In this context, it is under the administrative tutelage of the local center. The administrative tutelage, which was also included in the 1982 Constitution, was defined in the Constitution as "for the purposes of carrying out local services in accordance with the principle of integrity of the administration, ensuring unity in public duties, protecting the benefit of the society and meeting local needs as required". As can be understood from the definition, the Constitution sets out from the integrity of the administration, but puts the emphasis on the center and puts the locale in the second plan.

Without prejudice to all these criticisms, it can be said that there are many economic, political and administrative relations between the center and the local, and the center in this relationship is active and the local is passive. Because, at least at the moment, the biggest source of income of the local is the budget allocated by the center, and this is one of the most important indicators that the local is in a secondary position.

1.1 Central Government

Central administration; It is defined as “the execution of decisions and activities related to the said services by the central government and the organizations within its hierarchical structure in order to ensure unity and integrity in public services”. According to this definition, public services are divided into parts and carried out within the ministries, income and expenses are collected at the center to meet these services, and the authority and responsibility belongs to the center during the decision-making process. In addition, the provincial organizations have to act in accordance with the center's instructions and decisions, and all of these are carried out in integrity (Ökmen & Parlak, 2013: 22).

The benefits of the central management principle, which has such general characteristics, are the construction of strong management, less cost and more rational practices, while at the same time, regional differences can be eliminated, local effects are minimized as much as possible, and financial control can be carried out easily (Parlak & Sobacı, 2012: 29).

Besides the benefits of the central management principle, there are many drawbacks. There may be delays in the execution of public services, resources may not be used efficiently, and public officials working in provincial organizations may be unwilling to serve if they feel limited by the orders and instructions from the center. In this case, problems such as the loss of interest of the public in public services may also arise (Eryılmaz, 2013: 108).

Özay tried to define the extent of authority by associating it with the elimination of the disadvantages of the central administration. According to him, the breadth of authority was expressed as a system that increases the powers of civil servants, eliminates or at least softens the disadvantages of central administration (Özay, 1994: 148).

Yıldırım (2009:21) also made a similar definition and emphasized that the breadth of authority was considered as a part of the central management system and that this authority was used to eliminate the disadvantages of centralized management. Yıldırım also mentioned that the principle of width of authority has been applied in two ways, and the first of these mentioned that the powers of the upper authority were transferred to the lower authorities by law. In such transfers, the upper authority did not have the status to withdraw the powers delegated by law at any time. In the second

application, the upper authority transfers a set of duties, powers and responsibilities to the lower authorities of their own free will. In such cases, the higher authority stated that it has the right to withdraw the duty, authority and responsibility it has transferred whenever it wishes.

Extent of authority or similar applications with different names really play a major role in preventing the damage caused by the rather cumbersome, bureaucratic and time consuming structure of the central administration. The workload of the center is somewhat reduced by means of the authority extension, as well as saving time and money for the individuals living in the provinces.

1.2 Local Government (Decentralization)

Decentralization, which removes the disadvantages of the central administration and expresses a complementary form of management, means the management of a service in the place where a service is carried out or where the business is performed (Ulusoy, Akdemir, 2013: 57). As with centralized management, there are also useful and disadvantageous aspects of decentralization.

The benefits of decentralization are basically three, these are:

Local governments are more suitable for democratic principles,

- It functions to reduce red tape and bureaucracy of local administrations,
- Services in decentralization are carried out in a more appropriate way to the needs.

The drawbacks of decentralization are;

- Local governments may disrupt the unity and integrity of the country and the unitary state structure,
- Decentralization has a character to increase inequality between regions,
- Decentralization may lead to partisan practices,
- Local management organizations, if they do not have sufficient financial and technical means, may cause disruptions in the execution of services,
- Difficulties are experienced in performing the financial audit of local management institutions (Parlak & Sobacı, 2012: 31).

Although the risks of decentralization seem to be more than the benefits it brings on paper, in democratic modern states, more and more importance is attached to decentralization institutions,

and many duties, powers and responsibilities belonging to the center are transferred to these institutions. As a requirement of the liberal and capitalist system, the center deals with macro issues such as national defense, national security, foreign policy and the establishment of justice, while the remaining issues are largely transferred to decentralized institutions. This condition can be met as a natural approach to Western countries like Turkey is faced with great reservations. Likewise, the said countries such as Turkey, is obliged to act with great sensitivity when performing the transfer of responsibility.

The scope of decentralization is discussed in the literature. Issues such as where decentralization starts and ends, at least the variety of services to be provided, how and by which unit the money to be spent while providing services will be collected; It is one of the issues that cannot be agreed on.

The geography of the countries, ethnic and sectarian diversity, and the changing of factors such as welfare from country to country similarly causes the scope of decentralization to change from country to country. For these reasons, it is useful to focus on the types of decentralization rather than the scope of decentralization.

1.3 The Types of Decentralization

Decentralization can be defined as the type of organization where authority and resources are used by local governments. Decentralization, essentially, is the execution of some public services by public legal entities other than the state legal entity (Gözler, 2012: 33).

When it is asked a classification made on decentralization in Turkey after a binary distinction between the political and administrative management in place, administrative decentralization as well as two in terms of management and service management internally displaced within their own geographical place (Keleş, 2000: 27).

1.3.1 Political Decentralization

Political decentralization can be defined as the administration in which the central and local government units share their power to produce or do policies together, and in this regard, the

monopoly of the center is taken away. Although the monopoly of the center has been taken away, in countries where political decentralization is exercised, local governments are subordinate institutions to the national government, and their powers are regulated by the regional laws (Keleş, 2000: 30).

The features of political decentralization can be listed as follows;

- Power is not centered,
- There is a power sharing between various administrative units determined by the constitution or laws,

Although it may differ from country to country, decentralization units are given legislative, executive and even judicial powers, provided that they are limited to a certain area,

- Political decentralization forms the basis of the federal state system.

Political decentralization poses a great risk for countries that have adopted a unitary state system.

- In countries that focus on political decentralization, there are administrative units that usually carry a state system or other names, but which a unitary state is unlikely to accept.
- In countries where political decentralization is implemented, it is easier to create social mobility with external interventions compared to unitary states.
- In countries where political decentralization is implemented, a social life in which differences are concentrated in certain regions is dominant rather than the wealth resulting from the coexistence of differences.

1.3.2 Administrative Decentralization

The basis of management's implied in place in countries like Turkey has adopted a unitary state system of administrative management in place.

Unlike the central government principle, administrative decentralization means that some public services are carried out by the central administration (state legal entity) and public legal entities outside its hierarchy.

In this context, we can list the features of administrative decentralization as follows:

- Power is mostly concentrated at the center.
- There is no sharing of political power between the various administrative units as determined by the constitution or laws.

- Even a small part of the legislative and judicial powers cannot be used by other units.
- It carries any risk factor for countries that have adopted a unitary state system.
- It does not include the state system or a different administrative stratification expressed by another name.
- Administrative decentralization covers the fulfillment of some local affairs only by institutions that do not have the hierarchical control of the center but have a public legal personality.
- The business or transactions carried out by legal persons may include individuals living in a certain region, and it may include services such as education, culture, arts.

In general, administrative decentralization, which has such characteristics, is divided into two as geographic location management and decentralization in terms of service.

1.3.3 Geographical Decentralization

Since the period when people started to live together, they created living spaces under names such as villages, towns and cities, and tried to meet the common needs of living together. It is not possible for the needs of people living in a certain region to live only in that region by the central administration in the whole country by the same methods, and people living in such regions have formed various units under different names in various periods to meet local and common needs.

These units, which function within this framework in the historical process, have allowed these units, which have been recognized by modern states as well, to continue to carry out their public services they had previously carried out. The principle of geographic decentralization has emerged in this way and has managed to survive (Gözler & Kaplan, 2011: 42). The characteristics of geographic decentralization organizations that emerged in this way and continue to exist are as follows:

- Another name is Decentralization Organization in Terms of Location.
- Called local government or local government in the literature.

With the emergence of modern and democratic states, decision-making bodies began to come to power through elections.

- Geographical decentralization fulfills the duties and responsibilities that the center does not have effective and efficient results without being subject to the hierarchy of the center.

- As the name suggests, geographic location governments are in charge and responsible for a specific geographic region.
- The activities that can be carried out by geographic decentralization organizations are generally regulated and limited by the relevant laws.

Geographical decentralization units, which generally appear in the form of regions, provinces, municipalities or village administrations, perform important functions in today's world. These units fulfill critical tasks in meeting the common needs of the locality and solving problem areas in many issues related to human life from before birth to after death.

1.4 Factors Affecting the Development of Decentralization Approach

It is not reasonable to try to explain an understanding that exists in social sciences or emerged after any development, change or transformation with a single factor. Indeed, explaining a phenomenon belonging to social sciences with a single factor is against the nature of social sciences. In this context, it is possible to say that more than one factor is effective in the emergence of local government understanding. These factors are generally examined under four headings as political, economic, administrative and social factors.

1.4.1 Political Factors

In studies on local governments, it is frequently emphasized that local governments are one of the leading actors of democracy and democratic values. In fact, there are those who take this understanding so far that these people see local governments as a "school of democracy". However, as Görmez points out, the existence of local governments, although not always, is closely related to national unity, and while local governments are made strong where national unity is strong, local governments have been made weak by the state itself in places where national unity is not strong (Görmez, 1997: 45).

Nadaroğlu stated that in addition to national unity, traditional and historical factors also played a major role in the emergence of local government understanding. Indeed, while local governments

were at the center of democracy and development in the former Eastern bloc countries, in developed and underdeveloped countries, they had a local administration understanding according to their historical processes. While strong local governments emerge in developed countries, as the development decreases, the value given to local governments decreases in direct proportion (Tortop, et al., 2006: 20).

As stated by Giritli et al. (2001: 65), local governments are one of the tools that can be used to ensure democracy and democratization and this tool is also important in terms of showing how important political factors are in the emergence of local government understanding.

1.4.2 Economic Factors

Many international organizations, notably the European Union, attach great importance to the principle, which has long been known as "subsidiarity". The principle in question, referring to the fact that the institution that will serve the individual is the closest to the individual, he states that an effective and efficient management will be displayed in this way. There are two dimensions of the economic factor affecting the emergence of the local administration understanding. The first of these is to ensure that the public supply of goods and services conforms to the preferences of the people. Secondly, the benefit of some goods and services is for a limited region (Ulusoy, Akdemir, 2013: 42). Indeed, in the provision of public goods and services, it is important to provide these services by the closest units to the people who will receive the service in terms of knowing what the people prefer and developing alternatives accordingly. Because it does not seem very reasonable for a bureaucrat sitting in the center to know what and how the people will prefer in any unit of the province. Again, the unit that will make the cost-benefit analysis most accurately is the unit closest to the individual.

Considering that the administration is trying to meet unlimited needs with limited resources, it should be in an effort to obtain maximum benefit with minimum cost by using resources effectively and efficiently. This effort shows the importance of the economic factor in the emergence of local government understanding.

1.4.3 Administrative Factors

As it is known, there is no country in the world that is managed solely from the center or solely locally. All modern states, which are known for the ordinary course of life, apply both the central and decentralized management principles together. According to the country's own conditions, some focus on the center, while some focus on local government units. The relationship between the center and local government units can take place in different ways. While the center may form units subject to its own hierarchical control in the provinces from time to time, it may form units that are completely independent from the center or partially controlled by the center, with names such as the municipality. There are geographical, political, economic and cultural differences that determine the shape and size of the relationship. At this point, it is important to create a balance between the center and the local, which takes into account the geographical, political, economic and cultural differences.

1.4.4 Social Factors

The progress humanity has achieved in the last century has also changed and transformed the level of demand that it has in many other fields. As the level of education increased and the cultural level increased, a more positive attitude towards local governments began to dominate. An administrative unit that he knows, knows, or at least can reach easily and can influence decision-making mechanisms, has become increasingly preferred by the society.

CHAPTER II

2. LOCAL GOVERNMENT AND ADMINISTRATIVE TUTELAGE CONCEPTS

Governance is a relatively new concept at administrative sciences. In countries like Turkey, where a centralist State tradition exists, local governments are mostly under heavy control of central administration. So, in such countries like Turkey, it is not easy to establish and maintain local governance.

2.1 Local Government

At the academic and executive level, the classical approach to government and administration was focused on planning, coordination and inclination of the citizens towards a particular goal (Bozkurt and Ergun, 1998: 266). The classical view of the government was replaced by a management strategy from the 1970s (Özer, 2006: 61) The transition from government to governance is based on globalisation, localisation, the shift in attitudes towards political activity, the formation of new social groups and new social movements (Tesev, 2008: 16) Theoretical and functional government is one of the most common ideas. As it is used by various social branches, as well as by various organisations and institutions, the term is defined in different ways. For instance, the World Bank, one of the first organisations to use this concept, describes governance as "composed of practices and institutions by which authority is exerted in a nation. This requires the selection, monitoring and replacement of governments, the government's ability to successfully devise and execute sound policy, and the consideration of publics and the state for the economic and social relations institutions between these institutions. UNDP defines Governance as an economic, political, and administrative exercise to administer the affairs of a nation at all levels. It includes procedures, structures and organizations by which the interests of individuals and communities are articulated and legal rights exercised, their legal responsibilities fulfilled and their disagreements communicated.

The OECD describes governance as referring in relation to the administration of its social and economic wealth the use of political power and the practice of social regulation. This broad description includes the role of public bodies in deciding the operational environment and the allocation of rewards and partnership between the ruler and the ruling party.

The core governance values are transparency, engagement, responsibility, quality and consistency (Özer, 2006: 62). The other most widely cited governance concepts are validity, transparency, the rule of law, and equity. Governance is actively rearranged structurally, not statically. Actor players should also be directly engaged in a process of this nature. There are three main governance actors: Parliament, civil society and the private sector. (Hancioğlu, 2008: 14).

Four critical elements of changes to local governance are stated by Peter John (2001: 15-16). The first consideration is the restructuring of the institutions. According to John, the structural change has two aspects. The first is the administrative increase, which involves establishing new layers of elected sub-national governments and state, regional and central departments for special purposes. The second is administrative reform arising from the introduction of new concepts of public administration and/or the drive to decentralize the central government's authority. New networks are created as a second factor. There are two aspects of this factor too. Firstly, stronger horizontal networks are emerging. New policy networks may develop ties that build confidence and build governance capability with increased institutional complexity at the local level and the stronger involvement of the private sector. New cross-national networks will form the second dimension. In view of globalization and the increase of EU strength, the consequence of nation state reform is the stronger cross-national relations between the municipalities and the means of access and influence regulation. New reform proposals are emerging as a third dimension. Since local engineering is more open to industries in which the government, such as regional planning and local planning, has withdrawn or takes less of an interest than before, there are more possibilities for local innovation and building potential. Second, it becomes less important actor in local politics as a result of the re-treatment of the administration. Thus, in some policy sectors, instead of retreats, the state reinvents its position. It becomes a player and a leading participant in networks. The fourth and final element is answers to coordinated and accountable dilemmas. The two aspects of this factor are the quest for new methods of regulation and transparency and more influential modes of management.

The formulation and implementation of collective action on local level can clearly be defined as local governance (Shah and Shah 2006, 1). A more complete description notes that municipal government includes the commissioning, coordination and management of facilities such as healthcare, education, police services, infrastructure and local economic growth (Miller, Dixon and Stoker 2000, 1). Local governance is defined in a different definition as the development and implementation at local level of collective actions. In addition to its direct and indirect functions, the involvement of informal standards, networks, neighborhood and district agencies should also be involved in policy making and implementation of local services (Shah and Shah 2006, 2). Many values underpin local government. The principle which is widely accepted are public participation,

reaction, effectiveness and efficiency, openness and transparency, rule of legislation, innovation and openness to change, competencies and capabilities, sustainability and long-term guidance, good finance, human rights and cultural diversity, consensus-making, equity, legitimacy, resource prudence and ecological health (Saiko, 2008). As with government, local governance is a multi-actor operation. Local governance includes players including mayors, councils, NGOs, organizations such as city government, municipal boards, legislation and accessible capital, for example human resources and money.

2.2 Administrative Tutelage

The Legislative regime was changed to the "Presidential Government System" after a referendum in 2017 and a presidential election in 2018. The two-headed executive structure has been transformed into a single executive system under the Presidential Government System. This has contributed to major shifts in the conventional approach of Turkish management. In terms of the central government, it will be unfair to assess this move. This transition in the central administration would affect local governments' operation as well. At the same time, each unit has some impact over each other in keeping with the dignity of the government. The center needs to re-establish in so many ways its effect on the local region. Different signing procedures are currently adopted at certain stages of the local government decisions and changes are obligatory on some occasions.

The Presidential Government Structure is built primarily on a distinction between the state's political, administrative and judicial bodies, and is the general name of the system of a state-centered organisation of the state's management. This separation is guaranteed by the Constitution. In the role of President, the legislative and judicial functionality and the execution of their decision-making shall be the responsibility of the President. Each authority has some forces and powers in this regard to balance and provide a control mechanism. In the other hand, the President's preferential election is one of the principal aspects of the presidential system. This strengthens the executive's authority to the public.

The geographical, social and political experiences of the presidential countries of the world have given each nation a distinctive idea of governance. While various implementing models are listed,

the USA is the first country in the world to think about the presidential system (Yaman, 2014: 84). The effective and efficient conduct of State relations due to equilibrium is somehow difficult in an atmosphere of severe division of powers. Unlike the powers of the executive, as with the constitutional powers of the legislature, to administer the legislation through the judiciary, one of the powerful outlets of authority is to select public officials who can administer or support the State together. In the classifications of governmental structures established according to the concept of the separation of competences defined at the point of segregation of legislative, executive and judiciary powers, the parliamentary structure founded upon soft division of forces in our country was introduced over almost a century ago. But for a quarter of a century in particular, the existing paradigm could not resolve its structural challenges in operation and began an ongoing discussion about the need to create a new system for our transforming and evolving country (Kilinc, 2016: 510). It was presented as plans to reform the political structure after the establishment of the Republic of Turkey. The representative form of government was favoured by the Constitution of 1921. The structure started to reform with the 1923 amendment to this Constitution. The Constitution, the electoral system and the parliamentary government system of 1924 were combined, and a pure parliamentary system was incorporated into the Constitution of 1961. With the constitutional changes of 1971 and 1973, the electoral structure was separated from the system and the Constitution of 1982 has significant departures from that system. This discrepancies are rationalized parliamentarism (Kilinc, 2016: 501). In Turkey, the long-term discussion on changing the political structure is generally held in a presidential system. The presidential scheme proposal was included first in Necmettin Erbakan's 1970 program and bylaws developed by the National Order Party (Mili Nizam Partisi). Turgut Özal, Süleyman Demirel, who served as President and Prime Minister and Recep Tayyip Erdoğan (Demirhan & Adıgüzel, 2016: 187-188; Akman 2019: 40), later shared this idea. This proposal is also being made feasible. The people's presidential election was especially embraced after the difficulty faced during the presidential election in 2007 and the attitudes of the new regime evolved toward the semi-presidency rather than the parliamentary system. After this, it is time that the framework discussions are replaced by a new regime in accordance with the existing circumstances and needs of our country and the presidential government system they established with the April 2017 referendum (Akıncı 2018: 6) has been approved by the Justice and Development Party (AKP) (Akıncı, 2018: 6). After the constitutional reform had been adopted on 24 June, 2018, a referendum

was held on 16 April 2017 to give rise to both legal and parliamentary general elections in Turkey, which transformed into a new form of government, the presidential government system, which was de facto known. There are two principal areas of evaluation in the discussions on this subject; one of them is the evaluation of the 2017 constitutional modifications and the second the legal provisions of 24 June 2018 (Turan, 2018: 43; İzci and Yirmaz, 2019: 75). The second is the legal provisions made before and after the elections.

The definition of tutelage or tutelage, in effect a phrase in the private law, refers to the supervision of a lawful individual with a view to protecting and safeguard the interests of underage persons, such as minors (Önen and Eken 2016: 2018). The definition of hierarchy and custody applies to various institutional circumstances. The theory of hierarchy is founded on the *raison d'être*, the principle of administrative dignity. The integrity of the management theory is also essential. Article 127 of the Constitution specifically reflects this idea. Indeed, there are two legislative tools: tutelage and hierarchy to guarantee administrative competence. Management tutelage guarantees legitimacy between the central government (state) and institutions of decentralization. The hierarchy, on the other hand, ensures integrity to a common legal body between different authorities and divisions (Gözler, 2018: 197). While autonomy and administrative security tend to be separate, they balance. The defining aspect of the idea of local government is both concepts. These two components are important together to address the definition of municipal administration. In order for an agency to become a local authority, the central administration must have control.

No local administration shall be called an agency associated with the central government or an organization under the hierarchical supervision of the central administration. However, an entity, which is entirely independent of the central government, cannot be defined as a local government. That if a state authority remains autonomous from the central administration, it ends up becoming a local government. (A federal state or State itself, whether it both gains legislative and judicial power). A clear response to this question is given: since the guardian authority is and is limited to the constitution, the tutelage authority is made up of the powers delegated to it by law. The forces beyond the control of the tutelage authority, which are the powers which can be used by the

tutelage authority, in general, in all countries, cannot be mentioned in this case (Fenoğlu, 2018: 28-29). The rules of each nation decide the tutelage rights of each tutelage authority. If there are no such laws which specify the tutelage power, the central government would not be responsible for guarding the local government. When the different laws are reviewed, various supervisory powers are granted to central administrators over local governments (Gözler, 2018: 174-175).

Controls have been shaped by managerial tutorial applications in Turkey. Administrative custody is a special jurisdiction that is only available in certain cases. The tutelage agencies may use this authority as cancelation, consent, delay, authorization, order for re-negotiation and correction of the management institution's operations, or as an administrative judge against their own bodies' decisions (Akçay 2018: 52). As a consequence, however, the tutelage authority would not grant the central government the power to decide the implementation by removing the agencies of the local authorities. In fact, it can be seen that this is laid down in the Constitution when Turkish law is studied. Article 127(7) of the Constitution specifies explicitly who should make use of the administrative guard, that the central government is authorized to act as administrative guard over the local authorities. On the basis of this clause, only centralized administration can be provided to local councils (Gözler, 2018: 196).

2.3 Definitions of Local and Central Governments

The principles regarding the organization of the administration are related to management policy rather than legal. Management policy emerges as a result of historical development and experience. These principles also entered the constitutions over time. In Article 123 of the Constitution, it is stated that the principles of central administration and decentralization will be applied in the establishment and duties of the administration.

While the central administration is the use of administrative powers by the central authorities throughout the country, decentralization; It is the fulfillment of various public services by public legal entities (local administrations, local administration organizations in terms of service) in order to meet the local and common needs of those living in villages, towns and cities (Akı, 2010:62).

In the first paragraph of Article 127 of the Constitution, which defines the local administrations, it is stipulated that the principles of their establishment will be specified by law and the decision-making bodies will be elected and formed by the voters shown in the law.

The central administration (central administration, capital organization) is the organization of the central administration that consists of officials in the capital (such as the President, the Council of Ministers). Ministries have provincial organizations throughout the country. Turkey, in terms of central administrative structure to the geographical situation, according to the requirements of public services and economic conditions in the provinces, the provinces are also divided by other foot section (Cons. art. 126). The governor is at the head of the provincial administration, the district governor is governs a sub-region, and the subdistrict director is the head of the district administration. In addition to the benefits of centralized management, there are also disadvantages (Gözübüyük & Tan, 2006: 162).

The expected benefits can be listed as follows:

- a- The principle of central administration provided unity in the state administration.
- b- A strong state administration is provided.
- c- The superiority of civilian administration over military forces, has been realized by its centralization.
- d- The expertise and financial opportunities required for the efficient execution of public services are obtained more easily with the central administration.
- e- It is ensured that e- services are spread across the country in an equal and uniform manner.
- f- The cost of services is decreasing.
- g- Public functions are freed from local influences.

The disadvantages of centralized management are as follows:

- a- Central administration increases paperwork, and the fact that decision-making authority is at the center requires the correspondence of the provincial officer with the center.
- b- Central administration is not suitable for the principle of democracy. It narrows the boundaries of the people's participation in government.

- c- Central administration may have a negative effect on public officials and public services. Those who work on behalf of the center prefer to apply the center's opinion to the service requirements.
- d- Those who hold political power in the center may grant privileges to their constituencies in the distribution of public services.
- e- Local needs may not be sufficiently determined.

In article 127 of the Constitution, it is stated that the establishment, duties and powers of local administrations will be regulated by law in accordance with the principle of decentralization. Decentralization is divided into local decentralization and decentralization in terms of service. Accordingly, decentralization includes practices based on service or a specific type of activity, as well as a management style based on the region. However, in terms of service, decentralization should not be perceived as a public service carried out in a specific local area. For example, the Social Security Institution does not provide services for social security jobs in a particular region, but for the whole country (Derdiman, 2007: 64). Local governments are autonomous, decision-making bodies are elected and have their own budgets. Local administrations in terms of location are provinces (special provincial administrations), municipalities and villages in the Constitution, depending on the principle of limited number. While the organs of these are determined by election, it is not possible to determine the organs in the decentralized administration with the will of the voters in terms of service. While local governments provide many services stipulated in the law, local administration organizations fulfill a certain public service required by their expertise and their assets have been allocated to this particular service (Derdiman, 2007: 64). The benefits of the decentralization principle appear as disadvantages of local government in general. On the other hand, the principle of decentralization is beneficial in terms of compliance with democratic principles, carrying out services in accordance with requirements, reducing paperwork and bureaucracy. In this way, the inconveniences of the central administration can be eliminated by preventing the accumulation of all administrative powers and duties in one hand, in the center. Of course, the application of these principles alone is not the preference of one over the other; It is important that both are implemented in integrity and the regulation of the Constitution is in this direction.

Public administrations are structured in an administrative capacity where, in a certain proportion and coordination, local authorities are assigned the planning, organisation, execution, coordination and supervision role of public services and decentralised management. Because a system of these two approaches solely implemented would be extremely difficult to maintain, countries have established the most suitable model of central government relations with the local authorities.

While both approaches include advantages and disadvantages, the concept of offering services from their locations recently seems to gain weight. After the second half of the 1970s, when it was realized that welfare programs had caused intense issues, the prevalence of delivering services from their own sites accelerated. With the scope of a massive number of central governments, bureaucracy and dysfunction have grown, which want to carry out public services through the welfare state agreement, and the goal of effectively providing public services has been removed.

During this time, public funding was inadequate, welfare state programs and policies and political structures altered, and welfare state coalitions weakened. Oil crises, high unemployment, stagflation, and the extreme economic downturn of the West after the 1970s put an end to the golden age and pushed governments into a period of transition and contraction (Yerkes and Veen, 2011: 431). The failure of welfare state programs to effectively prescribe such issues has led to investigations and new research and since the 1980s has led to a common concept of the New Public Administration (NPA).

Although the radical reform programs of the NPA to each nation have been implemented and applied differently, the public administration movement towards marketing and privatization has been among the fundamental principles (Osborne, 2000: 15). The idea of decentralization is a sharing of powers and duties between central governments and local authorities and non-governmental organisations, and aims to ensure that local governments participate more effectively in public services and are able to participate more effectively. The decentralization concept that came into being after the 80's has become prevalent particularly since the 1990's, which prevents waste and efficiency, avoids waste of resources, accelerates services and makes service decisions more precisely. Local public services are provided by municipal authorities, who know the local needs and possibilities best. Furthermore, subsidiarity is a principle that

demonstrates the increase in the efficiency of local governments which builds on the principle of providing services through publicly closest units. When together the concepts of decentralization and subsidiarity are taken into account and countries' policies and procedures of local authorities have been reviewed as from the 1980s onwards, it is clear that the roles and obligations of local governments in the performance of public services have increased significantly.

It should, however, be noted that countries develop their own policies and practices in the determination of local governments' tasks and responsibilities. In order to determine the roles and powers of local authorities, Central administrations normally apply three (3) principles. These are the "general competence," "authority" and "list" concepts. Applied in countries such as Germany and the Netherlands, the general jurisdiction concept means that local governments provide services not banned by law or left to other administrative units. Under the principle of competence in many countries, such as the United Kingdom, local authorities are obliged, in matters permitted by law only, to carry out local public services. This situation demonstrates that local governments should take the central government's services to the authorities. The roles and obligations of local governments shall be identified independently within the context of legal principles and processes in countries in which the list principle is applied. Such authorities are thus able to fulfill their duties and obligations as far as the laws permit (Güngör, 2012: 4). The relationship between central and local administrations differs in accordance with each country's financial, fiscal, judicial, cultural and social structures. Many models have been developed based on these differences to clarify the relations between central government and municipal authorities. Agency and partnership hypotheses are two of the oldest and most influential of these models. Local governments are a representative of the central government to provide public services at local level, as described in the representation theory. The partnership model states that the local governments are the central administration partners, and the relationship between them with the center is similar to that between equal partners. With regard to the independence and willingness of the local governments to take autonomous decisions, central government tends to favor representation and local governments favor partnership models. The relations between central government and local governments are based on reciprocal negotiations and interdependent relations according to the power-dependence model of balance-mutual trump. According to this, the central government must rely somehow and be dependent on it, no matter how powerful the central government may seem at first sight. The central government and local authorities are identical to the client or master

employee relationship, according to the proxy model. In so far as the central government allows local governments to perform tasks and activities (Bilgiç 1998: 28-29). The relationship between central and local governments as contemplated by the governance principle is more akin to the model for partnerships and the power dependence and balance-mutual patterns. Because a transparent and participatory and mutual interaction process instead of a strong bureaucracy structure is conveyed with the notion of governance. Moreover, the notion of governance is based not on a centralized model in the decision-making processes of the actors but rather on the local needs of local governments. This concept reflects understandings based on the independence and autonomy principle of the actors. These are all terms in the partnership model, balance-mutual trump models, and power-dependency.

2.4 The Concept of Administrative Tutelage

The basis of granting autonomy to institutions and organizations is the aim of providing main services effectively and efficiently, and autonomy plays a major role in ensuring that needs are met in a simple, cheap and effective manner (Aktalay, 2011: 98). However, decentralization can weaken the unity of the country. It can cause competition between regions. Increased decentralization can hinder the provision of public services across the country and lead to imbalance in administrative organization. Administrative management is implemented to reduce these disadvantages of decentralization. As an element of balance and control, administrative management is not to choose one of the two administrative institutions, but to supervise the administrative decision-making, administrative behavior and action authority of the central authority decentralized administrative department and disrupt these situations when necessary.

Gözübüyük & Tan argued that this authority is in the public interest "for the purpose of controlling the local administrations and public institutions, where the state provides its assets (Günday, 1999: 58). According to another definition, administrative management is defined as controlling and lifting power when necessary (Gözler, 2006: 102). In decentralization, it is impossible for the administrative department to operate on its own, without the control of the center. The administrative department forms a whole as a result of its powers and responsibilities. To avoid

the disadvantages of decentralization and to ensure unity and integrity, the state must retain control of decentralized institutions and prevent decisions inconsistent with the general interests of the country, regional interests, and national requirements. Administrative tutelage is a form of administrative control, a force based on law and limited by law. Turkey clearly stated in the Constitution of this issue.

The concept of tutelage, which is essentially a private law term, in this field means putting under the control of a person authorized by law, in order to protect the interests of those who lack the ability to manage themselves, such as minors and restricted people. However, as it is used in public law, the purpose of tutelage is rather than protecting the decentralization and its interests, which are in a limited position in terms of authority; It is based on the protection of the public interest against dangers such as possible violation of authority, or other unlawfulness to be made by these organizations. From this perspective, it is seen that there is a difference between the two tutelage concepts in terms of meaning and scope (Tortop, 1999: 15). While the concept of tutelage performs a more protective role in private law; In public law, it generally undertakes an audit function to ensure compliance with the rules of law.

There are many similar definitions regarding administrative tutelage. Administrative tutelage is generally defined as the central government's power to control the decisions and activities of local governments (Onar, 1966: 622). According to a definition, administrative tutelage is the supervisory power of the central government, representing the state legal entity, over decentralized institutions in order to ensure that the state administration and public services are carried out as a whole and in harmony (Günday, 1999: 56-57). According to another definition, in order to protect the general and local interests of the organs, personnel, actions and operations of the decentralized administration organizations, the executable decisions of the central government and its extensions in the provinces and the enforceable decisions, administrative acts and movements of the local governments are enforced as the power to control and disrupt these decisions. It is the body of powers (Crowd, 2005: 729). In this way, it will be possible for the central government to limit the organization and operation of decentralized management institutions in line with the purposes it desires.

Administrative tutelage is a limited supervisory power that the central government has over the actions and operations of decentralized administration organizations, provided that a legal arrangement has been made before (Gözler, 2007: 43). In other words, this power is exercised on one of the two public legal entities, within the measures and boundaries clearly stipulated by law, for the formation of organs, personnel, actions and operations of the administration (Derdiman, 2007: 75). With this supervision, decentralization is ensured to act in accordance with the principles, standards and principles determined by the center.

Administrative tutelage control differs from hierarchy control. In order to be able to talk about administrative tutelage, unlike the hierarchy, there must be two separate legal entities. While one of these two legal entities was previously accepted as central administration and the other as local governments; As a result of the changes passed over time, this relationship now takes place between two administrations, one of which is legally recognized as the center (Özay, 1996: 160). In this way, the central administration is carried out not only at the local level, but also on other legal entities outside the center, with the tutelage control of the legality of public services carried out in the country.

When considered within the framework of all these definitions, it is understood that administrative tutelage power has various features. It is possible to list these characteristics briefly as follows (Keleş, 2006: 376; Gözler, 2007: 44; Günday, 1999: 57):

- Administrative tutelage power can only be used by administrative authorities and administrative jurisdictions.
- Although the hierarchy authority is a general and ordinary authority; Since administrative tutelage power is a separate authority, it is strictly based on law and its boundaries are drawn by law.
- The administrative tutelage power is separate from the concept of "hierarchical control" since there is no subordinate-superior relationship. For this reason, tutelage does not include the authority to give orders and instructions and the authority to correct.

Since the administrative tutelage power is an “exception to the autonomy” granted to local governments, it should be clearly stated in the law which transactions are subject to tutelage and which officer, authority or boards the administrative tutelage authority is entrusted to.

2.5 Place and Source of Administrative Tutelage in Turkish Law

Considering the elements and principles specified in article 127 / art. 1. Administrative power is the power of the central government, so one local government has no power to direct another local government. This authority belongs to the local government. The known purpose is to provide local services in accordance with the principle of integrity of administrative institutions, to ensure uniform fulfillment of public responsibilities, to protect public interests and to meet local needs when necessary. It is used in the procedures and principles stipulated in the fourth law. According to the broader definition that encompasses these elements and principles, “administrative tutelage is the basis of the decentralized institution of the state, as prescribed by law, to carry out decentralized services in accordance with the principle of the integrity of the administrative institution to achieve unification. It expresses the power in demand and procedural cycle such as protection of public responsibilities and protection of public interests (Gözübüyük & Tan, 2006: 192).

Similar to the principle that no crime and punishment is unlawful, there is no unlawful tutelage. Because, as stated above, the Constitution explicitly stipulated that the administrative tutelage authority could only be used within the framework of the principles and procedures specified in the law. As a result of this principle, administrative tutelage can not be used by default, nor can it be used beyond the limits of the administrative tutelage law. In that case, for whatever transactions the law stipulates, only those transactions are subject to custody control and since this authority is of exceptional nature, it is essential to be interpreted narrowly (Gözübüyük & Tan, 2006). Lack of authority in the use of tutelage authority is the main, authority is the exception (Derdiman, 2007:65). In the 1982 Constitution, the tutelage authority was granted to the tutelage authorities in terms of compliance with the law as well as in terms of appropriateness. However, since this authority is a limited authority, if the tutelage authority is not authorized by the law to check the appropriateness in that matter, the central administration cannot perform the appropriateness

check. In other words, the tutelage authority does not have a general supervision authority. When using this power, first of all, the examination and approval of the decisions of the decentralization administrations can be envisaged.

The regulation process introduced by the law may be subject to the approval of an authority in the central administration, the most important decisions taken by some decentralized bodies. For example, decisions that depend on the approval of the governor representing the center. All decisions taken by provincial councils on behalf of special provincial administrations depend on the approval of that provincial governor. Some of the decisions taken by the municipal councils on behalf of the municipal legal entity are likewise subject to approval. In the approval of the decision taken by the municipal council by the governor, the will, which is the element of the process, is the will of the municipal council, which is the decentralized body.

The governor's action is the process of approval. In general, approval is about decisions that have been taken but have not yet entered into force, and the ability to process approval is a process that gives execution [14]. As such, approval is not a complementary process. It would be more correct to mention that there are two separate processes. The first of these is the transaction made by the decentralization administration; The second is the approval of the center (in our example, the governor) [11]. As a tutelage authority in tutelage control, this authority can sometimes be used through the organs of the state. For example, the judicial body steps in when the governor can file a lawsuit against the provincial council decisions that he has not approved. Sometimes, as seen in the YÖK-University relationship, a public legal entity directly supervises the other public legal person in its field. [5].

Article 123 of the 1982 Constitution of the Republic of Turkey with the establishment and administration tasks with a whole and a provision will be regulated by law. In the continuation of the same article, it is stated that the establishment and duties of the administration are based on the principle of central administration and decentralization.

In Article 127/5 of the Constitution, "The central administration has administrative tutelage over the local administrations within the framework of principles and procedures specified in the law,

in order to carry out local services in accordance with the principle of integrity of the administration, to ensure unity in public duties, to protect the public interest and to meet local needs as required". and the administrative tutelage power is given a constitutional guarantee. However, since the reasons such as "protecting the public interest" and "protecting local needs properly" are rather vague expressions, the central administration is given a very wide supervisory power. In addition, although some improvements have been made with some legal regulations, the protection of this provision at the Constitutional level as the most basic law has a nature of damaging the autonomy of local governments.

Although it is not clearly stated in the Constitution that the central administration has the tutelage power over the service decentralization organizations; The acceptance of administrative tutelage over local governments, which have a more autonomous structure compared to these organizations, can be interpreted as this authority also exists for decentralized administration organizations. In addition, as required by the principle of "unity of administration" in the Constitution, it is possible for the central government to exercise this authority over the local administration organizations (Günday, 1999: 57).

The most important reference document on local governments among international treaties is the European Charter of Local Self-Government, which is a Council of Europe document, to which our country is a party with various reservations. Turkey's reservations set by Article 8 of the Charter, which consists of three paragraphs is devoted to the control of local governments. In the first paragraph, it is stated that all kinds of administrative control of local authorities can only be carried out in cases and methods determined by law or the constitution; In the second paragraph, it was stated that the administrative control of local authorities can only be an inspection of legality; In the third paragraph, it was emphasized that the intervention of the supervisory authority under the administrative supervision of the local authorities should be restricted in proportion to the intended benefit. The charter was thus adopted in a rather restrictive way for administrative tutelage. In addition, the appropriateness of the administration is included in the second paragraph. However, it has undertaken that the appropriateness control to be carried out on local authorities can only be carried out under the supervision of the works authorized by the local authorities (Council of Europe, 2011). In accordance with Article 90 of the Constitution, international agreements and treaties that have been duly approved and put into effect are implemented like the

rule of domestic law, in this case, the approved articles of this Charter have the characteristics of legal regulation.

When we look at the implementation of administrative tutelage at the level of countries in Europe, it is understood that while the custody control is felt clearly in France and Italy due to the provincial administration in the provinces, it is understood that in the UK and Germany, the central government generally audits local governments financially and attempts to audit legality as an exception. However, in Turkey, such as "propriety" heavy administrative tutelage in turn control the size is not even seen in any EU member state (Bright, 2014: 30). This situation shows that the administrative tutelage power is applied strictly in Turkey compared to many European countries.

2.6 Reflections of Administrative Tutelage in Foreign Law

Recent studies described the notion of administrative tutelage as the 'oversight of the government,' which is carried out by local public authorities and other public authorities or entities as regards the general leadership of public authorities in the field of law (Anton, 2010).

Administrative usage control remains in all European democratic countries. The word 'guardian,' for example, was abolished in France after 1946 from significant laws on skills (the Constitution, the law on the rights and freedoms of municipalities, departments and regions, the General Law of the communities of the region of 2 March 1982). The term institutional tutelage is used instead (Petrescu, 2009, p. 57; Rouault, 2005, p. 414). In that region, the Governor exercises posterior monitoring of legality only by being able, at administrative courts, to object to actions which he considers unlawful (Vedinaş, 2015, p.506).

The European Charter of Local Autonomy establishes it at EU level. Regulation by municipal administrative bodies is an inspection that cannot be enforced in the manner and circumstances provided for in the Constitution or legislation, with the objective of enforcing rules and constitutional values.

For instance, in Romania where some parts of the public sector function independently whereas the management of institutional tutelage booms today (Balan, 2008, p. 183), local autonomy can only operate under certain law-enforced limits. (Iorgovan, 2005, p. 466).

Because of the ambiguity and confusion, there have been substantial revisions to both the technical formulation and the practical problems that have been solved in the statutory process for the governor's investigation of the legitimacy of acts of municipal public administration authorities (Apostol Tofan, 2014, p. 366). But, on the basis of judicial reforms to that region, the Constitutional Court has amended its case law.

The existence of decision-making power, the independence of institutions and the existence of financial instruments are the elements of autonomy. The way of local autonomy is influenced by culture, politics, administrative traditions, administrative structure, local needs and ways of meeting these social, economic and technological developments (Sancakdar, 2011: 106). The decentralization principle includes autonomy. The existence of administrative tutelage does not mean that there is no autonomy. As autonomy is necessary and as discussed so far, tutelage is restricted by law and is of a special nature. Administrative tutelage plays a balancing role in autonomy balanced by the principle of administrative unity (Aktalay, 2011: 98).

Autonomy refers to the freedom of organizations to make and implement decisions on their own. Autonomy is considered to help establish democratization and meet certain interests through autonomous institutions. Limitation of autonomy is inversely proportional to the efficiency and inclusiveness of control in tutelage. As tutelage decreases, autonomy will expand (Derdiman, 2007: 64). As a matter of fact, after the last constitutional amendment in France, a very important decision was taken on localization. Within the framework of these decisions, it is seen that although France has a unified structure, local governments are still given important powers. Following the implementation of this reform in France, the central government re-shared its powers and as a result local government became more important than the central government. Local governments have been given the right to freely take decisions in matters concerning their field of duty in order to fulfill these duties in the most efficient way. Local organs that take charge in the election have the authority to freely regulate within the framework of the laws in order to use their powers (Giritli et al., 2006: 176).

2.7 Administrative Tutelage in Supreme Court Decisions

The Turkish administrative organization structure is based on the principles of central administration and decentralization in accordance with Article 123 of the Constitution. While the provision of public services to be carried out throughout the country is considered as the duty of the central administration; The task of providing local public services and services that require technical knowledge and expertise is also left to the local administration units. Therefore, in the administrative organization, besides the central administration, there are local administrations and service decentralization organizations.

In the 127th article of the Constitution, local administrations are defined as "public legal entities whose establishment principles are specified by law and whose decision bodies are elected by the voters to meet the common local needs of the people of provinces, municipalities or villages". As can be seen, in the Constitution, local administrations are determined as three, being provinces, municipalities and villages. The Constitution has adopted the limited number principle for local governments. However, in the 127th article, it is foreseen that special management forms can be introduced for large settlements with the law, and metropolitan municipalities have been established based on this provision. Some of the service decentralization organizations are regulated in the Constitution and some are established by law.

Decentralization has a separate legal personality from the State legal personality. As a natural consequence of this, decentralized administrations have their own budget, a property and a staff of their own. Since local governments have separate public corporate entities, they are not included in the hierarchy of the central administration and have administrative autonomy as a result of all these characteristics (Akyılmaz et al., 2014: 298).

"In the Constitution, the distinction between central administration and local administration, foreseeing the election of the organs of local administrations, the fact that their elections are temporary, their decisions are made and enforced by their own organs, and their own specific budgets are granted powers and privileges are the embodiments of the autonomy of these administrations." (Supreme Court, 2012 / 87- 2014/41).

Due to this administrative autonomy, local administrations have the freedom to take decisions on matters assigned to them by law and to implement these decisions. However, this autonomy of local governments does not mean that they act arbitrarily. For this reason, it is inevitable to inspect local administrations. At the same time, the acceptance of local administrations as well as the

central administration in the country administration brings some drawbacks. Here, these inconveniences are tried to be reduced or eliminated with the inspections made on the local administrations.

It is indisputable that the acts and actions of local administrations are subject to judicial review. In addition, it is regulated in the Constitution that the central administration has a supervisory power over local administrations, especially in order to ensure and protect the integrity of the administration. This supervisory power that the central government has over decentralized organizations is called administrative tutelage. Although administrative tutelage power is a type of administrative control, it has some features of its own. The Constitutional Court also emphasizes these features of the administrative tutelage power, while auditing the Constitutionality of laws and decrees having the force of law regarding administrative tutelage.

Administrative tutelage in paragraph 5 of article 127 of the Constitution is defined as the authority that the central administration exercises over the local administrations within the framework of principles and procedures specified in the law, in order to carry out local services in accordance with the principle of integrity of the administration, to ensure unity in public duties, to protect the public interest and to meet local needs properly. While the administrative tutelage power is considered as a second legal tool in addition to the hierarchy that will realize the integrity of the administration, which is expressed in Article 123 of the Constitution, it is also accepted as a legal tool that allows local governments to be controlled administratively by the central administration. Local administrations have been organized as separate legal entities other than the State legal personality, and have administrative autonomy. Administrative autonomy and tutelage relationship constitute the opposite of each other. That is to say, increasing the tutelage power of the central administration will restrict the autonomy of the local administration; Decreasing the power of tutelage will increase the autonomy of the local administration. The central administration's administrative tutelage is considered an exception to this autonomy (Supreme Court, 2014). The Constitutional Court also stated that the granting of administrative tutelage to the central government over local governments proves that the autonomy of local governments is not absolute and unlimited (Supreme Court, 2007).

In another decision of the Constitutional Court examining administrative tutelage, it found that although administrative tutelage was actually placed for the general interest of the State, it was also a guarantee of the interests of the local people (Supreme Court, 1988). Again, in another decision of the Supreme Court, since it is stated in the Constitution that the central government has administrative tutelage power over local governments, the administrative tutelage power is obliged by the Constitution, it is a mandatory power that is not left to the discretion of the legislator (Supreme Court, 2007). Even in the same decision, the Constitutional Court found that the weakening of the tutelage power was unconstitutional (Supreme Court, 2007).

The characteristic of administrative tutelage authority as a legal authority is clearly stated in the article 127 of the Constitution with the words "within the framework of the principles and procedures specified in the law". Autonomy for local administrations, its rule; Being subject to administrative tutelage constitutes an exception to this rule. Administrative tutelage power is not a general and ordinary authority, but rather an exceptional power. In other words, it is not possible to use the tutelage authority unless it is stipulated by law (Gözler, 2009: 211). Tutelage authority should be used completely in accordance with the legal regulation. With the law, this authority is a power that can only be used by the authority or to which public official is granted, and again only within the boundaries drawn by the law. The subject and use of tutelage authority must be clearly stated in the law (Özay, 2004: 173). The strict adherence to the law of administrative tutelage is a result of the autonomy of decentralized administrative units (Yıldırım, 2004: 35).

The Constitutional Court also emphasized the legality and exceptionality of the administrative tutelage in almost all of its decisions, which it examined on administrative tutelage. The Supreme Court uses the following statements: "The administrative tutelage power is not a general authority as in hierarchical control, but an exceptional power that should be used within the boundaries outlined by the law. Exceptionality and legality are the two most prominent features of administrative tutelage. In this context, the tutelage power does not include an absolute obligation to use. The authority to determine the scope and limit of this authority belongs to the legislator, provided that it remains within the purpose and framework specified in the Constitution. " (Supreme Court, 2013).

In another decision of the Constitutional Court, it has clearly stated that the principle of "legality" is an indispensable element for administrative tutelage. "The establishment principles of local

governments, the formation of decision-making bodies, determination of their duties and powers, their ties and relations with the central government, the administrative tutelage to be applied to them, requires a legal regulation, “legality” is an indispensable condition.

Tutelage authority will be regulated by law. However, the legislator cannot act arbitrarily while regulating the tutelage power. Because, by the Constitution, it has been determined by the law for what purposes the tutelage powers can be used. Accordingly, the tutelage authority; It should be aimed at ensuring the integrity of the administration, ensuring unity in public duties, protecting the public interest, and meeting local requirements duly.

We see that the Constitutional Court emphasizes that the legislator has the discretionary power in determining the administrative tutelage. For this reason, according to the Supreme Court, the tutelage will be determined by the legislator, as long as it does not contravene the basic principles of the Constitution, especially the autonomy of local administrations. Although the Constitutional Court used contrary expressions in some of its decisions, it has stated in many of its decisions that tutelage is an authority and therefore it is not mandatory to use it (Supreme Court, 2014).

“In this context, the authority to determine the administrative tutelage method and intensity to be used in the supervision of local governments by the central administration within the authority and scope stipulated by law, provided that the purpose and framework specified in the Constitution is at the discretion of the legislature.” (Supreme Court, 2011).

The Constitutional Court also states that the legislator has a discretionary power in determining the concept of "local common needs" used for the jurisdiction of local administrations in article 127, therefore, it will not disrupt the integrity of the environment and zoning limited to the areas where the slum transformation project will be implemented and the mass housing areas. It has not been found unconstitutional to give the authority to make zoning plans to the Housing Development Administration (Supreme Court, 2011). Similarly, the Supreme Court, in its decision that it evaluates the authorization of the central administration for the preparation of zoning plans, according to Article 127 of the Constitution, it is stated that the central administration has the power of tutelage over the local administrations and that the powers regarding the zoning plans will be exercised by the central administration or local administrations. He stated that since there is no provision, the authority in this matter is at the discretion of the legislator. In this decision, the Constitutional Court stated, “In the Constitution, what the local common needs of the people of

the province, municipality or village are not determined, the determination of this is left to the legislator. In this case, the legislator can determine the limits of duties between the central government and the local government within the constitutional boundaries, taking into account the public interest. Based on the principle of integrity of the administration, it is possible that the regulation does not aim to eliminate or render local governments ineffective, and it is possible to leave certain duties and powers to the central administration unit, depending on certain conditions in terms of certain areas and without imposing a burden or debt on local governments ”(Supreme Court, 2012), did not find it unconstitutional to grant authority to the central administration to draw up a development plan.

Local administrations are autonomous legal entities. Being subject to administrative tutelage is an exception to this autonomy. For this reason, the legislator has to act in accordance with the autonomy of the local administrations while determining the limits of this authority and when the central administration unit uses the authority given to it. The Constitutional Court also stated that the autonomy of local administrations is guaranteed by the Constitution and that the administrative tutelage is the exception of the autonomy granted and secured to local governments (Const. Art. 127). Again, the Constitutional Court ruled that the authority to determine the scope and limit of administrative tutelage belongs to the legislator, but that the legislator should remain within the purpose and framework specified in the Constitution while using this power (Supreme Court, 2013).

The Constitutional Court expressed this issue in an old decision as follows; “In order for an organization to be qualified as autonomous, it must be authorized to regulate the rules by itself, at least, provided that it is within certain limits by law. There is no doubt that the purpose of the expression (certain limits by law) used here is the provisions that have been made provided that they comply with the principles of the Constitution. In this respect, granting authority to all or one or more wings of the Government in the administration and performance of an autonomous legal entity is incompatible with autonomy. Because autonomy is, in fact, a form of administration for public services that are intended to be kept away from the domain of the executive. Opening the doors to influence in such a field to the executive body is not deemed to be compatible with the autonomous management style. ” (Supreme Court, 1968).

In another decision of the Constitutional Court, it was stated that a balance was tried to be struck through administrative tutelage within the framework of the principle of the autonomy of local governments and the integrity of the administration, thanks to the provision in Article 127 of the Constitution (Supreme Court, 1991).

Paragraph 4 of Article 127 has granted the Minister of Internal Affairs the authority to suspend local administration bodies and their members from duty as a temporary measure. In its decision, the Constitutional Court evaluates the conformity of the provision of the law regarding the appointment of a new person temporarily with the proposal of the Minister and the approval of the Prime Minister as a result of a dismissal made on the basis of this provision of the Constitution, saying, "The situation of suspension has the authority granted by the fourth paragraph of Article 127 of the Constitution. Direct assignment in place of the removed cannot be met as a natural consequence of this removal. After saying that it is impossible to consider the authority authorized to dismiss and the authority authorized to appoint as "the same authority" in the light of the purpose and meaning of Article 127 ", he stated that instead of dismissal, appointing someone temporarily or permanently would take the power of tutelage out of the limits of Article 127 of the Constitution. Again, in the same decision, the Supreme Court stated that it is against the Constitution to have this appointment made to the politically-identified authorities of the central administration, and that the appointment is temporary or permanent does not affect the result, because there is always the opportunity to open an investigation and prosecution, and that there is always the opportunity to use the power of dismissal for these reasons, It decided that it could turn into permanent appointment and that it was against the Constitution on these grounds (Supreme Court, 1988).

Since the authority to determine the administrative tutelage belongs to the legislator, it can also be used as an appropriateness check if stipulated by law (Akyılmaz et al., 2014: 225). The purposes of the administrative tutelage power enumerated in article 127 of the Constitution also allow for the appropriateness control. However, it must be clearly stipulated by law, since the central government's inspection of the decentralization unit's operation in terms of appropriateness will further limit the independence of the decentralization unit.

The Constitutional Court, referring to the 5th paragraph of Article 127, saying, "In this paragraph, the central government has the power of 'administrative tutelage over local governments', it is not left to the discretion of the legislator whether the central administration will exercise its power of tutelage over local governments. In addition, it is clear that the administrative tutelage power in the paragraph includes the appropriateness control as well as the legality control"(Supreme Court, 2010).

In another decision of the Constitutional Court, it was stated that whether or not the administrative tutelage authority includes the appropriateness control would not be against the Constitution, and this was at the discretion of the legislator (Supreme Court, 2007).

The Constitutional Court, after stating that the legislator has the authority to determine the elements of the autonomy of institutions and restrict the legislator on this issue, it has decided that the provision granting authority to the central administration in the appointment of TÜBA members and its president is not contrary to the Constitution (Supreme Court, 2013).

In an old decision, the Constitutional Court stated that the decentralized administrations were divided into two groups as decentralization of service and local administrations, and the common characteristics of these two groups of decentralized governments were that they were subject to administrative tutelage control (Supreme Court, 1988).

Although the Constitutional Court acknowledges the central administration's tutelage over the decentralized administrative organizations, the Metropolitan Municipality Law no.5216 acknowledges that the authority granted to the metropolitan municipality over district and lower-level municipalities cannot be considered as administrative tutelage authority (Supreme Court, 2007). As a justification, the Constitutional Court pointed out that the administrative tutelage is a power vested in the central administration by the Constitution. In the doctrine, there are opinions contrary to the Constitutional Court.

In the 155th article of the Constitution, the Council of State is defined as a high court with both judicial and administrative duties. It is accepted that the decisions of the First Department, which is the administrative department of the Council of State, regarding local administrations are related to the use of administrative tutelage power. These decisions of the Council of State are generally

in the form of limiting the central administration's administrative tutelage over local administrations (Duran, 1982: 108). The opinion of the Constitutional Court is in this direction and stated in a decision as follows:

"The non-judicial duties of the Council of State are shown in the Council of State Law No. 2575 and in some special laws. Pursuant to Article 74, the inspection foreseen to be made by the Provincial Administration Board or the Council of State on the procedures of the municipal councils is an administrative tutelage. The Council of State performs the advisory and review function given to it by the Constitution and the Law No. 2575, and takes an administrative decision as if it were a governing body. Because, this objection is not a judicial application or a lawsuit, but an administrative application." (Supreme Court, 1993).

In the Turkish administrative organization, besides the central administration, there are local administrations and service decentralization organizations. In order to ensure the integrity of the administration and the public interest, the central administration has been granted administrative tutelage over the decentralized administration units. Although administrative tutelage power is a type of administrative control, it has some unique features. The Constitutional Court has stated these features of administrative tutelage in many of its decisions.

According to the Constitutional Court, administrative tutelage power is a legal and exceptional power. In other words, granting the administrative tutelage authority to the central administration and using this power is subject to law. If this authority is stipulated by law, and it should be used only as stipulated by law. Again, administrative tutelage power is an exceptional power. Because the main thing for decentralized units is their autonomy. Administrative tutelage power is an exception to this autonomy.

According to the Constitutional Court, if it is regulated by law, it can be used in terms of both appropriateness and legality, and if it is stipulated by law, the central administration can also use the power of substitution on the decisions of the decentralization unit, provided that it complies with the conditions in the law.

Although not explicitly stated in the Constitution, the Constitutional Court accepts the existence of administrative tutelage over the decentralized service organizations based on the principle of the integrity of the administration. Again, the Constitutional Court states that the administrative

and financial control stated in the Constitution for professional organizations that are public institutions should be accepted as an administrative tutelage power with its own characteristics.

The Constitutional Court accepts that the administrative tutelage power should be used by the authority given by law, that is, it cannot be transferred. It also accepts that the administrative tutelage power can be exercised by the Council of State if stipulated by law by the Supreme Court. If the tutelage authority is authorized to approve the act of the decentralization unit, the Constitutional Court states that this approval process is an administrative action separate from the decentralization unit's action.

There is a difference in the decisions of the Constitutional Court as to whether an administrative tutelage power can be granted to the central administration in the form of applying to the administrative jurisdiction against the acts of decentralization units. The Constitutional Court annulled this provision in some of its decisions as unconstitutional, and in some of its decisions it was found to be compatible with the Constitution.

CHAPTER III

3. LEGAL ELEMENTS OF ADMINISTRATIVE TUTELAGE

Administrative tutelage, which is applied on legal acts, decisions and actions of decentralized administrations, is carried out by independent legal procedures such as approval, annulment and postponement. As it is known, in order for administrative transactions to have results, it has been obliged to be made within the framework of certain rules, methods, legal events and purposes. It performs the administrative procedures not arbitrarily, freely appreciating, but within the framework of the constructive elements that make up each administrative transaction and function like a pattern. As revealed by the judgment of the historical development of administrative law and the doctrine systematization that these elements, the Council of State laws previously in

Turkey, then entered the iyuk and powers, shape, why are expressed under the object and subject names (Highland, 1985: 82). When administrative tutelage is examined under these five elements, it is possible to see that all elements are in its structure.

3.1 Reason

The legal actions to be carried out by the administrative tutelage authority in this capacity are among the transactions based on the reason. Since it is a subordinate authority based on the administrative tutelage law and can be used within the boundaries determined by the law, the legal proceedings based on this authority must also include the cause element and this element must be in accordance with the administrative tutelage rule.

Administrative tutelage is not used except for the conditions and reasons clearly stated by the law. Otherwise, transactions stating the use of this authority should also be deemed void. However, in certain cases, the use of administrative tutelage is left to the discretion of the authority with this authority. However, in order for the administrative tutelage procedures to be discretionary, it must be clearly stated in the law. Since the law is restrictive for certain reasons, it is not applied in other cases by analogy. For example, over the villages that have an autonomous decentralization administration, the highest administrative authority of the district has administrative tutelage. This tutelage is a broad authority in the law to change the headman, who is the representative of the village and the executive body, in certain cases. However, administrative superiors can only dismiss the village headman, who does not have legal competence, only if there is an explicit law text that gives them this authority (Onar, 1966). The law gave this authority of the tutelage authority only on the basis of the reason that the headman did not fulfill his duty. In other words, the legal procedure for the use of administrative tutelage in this way should be based on a reason (Onar, 1966). Even where the use of administrative tutelage is left to the discretion of the tutelage authority, it should be clearly regulated in the law. In short, the tutelage authority is a dependent and limited supervision authority.

In this sense, the element that determines what event, fact and legal situation will be established after the realization of the administrative transaction is called the cause element. In whatever process of the decentralized body, the administrative tutelage authority exercises this authority?

Since the administrative tutelage power will be exercised by the central administration, the central administration may use the administrative tutelage power in cases contrary to the execution of local services in accordance with the principle of integrity of the administration. In cases where unity in public duties is required, the administrative tutelage authority uses the administrative tutelage authority. Ultimately, the administrative tutelage authority can be used in the operations of the organs over which the administrative tutelage bodies can exercise the administrative tutelage control, which damages the integrity of the administration. The administrative tutelage practice, which is an administrative act, is subject to cancellation sanctions for irregularity in the cause (Kaya, 2019: 50).

3.2 Authority

Administrative tutelage authority must be exercised by the person, authority or body that has been given this authority by law. The relevant laws of decentralized administrations clearly regulate who will exercise their administrative tutelage. Administrative tutelage used by people other than the person or authorities indicated in these laws is a crippled operation in terms of authority. In addition, since this authority is given to a body, authority or official in the center, it should be exercised directly by the person or authorities stipulated by the legal regulation, not in a hierarchy. In a decision of the Council of State, it is emphasized that the authority to approve or reject the decisions of the scientific board was given to the President by law and that it should be exercised by this person personally, and it was concluded that the actions taken by different authorities in this regard were void in terms of authority (Özay, 2004: 177).

The question of which administrative body, authority or persons will use the administrative tutelage power is evaluated within the framework of this element. Indeed, in the laws from which the administrative tutelage authority originates, it is determined who will use the authority. Otherwise, the application may cause arbitrariness.

When the administrative tutelage authority is examined in terms of the authority element, a generalization has been made as 'central administration' in the law regarding who or which

authority will establish this operation. In this context, the administrative tutelage authorities are the Presidency, which is the central administration, the ministries, the governors and district governors, which are the provincial organizations of the central administration.

In the use of administrative tutelage power by unauthorized persons or authorities, a violation of authority or power of authority occurs. In this case, it should not be forgotten that the transaction will be subject to cancellation sanctions. Again, in cases where the judiciary exercises its administrative tutelage power, there will be an extortion of function. In this case, the mentioned administrative act will be faced with an absence sanction (Kaya, 2019: 48).

3.3 Subject

The bodies, decisions and transactions of decentralized organizations constitute the subject of administrative tutelage. The tutelage authority can approve these decisions and transactions, as well as postpone or cancel them. This authority of the administrative tutelage authority is also a dependent authority in terms of the subject element. Local government transactions can only be approved, postponed or canceled. As a rule, no corrections or changes can be made. Otherwise, it arises as a result of the crippled administrative tutelage in terms of the subject element.

However, as in the making of the budgets of local governments, the law has made some exceptions in this regard, explaining that in certain cases the subject of the decentralization administration can be changed by correcting it with the approval process of the administrative tutelage authority (Coşkun, 1976: 6).

The subject of a legal transaction is the content of the transaction in question or the legal situation in which it took place and its result. Unless there is a constitutional contradiction, it is possible for everything to be the subject of the laws. From this point of view, it is seen that the legislature is given a very wide discretionary power in the context of the subject of laws. The subject of

administrative tutelage control of local governments consists of the decisions they have taken, the transactions and actions they have taken. Administrative tutelage due to an act or action not taken by local government organizations or a decision not taken cannot be subject to control (Korkmaz, 2009: 48).

3.4 Method - Form

Administrative tutelage must be used in accordance with the time, form and methods determined by the law. How administrative tutelage will be used, how and when it will be audited are specified by laws (Coşkun, 1976). For example, the tutelage power not used within its time period will cease in some cases. If the municipal budget is not approved by the local authority within a week, the budget is deemed approved. In cases where it is not stipulated in the law, administrative tutelage procedures are subject to the general form and conditions of administrative proceedings. In addition, administrative tutelage must be in writing in all cases. Administrative tutelage cannot be applied in verbal orders and directives (Onar, 1966: 639).

In administrative transactions, the element of form is the element that indicates the procedure and form rules that the transaction will be made with, and the validity requirement of the administrative transaction in this direction. The person, body or authorities that use the administrative tutelage power must comply with the formal requirements while using the administrative tutelage power. For example, the administrative tutelage authority cannot give verbal consent. Writtleness requirement is required here. In this context, when the person, body or authorities using the authority of administrative tutelage do not comply with the formal requirements of the administrative act within the scope of administrative tutelage, it may not be appropriate to mention the cancellation of the administrative act subject to administrative tutelage without examining whether this deficiency is an essential deficiency or a secondary deficiency (Kaya, 2019: 49) .

3.5 Purpose

As stated earlier, the purpose of administrative tutelage is to protect the general and common interest, unity and regularity in public services and local interests in the face of decentralization procedures. As a matter of fact, in the 127th article of the Constitution, the purposes of "carrying

out local services in accordance with the principle of integrity of the administration, ensuring unity in public duties, protecting the public interest and meeting the needs of local needs" are mentioned.

After evaluating the administrative tutelage authority in terms of the five elements of the administrative act, it is useful to mention the sanctions of the disabilities in these transaction elements. The sanction of the disabilities in the elements of administrative tutelage proceedings is that they can be annulled through judiciary. The actions of the tutelage authority, which involve the approval, annulment or postponement of the decisions of the decentralized administration, do not affect the cases arising from the actual transaction. However, if the administrative tutelage proceedings occur with a crippled transaction, it is possible for those concerned, that is, those whose interests are violated, to file annulment cases against such administrative tutelage proceedings. This situation is a natural result of the administrative tutelage transactions having a separate legal entity. Likewise, decentralization administrations can also file an annulment suit against the act of the tutelage authority. There is no difference between the state and the real and legal persons outside the autonomous administrations and the administration in the face of objective legal rules. Such a difference can only be specified as an exception by objective law.

CHAPTER IV

4. THE USE OF ADMINISTRATIVE TUTELAGE

Similar to the principle that no crime and punishment is unlawful, there is no unlawful tutelage. Because, as stated above, the Constitution clearly stipulated that the administrative tutelage power could only be used within the framework of the principles and procedures specified in the law. As a result of this principle, administrative tutelage cannot be used by assumption, nor can it be used beyond the limits of the administrative tutelage law. In that case, for whatever transactions the law stipulates, only those transactions are subject to custody control and since this authority is exceptional, it is essential to interpret it narrowly (Gözübüyük & Tan, 2006). Lack of authority in the use of tutelage power is the main exception and authority is the exception (Gezer, 2004).

In the 1982 Constitution, the tutelage authority was granted to the tutelage authorities in terms of appropriateness as well as being in compliance with the law. However, since this authority is a limited authority, if the tutelage authority is not authorized by law to check the appropriateness in that matter, the central administration cannot perform the appropriateness check. In other words, the tutelage authority does not have a general supervision authority. When using this power, first of all, the examination and approval of the decisions of the decentralization administrations can be envisaged. The regulatory process introduced by the law may be subject to the approval of an authority in the central administration, the most important decisions taken by some decentralized bodies. For example, decisions that depend on the approval of the governor representing the center. All decisions taken by provincial councils on behalf of special provincial administrations depend on the approval of that provincial governor. Some of the decisions taken by the municipal councils on behalf of the municipal legal entity are likewise subject to approval.

In the approval of the decision taken by the municipal council by the governor, the will, which is the element of the process, is the will of the municipal council, which is the decentralized body. The governor's action is the process of approval. Generally, consent is related to decisions that have been taken but have not yet entered into force, and the ability to process approval is a process that provides enforcement (Yıldırım & Karan, 2014: 16). As such, approval is not a complementary process. It would be more correct to mention that there are two separate processes. The first of these is the transaction made by the decentralized administration; The second is the approval of the center (Sancakdar, 2012: 106). As a tutelage authority in tutelage control, this authority can sometimes be used through the organs of the state. For example, the judicial body steps in when the governor can file a lawsuit against the provincial council decisions that he has not approved.

4.1 Authority to Use Administrative Tutelage

127/5 of the Constitution states that the central government has administrative tutelage over local governments within the framework of the principles and procedures specified in the law. In addition, regulating the principles regarding the establishment, organization and duties of the Ministry of Internal Affairs; In the clause (g) of Article 2 of the "Law on the Organization and Duties of the Ministry of Internal Affairs" dated 14.02.1985 and numbered 3152, among the duties of the Ministry, "the division of the country into administrative divisions, the general administrations of provinces and districts, local administrations and their relation to the central administration and It is stated that the Ministry of Internal Affairs is the authority that provides the relationship between local governments and the central government. Likewise, with Article 32, the Ministry of Interior has been held responsible for ensuring coordination with local governments in matters falling within its scope of service.

The Ministry of Interior carries out this task through the General Directorate of Local Administrations and Civil Inspectors, one of the main service units of the central organization. In subparagraph (b) of Article 11 of Law No. 3152, the General Directorate of Local Authorities is charged with "ensuring the enforcement of the tutelage authority of the Ministry over local administrations in accordance with the provisions of the legislation". In the General Directorate of Local Administrations, this task is carried out by local administrations controllers.

In the relevant article (38/3) of the Special Provincial Administration Law numbered 5302, it is stated that "other administrative operations of the special provincial administration, other than financial transactions, are also audited by the Ministry of Interior, the governor or the staff to be assigned in terms of compliance with the integrity of the administration and the development plan and strategies." their authorities are expressed one by one. Law No. 5393 refers to the authority of administrative tutelage by saying "other administrative transactions of the municipality, other than financial transactions, are also audited by the Ministry of Internal Affairs in terms of compliance with the law and the integrity of the administration" (55/3).

Apart from these, various laws provide the use of administrative control and supervision authority over the decisions, actions and operations, organs and employees of other ministries, the Council of Ministers and the central audit institutions such as the State Supervisory Board. (Keleş, 2006: 379). In this way, it becomes easier for local governments to provide services that comply with the laws that regulate them.

According to the legislation of our country, since elected mayors are not given the right to act on behalf of the center except in very limited situations, there is not much control over municipalities through dual duties (Çolak, 2004: 76). However, the tutelage authority of the Ministry of Internal Affairs, which is the governor and the center, which is the agent of the center, still continues. As the governor is both the agent of the center and the body of the special provincial administration, which is a decentralized administration, it is understood that the control by dual duty exists in the special provincial administrations.

Administrative tutelage over the bodies of decentralized administrations generally manifests itself in the form of the election and appointment of the organs or officials of these administrations, the approval of the elections, the temporary termination of their duties, the dissolution of the decision-making bodies. However, in Turkish law, the authority of tutelage over individuals and organs is quite limited. The Constitution, which does not give any authority to the central administration in the selection and formation of the decision-making bodies of local governments and the bodies of professional organizations that have the characteristics of public institutions, does not give any

authority to the elected bodies of these organizations to gain or lose the status of an organ. It is clear that the resolution of objections to the elected organs of local administrations gaining the status of an organism and the control over their disappearance is only "judicial control". The authority granted to the central administration by the Constitution over the elected bodies of local administrations and professional organizations that have the characteristics of public institutions is the power to "dismiss these bodies" as a temporary measure. According to article 127/4 of the Constitution, if an investigation or prosecution has been initiated against the organs of local governments or members of these bodies due to a crime related to their duties, the Minister of Internal Affairs may dismiss the relevant body or organ member from duty as a temporary measure until a final judgment.

The tutelage authorities are provided with the ability to influence and direct the transactions made with the tutelage authority granted over the transactions of the decentralized administrations for the purposes in question in the recognition of this authority. Tutelage powers over transactions in general; with the authority to annul, approve, permit, request re-negotiation-suspend execution, approve-substitute by changing, and filing an administrative lawsuit (Gözübüyük & Tan, 2006: 165). Of course, it is clear that filing a lawsuit is not simply exercising control over the transaction, but simply initiating the judicial review process. Likewise, not appropriateness in judicial review; compliance with the law will be checked. However, the administrative tutelage authority includes the appropriateness control in cases where there is an explicit regulation. The custody powers of the central administration over the transactions of the decentralization institutions are granted in some cases before the transactions are carried out or generally after the transactions are carried out.

Before the proceedings are made, the administrative tutelage authority emerges in the form of assisting the tutelage authorities in carrying out the transactions of the decentralization institutions with a number of regulations. However, these practices and regulations should not be mandatory, displaced method institutions should not be forced to act in a certain direction, and the cancellation or approval of transactions should not be resorted to simply because these regulations are not complied with. Otherwise, it will result in the central administration being inherent to the will of the decentralized administration institutions, which is contrary to the nature of the administrative

tutelage (Gözler, 2006: 106). The decision of at least 3/4 of the total number of members of the municipal council and the change of the town name with the approval of the Ministry of Interior upon the opinion of the governor constitutes an example of administrative tutelage on transactions.

Since the tutelage authority does not include the authority to correct the transaction, as a rule, the administrative tutelage authority cannot act on its behalf by replacing the decentralization organization in cases where it does not approve the transaction. As a rule, there is no "substitution authority" (İYUK, art.2 / b). Likewise, since administrative tutelage does not eliminate the autonomy of local governments and the freedom to make decisions, the tutelage authority does not have the "authority to give orders and instructions" (Gözübüyük & Tan, 2006: 165). The scope of the correction (approval by modification) authority used in terms of transactions should be limited. In this case, if the tutelage authority comes up with a new decision, it will be a matter of taking decisions and taking action instead of the decentralized administration, which will mean that such an application exceeds the limits of the authority of correction and the use of the substitution authority not granted to the tutelage authority.

In the Constitution, the tutelage power of the central administration over the service decentralization organizations is not explicitly stated, but it is accepted that this authority, which is accepted for local administrations that is more autonomous than these organizations, exists primarily for decentralized administration organizations. In addition, it is possible to conclude from the principle of the integrity of the administration, which is expressed in the Constitution, that the central administration has the authority of tutelage over the administrative institutions from the place of service (Kabaalıoğlu & Yıldırım, 2010: 147).

Administrative tutelage, which emerged as the control of the central administration over decentralization organizations in terms of location, is gradually recognized as the control powers of a public legal person over another public legal person. An example of such an administrative tutelage relationship, we can show the relationship between the public entity having a separate bar with Turkey Bar Association. The administrative tutelage power is actually exercised on decentralized administration organizations that have a legal personality and autonomous administration separate from the state legal entity represented by the central administration, that

is, authorized to establish transactions that will be independent of the central administration or the public legal entity considered to be the center. Therefore, administrative tutelage is an exception to the autonomy granted to decentralized administrative organizations (Kabaalioğlu & Yildım, 2010: 147). In other words, the autonomy of decentralized organizations is the rule; The exception is that they are subject to administrative tutelage. In that case, it is obligatory to clearly state in the law the authorities that will use their administrative tutelage power and over which transactions of the decentralization institutions of these authorities.

4.1.1 Bodies Authorized to Implement Administrative Tutelage

Local governors, namely governors, district governors and sub-district directors, have been authorized by various laws to exercise tutelage control over local governments. For example, according to Articles 71 and 72 of the Municipal Law, the municipal council negotiated and decided;

-Budget,

- Final account

-Additional allowance or changes in the budget or transferring allowance,

-Lending and borrowing

It becomes effective with the approval of the highest local administrative authority. If these decisions are not approved by the relevant officials within a week, the decision to be taken by the Council of State within a month, upon the request of the municipal council, is taken as basis.

Again, according to Article 6 of the Special Provincial Administration Law, the budget, which is discussed and approved by the provincial council, is approved by the governor within fifteen days following the end of the meeting, together with the program for that year. The budget that is not approved during this period is automatically deemed to be approved.

According to Article 9 of the Law on the Adoption of the Decree Law on the Management of Metropolitan Municipalities, if an investigation or prosecution is opened against the elected organs of metropolitan and district municipalities or elected members of these bodies for a crime related to their duties, the Minister of Internal Affairs, as a provisional measure, It may remove these bodies or their members from duty until the final decision. This provision, regulated in parallel

with the relevant Constitutional article, is essentially valid for all elected organs and members of local governments.

According to Article 93 of the Municipal Law, in case of dismissal, instead of the dismissed mayor, the Minister of Internal Affairs in the provincial central municipalities and the governors in other municipalities appoint one of the council members as the temporary mayor.

Some decisions and actions of local government bodies are subject to the control of the relevant ministries, depending on the subject. For example, according to Article 45 of the Zoning Law, the borders of the contiguous area determined by the decision of the municipal council and the provincial administrative board and sent to the Ministry for the final decision can be "returned as it is, or by amendment, for approval or to be changed" after the Ministry has examined. As can be seen, a decision regarding the boundaries of local governments is finalized with the approval of the Ministry of Public Works and Settlement.

The President's practice of tutelage control over local governments manifests itself in the process of establishing a municipality. According to Article 7 of the Municipal Law, the decision of the Council of State must be approved by the President for the establishment of a municipality.

In the laws on local governments, provincial and district administrative boards are included as either the approval or the expressing authority. Provincial and district administrative boards subject some decisions and transactions of municipalities to tutelage control according to the Law of Municipalities and the Law of Provincial Administration. According to Article 5/a of the Municipal Law, the boundaries of municipalities with a population less than eighty thousand are finalized with the approval of the provincial administrative board after the decision of the municipal councils and the opinion of the local administrative board.

According to Article 2 of the Decree Law on the Establishment and Duties of the State Planning Organization, determining the development principles, preparing and monitoring the implementation of five-year development plans, annual programs, making recommendations for the successful implementation of the plans and the development of the functioning and structures of the relevant administrative institutions, SPO It is among the duties of. Within the framework of

these duties, SPO conveys its opinions and suggestions on the improvement of the establishment and functioning of local governments through both the development plan and annual programs. For example, according to the Seventh Five-Year Development Plan Special Expertise Commission Report, a project condition is sought for municipal expenditures exceeding certain limits; Expenditure is made with the approval of SPO.

According to the first article of the Decree No. 217, the State Personnel Presidency regulates the personnel regimes to which public officials other than the personnel subject to additional and amendments are subject to the TSK Personnel Law, in accordance with the cultural, social and economic conditions and legal principles of the country, harmony between personnel regimes, It is responsible for maintaining balance and coordination, adapting the legislation to changing conditions, monitoring and auditing the relevant implementation, evaluating and developing the administrative procedures and methods used, and carrying out the necessary legislative studies with scientific methods and impartiality.

According to Article 5 of the Decree Law No.190 on the General Staff Procedure, special provincial administrations and municipalities and their unions, establishments and enterprises shall make their requests regarding the civil servant cadres within the scope of the Civil Servants Law every year according to the principles specified in this Decree Law. They send it to the Ministry of Internal Affairs by the end of their sixth month. Opinions of the Ministry of Finance and the State Personnel Presidency are taken about the staff requests to be deemed appropriate by the Ministry of Internal Affairs. The opinions received are added to the staff offers and submitted to the Prime Ministry. Positions deemed appropriate are established by the decision of the Council of Ministers.

According to the last paragraph of Article 16 of Law No. 3030, in metropolitan municipalities, contracted personnel may be employed with the approval of the supervisor authorized to appoint, by showing the general secretary and deputy head of departments, general directors of enterprises and organizations affiliated to the metropolitan municipality, and the cadres of deputy mayors of district municipalities. The wages of the contracted personnel are determined by taking the opinion of the State Personnel Presidency and the Ministry of Finance.

According to the Law on the Court of Accounts, the Court of Accounts, which is equipped with audit, judicial and administrative consultation duties and powers, audits the income, expense and property accounts and transactions within the framework of its audit duty. In terms of its judicial duties, the Court of Accounts is a "special administrative judiciary" institution.

The authority to audit the municipalities was first given to the Court of Accounts by the Decree on the Court of Accounts and its Duties. The first explicit provision regarding the auditing of the financial transactions of the municipalities is included in the 11th article of the General Accounting Law No. 1050 and the Court of Accounts Law No. 2514 (Doğan, 1986: 34). The Court of Accounts Law was abolished by Article 114 of the Court of Accounts Law, however, with the provisional article 8 of the same Law, it is stated that "until the Law on the auditing of the financial transactions of the provincial special administrations and municipalities enters into force". It was decided that the provisions of Law No. 2514 on this subject remain in effect.

In the audit of the accounts and transactions of the municipalities, the provisions of the General Accounting Law as well as the special provisions of their own laws and in cases where this law is insufficient, the General Assembly decisions of the Court of Accounts are taken as basis.

The law on the court of accounts audit over municipalities focuses on budget transactions. Auditing of the municipal budget by the Court of Accounts generally consists of "post-implementation audit" stages on final accounts, end-of-term accounts and expenditures. However, since the provision of Article 30 of the Court of Accounts Law also covers the municipalities, "pre-implementation audit" can also be made on the financial transactions of the municipalities. (Doğan, 1986: 34) Again, according to this article, all contracts, including those related to expenditure, are registered; General and annexed budget offices' staff and allowance distribution operations are subject to a prior visa.

The Council of State exercises administrative tutelage control over special provincial administrations and municipalities. There is not only an administrative tutelage relationship between the village administration and the judicial bodies. According to the article 42 / h of the Council of State Law, the works submitted to the Council directly or through an objection pursuant to the Administration Public Provincial Act and the works submitted to the Council by the Municipality Law and not subject to an administrative case are examined by the Council of State.

The main responsible for the execution of public services is the State. However, this does not require that all services be performed by the State. With the idea of public interest, the state includes public services; It shares them among the units that will present them to the society in the most economical and efficient way, according to the optimum service area size. On the other hand, one of the basic principles in the execution of public services is to ensure harmony and unity. (Nadaroğlu, 1998: 26) This naturally imposes the responsibility of supervising the execution of services in harmony and unity throughout the country, on the state, which has divided the services between the center and local governments. (Arslan, 1978: 30)

For the reasons listed, it is necessary to establish a relationship between central government and local governments. The name of the relationship born in this context is administrative tutelage. In other words, it is inevitable that the center, which is responsible for the efficient execution of services at the national level as well as at the local level, audits local governments in order to prevent decisions and actions against both general and local interests. (Arslan, 1978: 25) What needs to be discussed here is not the administrative tutelage itself, but its degree. (Meric, 1983: 295)

The scope and limit and method of administrative tutelage control vary from country to country. Here, each state is expected to move systematically at its own rhythm. The overdose of tutelage control can make it impossible to talk about the autonomy of local governments. (Keleş, 1997: 26) In this respect, as a result of the autonomy granted to local governments, tutelage supervision must be carried out within the framework of the principles and procedures specified in the law. (Tan-Gözübüyük, 1998: 132).

4.2 Administrative Tutelage Application Method and Procedures

Administrative tutelage does not occur in the same way on all local administration units. While it has a wide application area in terms of some local administrations, it has a narrower application area in some local administrations (Derbil, 1959: 270) While it is more restrictive in some organs or operations of the same local administration, it gives more freedom in others. For this reason, it

is necessary to examine and evaluate the ways in which administrative tutelage is performed on the procedures, organs and personnel of local administrations in terms of each.

law, including regulations concerning performed supervision over local governments in Turkey. There are numerous and scattered (Armstrong, 1990: 541). Therefore, we will discuss the most common airports practice from the way administrative tutelage audit performed on the local authorities. While doing this, the basic laws of local administrations, the Special Provincial Administration Law No. 5302, the Municipality Law No. 5393, the Metropolitan Municipality Law No. 5216 and the regulations on administrative tutelage in the Village Law No. 442 will be examined with priority.

Administrative tutelage control is carried out on the operations, organs and personnel of local administrations. If it is necessary to bring a limitation in terms of naming, administrative tutelage control over local administrations is primarily carried out in the form of approval, prior authorization, correction, substitution (replacement), annulment, suspension of execution, application to the judicial body, appointment, dismissal.

The central administration mostly carries out the administrative tutelage control over the local administrations on the transactions of the local administrations (Relative, 1952: 8). The central administration uses this control over the local administrations at different stages before, during, or after the transaction (Akyılmaz, et al., 2014: 209). However, it generally inspects the local administrations after the transaction (Günday, 2003: 78). The administrative tutelage control over the local administrations is carried out by the central administration before or while the transaction is carried out, through permission, approval, comment and exceptionally substitution. After the transaction is made, this control usually takes place in the form of approval, suspension of execution, application to the judicial body, and annulment (Akyılmaz, et al., 2014: 208). The administrative tutelage control, which is carried out before the transaction, emerges as the central administration assists the local administrations in their operations (Özyörük, 1975: 181). After the process is done, it is generally aimed to eliminate the detected defect.

Administrative tutelage control is a form of control that arises from the law and whose boundaries are drawn by law. For this reason, if the law stipulates on which transactions of the local

administrations will be controlled by administrative tutelage, only the central administration will carry out administrative tutelage control over those transactions (Gözler, 2018: 119). The legislator will determine on which transactions of the local administrations the administrative tutelage control will be carried out. The legislator has been given discretionary power to the central administration in determining which operations of the local administrations will perform administrative tutelage control and the scope of this.

Stating in the Constitution that the central administration has the authority to control administrative tutelage over local administrations does not mean that it can be used on all operations of local administrations even if it is not foreseen in the laws because the central administration takes this authority directly from the Constitution (Günday, 2003). Because, in the fifth paragraph of article 127 of the Constitution, it is stated that the central administration has administrative tutelage over the local administrations within the framework of the principles and procedures specified in the law. For this reason, it will be necessary to examine the laws regulating administrative tutelage one by one in order to find out what powers the central administration has over the operations of local administrations.

Considering the laws, it is seen that the administrative tutelage control over the transactions of the central government local administrations is carried out in the form of approval, obtaining their opinion, prior authorization, annulment, suspension of execution, application to the judicial body, rectification and substitution, albeit exceptionally (Arslan, 1990: 512).

Approval refers to the approval of the central administration in case of determination of compliance with the law, if the audit is carried out in terms of the necessity and need, if the audit is carried out by the central administration as a result of the examination of the transactions established by the local administrations (Relative, 1999: 14). It is possible that the laws require the approval of the administrative tutelage authority in order for the procedures of local administrations to enter into force (Kargın, 1956: 71). This obligation can be envisaged in terms of all transactions of the local administration subject to administrative tutelage control, as well as

in terms of some transactions (Onar, 1966: 501). However, some but not all of the transactions of the local administrations come into force with the approval of the central administration. In cases where administrative tutelage supervision is applied in the widest way, all transactions of local administrations are submitted to the approval of the central administration (Onar, 1966: 501). For example, in the abolished Special Provincial Administration Law of 1913, all transactions of the special provincial administration had to be submitted to the governor's approval.

Approval is a process related to decisions taken by the local administration but not yet put into effect (Coşkun, 1976: 29). Approval adds enforceability and applicability to the operation of the local administration (Özay, 2004: 168). The approval process has an effect on the past and ensures that the decision of the local administration is effective as of the date it is taken. Unless the transactions foreseen to be approved by the central administration are not approved, they cannot be implemented and cannot have legal consequences (Meriç, 1983: 1346). In order for a transaction subject to approval to enter into force, it must be approved by the central administration (Onar, 1966: 502). If the transactions of the local administrations are approved by the administrative tutelage authority, the transaction subject to approval will be enforceable, that is, it will come into force, otherwise, if the transaction does not approve, the transaction of the local administration will not come into effect. However, the administrative tutelage authority sometimes does not express its will of approval or disapproval, and remains inactive.

If the law stipulates that the approval will be done within a certain period of time, but is not done within the time limit, 468 the administrative tutelage authority is deemed to have approved the transaction and the transaction automatically becomes effective at the end of the period foreseen for approval (Coşkun, 1976: 29). The approval process realized in this way is called "implied consent". In cases where no time is given for approval, it is accepted that the administrative tutelage authority remains inactive, that is, it does not approve the transaction unless it explicitly declares its approval (Relative, 1999: 9). In other words, in the applications made to the administration, it is accepted that the administration does not approve the transaction by applying the general rule that it does not approve the application if the administration does not respond within sixty days.

Regarding the transactions subject to the approval of the central administration, if the central administration does not approve the transaction subject to audit, it is not possible to establish another transaction unless it is clearly stated in the law. It either approves or does not approve the transaction. It cannot establish a transaction other than that. As a rule, the administrative tutelage authority cannot correct or change the process subject to inspection (Onar, 1966: 503). It cannot establish a transaction by replacing the local administration (Arslan, 1990: 65). Again, it is not possible for him to approve a part of the transaction subject to audit, but not approve or cancel a part. Because the process constitutes a whole (Maspétiol, 1948: 257).

The approval of the administrative tutelage authority of the local administration process subject to inspection does not mean that the transaction is absolutely lawful, it does not qualify it to comply with the law (Arslan, 1990: 515). If the transaction is against the law, a legal action can be taken against this transaction. Approval does not eliminate the judicial remedy against the transaction subject to audit.

A difference of opinion arises in the doctrine regarding the approval of the administrative tutelage authority's actions of the local administration. This difference of opinion stems from the relationship between the approval process and the transaction that is the subject of the audit and that the local administration has established and the legal nature of the approval process is controversial. There is no consensus on whether the consent process is an element of the local administration process that is subject to administrative tutelage control, that is, a transaction included in it or an operation independent of the local administration (Gözler, 124). According to the majority of the authors in the doctrine, although the law requires the approval of the central government in order to enter into force some of the operations of local governments, the approval is not an element of the process of the local government unit.

The process of the decentralized management unit and the transaction established by the central administration, that is, the approval process, are two separate transactions. Because there are two separate legal entities, two separate wills and two separate legal transactions. The transaction of the local administration, which is subject to administrative tutelage control, is a valid and completed administrative act, but it is not execution. The approval process gives execution to the

process subject to approval. Approval of the transaction by the administrative tutelage authority does not make this transaction an act of the administrative tutelage authority.

According to the opinion put forward by some other authors⁴⁸³ in the doctrine, there are no two different procedures in terms of the local administration organization subject to administrative tutelage control. The transaction subject to administrative tutelage supervision becomes execution with the approval of the administrative tutelage authority. The approval process of the administrative tutelage authority alone cannot qualify as an administrative act. Without the action of the local authority subject to approval, the approval will not have any effect or result. For this reason, the transactions of the local administration subject to approval and the transactions of the administrative tutelage authority are two elements that complement each other. The approval process is an element of the local administration's process. Two separate wills come together to give birth to the process.

Regarding the relationship between the local administrative process subject to approval and the approval process of the administrative tutelage authority, in our opinion, the transaction of the local authority is a separate procedure before approving it. However, it is not an administrative action. Because it is not executive. After approval, it becomes an administrative transaction. The approval process is an administrative process. Because it is executive. The consent process provides the birth of another administrative act with itself. The non-administrative act of the local administration and the administrative act of the administrative tutelage are combined to create an administrative act. In the stage after the approval, both the operation of the local administration and the approval process are two separate administrative actions. If the administrative action is not approved, there is only one administrative action. That is the administrative act of not approving the administrative tutelage authority.

Another issue that is subject to discussion regarding the approval process is about when the case will be filed against the local administration process, which has become enforceable with the approval process. In this regard, it is stated that the transaction subjected to approval was born as a legal disposition in the stage before its approval, therefore it is possible to file a lawsuit against this transaction in the stage before approval (Onar, 1966: 505). In fact, the local administration should not be able to file a counterclaim for the transaction at the stage before the approval process.

Because at this stage, the transaction is not yet execution and therefore it has not been able to assume the identity of an administrative transaction.

Another problem that may be encountered with regard to consent is related to who will be responsible in case of a dispute regarding the transaction subject to approval and to whom the hostility will be directed. It is an issue that needs to be resolved whether the local administration unit that established the transaction subject to approval or the central administration, which is the administrative tutelage authority, will be responsible. In the first case, that is, if the administrative tutelage approves the transaction, it is widely accepted that the responsibility will belong to the local administration unit since the main owner of the transaction subject to approval is the local administration. Accordingly, it is stated that the responsibility arising from this transaction will not pass to the administrative tutelage authority because the administrative tutelage authority approves the administrative act. Because the approved transaction was born and completed by the will of the local administration. With the central administration approval process, it does not add anything to the process of the local administration subject to approval, it only makes it come into force (Günday, 2003: 80). As a result of this, if there is a dispute regarding the administrative act and an administrative lawsuit is filed, the hostility must be directed to the local administration unit. In our opinion, both the local administration and the central administration as the administrative tutelage authority should be held responsible for the approval process. Although the main owner of the transaction subject to approval is the local administration and it is necessary to be held responsible for this transaction, it is not sufficient. The local administrative process subject to approval and the approval process of the administrative tutelage authority are separate executive acts, that is, administrative proceedings. In addition, the central administration has ensured that this process comes into effect after it has been subject to inspection.

Not accepting the central administration responsible for the transaction it approved would make the administrative tutelage control meaningless (Coşkun,; 29). For this reason, it is possible to think that a lawsuit can be filed against both the transaction subject to approval of the local administration and the approval process of the administrative tutelage authority.

In the second possibility, that is, in cases where the act of the local authority subject to approval is not approved by the administrative tutelage authority, that is, the process of non-approval is in question, the responsibility of the administrative tutelage authority will be applied. Accordingly, in cases to be filed against the non-consent process, the hostility will have to be directed to the administrative tutelage authority (Onar, 1966: 506). However, it would be useful to make a distinction here regarding the possibility that the central administration will not approve the operation of the local administration.

If the central administration does not approve the operation of the local administration due to reasons arising from the local administration, the local administration should be held responsible (Onar, 1966: 506). To put it more clearly, if the central administration did not approve the operation of the local administration because it was illegal, it would be appropriate to hold the local administration responsible for it. On the contrary, if the transaction is lawful but not approved by the administrative tutelage authority, the administrative tutelage authority should be held responsible.

Although the approval of the administrative tutelage authority is required for some of the transactions subjected to administrative tutelage control to become effective, the local administrative unit may not want to implement the decision subject to audit. The approval of the administrative tutelage authority does not impose an obligation on the local administration unit to implement the decision. If the local administration organization wishes, it may not apply the administrative process subject to supervision, can take back the transaction or change the transaction in time (Arslan, 1989: 65). Likewise, the administrative tutelage authority may withdraw the transaction (Arslan, 1990: 513). So both can undo their action. However, since a new decision will emerge if the local administration changes the transaction, this decision will also have to be submitted for the approval of the administrative tutelage authority. Likewise, if the transaction is withdrawn, it must be submitted for the approval of the administrative tutelage authority (Akyılmaz, et al., 2014: 211). However, it is stated that the administrative tutelage authority will not be able to withdraw it if a certain period is stipulated in the law for revocation and if this period passes, the local administration puts the approved transaction into practice (Arslan, 1990: 514).

Regarding the administrative tutelage control carried out by the central administration on the transactions of the local administrative body, it is possible to come across many regulations regarding the control carried out in the form of approval in the basic laws regulating local administrations. For example, according to Article 51 of the Special Provincial Administration Law No. 5302, the amount of the budget revenues of the provincial council, which is a body of the provincial special administration, increased by the revaluation rate determined in the Tax Procedure Law No. (Bayındır, 2007: 35). It is not possible to make borrowings exceeding this amount.

In addition to the Special Provincial Administration Law numbered 5302, it is seen that the central administration performs administrative tutelage control on the municipalities by approving some transactions of the municipalities in various articles of the Municipality Law numbered 5393. In Article 9 of the aforementioned Law, it is seen that the decision of the municipal council regarding the establishment, removal, merging, division, determination and change of the boundaries within the boundaries of the municipality is subject to the approval of the governor. In Article 10 of the Law, it is stated that the name of a town will be changed with the approval of the Ministry of Interior upon the decision of at least three-fourths of the total number of municipal council members and the opinion of the governor. In the second paragraph of Article 15 of the Law, the services of the municipality specified in sub-paragraphs (e), (f) and (g) of the first paragraph of Article 15 of the Law, with the opinion of the Council of State and the decision of the Ministry of Internal Affairs, for a maximum of forty-nine years. It is stated that it can be transferred through concession. In the third paragraph of Article 15 of the Law, the decision to be taken by metropolitan municipalities within the provincial boundaries, provincial municipalities within the boundaries of municipalities and adjacent areas, municipalities with a population over 10,000, and the approval of the Ministry of Internal Affairs, health, education, social services and tourism It has been stated that they can allocate land to the projects to be developed free of charge or at a low cost, provided that they are not used for other purposes.

In Article 81 of the Municipal Law No. 5393, it is stated that the decisions of the municipal council on naming streets, streets, squares, parks, facilities and the like, identifying emblems, flags and the

like, and their amendment, will come into force with the approval of the local authority. In addition to the basic laws regulating local administrations, article 6 of the Expropriation Law numbered 2942, the public benefit decision to be taken by the provincial permanent committee, which is an organ of the provincial special administration, will be completed with the approval of the governor and the decision of the municipal committee, which is an organ of the municipality, with the approval of the district governor in the districts and the governor in the provinces. is foreseen.

Laws sometimes require that local administrations take the opinion of some central administration bodies before establishing a transaction. In order for such transactions established by local administrations to be legally valid, the opinion of the relevant authority must be taken. In other words, receiving opinion is the validity condition of the process.

In the regulations, which require the opinion of certain authorities, the purpose is actually to facilitate the administrative tutelage control to be carried out by another central administration institution by giving an idea. In general, this administrative tutelage control is followed by another administrative tutelage control. For example, in Article 10 of the Municipal Law No. 5393, it is stated that the name of a town will be changed with the approval of the Ministry of Interior upon the decision of at least three-fourths of the total number of members of the municipal council and the opinion of the governor. In Article 4 of the Municipal Law No.5393, if the conditions stipulated in the 11th article regarding the establishment of a municipality are fulfilled, it is stated in the article 15 that the opinion of the Council of State will be taken when some services are transferred through concession. Since the duties of the Council of State in the form of delivering an opinion are of an administrative nature and the administrative office is the 1st Department of the Council of State, this duty should be fulfilled by the said department.

The opinion of the relevant authority is not binding in the administrative tutelage supervision carried out by taking the opinion of the relevant authority. It is just a form requirement. If it were binding, we would talk about administrative tutelage control in the form of prior consent, which we will examine a little later.

Previously, the permission is the administrative tutelage control over local administrations by obtaining the approval of the central administration before establishing a transaction in cases stipulated by the laws. In such cases, it is necessary to obtain prior permission from the administrative tutelage authority in order for the transaction established by the local administration to become legally valid (Arslan, 1989: 66). If the central administration does not allow the establishment of the transaction, the local administration will not be able to establish the transaction subject to inspection.

Previous consent is similar to an audit by approval. However, unlike the approval, the local administration here applies to the administrative tutelage authority and requests its permission before establishing a transaction. In the approval process, it has established the local administration process, but the operation is non-executive. It requires the permission of the administrative tutelage authority in order to execute its operation (Arslan, 1989: 67). As we have just mentioned, prior permission is similar to administrative tutelage control in the form of obtaining the opinion of the relevant authority. However, in cases where obtaining permission is foreseen beforehand, there is an obligation for the local administration unit to establish a transaction in accordance with the permission, but such an obligation cannot be mentioned in obtaining opinions.

It is aimed to prevent the local administrations from making wrong decisions due to their possible ignorance with the administrative tutelage control, which was previously carried out in the form of permission. With the prior permission method, local administrations are enabled to establish a transaction by obtaining permission from the central administration, thus saving both labor and time. Indeed, obtaining permission from the administrative tutelage authority in advance in jobs that require important technical and legal knowledge can save the local administration from possible difficulties. However, this situation may damage the autonomy of local administrations. Instead, it would be more appropriate to only seek the opinion of certain authorities before taking action.

Regarding the procedures established with the prior permission of the administrative tutelage authority, the regulation in Article 127 of the Constitution, which stipulates that local administrations can establish a union with each other with the permission of the Council of Ministers in order to perform certain public services, is the administrative tutelage audit carried

out by the Council of Ministers on local administrations. In addition to this regulation in the Constitution, it is also possible to give separate examples for each local administration organization regarding the prior permit administrative tutelage control. As a matter of fact, according to Article 74 of the Municipal Law No. 5393, the municipality requires the permission of the Ministry of Internal Affairs in advance in order to become a founding member or member of international organizations and organizations operating in the fields of their field of activity and to realize joint activities and service projects or establish sister city relations with them, depending on the decision of the municipal council. It is mandatory. Again, according to Article 53 of the Special Provincial Administration Law numbered 5302, the regulation stipulating that the special provincial administration will perform its services with special income and expense by establishing an in-budget enterprise with the permission of the Ministry of Interior can be shown as an example of administrative tutelage control carried out in the form of prior permission.

The annulment is abolished by the central administration with all legal consequences, with effect on the past, on the grounds that the final, mandatory transaction that has been established by the local administration unit, that is, the transaction that has become an administrative transaction is illegal or does not comply with general or local interests (Özer, 1985: 18).

Cancellation is a very heavy form of administrative tutelage control. As in the annulment decisions given by the administrative courts, the transaction is eliminated with all legal consequences from the date of its execution. For this reason, the number of regulations that can show an example of this control is not many. There is only one regulation that gives the central administration the authority to cancel the transactions of the local administrations (Gözler, 1999: 120). It is also Article 40 of the Village Law No. 442. According to Article 40 of the Village Law No. 442, the district governor may overturn the decisions of the village headman that are not in the interest of the villager. But the district governor cannot decide himself by replacing him. The decision is again made by the villager.

The decision of the administrative tutelage authority to annul the action of the local administrative body is a separate administrative action that eliminates the transaction established by the local administration with past effect. Therefore, if a dispute arises regarding the annulment procedure,

a lawsuit may be filed against the annulment of the administrative tutelage authority in the administrative court (Gözler, 1999: 124). If a lawsuit is filed in the administrative jurisdiction, the hostility will have to be directed to the administrative tutelage authority.

The annulment power is an authority that may adversely affect the autonomy of local administrations. First of all, it is the local administrative body with a public legal personality that establishes the transaction that will best appreciate whether the transaction is in place or not. It is the judicial authorities that will best determine whether the transaction established by the local administration is unlawful or not. For this reason, the authority to disrupt the operations of the local administrations should only be granted to the central administration in cases of severe violation of the law.

Suspension of execution is an administrative tutelage control carried out in the form of postponing the implementation of the transactions made by the local administrations by the central administration for a period of time. In case of being equipped with the authority to suspend execution, the central administration suspends the execution of the transaction established by the local administration and suspends its execution for a while (Özay, 2004: 170). The reason for giving the central administration the authority to suspend the execution of the operations of the local administrations is to prevent the inconveniences that may arise if the transaction is implemented.⁵¹⁷ Therefore, the central administration suspends the execution of some transactions of the local administrations in urgent cases and thus performs administrative tutelage control (Atay, 2009: 175).

If we give examples regarding the suspension of the execution of the operations of the local administrative body by the administrative tutelage authority, there is a provision related to this in Article 27 of the Special Provincial Administration Law numbered 5302. According to Article 27 of Law No. 5302, the governor may request that the decision of the council, which he deems contrary to the law, statute, regulation and provincial council decisions, be discussed again at the next meeting. However, if he insists on the decision of the council, the decision becomes final. In this case, the governor stops the implementation of the finalized council's decision and applies to the administrative courts within ten days with the request for stay of execution. The objection is decided by the Council of State within sixty days at the latest.

If the central administration is authorized by law, postponing the implementation of the transaction subject to administrative tutelage control by the local administrations, in other words, suspending its execution is a separate administrative action belonging to the central administration (Gözler, 1999: 125). Therefore, the responsibility arising from the said transaction belongs to the administrative tutelage authority. A lawsuit can be filed in the administrative jurisdiction for the cancellation of the central administration's stay of execution. In this case, of course, the hostility should be directed to the central administration.

It is the administrative tutelage control carried out by the central administration in the form of applying to the administrative jurisdiction against the actions of the local administrations. In cases stipulated by the laws, the central administration, as the administrative tutelage authority, applies to the judicial body in terms of the procedures or organs of the local administrations and ensures that the audit to be carried out by the judicial body is initiated. In the basic laws regarding local administrations, the Council of State is generally indicated as the authority to be applied by the central administration. As we mentioned while describing the authorities conducting administrative tutelage inspection, the Council of State is an institution that has both administrative and judicial duties, and its examination and decisions regarding the special provincial administrations, which are local administration organizations, are of an administrative nature. That is, it is within the scope of administrative tutelage control. Therefore, it is wrong to file an application to the judicial body and to accept all decisions made by the judiciary as judicial decisions. As a result, administrative tutelage control, in the form of applying to the judicial body, enables the start of the judicial review process or another administrative tutelage control process, depending on the nature of the control to be carried out by the applied judicial body.

Regarding the administrative tutelage control in the form of applying to the judicial body in terms of initiating the judicial review process, it should be noted that both the local administrations and the central administration are against each other's enforcement actions without the need for a separate regulation in their relevant laws, except in cases where the appropriateness is audited, (Özay, 2004: 168). However, since the administrative tutelage control, which is carried out in the form of application to the judicial organs, is regulated separately in the relevant laws, the application to the judicial organs is examined under a separate heading. The granting of authority

to the administrative tutelage authority to apply to the judicial body will facilitate the administrative tutelage authority in terms of revealing that the violation of interest, which is one of the admissibility conditions of the case to be filed in the administrative court, has occurred. In other words, the administrative jurisdiction will directly look at the case without examining whether the condition of breach of interest has been fulfilled (Akyılmaz, et al., 2014: 215).

It is stated that it would be a correct way to carry out the administrative tutelage control of the central administration on local administrations by applying to the judicial body against their actions (Eddison & Tukız, 1993: 79). The reason for this is that, as we have stated before, the idea of carrying out administrative tutelage control in terms of compliance with the law has gained weight and the control to be carried out by the judicial authorities is carried out based on objective criteria. There are some consequences for the individuals that the central administration filed an action for annulment against the transactions of the local administrations (Bayındır, 2007: 226). In the event that the central administration filed a lawsuit against the acts of the local administrations and the decision brought before the judiciary is annulled by the administrative jurisdiction, individuals will no longer need to file an annulment action. In addition, even if the decision brought before the judiciary is not canceled in accordance with the law, individuals will be able to file administrative court cases for annulment and full remedy against damages arising from this transaction and its implementation (Bayındır, 2007: 226). The administrative tutelage control carried out by the central administration by applying to the judicial body has a different feature than other forms of administrative tutelage control.

Unlike other administrative tutelage inspections performed on local administrations, the central administration's application to the judicial body here has consequences and consequences on local administrations, not directly but indirectly (Akyılmaz et al., 2014: 226). Because, in cases of approval, annulment, suspension of execution, and substitution, which are the other forms of administrative tutelage, the central administration directly takes the decisions that have rulings and consequences on the transactions of the local administrations. The operation of the central administration directly affects the operations of the local administrations. In the event of an application to the judicial body, the central administration initiates the judicial review process or another administrative tutelage inspection process to be carried out by the judicial body by filing

a lawsuit against the decision of the local administration, which it deems unlawful and therefore needs to be annulled. Again, unlike other types of administrative tutelage control, if judicial control is carried out, administrative tutelage control can only be carried out in terms of compliance with the law, since only the administrative jurisdictions can check the compliance with the law.

It is possible to give various examples of administrative tutelage control in the form of application to the judiciary. According to the fifth paragraph of Article 23 of the Municipal Law No. 5393, the local governors can apply to the administrative court against the decisions of the municipal council which they deem unlawful. Again, according to Article 57 of the same Law, the determination of the determination by the competent magistrate judge at the request of the Ministry of Internal Affairs that the determination of the serious disruption of municipal services and that this situation negatively affects the health, peace and well-being of the people can be shown as an example of administrative tutelage control in the form of applying to the judicial organs.

According to Article 14 of the Metropolitan Municipality Law No. 5216, the decisions of the metropolitan municipal council and the district municipal council are sent to the highest local administrative authority within seven days from the date of their finalization.

The local administrative authority may appeal to the administrative judicial authorities against the decisions he deems unlawful.

According to the sixth paragraph of Article 27 of the Special Provincial Administration Law numbered 5302, the governor suspends the implementation of the decision, which he deems contrary to the law, bylaws, regulations and the decisions of the provincial council and requested to be discussed again at the next meeting, but upon the insistence of the committee, and applies within ten days with the request for suspension.

While describing the administrative tutelage control over the local administrations in the form of approval, we stated that the central administration has no authority other than approving or disapproving the action of the local administration, and that it cannot change the operations of local administrations as a rule. However, it is possible for the central administration to correct the operations of the local administrations, to approve them by changing them if such authorization is given by law (Onar, 1966: 503). In this form of supervision, the central administration makes changes on the operations of the local administrations, corrects and approves their transactions. In

the approval process, it does not make any changes in the transaction, it only takes effect by finding it appropriate.

Consent or limited substitution by rectification or substitution is usually examined under the heading of substitution, another form of administrative tutelage control. In case of change and approval, the central administration, in a way, takes the place of local administrations and establishes a transaction. However, there is no complete replacement here. Because the central administration does not establish a brand new transaction, it makes changes and corrections on the existing transaction established by the local administration. The will of both the local administration on which the control is carried out and the central administration that carries out the control is reflected in the process, but the will of the local administration is in a more dominant position. Because, if the scope of changes or corrections is kept wide and a new decision emerges, it is a complete replacement, not a correction (Özyörük,: 182).

In the event that the administrative tutelage authority approves the operation of the local administration by changing the transaction, it is necessary to determine who will be responsible for the transaction subject to audit. In our opinion, it is necessary to hold only the central administration responsible for the changes made in the transaction in this possibility, and both the local administration and the administrative tutelage in terms of the part approved without change. it would be correct to hold the central administration responsible as its authority. The local administration cannot be held responsible for the changed part. Because, the will of the central administration, has been added to the process. Both administrative units should be held responsible for the unchanged part.

The principles of administrative tutelage control in the form of approval are also valid here. In terms of the parts approved without being changed, the will of the local administration is reflected in the process. Therefore, the responsibility of the local administration should be in question. As the administrative tutelage authority, the central administration has enabled it to enter into force by approving the transaction that should not be approved while performing its supervisory duty. Therefore, it will be necessary to hold him responsible. It is possible to give various examples of administrative tutelage control carried out by changing and approving the transactions of local administrations.

According to Article 123 of the abolished Municipal Law No. 1580, the biggest civil servant of the district, namely the governor in the provincial municipalities and the district governor in the district municipalities, had the authority to approve the budget by making changes. According to Article 86 of the abolished Special Provincial Administration Law dated 1913, the Ministry of Internal Affairs, which was the administrative tutelage authority, was authorized to make some changes in the budget, which was discussed and accepted by the provincial council, which is an organ of the special provincial administration, and to complete the deficiencies in the budget. In cases stipulated in the central administration law, it replaces both the operations and the organs of the local administrations. In other words, the substitution can be carried out in terms of the organs or operations of the local administrations.

Substitution, in cases stipulated by the law, as the administrative tutelage authority, the central administration takes the place of the local administration unit and establishes the transaction.⁵⁴¹ It is the complete substitution of its will.

As a rule, the central administration as the administrative tutelage authority cannot establish a transaction by replacing local administrations (Türkay, 1993: 118). However, although it is not very common, the central administration can be given the power of substitution by laws. This authority is given to the central administration under very strict terms and conditions (Salihoğlu, 2009: 100). In cases where it is authorized, the central administration takes the place of the local administration and establishes a transaction.

Substitution, which is the most severe and broadest form of administrative tutelage control, is applied in exceptional cases (Arslan, 1989: 75). As the administrative tutelage authority, this authority is generally given to the central administration in cases where the local administrations act against the law and do not fulfill the obligations imposed on them late or not at all, that is, they remain passive, and this attitude of the local administration may cause irreparable damages (Günday, 2003: 80). In this case, the central administration takes the place of the local administration organization that does not do what it has to do, and establishes the transaction. Thus, it is aimed to ensure stability and continuity in public services (Onar, 1966: 504). If we give an example of administrative tutelage control carried out in the form of substitution, according to Article 40 of the Special Provincial Administration Law numbered 5302, the serious disruption of

the special provincial administration services and the fact that this situation has a vital negative effect on the health, peace and well-being of the people, the competent magistrate law judge If determined by the Ministry of Internal Affairs, by giving a reasonable time according to the nature of the service, it requests the special provincial administration to eliminate the disruption in the services.

If the disruption in the services cannot be repaired within the given time, the Ministry of Internal Affairs requests the performance of the said service from the governor of that province. In this case, the governor primarily remedies the disruption with the tools, equipment, personnel and other resources of the special provincial administration. Again, according to Article 57 of the Municipal Law No. 5393, if it is determined by the competent magistrate of the Ministry of Internal Affairs that the municipal services are seriously disrupted and that this situation has a vital negative effect on the health, peace and well-being of the people, the Minister of Internal Affairs, It asks from the mayor by giving a reasonable time according to its characteristics (Gözübüyük & Tan, 2006: 254). If the disruption cannot be resolved, it requests the performance of the said service from the governor of that province. In this case, the governor primarily remedies the disruption with the vehicles, equipment, personnel and other resources of the municipality. The reason for giving such authority to the Ministry of Interior as the administrative tutelage authority is to prevent the disruptions in local services from making the life of the people difficult and to ensure the uninterrupted execution of public services (Tortop et al., 2008: 588).

Apart from the basic laws of local administrations, a regulation regarding substitution is also included in the Zoning Law No. 3194. According to the third paragraph of Article 9 of the Zoning Law No.3194, in case it is necessary to allocate a place in the zoning plans for official buildings and facilities depending on the purpose of performing a public service or to make changes in the zoning plans for this purpose, the ministry can give instructions to the relevant municipality through the governorship channel or and that it will make and approve the part related to the facilities. As can be understood from the provision, the Ministry can establish a transaction by replacing the municipality by making the development plan itself. In other words, the Ministry has the authority to substitute.

Regarding what the responsibility will be in the administrative tutelage control carried out in the form of substitution, since the central administration has established the operation of the local administration itself, the responsibility for this transaction should belong to it (Bayındır, 2007: 208). Accordingly, the concerned parties must direct the hostility to the central administration as the administrative tutelage authority in the lawsuit filed against this transaction in the administrative jurisdiction.

4.3 Elements of Administrative Tutelage Control

In the clause (a) of the 3rd article of the Special Provincial Administration Law numbered 5302, the special provincial administration is defined as "the public legal person with administrative and financial autonomy, established to meet the common local needs of the people of the province and formed by the election of the decision-making body". The central government carries out administrative tutelage control especially over the organs, personnel, operations and actions of special provincial administrations. Administrative tutelage control is done with powers that arise either from the constitution and the law, or not from the law.

Administrative tutelage has entered our legal system with the provisional law named *İdare-i Umumiye-i Vilayet* dated 1913, which grants legal personality to provincial local governments (Gürsoy, 1987: 2). In the Constitution of 1921, unlike the Constitution of 1876, local governments were regulated on a broad autonomy basis and the reduction of tutelage control was envisaged. In the 6th article of this constitution of twenty three articles, which accepts the elected bodies to be authorized in principle and reduces the authority of the center to exceptional situations (TOBB, 1996: 99), "The township is a spiritual person who has autonomy in their private life" (Gözübüyük - Kili, 1982: 94) By saying, an autonomous local administration idea, far from the tutelary approach, was adopted (Ortaylı, 1985: 207).

The 1924 Constitution, on the other hand, restricted the wide autonomy granted to local governments with the concern of national unity; It strengthened loyalty to the center and tutelage control. As a matter of fact, the Municipality Law enacted during this period reflects the typical characteristics of those days (Tekeli, 1990: 47).

Administrative tutelage was not clearly regulated in the 1961 Constitution, unlike the 1982 Constitution. However, in this constitutional period, in which the tutelary tendency was noted (Heper, 1987: 3), administrative tutelage continued to be applied without the need for a constitutional basis (Nadaroğlu, 1998: 283; Keleş, 1994: 120).

The 1982 Constitution, which turned administrative tutelage into a constitutional institution, included provisions that aggravate tutelage control, unlike the 1961 Constitution, in which the autonomy of local governments took a wider place. Inclusion of the concept of administrative tutelage in the 1982 Constitution in this way; “The preservation of this principle, which is one of the basic rules of public law, without changing it or at least interpreting it with a brand new approach, while it can already be applied without assuming a constitutional character, should be regarded as a step backwards” (Soysal, 1992: 354).

The provisions regarding administrative tutelage in the 1982 Constitution are as follows:

- The objections and inspections regarding the gaining and loss of the organism status of the elected organs are made through the judiciary.
- Local government bodies or members of these bodies, against whom an investigation or prosecution is initiated due to a crime related to their duties, may be suspended from their duties until a final decision by the Minister of Internal Affairs as an interim measure.
- The central government has administrative tutelage power. Administrative tutelage is carried out in order to carry out local services in accordance with the principle of the integrity of the administration, to ensure unity in public services, to protect the public interest, and to meet local needs properly.
- This authority is used within the framework of the principles and procedures specified in the law.
- It is regulated by law that local administrations establish a union among themselves with the permission of the Council of Ministers in order to provide a certain public service.

It is essential that the supervisory power is given by law and again based on the law. In other words, the law both gives authority and draws its boundaries. This authority determined by law covers financial audit, approval of regulatory acts, inspection, inspection of civil servants and review of plans, projects and decisions in almost every country.

According to our Constitution, the principles and procedures regarding administrative tutelage are determined by law. In this context: The Law on the Organization and Duties of the Ministry of

Internal Affairs provides the Ministry of Internal Affairs with various supervisory powers over local governments, such as directing them, regulating their relations with the central government, providing administrative tutelage, examining their accounts, and investigating allegations about election or appointment bodies. gives. According to the Provincial Administration Law, governors can inspect local governments in person or through Ministry inspectors. Again, with the Court of Accounts Law, the Court of Accounts has been given the authority to audit the accounts of local governments.

In this context, among the other important laws that give tutelage authority over the provincial special administrations, municipalities, villages and local government unions, which are in force and within the central and provincial organization of the central government, the Special Provincial Administration Law, the Municipality Law, the Municipal Revenue Law, There is the Village Law and the Council of State Law.

Although not included in the law, this supervisory power, which exists in practice due to the general principles of administrative law and the structure of administrative control institutions (Arslan, 1978: 31), is generally applied in three ways:

- Regarding the implementation of a law or regulatory act, the central government sends explanations, circulars, circulars and similar texts to local governments and directs them to a certain implementation union. The central government orders compliance with these written texts and, on the contrary, exercises control over the movement.
- The second way of inspection, which does not arise from the law, is done by asking the center for opinion. In practice, although the unit asking the question is generally not bound by the central government's opinion, it complies with the opinion expressed in order not to confront or react with the central government later on.
- The central government can also use its supervisory power, which does not arise from the law, by making recommendations. This is a common and efficient way.

The tutelage control applied on local governments can be examined under four headings:

- Control over transactions
- Control over actions
- Control over organs

- Control over the personnel

4.3.1. Administrative Tutelage Control Over Transactions

Administrative tutelage control over the transactions is carried out in one of the ways of "approval, prior authorization, substitution, cancellation and suspension of execution".

Approval; "The administrative tutelage authorities approve the decisions of the local government regarding certain works they are authorized to examine" because there is no violation of the law or the requirements of the situation and interest.

Unlike similar decisions of the central government, approval is not an essential element in decisions, which is a legal process arising from the will of local government bodies that have autonomy and legal personality and are authorized to declare their will on their behalf. In other words, in such a case, there are two different decisions, namely the actual legal act taken by the relevant administration and its approval, and the second of these is "a condition that remains outside the actual transaction and affects its outcome, not its body. (Onar, 1960: 502 et al.) The implementation of the first transaction made by the relevant administration here requires another action to be taken by the administrative authority indicated by the law; result and judgment arise only with the merger of these two transactions. (Özay, 1996: 164-165) In this context, the decision in question cannot be implemented by local governments unless it is approved by the central government or its agent. Therefore, the approval of the central government or its agent is a necessary process for the decision to enter into force. (Arslan, 1978: 63)

Not all local government decisions are subject to approval. In terms of approval, the decisions of local governments are divided into two as those that are subject to approval and those that are not:

In our country, all decisions taken by the provincial council are subject to the approval of the provincial governor: "The mukarrerat, which is assigned by the General Assembly of the Provinces, is finalized with the approval of the governor." (Special Provincial Administration Law, Article 135) This indicates heavy administrative tutelage over the decisions of the provincial council.

In contrast, only some decisions of municipal governments are subject to approval. Which decisions will be subject to approval is determined by the laws that authorize tutelage control. In cases where the law does not give explicit permission, the authority of approval by comparison cannot be applied (Arslan, 1978: 63). Sometimes, some decisions that have not been subject to approval may be given the right to appeal to an authority outside the administration. For example, according to Article 74 of the Municipal Law, "annexation council decisions, whose duties and powers are in contravention of the law or the State laws and regulations, are assigned by the provincial administrative committee, at the request of the governor, the Ministry of Internal Affairs in the provinces center '. Upon the request of the State Council, it is verified or canceled by the State Council. "

Consent can be either explicit or confidential. Explicit consent, the tutelage authority to exercise its powers; Confidential (implied) consent is the self-acceptance of the decision if it does not inform whether it approves the decision or not within the given period. The approval and non-approval periods of the decision are clearly stated in the relevant laws.

The approval authority also varies, depending on the importance and nature of the decision. Some decisions are made by governors and district governors; some are approved by the central administration, and at the center by the relevant ministry or the Council of Ministers. The authority of refusal of the authority with the power to certify is not absolute. Often the unapproved decision is forwarded to another authority and the final decision is made by that authority. (Onar, 1960: 501)

The approval of local government decisions by the central government does not impose responsibility on them in the implementation of the decisions. Local government bodies may not implement or change the decision, despite approval. Because, as stated, the ratification process is separate from the original decision and shows that it is not contrary to the interests of the state. However, if the relevant local unit changes the approved decision, this will need to be approved as a new transaction will emerge (Onar, 1960: 504).

The responsibility for the approved decisions rests with the relevant local authority. Approval responsibility does not pass from local governments to central government; Since approval is a separate process from the approval decision, responsibility remains with the local government unit that also made the decision. Therefore, "in administrative cases related to the decision, the hostility should be directed not to the tutelage authority, but to the relevant local unit that made the decision". (Onar, 1960: 506) On the other hand, the disapproval of the decision does not make the relevant local administration responsible. However, if the decision taken was not approved by the central authority, the responsibility of the relevant local administration continues. (Onar, 1960: 506)

Decisions that are not subject to approval are decisions that come into force as soon as they are taken by the relevant local government and do not require the approval of the administrative tutelage authority. (Onar, 1960: 506) Decisions that are not clear in the law that they are subject to approval fall into this group. While decisions subject to approval are exceptions, they are of a general nature. Therefore, for a decision to be subject to approval, it must be clearly stated in the law that it is subject to approval. Decisions that are not explicitly stated in the law to which they are subject to approval are final and come into force automatically.

It is also possible to audit such decisions. As a matter of fact, the administrative tutelage authorities can appeal to the administrative jurisdiction bodies for the reasons specified in the Law No. 1580, requesting annulment. Again, according to the 73rd article of this law, the mayor or the concerned parties can ensure that the decision taken by the governor in non-provincial municipalities and the Ministry of Internal Affairs in the municipalities with provincial centers against the decisions of the municipal council. In case of the existence of disabilities that require cancellation, it is always possible for the administrative tutelage authority to have the decision of local administrations annulled by filing an action for annulment within the framework of general provisions in order to protect the public interest. (Onar, 1960: 508)

The law may oblige local governments to obtain permission from their administrative tutelage authorities before starting some work and only then to start work. (Görel, 1944: 14) In other

words, in such a case, the legal validity of the decision depends on obtaining prior permission from the tutelage authority. For example, according to Article 10 of the Law, municipalities and special provincial administrations are subject to the prior permission of the Council of Ministers to purchase vehicles.

As well as requesting permission without taking a decision, it may be obligatory to request permission from the central government after the decision is taken. In this case, the permit in question is required not to take the decision but to execute it. (Arslan, 1978: 67)

It is the decision of the administrative tutelage authority by replacing local governments or making changes on the decisions taken by them. Substitution is an exceptional power; generalization of this greatly impairs local autonomy. (Arslan, 1978: 67) Because, as stated by Göreli, "The fact that the power of the enterprise always belongs to the decentralized authority is the logical consequence of autonomy. For this reason, if the tutelage authority has the authority to change the decision of the decentralization administration, the autonomy of the judicial person and the right to hold the undertaking becomes a pointless point. " (Göreli, 1944: 12)

In replacing local governments forcing them to fulfill some mandatory duties given by law or to take some necessary decisions, the central government aims to eliminate the violations of the law that may arise as a result of the local governments remaining passive on an issue ordered by the law. Precisely for this reason, the power of substitution cannot be exercised, except where required by law; it cannot be entirely left to the discretion of the tutelage authority, and its regulation requires very careful action by the legislator. (Arslan, 1978: 68)

Cancel; It is the elimination of a decision taken by local government bodies, together with all legal consequences, by the tutelage authority due to general or local interests or contradiction to legislation. (Erdoğan, 1972: 204)

According to the seventy-fourth article of the Municipal Law, the decisions taken by the municipal councils other than the ordinary and extraordinary meetings and the decisions that are taken against the legislation, upon the request of the governor, the provincial administrative board, is examined by the Council of State at the request of the Ministry of Internal Affairs in provincial centers and either approved or canceled.

While using the revocation power, the control of illegality is a guarantee for local governments. Because, the extension of this authority to simple inconveniences and the supervision of the right of discretion by the tutelage authority instead of the local government inevitably damages the autonomy of local governments. (Arslan, 1978: 68)

Suspension of Execution is the delay of the implementation of the decisions taken by local governments by the competent administrative tutelage authorities. For example, according to the seventy-third article of the Municipal Law numbered 1580, "the governor may delay the implementation and execution of the decisions of the council until the objections and applications are investigated by the relevant authorities."

This authority has been granted to the lower tutelage authorities in order to prevent the inconveniences that may arise from the implementation of the relevant decision in the period until the examination and decision of the objections that are legally possible to be examined by the higher tutelage authorities.

4.3.2. Administrative Tutelage Control Over Actions

The central government constantly supervises the decisions of local governments, as well as their implementation, on the basis of administrative tutelage.

Administrative tutelage over actions aimed at ensuring that administrative acts are carried out in accordance with general procedures is different from administrative tutelage over decisions in that it is carried out through actual control and inspection. Here, the subject of the actual audit is to determine whether the actual situation coincides with the legal situation. (Onar, 1960: 508)

Custody control over actions encompasses negative actions by local governments as negligence of legal duties as well as positive actions. If the violation of the law is the result of refraining from performing the duty, the tutelage authority may take a more active role and replace the local government authority, which is called "action substitution". (Arslan, 1978: 70)

The central government not only audits the decisions taken by the local government units, but also the processes and actions taken during the implementation process of these decisions. The said administrative tutelage control over the transactions and actions is mostly carried out by the civil inspectors working under the Ministry of Interior (Bayrakçı, 2014: 31).

There is an operational aspect of administrative tutelage control over transactions. It differs from administrative tutelage control over the decisions by the fact that it is done by means of administrative tutelage control, actual control and inspection over the actions applied with the aim of ensuring that the administrative actions are made reasonable with the usual methods. The subject of the actual audit is to determine whether the actual situation is compatible with the legal situation. The limits of administrative tutelage control over actions and transactions should also be determined well. Otherwise, it is clear that the autonomy of local governments will be damaged and a negative situation will occur (Koç, Baharçiçek, 2018: 674).

4.3.3 Administrative Tutelage Control Over Organs

Administrative tutelage control over the organs refers to the powers granted to the tutelage authorities regarding the activation or termination of the executive and decision-making bodies of local governments or to be invited to meetings in urgent cases. (Erdoğan, 1972: 204) The most important of these powers is that the tutelage authority can terminate the duties of these organs.

In our country, the supervision of the elected organs of local governments to gain and lose the status of an organ is done through the judiciary, not through administrative tutelage, as required by the Constitution.

It refers to the powers granted to administrative tutelage authorities over the executive and decision-making bodies of local governments to enable them to act, to be invited to a meeting in case of emergency, to terminate their activities. The most important supervisory power granted to administrative tutelage authorities over the organs of local governments is the power to terminate or dismiss local government bodies or members from their activities and duties (Bayrakçı, 2014: 34).

For example, provision 127/4 of the Constitution is regulated as "... However, the Minister of Internal Affairs may dismiss local administrative bodies or members of these organs, which are

subject to an investigation or prosecution due to a crime related to their duties, as a temporary measure, until a final judgment". However, it is seen that the authority given to the Minister of Internal Affairs has been narrowed in terms of reason and duration. In other words, it is understood that this authority can be used only in the case of an investigation or investigation, and that time is allowed until a final decision is made. Another important point to be stated here is that this authority granted to the minister does not mean that it will be used in every investigation or prosecution. In the context of discretionary power, the minister will be able to use administrative tutelage (Bayındır, 2007: 161).

The dissolution authority of the organs of local governments is an authority given to the Council of State. According to Article 127 of the Constitution and Article 24 of the Council of State Law, the resolution of the objections to the decision-making bodies of local governments and their loss have been made possible through the judiciary and the authority has been given to the Council of State (Yosunkaya, 2018: 35).

4.3.3 Administrative Tutelage Control on Personnel

The tutelage control over the personnel includes the powers given to the central government in matters related to personal affairs such as recruiting civil servants who receive their salaries from the local government budget, appointment or approval of civil servants, promotion, leave, dismissal, disciplinary prosecution. (Erdoğan, 1972: 204; Aldan, 1985: 230) For example, the Decree Law No. 190 on General Staff and its Procedure stipulates that the staff of special provincial administrations and municipalities and affiliated unions, establishments and enterprises shall be established by the Council of Ministers. Again, according to the Special Provincial Administration Law, "All taxpayer officials belong to the governor." Control over staff includes unelected staff of local government; elected personnel are handled within the scope of the control over the organs (Arslan, 1978: 71).

What is meant by administrative tutelage control over staff is not control over elected members of local governments, but control over their appointed officers and officials. These are the authorities granted to the central government in matters related to personal affairs such as recruitment,

appointment or approval of civil servants who receive their salaries from the budgets of local governments, promotion, leave, dismissal, disciplinary investigation and dismissal (Bayrakçı, 2014: 31) For example, the Metropolitan Municipality Law. According to Article 22, the Secretary General of the Metropolitan Municipality can be appointed upon the proposal of the Mayor and the approval of the Minister of Interior. According to the 74th article of the Village Law, the assignment of volunteer village guards can be made with the decision of the mukhtar and the elders and the permission of the district governor. Another example is regulated by Article 34 of the Civil Servants Law No. 657. According to this; Special provincial administrations and municipalities and the cadres of the associations established by them are prepared by their authorized bodies and put into practice with the approval of the Ministry of Interior (Bayındır, 2007: 189).

According to the Municipality Law No. 5393, the norm staff principles and standards are determined by the Ministry of Internal Affairs and the State Personnel Presidency. Within the framework of these principles and standards, the authority to determine the norm cadres is given to the municipal council; The authority to appoint the personnel is left to the mayor. Municipalities are authorized to employ contracted personnel, part-time personnel, workers and civil servants. It has been accepted by the Ministry of Internal Affairs that the personnel to be employed under contract may bring limitations in terms of titles (art. 49).

The municipal organization consists of the editorial office, financial services, science affairs and police units in accordance with the norm staff. Considering the population, physical and geographical structure, economic, social and cultural characteristics of the town, as well as the development potential of the town, health, fire brigade, zoning, human resources, legal affairs and other units may be established if deemed necessary within the framework of the norm staff principles and standards. The decision of the municipal council is required to establish, abolish or merge these units (Law No. 5393, Art. 48).

The working procedures and principles of the municipal police organization and the duties and authorities of the employees and other regulations are regulated only by the regulation to be issued by the Ministry of Internal Affairs (Law No. 5393, Art. 51/3). The same situation is also valid for the fire brigade. The municipality can make new regulations, not contrary to this regulation. This

situation reveals that the Ministry of Internal Affairs has the legal right to intervene in activities related to municipalities.

It is observed that the supervision of local administrations on their personnel continues in the laws other than the Special Provincial Administration Law numbered 5302 and the Municipality Law numbered 5393. The fact that the mayor and staff's departure from abroad is upon approval, the payments made to the employees are subject to the approval of the ministry when the expenditure exceeds 30%, and the authority to determine the titles to be determined for the employees under the central government can be shown as an example of these practices (Karaarslan, 2008, 232).

CHAPTER V

5. Administrative Tutelage Control

Control concept weakly means research, investigation, testing, editing or correction; If it is in a strong sense; it has stronger meanings such as power, pressure, authority, superiority, and coercion. Control is mostly used in the second meaning in Turkish (Atay, 1999: 18-19). However, it is possible to come across situations where control is sometimes used in Turkish with its weak sense.

According to a definition, controlling is described as "the instrument that indicates whether the management activities are carried out effectively in accordance with the agreed plan, given directive and established principles" (Tortop et al., 1993: 160). According to another definition, controlling is to investigate, see, know, interpret and understand the level of realization of the activities planned within the framework of various purposes and within the framework of this plan, whether the activity was carried out in a "correct, effective and efficient way", and if the activity was not carried out, finding the reasons for this (Aydm, 2004: 66).

The control applied on the public administration may also differ according to the party performing the control and the nature of the control. Accordingly, if control is carried out by administrative institutions and individuals, it is called "administrative control", if it is done by the legislature, "political control", if it is done by the judiciary, "judicial control", if it is carried out by the public, "public control" (Gözübüyük, 2005: 365). To this distinction, it is possible to add the Ombudsman Institution, which was established with the Law on the Ombudsman Institution dated 14.06.2012 and numbered 6328 in our country, as the "ombudsman control" to the form of controlling the public administration.

In the public administration of our country, it can be mentioned that administrative control is applied under three main headings: (1) control through comprisal, (2) hierarchical control and (3) tutelage control. The person who thinks that the administration has violated the interests or rights as a result of the acts or actions of the administration in the supervision by the request, objects to this decision and as a result, the administration examines its decision in terms of compliance with the law and appropriateness (Gözler, 2007: 297). This practice enables the administration to evaluate violations of rights and interests before reaching the judicial authorities and relieves the burden of judicial review.

Hierarchical control is the supervisory authority over the superior, the subordinate, which is naturally included in the management task without the need for a legal basis and is determined by the duty status of the organization (Gözübüyük, 2005: 366). As a type of administrative control, tutelage control or administrative tutelage is the control of the organization by individuals, units, organs, boards or organizations outside the organization, unlike hierarchical control. Administrative tutelage in public administration must be based on the laws and used by the competent authorities and persons as stipulated by the laws.

Except for geographically very small countries, it will not be easy for all public services to be performed by the central government. Planning and delivering public services to all points of the country from the center in a way to meet the expectations will probably bring high costs and will not be suitable for the demands and expectations of the local people. In accordance with the principle of appropriateness in service, local joint public services should be provided to those who need this service from the closest point. According to this understanding, it will be more accurate and easy to determine what kind and amount of public services local citizens need, what kind of expectations they have, and the local administrators who are elected and appointed by the people living in the same place and living here. Moreover, the cost advantages of providing the needed public services much more closely are also clearly known.

However, while local governments determine, decide and implement these public services, they must also be compatible with the central government. If there is no harmony between the two administrative units, the issue of repeated provision of some public services both by the local administrations and even by the central administration leads to a single significant waste. On the contrary, in case of incompatibility, it may arise that the public services mentioned by both administrative units are not fulfilled at all, despite the needs of the public. Therefore, this time, the risk arises of the public being deprived of public services. Moreover, in the process of fulfilling the obligations of local governments, it also includes applications that conflict with central administration services, disrupt the unity and order, prevent stability in services or arbitrary in public services. Against all these negativities, it is accepted that administrative tutelage control will be a coordination tool between central government and local governments (Yılmaz, 2007: 25).

The administrative autonomy granted to local governments means that these organizations themselves take decisions and form policies for the execution of public services that they deem necessary independently by the governing bodies. Financial autonomy means that these organizations can use their own budgetary possibilities and financial resources independently while executing the decisions they take regarding their activities. Thus, it is possible for local administrations to implement public services quickly, effectively and efficiently in the area determined by laws while fulfilling their duties. Thanks to the flexibility of movement provided

here, it is desired to achieve results that benefit both the local people and the people in the country. However, it is not intended to provide influence to some authorities and authorities with both administrative and financial autonomy and to create an environment for the arbitrary attitudes and behaviors of these persons or institutions. In a sense, administrative tutelage control has a feature that prevents or minimizes the negativities arising from the autonomy mentioned here (Tortop, 1999:20).

In the control of administrative tutelage, it is foreseen that the unity, integrity of the state and national interests will be protected and supervised by local government organizations. The main thing in administrative tutelage control, which is the result of the mutual benefit of the central government and local governments, is the protection of the unitary structure of the country. Administrative tutelage control is an inevitable necessity for a country with a unitary structure with a central administration and local administration. In a unitary state that is the absolute owner of sovereign power, the central government makes its sovereignty felt over local governments through administrative tutelage control (Yosunkaya, 2018).

The central government has been given the task of ensuring the economic, social and cultural development of a country in a balanced manner at the national level. In order to achieve this goal, development plans are prepared by the central administrations. The central government adapts the activities of local governments to the development plans by using the administrative tutelage control power while preparing development plans. For example; The task of ensuring that the investments and activities of local governments are carried out in accordance with the development plans is carried out by the Ministry of Interior General Directorate of Local Administrations. In order to achieve a balanced development goal at the national level, central government and local governments should act in a complementary understanding. Therefore, development plans become a tool of administrative tutelage control (Yılmaz, 2007: 27).

Local governments have a budget to fulfill their legal duties and can use this budget in accordance with their financial autonomy. Income items of their budgets; own revenues consist of aids from central government, shares allocated from central government revenues and other revenues. In recent years, the areas where local governments are in charge have expanded and diversified. They

have come to need a larger amount of resources. In particular, they are obligated to fulfill their tasks with their own revenues of local governments in Turkey is not possible. For this reason, they need the assistance provided by the central government to a large extent. The main thing in such aids is that they are made without any conditions. As a matter of fact, the European Charter of Local Self-Government has adopted the unconditional provision of aid to local governments by the central government. However, grants made to local governments by the central government in Turkey usually mounted at the project-based and linked to a condition of placing certain areas. In this way, the central government wants to ensure that local governments use the budget opportunities offered to them efficiently. Therefore, administrative tutelage control is an important tool in the efficient and effective use of resource utilization.

Administrative tutelage control also has an educative role in the development of local governments. The educational and professional characteristics of the persons employed in local government organizations may not be compatible with their duties in local governments. If they are elected, they may not have enough time to specialize because they have been appointed for a certain period of time. In addition, they may not want to learn, thinking that they have been temporarily selected. The existence of such a situation will adversely affect the quality of public services that local governments are obliged to provide. These negativities, especially encountered in small-scale local government units, can cause significant losses. However, thanks to the administrative tutelage control, training and development of officials in local governments becomes possible. Employees in local governments get the opportunity to develop and learn by coming together with expert officials in the central government. With the warnings and directions made during the administrative tutelage control process, the officials in local governments are given the opportunity to correct their lack of information (Yılmaz, 2007: 29).

Administrative tutelage control performed by the central government over local governments is in the form of legality control or appropriateness control.

5.1 Legality Control

The central government mostly checks whether the local governments' procedures are in compliance with the law through administrative tutelage control. Legal control and administrative tutelage control authorities inspect the compliance of the decisions taken by local governments with the legal legislation and the existence of the conditions stipulated by the legislation in these decisions. Thus, they are protected from being illegal or illegal decisions of local governments or from acting outside their authority. In legal control, in a sense, "dependent authority" is controlled (Bayrakcı, 2014: 31-32).

It is accepted that the control that should be in terms of administrative tutelage control is the legality control. Municipality Law No. 5393 also in Turkey with the central government "discretion" can be seen as eliminating the propriety control legality control was adopted. In addition, in some cases, there are Council of State decisions stating that administrative tutelage control should be in the form of legality control (Boztepe, 2014: 104).

5.2 Appropriateness Control

Control of the central government's operations performed by local governments in terms of suitability (appropriateness), conformity to the situation or compliance with the need is called the appropriateness control. In this type of audit, a wide freedom is given to the controller in the discretion of the subject being audited. The inspector examines not conformity with a certain or explicit rule (subordinate authority), but rather the convenience of the rule of good behavior in a very broad sense. It is up to the inspector to determine the extent of this. Disputes may arise between the central government and local governments due to the control of the discretionary power of local governments by the central government. In practice, it is seen that the appropriateness control is done in two ways (Bayrakcı, 2014: 32):

- In terms of compliance of the transactions with the national plan and policy, administrative tutelage control is carried out through the budgets of local governments, through subsidies or through the control of their borrowings.
- It is in the form of controlling of operations in terms of efficiency or compliance with standards.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

The administration is based on the principles of central management and decentralization in terms of organization and duties. The first of these was given the power of tutelage over the second. (Constitution, articles: 123 and 127) The purpose of tutelage here is to keep the local units, which are autonomous organizations, under the supervision and control of the central government by not leaving them to themselves.

On the other hand, there is an inverse proportion between local autonomy and custody control; as one increases, the other decreases. Of these, expanding the scope of autonomy does not necessitate the absence of the other, namely administrative tutelage. More precisely, it is not possible to consider these two separately. Therefore, what is essential here is the well-defined limits of trust and autonomy.

Indeed, the debate in our country regarding administrative tutelage control is not with the control itself; It is about determining the quality and degree.

The problem is very important from a practical point of view. As a matter of fact, with the reforms initiated in France after 1982 and reducing the tutelage control over local governments, local autonomy has been increased, contrary to our practice; However, in the end, unexpectedly, waste, excessive indebtedness, starting projects that could not be overcome and favoritism could not be prevented in the French local administrations. The lesson can be drawn from this that the failure to balance local autonomy and administrative tutelage with each other prevents the production of effective and efficient services. Therefore, local autonomy should be subjected to tutelage control to the extent that it prevents it from doing harm rather than benefit. What we also need is a reform that will strike a balance between the two. Although there have been positive developments in our country such as the transfer of the authority to make zoning plans to municipalities, the elimination of central government approval in some personnel transactions, leaving the property tax to local governments, and increasing the shares to be given to local governments from the tax revenues collected by the center, A reform that prevents local governments from producing effective and efficient services has not yet been implemented in our country, which will reduce the heavy tutelage control to an acceptable level.

It seems that it will not be possible to solve the problems in our local administration system with such partial changes. For one thing, custody control is closely related to the sharing of tasks between central government and local governments. The sharing of tasks prevailing to date among them should be urgently revised according to the principles of efficiency, efficiency and democratic participation in services. In terms of task sharing, first of all, the basic principle should be that the service to be produced is produced by the management unit closest to its beneficiary, that is, "subsidiarity in service"; service, as foreseen in the Eighth Five-Year Development Plan, should be left to the best management level.

When our local government units are evaluated, it can be said that it is very difficult to describe the special provincial administrations as local government units, since they lack the necessary organization and financial power to fulfill the duties given by the law, and the executive function is performed by the governor, who is a provincial agent of the center.

Despite the heavy tutelage control over them, the municipalities; It has a much more pronounced local autonomy than provincial special administrations and villages. Although most of the decisions of the municipal council can be implemented without the need for approval, all the decisions of the provincial council are subject to the approval of the governor. In addition, municipalities have their own organization and, if not sufficient, more sources of income than other local units. However, in terms of current resources commensurate with their duties, municipalities still need to be provided with new resources that will reduce their dependence on the center.

As mentioned, tasks of a local nature are often shared between central and local government organizations, although financial resources are left to the initiative of the first of them only. Sometimes, as in the case of special provincial administrations, when the tasks assigned to them could not be carried out due to financial insufficiency, in time, they were transferred to the provincial institutions of the central government. In order to resolve the task dilemma created by this process, local quality services carried out by central agents should be transferred to local government units, together with the organization, staff and resources.

Indeed, in the sharing of tasks between the central and local governments, the first thing that directly affects the lives of the local people should be left to the local governments, and the work and services that must be performed equally at the country level and within certain standards should be left to the central government. Then, a fair and objective resource allocation should be created to provide local governments with sources of income in proportion to their duties and responsibilities, in a way that will ensure the rational use of resources and the realization of services at the lowest cost.

Financial control of local governments should be both independent and left to a specialized body. As in the case of France, it would be appropriate to assign financial control to the Local

Governments Court of Accounts, which is an independent and impartial judicial body outside the hierarchical structure of the central government, in local governments.

The powers given to local governments should belong to them fully and alone, without being weakened by other units. In other words, the success of a local government unit within its borders depends on its being the only administrative organization responsible for all public services that concern the local community living in that area. As a matter of fact, according to the third article of the European Charter of Local Self-Government, local governments have to fulfill a significant part of public affairs under their own responsibilities in order to be autonomous.

In line with the idea of "centrally governed, decentralized", the central administration should have a goal-setting, planning, coordinating and controlling structure, rather than undertaking tasks other than internal and external security, justice, and foreign policy.

The tutelage control, which is regulated in detail in our legislation, should be removed from being heavy and formal, and the opportunity to freely make and implement decisions should be created for elected bodies. This is one of the most important conditions for local governments to produce good services. However, local autonomy is not unlimited and it naturally includes some control mechanisms.

In our country, administrative tutelage control covers both compliance with the law and appropriateness with the law. In terms of central government, this supervision should be limited to observing the functioning of local government units and applying to judicial bodies against decisions and actions deemed unlawful. Appropriateness control should be left to local people, with bodies selected in accordance with the developments in the world. As a matter of fact, the control of compliance with the law and appropriateness carried out by the central government in France left its place to the legal compliance control after the 1982 reform. In Germany, the state's control over the municipalities is limited to the compliance with the law.

Considering the tutelage control especially over the organs of local governments since the foundation of the Republic, it can be emphasized that while a roughly variable process has been experienced in the understanding of municipal management, there is a more stable and static structuring in the special provincial administrations. In fact, with the abolition of Special Provincial Administrations in the provinces where some metropolitan cities were established by Law No. 6360, the number of special provincial administrations decreased, whereas municipalities gradually came to the fore. However, thanks to the innovations and regulations introduced by the

enactment of laws regulating both provincial special administrations and municipalities in 2005, the personnel structure of both organizations, the election of decision-making bodies, the execution of their decisions, the place and time of their organs, are similar in many issues related to guardianship control. There have been changes in direction.

Before 2005, there was strict administrative tutelage control over municipalities and special provincial administrations; Under the supervision of these organizations with the Special Provincial Administration Law numbered 5302 and the Municipality Law numbered 5393 issued on this date; an objective, general and impartial audit approach is aimed. Although the tutelage control of local governments has been tried to be softened by laws in general, it is understood that this control still exists in some provisions of the relevant laws. Although the governor's position in the special provincial administration was wanted to be weakened by Law No. 5302, the fact that he is still the head of the executive body and a strong representative of the legal entity in the special administration harms the autonomy of local governments.

In both the Law No. 5302 and the Law No. 5393, it is a kind of arrangement that may cause the administrative tutelage authority to be interpreted very generally in terms of the fact that other administrative transactions of these organizations, other than financial transactions, can be inspected by the Ministry of Internal Affairs in terms of compliance with the law and the integrity of the administration. The fact that the limit of this is not determined precisely, may lead to the perception that the administrative tutelage power of the central government over local governments is always heavy. In addition, it is possible to encounter many provisions in the relevant parts of both laws that will provide the center with a wide regulatory power. However, it is also known that many administrative tutelage practices were either completely abolished or partially softened compared to the previous situation. For example, the heavy guardianship power over the decisions of the municipal council and the provincial council has been abolished in its previous form.

The most severe guardianship practice of the Ministry of Internal Affairs, regulated in both laws; In case of disruption in the services, the determination of this situation by the magistrate at the request of the Ministry and the decision of the governor to have the service determined to be disrupted by the governor is a reflection of such a negative guardianship power.

Although this is foreseen for extraordinary situations and is considered in good faith, it is still not compatible with the autonomy of municipalities and special provincial administrations.

In fact, with Article 127 of the Constitution, granting the Minister of Internal Affairs the authority to dismiss the local government bodies against which an investigation or prosecution is initiated as a provisional measure until the court decision is finalized, is a regulation that can always lead to discussion of the decisions to be made about local governments with different political identities. However, leaving the resolution of such controversial disputes to the courts in the Constitution will ensure that decisions are taken more impartially and appropriately. Even if the local government bodies under investigation or prosecution should be suspended from duty as a temporary measure, it would be a more appropriate and appropriate way of action if this is done by the judicial body upon the application of the Minister of Interior. However, for this, it is also very important for the judiciary to resolve the disputes brought before it as soon as possible.

Although there are some similarities between the special provincial administration and the tutelage control of the municipality, it is also known that the administrative tutelage over the special provincial administration is more intense than the municipality. The most important reason for this is that as the provincial officer of the center, the acting governor acts as an organ of the provincial special administration at the same time through dual duty. In addition, the governor's superiority in the provincial special administration is stronger in the municipality than the position of the mayor against the municipal council.

Although the new regulations tried to reduce the weight of the governor in the special provincial administration, the decisions taken by the provincial council could not come into effect without the governor's approval, the governor's consent was sought in the appointment of any personnel to be assigned to the special administration, and the governor was firstly authorized for the preparation of the annual activity report of the special administration, However, the fact that it cannot be held responsible to the provincial council for this reason is one of the bad examples of this kind of strict guardianship practice. In fact, the superiority of the governor in the provincial special administration may be considered the biggest obstacle in front of the fact that it cannot achieve a truly autonomous structure.

Local governments have a very important place in the governance of countries. Especially in democratic countries, local governments are considered the foundation of government and the school of democracy. Moreover, participation in administration and ensuring representation, which is regarded as the measure of advanced democracy, is largely realized in local governments. Ideal for democratic countries; local governments cease to be the image of central governments in the provinces.

to save, to do this without autonomy.

To carry out their activities and local services out of local governments in Turkey, as in the Western sense is not based on a very long and ancient history. In the modern sense of local governments in Turkey in the 19th century and modeled after they emerge from the western countries, which are also known in France is inspired by. The local administrations that became law of this period were generally regarded as auxiliary institutions alongside the central government, which strengthened the sovereignty of the central power, expanded it throughout the country, ensured the collection of taxes at the local level, and were encouraged to move in this direction.

Centers and is a result of the decentralization distinction is intended to ensure balanced development, local government information, lack of being relieving direction, the state's unity and authority of the integrity of the principle of public services and the role of government administrative tutelage auditing in Turkey are the reasons compelling.

The amendments made by the Law No. 6771 have brought about fundamental changes in the Turkish administrative organization. Indeed, after the abolition of the Council of Ministers and the meeting of the executive at the President of the Republic, the Presidential Organization was arranged with Presidential Decree No. 1 (CBK).

The effect of globalization, technological developments, increase in the diversity of communication and transportation channels have brought about changes in management approaches. The attempts of central governments to reduce their burden and ensure the provision of healthier services by transferring some of their powers to local governments from time to time brought along some political, economic risks and security concerns. While these risks and concerns have led central governments to restrict some of the powers of local governments, they have also led to the emergence of new control mechanisms.

In particular geographical location and geopolitical position of Turkey as a "special" change the course of these control mechanisms kept in a country, changing the powers and responsibilities of local government bodies was a result that can not be avoided. On the other hand; To meet the needs of the increasing population more easily, to produce practical solutions to meet these needs more quickly, the emergence of larger cities with the increase of urban populations brought about changes in the understanding of local administration as a result of the paradigm change in the understanding of administration.

On October 8th 2012 Turkey and the bill came to the agenda of the Grand National Assembly, began to be discussed at the Internal Affairs Committee of Grand National Assembly of Turkey on October 10, 2012. Said commission was also observed in negotiations on the proposed by the author of the draft law grounds of services to facilitate the side of where the said draft law as advocated Turkey's unitary state concerns that proposed the thesis that the agenda would undermine the structure.

When the developments after the enactment of the Law No. 6360 are considered as a whole, it is obvious that the emerging picture should increase the diversity of the control mechanisms of the central government over local governments and the scope of administrative tutelage applied by the representatives of the central government should be expanded.

To perform the administrative tutelage of civil administration supervisor handed control of the central administration have the capacity will not be denied that there is a big win for Turkey.

Considering within the framework of Law No. 6360, we can list the things that local governors should have or should do as follows:

- Their powers within the scope of administrative tutelage need to be revised.
- Ability to show faster and more practical reflexes to local governments against the steps that will eliminate the unitary state structure by local governments will be appropriate.
- Behaviors likely to strengthen local centralization
- A more effective supervision of local administrators and local decision-making bodies by the local governors would be an important step.

- In order to prevent the consequences of the cumbersome and insufficient control mechanisms currently used by the central administration, it will be beneficial to increase

the powers of the local governors, who are obvious to be able to coordinate the inspections in question with their experience and training.

- Before the enactment of Law No. 6360, it would be appropriate to amend the relevant legislation in a way to increase the effectiveness and efficiency of local government bodies such as special provincial administrations, which operated in all provinces including metropolitan cities and still maintain their presence in non-metropolitan provinces. These amendments will also eliminate the low efficiency and productivity of the said institutions, which constitute the main reason of lawmakers and that reveals Law No. 6360.
- Increasing the current powers, efficiency and productivity of special provincial administrations and municipal municipalities does not seem possible by eliminating these legal entities. In addition, the fact that the legal entities of the special provincial administrations in metropolitan cities have been abolished, while they continue their existence in other provinces is a matter that harms the integrity of the administration. It is inevitable to make radical changes in the local administration system in order to eliminate this situation, which is claimed to be against the integrity of the administration.

In the light of all these evaluations, it can be said that there is a need for radical changes in the legislation of local governments and the scope of administrative tutelage.

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