SPECTRUM HOUSE
DÜŞÜNCE VE ARAŞTIRMA MERKEZİ

NORDEM
NUHM SOSYOEKONOMİK VE KÜLTÜREL ÇALIŞMALAR DERNEĞİ

POLICY BRIEF/DECEMBER 2023

A Black Hole in the Turkish Local Administration System: The Appointment of Trustees[1]

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Executive Summary

Since 11 September 2016, the Ministry of Interior Affairs of Turkey has dismissed a total of 148 mayors from their offices and appointed officials in their places[2]. Replacing the ordinary dismissal procedure with so-called "appointment of trustees", this practice plagued the Turkish administrative system by cutting out democratic election results in administrative units, predominantly inhabited by Kurds. This issue maintains its importance considering the forthcoming local elections, which are going to take place on 31 March 2024.

The appointment of trustees, this policy brief argues, is a result of particular political contexts and instrumentalises law in order to attain political goals. These contexts are the Kurdish question, state of emergency, and entrenched authoritarianism and tutelage culture in Turkey. Especially after the collapse of peace talks between the Kurdish armed movement and the Turkish state in 2015, the conflict intensified, and the government stigmatised and criminalised the Kurdish political movement. Aiming at excluding the Kurdish political movement from the legal political scene, the parliamentary immunities of MPs were lifted, they were imprisoned, a party closure case was launched against the HDP, and thousands of the workers of the HDP were detained under the name of terror crimes. This policy brief evaluates the question of trustee appointments as part of these policies of exclusion.

This policy brief aims at presenting the legal problems caused by the introduction of "trustees" to Turkish administrative system. Introduced by an emergency decree, which

1 The English version of this policy brief is not identical to the Turkish version. Amendments and explanations were made in order to make the text more comprehensible for readers who are not familiar with the Turkish political scene.

2 In the first wave of trustee appointments, at 95 elected co-mayors out of 102 of the Democratic Regions Party (Demokratik Bölgeler Partisi-DBP) were replaced by the appointed trustees. In the second wave, after the elections of 31 March 2019, at least 48 trustees were appointed in the places of dismissed co-mayors, out of 65 municipalities that are held by the Peoples' Democratic Party (Halkların Demokratik Partisi-HDP). According to the report of the HDP, 95 co-mayors were replaced by trustees whereas, the BBC and the Voice of America increases the number to 96 (probably including the Union of Southeastern Anatolia Region Municipalities). The Ministry of Interior Affairs, on the other hand, states that 94 municipalities are led by the trustees before the local elections of 2019. The verification of numbers is challenging, since the local organisations of the DBP and HDP were paralysed by constant operations. Even though the state of emergency was declared to tackle with the Gulenist movement, only 4 out of 148 trustee appointments were made under the name of the membership to the Gulenist movement. This will be explained in detail in the policy brief.

should be temporary, this practice maintained even after the end of the state of emergency. Extending the scope of dismissal procedure, which is strictly put by the constitution, the emergency decree made it possible to dismiss mayors in case of the existence a terror investigation against them.

Instrumentalising terror investigations, almost always arbitrary and politically motivated, caused a black hole in the Turkish administrative system by breaching the constitutional administrative framework and guarantees. Violating human rights which cannot be suspended even during state of emergency, the human rights toll of the appointment of trustees has been vast. This procedure perversely affected human rights by not only violating the presumption of innocence and eroding the principle of legality, but also violating the right to vote and to be elected, and freedom of expression among others. These violations became permanent due to the lack of veritable judicial and administrative control. Supported by the data obtained by the Spectrum House's poll that took place in August 2023, in 16 cities, suffering the grave consequences of trustee appointments, this policy brief presents public opinion regarding this practice and its relationship with human rights violations.

Finally, the policy brief gives suggestions to national and international actors, including international human rights organisations, and international organisations with a special focus on local authorities and democracy.

Preamble

As the Turkish Republic marks its centenary, the fundamental problems arising from its administrative, legal, and bureaucratic structure, established over the past century, continue to fuel debates. In the period from its establishment to the transition to a multi-party system managed by extraordinary administrative mechanisms, there has been always an intensification of conflicts between central authority and local dynamics. Key to understanding the background of this dynamic are governance practices such as the appointment of "General Inspectors" (Umumi Müfettişlikler) from 1927 to 1952, the implementation of the State of Emergency and "Super Governorship" (Süper Valilik was the name given to the governors with emergency authorities) from 1987 to 2002, and the use of "trustees" since 2016.

The trustee practices, which have become a systematic application in the political and administrative history of Turkey following the coup attempt in 2016, is pivotal in highlighting ongoing dimensions of governance issues between the central and local authorities. These practices, which could also be considered as a black hole in Turkey's political and local government history, can be described as the litmus test for the notion of elections in Turkey, democratization, public will, authoritarianism, and central-local relations.

This governance style, persisting from 1927 with General Inspectors to the era of Super Governors until 2002, forms the basic framework for administering the Kurdish regions. It took a new dimension with the trustee system after 2016. Instances like the 1979 dismissal of Hilvan Mayor Nadir Temel and council members, the awarding of mandates to other parties instead of mayors who won in Diyarbakır, Lice, and Ağrı Diyadin municipalities in the 1999 elections, the dismissal and arrest of mayors during the 2009 KCK operations, and the interventions from the center against DBP and HDP municipalities following the coup attempt in 2016 and after the 2019 local elections, are crucial for understanding the chronic issues in this governance practice.

The method, functioning, and legitimization dynamics of the trustee practices can largely be considered a continuation of the Republic's centralist governance approach. Since its foundation, the Republic's centralist approach has been instrumental in the construction of Turkish national identity and its dominant monistic perspective. Initially justified by creating extraordinary conditions within social engineering and exceptional governance, especially under the Eastern Reform Plan in the early years of the Republic, these practices primarily aim to assert central power in response to the Kurdish quest for local representation and governance. Lacking constitutional and legal grounding, they represent a significant anomaly in Turkey's political and local governance history.

Trustee practices, a unique example in the history of Turkey's political and local governments, have become a tool in the ruling party's authoritarian and centralization agenda after 2016. These practices can be viewed as a reflection of the character of Turkey's centralizing and authoritarian regime. Moreover, resulted by extending to autonomous structures like universities and professional organizations through different procedures, undermining the principle of decentralization.

In the run-up to the 31 March 2024 local elections, these practices, which have precipitated a crisis of representation in Kurdish cities and dampened people's motivation to participate in elections, constitute an important aspect of people's expectations and perceptions about local public services. These ongoing practices are emerging as one of the most significant issues in the upcoming local elections for Kurdish cities. The disruption of local governance is seen not only as a negation of public will but also as central interference in diverse sectors, including private enterprises and academic freedom.

This report aims to analyse the political and legal implications of these anti-democratic interventions by trustees and central authorities in local governance, in the context of the reconstruction of the Republic in the 2nd century, involving various segments of society, from academia to politics.

Focusing on the political context of trustee practices, this policy report reveals their impact on Turkey's administrative structure. It addresses the rising centralization and authoritarian trends in Turkey, emphasizing the need for local autonomy and the damaging role of trustee practices in eroding local democracy. As Turkey approaches its local elections, this report aims to present a legal and human rights-based perspective on the issues posed by trustee appointments, seeks to focus on the background and political and legal contexts of these practices.

SPECTRUM HOUSE

Introduction

Under the state of emergency rule, declared after the attempted coup of 15 July 2016, on 11 September 2016, the Turkish Ministry of Interior Affairs dismissed 28 elected mayors from their offices and appointed officials in their places. This practice widely known as "the appointment of trustees", based on an emergency decree[1], led to the systematic exclusion of the locally elected representatives of the Kurdish political movement from local administration. In the first wave, 96 mayors, elected from the lists of the Democratic Regions Party (Demokratik Bölgeler Partisi, DBP)[2] were stripped of their statuses and were replaced by trustees[3]. In other words, left-leaning opposition who seek a durable and honourable peace to the Kurdish question lost 93% of its local administrative units via trustee appointments. That wave continued after the next local elections which took place on 31 March 2019. Out of 65 -a significant decrease compared to pre-trustee administration system- municipalities won by the Peoples' Democratic Party (Halkların Demokratik Partisi, HDP)[4], only 6 municipalities are left to run by the elected mayors[5]. The debates around this practice, sweeping the results of local elections maintain their importance on the eve of municipal elections of 31 March 2024.

The effect of trustee appointments on local democracy has not been limited to the dismissal of co-mayors. Along with replacing elected co-mayors[6] with centrally appointed officials, no elected organ of the seized municipalities was left to function: The assembly of municipal councils required permission of the trustee to convene. Likewise, elected members of municipal boards (belediye encümeni) were dismissed, with reference to the relevant article of the Municipality Law. This practice created a black hole in the Turkish administrative system not only by breaching the constitutional framework regarding the principles of administrative organisation, but also by violating fundamental rights and freedoms regime and international conventions that protect this regime to which Turkey is a party state. What creates this black hole is that the appointment of trustees, which constitutes the grounds of an administrative regime of exception, is conditioned on the launching of terror investigations against the elected mayors/ members of municipal councils.

This intervention of the central government to local governments was made possible by the terror investigations opened against elected representatives at a time when it became difficult to accept the independence and impartiality of the judiciary and even the existence of the constitutional order itself in Turkey.

1 Emergency decree 674/38, dated 15.8.2016.
2 The DBP won a total of 102 municipalities, including 3 metropolitan municipalities (Diyarbakır, Mardin, Van), 8 provincial municipalities (Ağrı, Batman, Bitlis, Hakkari, Şırnak, Iğdır, Dersim, and Siirt), 67 municipalities and 24 small municipalities (belde belediyesi).
3 In a report, published by the Ministry of Interior Affairs, the number is given as 94, apparently excluding a small municipality and the head organisation, the Union of Southeastern Anatolia Region Municipalities (Güneydoğu Anadolu Belediyeler Birliği, GABB): https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/illeridaresi/Yayinlar/KayyumRaporu/kayyum_nihai_rapor.pdf.
4 The HDP is a political party, which is constituted by the alliance of numerous political parties, groups, initiatives as well as independent individuals, and advocates a society based on the principles of ecology, the equality of the sexes, humanitarianism, and dignity. The DBP, which belongs to the political tradition that aims to find a political solution to the Kurdish conflict, as well as a durable peace, is among the HDP's most important constituents. The DBP's political tradition was formerly represented by ÖZDEP, DEHAP and BDP (which dissolved themselves) and HEP, DEP, ÖZDEP, HADEP and DTP (which were dissolved by the Constitutional Court of Turkey). The dissolution of the latter group of parties has been condemned in the ECtHR judgments.
5 This number includes the co-mayors who were denied receiving their mandate (mazbata) after being elected. Even though their candidatures were accepted by the Supreme Election Board before the elections, the same Board denied their mayorship after being elected. The grounds for this decision were their dismissal from public services via another emergency decree.
6 Co-mayorship, suggesting a male and a female mayor at the same time, is introduced to the Turkish administrative system by the Kurdish political movement to promote equality between genders. Having no normative ground in the Turkish administrative system, in practice, a member of elected municipal council acts along with the elected mayor.

Introduced by an emergency decree, the appointment of trustees expanded the administrative dismissal mechanism, which the constitution limited only to crimes committed due to duty, to be applied to terror investigations, and in addition, eliminated the procedure for holding an election to replace the person suspended from office. Thus, people appointed by the central administration were assigned to replace elected politicians based on investigations in which political activities, statements and meetings were presented as crime. As a result of this practice, which redesigned the field of legal politics at the local level, opposition-held decentralised units were sucked into a black hole.

This policy brief is based on the suggestion that the appointment of trustees is yet another reflection of systematic exclusion of the Kurdish political movement from legal political scene. In other words, the illegal character of trustee appointments is a result of a political choice, it serves a political goal, and the law is instrumentalised to achieve this goal. In this context, law is not a neutral normative order separate from politics; but it is a structure designed and (ab)used by the dominant politics to attain their goals. This hypothesis is supported by the political context of trustee appointments and the pattern of legal processes that make trustee appointments possible. Within the scope of this policy brief, after briefly touching on the intersecting political contexts of trustee appointments, their legal aspects will be evaluated. Following this section, where the illegality of trustee appointments is identified and evaluated from a rights-based perspective, various suggestions will be presented considering the upcoming local elections.

The Political Context of Trustee Appointments

Turkey witnessed political turmoil in 2016, the year when the appointment of trustees was introduced to Turkish administrative system. The political context of trustee appointments should be addressed around three deep-rooted, intertwined problems. The first of these is the 'Kurdish issue', which emerged as a result of the suppression of the recognition demands of the Kurds living in Turkey through security policies, the second one is the state of emergency, and the third is the authoritarianism and tutelage culture.

The conflict that escalated after the peace process carried out between Turkey and the Kurdistan Workers' Party[7] was shelved in 2015, caused destruction with the declaration of curfews, in which at least half a million civilians were forcibly displaced[8], and hundreds lost their lives[9]. This process, in which practices that would be unlawful even in a state of emergency are put into effect without the need for a declaration of state of emergency, has blurred the border between normal and exception. In this environment where the climate of violence narrows down the political space, the government besieged the Kurdish political movement by political and legal means. The lifting of parliamentary immunities and the detention of MPs[10], the

7 The Kurdistan Workers' Party (Partiya Karkerên Kurdistan) has chosen the path of armed struggle since 1984.
8 According to a report by the Amnesty International, published on 6 December, 2016, only in the historical centre of Diyarbakır and UNESCO world heritage site Sur, tens of thousands of Kurds were displaced:
https://www.amnesty.org/en/latest/press-release/2016/12/turkey-curfews-and-crackdown-force-hundreds-of-thousands-of-kurds-from-their-homes/.
9 According to the data presented by the Armed Conflict Location and Event Data Project, between 16 August 2015, the date when the first curfews were declared, until the end of curfews in 2017, at least 3540 people lost their lives among whom at least 364 were civilians.
10 The legal aspects of the constitutional amendment which caused the lifting of parliamentary immunities were thoroughly elaborated by the Venice Commission in an early report, dated 14 October 2016: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2016)027-e. Recently, the European Parliament pointed out the repression of the opposition in Turkey with a special reference to the HDP MPs: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0360_EN.html .

party closure case against HDP, mass trials of politicians such as the DTK, KCK, Kobanê cases, and the appointment of trustees are the most striking examples of this siege. In this context, trustee appointments not only neutralised the right to free elections in local democracy in mostly Kurdish-inhabited areas, but also eliminated the democratically elected representatives of the Kurdish political movement. Trustee appointments implemented since 2016 have become a significant part of the authoritarian and aggressively centralised character of the government.

The reason for the state of emergency conditions in which the trustee institution was introduced to the Turkish legal system is the July 15 coup attempt. Following the cleavage between the Fetullah Gülen community, an unofficial partner of the governing party the Justice and Development Party (Adalet ve Kalkınma Partisi, AKP) an attempted coup took place on July 15, 2015. Never enlightened thoroughly, the coup attempt, which was carried out by soldiers linked to the Gulenist community, was suppressed. Immediately afterwards, the government declared state of emergency. Due to the state of emergency, fundamental rights and freedoms such as the right to defence, the right to freedom and security, and freedom of association were limited or suspended, and the organisation of public services was redesigned with extraordinary methods. While mass dismissals from the public sector are the most visible example of this, the state of emergency practices envisaged radical changes in the process of appointing university rectors and civil servants. Whereas some of these measures targeted structures associated with the Gulenist community, some were directed at the opposition. However, since there were no appropriate control mechanisms in both cases, the legality of these measures could not be checked in a timely manner. Likewise, since the extraordinary measures, which should have been limited with the reason of the declaration of the state of emergency, were also applied to situations that had no connection with the coup attempt, fundamental rights and freedoms were disproportionately suspended or even eliminated altogether. Again, some practices have become law after being approved by the Grand National Assembly of Turkey (Türkiye Büyük Millet Meclisi, GNAT), and exceptional practices that should be limited to the duration of state of emergency have become permanent. Trustee appointments are one of the most important examples of these uncontrolled, unlawful practices that transcend the reason and duration of the state of emergency.

Discussions over tutelage and authoritarianism have always occupied an important place in Turkey's constitutional history which is crippled by military interventions and exceptional forms of government. As a matter of fact, the AKP acquired support among liberal democrats by effectively using the discourse of "coming into terms with the past military tutelage" in the first eight years of its rule. In the following period, the trials carried out with the cooperation of the Gulenist movement[11] remained far from settling

11 Judges and prosecutors of the trial processes initiated with the motto of coming into terms with the past and reckoning with tutelage (the cases known as Ergenekon, Balyoz, and other coup attempt cases) were subjected to 'Fetullah Terrorist Organization' (FETÖ) investigations, and some of them were punished after the attempted coup. Ergenekon, Balyoz and other coup attempt cases, especially in which soldiers and journalists are tried, are plagued with serious unlawfulness, especially illegal evidence, and these unlawful procedures have been one of the main indicators of the cases deviating from the purpose of settling scores with tutelage. Again, the criminal proceedings initiated on the grounds of prosecuting military and paramilitary forces of the tutelage regime of the 1990s, such as unsolved murder and JITEM cases, to put pressure on the Kurds, resulted in impunity. These findings strengthen the opinion that the aim is not a real showdown, but a struggle for power sharing within the government. The Gulenist community, which increased its influence within the judiciary in this process, became the target of the government after the July 15 coup attempt and mass dismissals from the judiciary took place.

accounts with the military tutelage regime, and the cases regarding the serious human rights violations committed by the security forces and paramilitary groups in the Kurdish regions in the 1990s resulted with impunity[12]. The AKP, which consolidated its power in this process, has been the subject of discussions as the perpetrator of authoritarianism itself, by suppressing fundamental rights and freedoms such as the right to assembly and demonstration, freedom of expression, the right to strike and other union rights, and the right to the healthy environment, and by increasing police violence.

The climate of conflict, exacerbated by curfews and the executive branch which was disproportionately strengthened by the declaration of a state of emergency, has taken the ongoing discussions of authoritarianism to the next level. The transition to the "Turkish-style presidential system" with a referendum held under the state of emergency in 2017, strengthening the executive vis-à-vis the legislature and increasing the influence of the execution over the judiciary can also be interpreted as the consolidation of authoritarianism. Trustee appointments, as an extreme and unlawful example of administrative tutelage, which is a technical legal concept, became a political tutelage practice that leaves all elected bodies of local governments under the control of the central administration, and they reflect a special manifestation of authoritarianism on local governments.

Legal and Human Rights-Based Approach Towards Trustee Appointments

The legal basis for the trustee appointments is an amendment made to the Municipality Law with an emergency decree. With article 38 of the decree law no. 674, which came into force by being published in the Official Gazette dated 1 September 2016, the following paragraph was added after the first paragraph to article 45 of the Municipality Law No. 5393, dated 3 July 2005[13]:

> "However, in cases where the mayor or deputy mayor or member of municipal council is **dismissed from office or detained or banned from public service due to crimes of terrorism or aiding and abetting terrorist organisations**, or in cases where the mayor or deputy mayor or member of municipal council are stripped off their titles, the mayor or deputy mayor or council member shall be appointed by the authorities as specified in Article 46. The person to be appointed must be eligible to be elected. The provisions of this paragraph also apply if the member of municipal council member who is suspended or detained resigns. In municipalities where a mayor or deputy mayor is appointed in accordance with this paragraph, budget and accounting affairs and transactions may be assigned to the revenue office or property directorate with the approval of the governorship. **In these municipalities, the municipal council cannot convene unless called by the mayor**. The duties and authorities of the assembly, council and commissions are carried out by the council members specified in Article 31."

This decree law is procedurally unlawful by not being submitted to the GNAT for approval within the period specified in the

12 The extensive reports by the Hafıza Merkezi on impunity can be reached here: https://hakikatadalethafiza.org/en/project/faili-belli-site-monitoring-human-rights-trials.
13 Including this citation, all highlights in the citations are mine, unless specified otherwise.

internal regulations of the GNAT. After this period, the law no. 6758 was accepted verbatim by the GNAT on 10 November 2016 and gained the appearance of a law by being published in the Official Gazette no. 29898 on 24 November 2016. In other words, during the state of emergency conditions, where the powers of the executive branch were expanded and human rights were substantially limited, a radical regulation has been made that does not meet these conditions and is contrary to constitutional principles, even though it should be limited due to the duration and the reason of the state of emergency.

Emergency decrees cannot be brought before the Constitutional Court for annulment[14]. However, after becoming law, lawsuits can be filed for constitutionality review. In the lawsuits filed by the main opposition party CHP for the annulment of the emergency decrees that became law, the annulment of the provision allowing the application of trustees was not requested. For this reason, as far as is known, the requests for constitutional review, which has not brough before the Constitutional Court through abstract norm review, to be examined through concrete norm review, have not been accepted by the administrative courts so far. Thus, the constitutionality of the regulation has not yet been examined by the Constitutional Court. However, with this amendment, the principles of decentralisation, regulated by the Constitution, and the framework of relations between the central administration and local government were violated. Eventually, a new form of local government under the control of the central administration came into force, leaving no room for the will of the people. The regulation is against Turkey's constitutional and legal administrative structure, as well as international human rights conventions and human rights to which Turkey is a party.

Trustees in Turkey's Administrative Organisation

The framework of Turkey's administrative structure is drawn by article 123, which regulates the administration in general, article 126, which regulates the central administration, and article 127, which regulates local administrations of the Constitution. These articles are based on the principle of decentralisation, the autonomous local administrations regime and the principle of integrity of the administration. The principle of decentralisation, as one of the fundamental principles determining the relationship between the central administration and local administrations, means, in its simplest definition, the use of some of political and/or administrative powers by authorities other than the central administration. The Constitution stipulates that matters related to local administrations will be regulated by law; and requires that these regulations be made in accordance with the principle of decentralisation. Although central administration and local administrations are organised according to different procedures and principles, they constitute a whole and function in integrity. In accordance with the principle of integrity of administration, they carry out their work and provide services to the public in harmony with each other, but without illegally interfering in each other's domain.

14 There are two forms of constitutionality control over laws in Turkish constitutional system. First, upon the publication of the law in the Official Gazzette, one fifth of the MPs can apply for the annulment of the provisions. The number of MPs needed for this application was 110 at the time of the abovementioned law. After the 2017 constitutional amendments, the number of MPs were increased from 550 to 600, thus 120 MPs shall make an application before the Constitutional Court. This form of constitutionality control is called "abstract norm review" (soyut norm denetimi). Second, in case during a litigation, one of the parties challenge the constitutionality of a legal norm, the local court can bring the case before the Constitutional Court. This form of constitutional review is called "concrete norm review" (somut norm denetimi).

In fact, although all laws are based on public interest, according to the Constitutional Court, there should be a special objective in the laws concerning local governments. This objective is to realise the principle of decentralisation. The fundamental aspect of the principle of decentralisation is public participation. The Constitutional Court, which made this evaluation, determined that the laws that reduce the effectiveness of the public vote are unconstitutional in terms of the purpose element (amaç unsuru). Trustee appointments aim at rendering the decentralisation dysfunctional and is therefore contrary to the framework of decentralisation drawn by the Constitution and the interpretations of the Constitutional Court on this issue.

Local Autonomy and Trustees

The principle of decentralisation necessitates local autonomy. The Constitutional Court clarified the framework of administrative autonomy, which is a different concept from political autonomy, in its various decisions. Administrative autonomy, defined as "the freedom and authority of a social community or legal entity to determine all or part of the rules that govern themselves, or to act within the limits drawn by the constitution and laws"[15] by the Constitutional Court, means granting the right to self-management, in other words, the ability of public institutions and organisations to regulate the services they undertake and the regulations required by these institutions to be made by these institutions and organisations[16]. Again, according to the Constitutional Court, "(...) **granting authority to the whole or one or more parts of the government in the management and services of an autonomous legal entity is incompatible with autonomy**. Because autonomy is actually a form of management that applies to public services that are expected to **be kept away from the sphere of influence of the executive**. Opening the doors of influence to the executive branch in such an area cannot be considered compatible with the autonomous form of government"[17].

The meaning of autonomy in terms of local administrations is that the decision-making bodies of local governments are elected and carry out their work through their own bodies, without any interference from outside. This means a legal sphere for local governments, separate from the central government's sphere of power and free from interference. The framework of the autonomy of local administrations is drawn by legislation and jurisprudence, as well as by a binding international charter, the European Charter of Local Self-Government (Charter), to which Turkey is a party. The Charter, which is a binding convention on human rights in terms of setting political fundamental rights in connection with local governments and binding in accordance with atticle 90 of the Turkish Constitution, should be accepted as an international convention on fundamental rights, and disputes in case of conflict with the law should be resolved by judicial authorities in line with the Charter[18].

Articles 3, 4 and 7 of the Charter state the meaning and limits of the autonomy of local administrations. Accordingly, local government bodies should be elected through direct and free elections, and the

15 Constitutional Court, Case no.1987/18, Judgment no. 1988/23, dated 22 June 1988.
16 Halil Kalabalık, İdare Hukuku Dersleri, Vol. 1, Seçkin Yayıncılık, Ankara, 2013, p. 141.
17 Constitutional Court, Case no. 1967/37, Judgment no. 1968/46, dated 15 October 1968, likewise Constitutional Court Case no. 1973/37, Judgment no. 1975/22, 11, 12, 13, 14 and 25 February 1975.
18 Ayşegül Mengi, Can Umut Çiner, "Avrupa Yerel Yönetimler Özerklik Şartı, Niteliği, Beklentiler ve Türkiye", pp. 89-109, ed. Aykut Çoban, Yerel Yönetim, Kent ve Ekoloji içinde, Ankara: İmge Kitabevi, 2015, p. 104; Zülfiye Yılmaz, Yerel Yönetimlerin Özerklik Hakkı, Oniki Levha Yayıncılık, 2019, p. 429.

necessary guarantees should be provided to these bodies so that they can fulfil their duties. The purpose of this freedom is to protect the will of the bodies exercising their representative duties against third-party interference. Therefore, in order to materialise the principle of coming to office through democratic elections in article 3 of the Charter, also in line with article 7, the interventions made during the term of office and when leaving office must also comply with the relevant articles to which Turkey has not made reservations.

As a matter of fact, the Congress of Local and Regional Authorities (Congress), which is the supervision mechanism of the Charter and the advisory body of the Council of Europe (CoE), in a decision about Turkey in 2014[19], reminded the judgment of the Constitutional Court Mustafa Balbay et al. and stated that the guarantees provided to representatives at the national level in terms of elected officials should be valid at the local level as well. Accordingly, the actual fulfilment of the duty of representation is not only the right and duty of the elected officials, but also a reflection of the right to free elections regulated in article 67 of the Turkish Constitution. The relevant paragraph of the judgment cited by the Congress is as follows: "The right to be elected includes not only the right to be a candidate in the elections, but also the right to sit in the parliament as a member of parliament after being elected. This undoubtedly requires the person to be able to actually exercise his/her power of representation as a member of parliament after being elected. In this context, **interference in the participation of an elected member of parliament in legislative activities may constitute an intervention not only in his right to be elected, but also in the right of his voters to express their free will.**"[20] Failure to do so would violate the Charter's provision "The powers conferred on local authorities are normally full and exclusive. Except in cases provided for by law, these powers may not be weakened or limited by other central or regional authorities."

The Congress interpreted the trustee appointments as "recentralisation" in the report it prepared regarding the dismissed mayors[21]. The clear contradiction of the trustee practice with the Charter has also been revealed in report of the European Commission for Democracy through Law (Venice Commission)[22]. Keeping in mind that the state of emergency was in force at the time the report was written, the Venice Commission condemned the appointments as clearly unlawful. According to the Venice Commission, there is no provision allowing the derogation or limited application of the Charter during periods of emergency, and according to the Venice Commission, the Charter, which is considered one of the obligations arising from international conventions in accordance with article 15 of the Constitution, has been violated. It is obvious that this assessment will be valid after the state of emergency conditions end.

Trustee appointments as the invasion by tutelage

In addition to judicial control, control over decentralised units is possible through administrative tutelage, which

19 Résolution 367 (2014) sur la situation de Leyla Güven et d'autres élus locaux en détention en Turquie, 2014, https://wcd.coe.int/ViewDoc.jsp?id=2177277&Site=COE .
20 Constitutional Court, Mustafa Ali Balbay, Application no. 2012/1272, judgment dated 04 December 2013, para. 111.
21 https://rm.coe.int/16806fbf0d, para. 43.
22 Venice Commission, Opinion on the Provisions of the Emergency Decree Law no. 674 of 1 September 2016 Which Concern the Exercise of Local Democracy in Turkey, 6-7 October 2017, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-Ad(2017)021-e.

is an exceptional form of supervision and possible only when clearly regulated by law and limited to the specified framework. Administrative tutelage is an exceptional authority, unlike hierarchical control. Administrative tutelage restricts the area of local administrations in favour of the central administration. For these reasons, it should be interpreted narrowly. However, administrative tutelage with trustee appointments has virtually invaded the decentralised administrative organisation. Administrative tutelage, which has become a rule, far from being interpreted narrowly, is implemented without legal and administrative control.

The power of dismissal granted to the Minister of Interior Affairs by the Constitution is a special form of administrative tutelage. This authority is regulated in the 4th paragraph of article 127 of the Constitution, with clearly defined limits:

"The supervision regarding the resolution of objections as to the acquisition and **loss** of the title of organs of the elected bodies of local governments is held **through the judiciary**. However, local government bodies or members of these bodies, against whom an investigation or prosecution has been initiated **due to a crime related to their duties**, shall be subject to dismissal by the Minister of Interior Affairs as a temporary measure, until final judgment".

Here, the Constitution gives an **exceptional and limited** authority to the Minister of Interior Affairs regarding the organs of local government bodies determined by elections. This authority is given by the Constitution and for a very specific situation. In other words, the mayor and municipal council members, who are the elected organs of the local government, can only be dismissed from office as a temporary measure due to an investigation or prosecution initiated **for a crime related to their duties**. Given the exceptional nature of administrative tutelage, it is not possible to expand this authority by law in a way that would erode local administrations, local elections, and the will of the voters. While this limitation cannot be expanded even by law because it was introduced by the Constitution, expanding it by an emergency decree would mean reshaping the administrative organisation of Turkey with emergency measures, contrary to the Constitution.

The precedents of the Constitutional Court are also very clear on this issue. According to the Court, "It is unthinkable to extend the tutelage authority of the central government beyond the situations limited by the fifth paragraph of article 127, and to give validity to regulations that appear to deny the principles of local government and decentralisation. The authority granted by the hierarchical nexus in administrative relations cannot be valid in autonomous organisations based on elections. The regulation that allows any member of the municipal council, who is not backed by the majority vote of the council, to become president for political reasons or for purposes that are incompatible with the law is an open call for intervention of the central government. It is unconstitutional to have this determination made by the political organs of the central government. Whether the appointment is temporary or permanent does not affect the result. Also, since there is always the possibility of prosecuting or dismissing from office for these reasons, a "temporary" appointment can also turn into a "permanent" appointment"[23].

23 Constitutional Court, Case no. 1987/22, Judgment no. 1988/19, dated 13 June 1988.

As to this limitation, the Charter stipulates the criteria of legality and proportionality. According to the Recommendation No. 20 (1996) on the Implementation of the Charter, if tutelage control over elected local representatives or bodies does not comply with the principles of legality and proportionality, it may lead to serious consequences, including dismissal. However, in order for sanctions that may have administrative and even criminal consequences, such as temporary dismissal, demotion and final dismissal, to be acceptable, certain conditions must be met. These conditions are (i) sanctions are only required by the constitution and relevant legislation adopted by the legislature; (ii) its application should be as a last resort and in cases where it has become an established practice and as a result of repeated violations or in long-term situations that make it impossible for the relevant persons or bodies to fulfil their duties, and (iii) the right to effective judicial appeal must be guaranteed to control the proportionality of tutelage supervision that may lead to sanctions.

Trustee appointments do not meet the first criterion for the reasons explained above. In fact, when it is so obvious that the legality criterion is not met, there is no need to even discuss other criteria. However, it should be noted that this practice does not meet the second criterion either. Before the elected mayors were dismissed, they were not warned through any other legal mechanism, and the steps that could be taken within the framework of legal administrative tutelage authority were not taken. In this respect, it is not possible to claim that the appointment of a trustee is a last resort. The legal ground for appointing trustees is not ongoing violations or situations that make it impossible to fulfil their duty, but arbitrary terrorism investigations. These investigations will be discussed in detail below; however, it should be noted here that even a glance at the content of these investigations will be enough to demonstrate that the actions of elected local representatives, which consist of the exercise of their political rights and freedom of expression, are associated with terrorism. Therefore, it cannot be claimed that the criterion in the Recommendation is met. Finally, to date, the allegation of unconstitutionality has not been found serious in any of the cases filed by mayors who have been dismissed from their office and replaced by trustees, or municipal council members who have been unable to continue their duties, and no stay of execution or annulment has been decided. In such a situation where the illegality is so obvious and the damage is devastating, administrative courts hesitate and refrain from fulfilling the requirements of the law. In this respect, while the existence of an effective judicial remedy is controversial, it is not possible to claim that there is a judicial review that can properly evaluate the proportionality element.

Another problem regarding the control over dismissal decisions is that the administration, which is supposed to review this decision regarding suspended mayors every two months, is the authority that removes the mayor and replaces him with his hierarchical subordinate[24]. This means that co-mayors, who have already been stripped of all their guarantees, are subjected to a more uncontrolled regime. However, in accordance with article 47 of Law No. 5393, if there is no public interest in temporary dismissal, it is the order of the law to abolish this decision. However,

24 In most of the cases, the co-mayors were replaced by the governors and sub-governors (kaymakam) who are administrative subordinates of the Minister of Interior Affairs.

since the moment when the Emergency Decree No. 674 came into force, none of the mayors who were dismissed in accordance with this procedure have been reinstated[25]. This indicates that an administrative measure that was supposed to be temporary and subject to regular control has become permanent.

Destruction of Local Democracy

The last point that should be emphasised as to the damage caused by the trustee appointments in Turkey's administrative organisation is that, as mentioned in the introduction, there is no elected body left to function in the municipalities where trustees are appointed. The organs of local governments are the mayor, municipal council, and municipal board. The municipal council is the decision-making body, and it has the duty and authority to supervise the mayor according to the Constitution and laws. However, in case the mayor is dismissed from office, the person who will take over the duty as deputy mayor must be elected among the municipal council members and by the council, itself. Thus, the legislation protects the democratic basis of local governments despite the removal from office. The emergency decree, on the other hand, abolished this democratic principle and introduced the practice of appointing the 'new' mayor by the Ministry of Interior Affairs and, in some cases, even by the Governorships. In other words, while the removal of a mayor from office on the grounds of a terrorism investigation is per se against the law, the need for an election to be held by the municipal council and among the elected members of the municipal council has been eliminated, thus dealing another blow to local democracy.

Moreover, although the municipal council continues to be in office on paper, its meeting was subject to the call of the trustee. While municipal council members are prohibited from even entering the municipality building in municipalities where a trustee is appointed[26], it is not reasonable to expect the trustee to call the council to a meeting. The municipal council, which is a democratic body as it is elected and includes members from various political parties, also has the authority and duty to supervise the mayor's work and transactions. The fact that the municipal council cannot meet eliminates this possibility of control. As a result, the governor/district governor at the local level, both as the head of central administration, reporting hierarchically to the Ministry of Internal Affairs, and as the appointed mayor, carries out all work and transactions without any democratic control mechanism. In other words, while the government dismissed the co-mayor elected by the people, it also eliminated the possibility of electing a municipal council member from the political party in the majority in the municipal council (which in almost all cases is HDP).

Again, in accordance with the Emergency Decree, all duties of the municipal board are transferred to the civil servant members of the commission, as if the municipal

25 After the 2019 elections, the co-mayors of Patnos municipality, one of the 6 municipalities remaining in the hands of the People's Equality and Democracy Party (the Party entered the general elections as the Green Left Party after a closure case was filed against the HDP, and at the congress held after the elections, the name of the party was changed to the People's Equality and Democracy Party -DEM Party-). They were put in pre-trial detention on suspicion of bid rigging on June 12, 2023, and were returned to their duties following their release in September. It should be noted that, since bid rigging is a crime related to the duties of co-mayors, suspension from office is a procedure permitted by the Constitution, unlike terrorism investigations. Again, as in the case of trustee appointments, no central appointment was made to replace the suspended co-mayors, and the deputy mayor was elected among the municipal council members, by the council, as it should be according to the Constitution. Thus, this does not constitute a reinstatement regarding trustee appointments.

26 https://artigercek.com/guncel/uc-ilcede-meclis-uyelerinin-belediyelere-girislerine-engel-120242h, https://sendika.org/2020/07/batman-belediyesi-es-baskani-songul-korkmaz-ve-meclis-uyeleri-gozaltina-alindi-591644).

board were dissolved. This means that the elected members of the board are disabled as well, and that the board loses its status as an organ. Thus, another unconstitutional situation arises; with an investigation opened against a person, the entire elected local government bodies is left to the initiative of an appointed person, without any other conditions. As quoted above, while it is only possible for elected bodies to lose their status as organs through a judicial decision, all municipal bodies are paralysed on the grounds of a terrorism investigation.

As a result, local public services are disrupted. The closure of nurseries and similar educational institutions that prioritise multilingualism, women's shelters and other services for women, children, and families at risk is an important problem. This situation, which also constitutes a violation of the right of local governments to dispose freely of their financial resources, has become a rule in Kurdish provinces since 2016. The closure of women's shelters and nurseries is evaluated by the Congress in the context of violation of the Istanbul Convention. Similar criticism was also included in the 16th paragraph of the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) report[27]. The GREVIO clearly emphasised that the fight against violence should be carried out by the most appropriate actors and the importance of the position of local governments in this fight.

Such widespread destruction of local democracy is also observed and disapproved by the voters. According to the results of the field research conducted by Spectrum House in August 2023 with 1351 people in the provinces of Diyarbakır, Mardin, Van, Urfa, Hakkari, Ağrı, Adıyaman, Batman, Kars, Şırnak, Muş, Bitlis, Erzurum, Bingöl, Siirt, Dersim, %75 of voters finds trustee appointments wrong. Voters are predominantly of the opinion that trustee appointments have a negative impact, especially in areas such as children's access to education in their native language and cultural activities.

A Black Hole: Terror Investigations

Trustee appointments, which caused a serious erosion in Turkey's administrative structure, were implemented through terrorism investigations against elected local administrators. Terrorism is a politically charged concept and it is not possible to find a clear legal definition in both international law and national legal systems. Therefore, the meaning and scope of the concept are shaped around the ideological tendencies and political preferences of the ones who have the authority to determine what terrorism is. This creates a vast legal uncertainty. This uncertainty has spread to such a wide area that it has become a concept that is very open to political instrumentalization, with no consensus being reached even on basic issues such as the nature of the action, whether it involves violence, who or what it targets, the perpetrator, its purpose and context.

Turkey is not free from this uncertainty, in fact, compared to states where the rule of law is relatively established, political authorities have used this uncertainty more often to redesign the political sphere. The current government also resorts to the terrorism discourse extensively, both by applying different criteria in different situations, and to suppress and silence

27 https://rm.coe.int/eng-grevio-report-turquie/16808e5283.

the opposition and dissenting voices against it. With terrorism investigations and prosecutions, the boundaries of the legal political arena are reestablished in a conjunctural fashion through the coercive mechanisms of the law. In addition to the political pressure it faces, the Kurdish political movement has been put under legal pressure, through terrorism investigations. Along with the highly controversial nature of the contents of the investigations, basic legal safeguards are also ignored in these processes. Especially after 2015, when the peace process ended, criminal investigations were used to suppress Kurdish political movement and reshape legal politics via the exclusion of Kurdish political movement.

The research report titled "Freedom of Expression Since 1991: Searching for Freedom of Expression in Uncertain Terrorism Legislation"[28] states that the wording of Articles 6, 7/2 and 8 of the Anti-Terrorism Law No. 3713 have changed with the effects of the ECtHR judgments and the judicial packages of the EU harmonisation process, however, the practice remained unchanged. It determines that they continue to maintain their unpredictable and uncertain nature. The report explains that terror crimes, which are related to freedom of expression, as well as other crimes, are subject to practices that make the principle of legality meaningless, such as expression that was not considered a crime in a period of time as a result of the change in the political conjuncture, becoming a crime[29].

It is necessary to approach the use of terror investigations analytically in order to understand their function in the appointment of trustees. The outlook of terror investigations after 2015 is important, especially in the context of the post-2015 state's approach to the Kurdish issue and the state of emergency conditions, which constitute the political context of trustee appointments. However, this should not be done by ignoring the KCK cases, which were initiated in 2009 and affected many politicians, including the co-mayors of the municipalities, and the DTK cases, which were suddenly opened against its participants on the grounds that it was a terrorist organisation, while it was invited to the GNAT to give its opinion in the constitutional debates. Therefore, these cases will be mentioned to the extent necessary in the context of the trustee issue, keeping in mind their continuity and their function of oppressing the Kurdish political movement.

In this context, two interconnected functions of terror investigations will be discussed. The first of these is that actions that are subjected to investigation (and prosecution and even subsequent conviction) reshape the political sphere in local democracies. In other words, a trial process in which what is legal and what is not and actions that are considered illegal within the framework of terrorism is discussed, determines the boundaries of the political discourse that is considered legal by the judicial authorities. The second of these is that the people elected as a result of these investigations cannot continue their duties and are excluded from politics. Again, the aspect of this issue limited to our topic is the *de facto* abolition of decentralisation, and therefore the possibility of democratic representation, in places where Kurds live densely, with trustees appointed to replace the co-mayors of the municipalities. Although trustee appointments will be

28 Kerem Altıparmak, "1991'den Bugüne İfade Özgürlüğü: Belirsiz Terör Mevzuatında İfade Özgürlüğünü Aramak", Kapasite Geliştirme Derneği, Ankara, February 2019.
29 ibid, p. 89, 90.

discussed in more detail below in the context of their impact on fundamental rights and freedoms, it should be noted that the fact that the source of the dismissal and subsequent trustee appointment procedures is an investigation, not a conviction, in itself violates the presumption of innocence. Reviewing all indictments and trial proceedings would be beyond the scope of this policy brief, yet, it is necessary to highlight some patterns to show the function of terror investigations that swallow up undesirable elected officials, including the entire municipal machinery.

After the trustee appointments came into force with the Emergency Decree, trustees were appointed to almost all the administrative units (metropolitan municipalities, provinces, districts, town municipalities) in which DBP was the leading party. In the second wave of trustee appointments following the 2019 local elections, the Ministry of Interior Affairs and the Governorships took over HDP municipalities. The investigations that constitute the grounds of these dismissals and trustee appointments have spread over a wide area, from the electoral campaigns, to press releases, from the speeches of the municipal co-mayors to the March 8 protests and participation in the funerals and consolations of PKK fighters who lost their lives.

The indictment of Gültan Kışanak, the co-mayor of Diyarbakır Metropolitan Municipality at the time, who shared her views with the commission established to investigate the July 15 coup attempt in the GNAT just before she was taken into custody, includes her speeches, DTK activities and contacts with many other local non-governmental organisations, and her political criticism toward the government. While these actions had no connection with violence and could not be considered within the scope of any other crime, the investigation paved the path for the appointment of a trustee to the Diyarbakır Metropolitan Municipality. Local press statements, especially statements to protest and criticise curfews and the military operations carried out during this period that threaten fundamental rights and freedoms, especially the right to life, constitute the important basis of the investigations opened against the co-mayors of the Diyarbakır metropolitan municipality.

The fact that investigations focus on such actions that need to be protected within the framework of human rights is neither new in Turkey nor exclusive to local governments. Recently, in its two judgments regarding HDP politicians, the European Court of Human Rights reiterated its findings in the Kavala judgment and pointed out that the actions should be understood as the exercise of rights protected by the European Convention on Human Rights, let alone constituting a crime in domestic law[30]. Condemning Turkey for violating article 18 of the ECHR and considering this finding as evidence that the government uses criminal investigations as a tool to stifle the pluralist opposition, the Court concluded that criminal investigations against politicians in Turkey should be approached with suspicion. This suspicion should also be considered in legal processes carried out against elected local officials.

30 ECtHR, Kavala/Turkey, para. 157, Selahattin Demirtaş (No. 2) /Turkey, para. 339, Yüksekdağ Şenoğlu and Others/Turkey, para. 545 read as follows: In particular, in view of the nature of the charges against him, the Court observes that the authorities are unable to demonstrate that the applicant's initial and continued pre-trial detention were justified by reasonable suspicions based on an objective assessment of the acts in question. It further notes that the measures were essentially based not only on facts that cannot be reasonably considered as behaviour criminalised under domestic law, but also on facts which were largely related to the exercise of Convention rights. The very fact that such acts were included in the bill of indictment as the constituent elements of an offence in itself diminishes the reasonableness of the suspicions in question."

Trustee appointments and human rights

Violations of fundamental rights and freedoms caused by trustee appointments are multidimensional. Along with the rights of elected representatives and voters, the rights of local governments have been violated in various ways. No meaningful legal remedy has yet been achieved as to violation of human rights regime protected by international conventions and the constitution. Violated human rights are the right to be elected and to participate in public activity, freedom of expression and freedom of association, as well as the presumption of innocence of elected officials. In terms of voters, the right to vote has been violated and freedom of expression and freedom of association have been indirectly limited.

The principle of election is sine qua non for democracy, which is also the founding principle of the republic. The right to vote, to be elected, to engage in political activity and to participate in public service, as a fundamental political right as well as being a fundamental condition of democracy, are guaranteed in Article 67 of the Constitution. At the international level, Article 25 of the United Nations International Covenant on Civil and Political Rights (ICCPR) regulates the right to vote, to be elected and to participate in public administration. While one aspect of this right includes guarantees before the election and on the day of the election, another aspect includes local administrations acting in accordance with the will of the voters until the next election. In this respect, it is not correct to think of the right to vote as limited to elections.

This interpretation was also adopted by the United Nations High Commissioner for Human Rights. At the 57th session of the 1510th meeting held in 1996, the Commissioner listed the guiding principles of interpretation[31]. According to this general interpretation, states have the obligation to create effective opportunities for the exercise of the protected rights to elect, to be elected and to enter public service. The Commissioner's Office states that Article 25 is the essence of a democratic government based on the will of the people and finds that the conditions imposed for the exercise of this right must be based on objective and reasonable criteria (para. 4).

According to the Commissioner's Office, citizens who are protected under paragraph (b) of Article 25 of ICCPR have the right to participate in public services by taking part in legislative, executive, or local government bodies, and by participating in referendums or other election processes. This right is further supported by guarantees of freedom of the press, expression, assembly, and association (paras. 8, 12, 25).

The Commissioner points out another dimension of the right to vote. Accordingly, an integral part of citizens' rights to participate in public service as voters or candidates in elections is elections that are held correctly and at regular intervals. The government is obliged to ensure that the free will of the voters is reflected in the ballot box (para. 10). Considering this right to be limited to election day is incompatible with the principles protected by the right. The reflection of free will in the ballot box must be completed by the person carrying out this duty, free from any unlawful interference, during the term of office determined by law. It is clear that trustee

31 https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf.

appointments are incompatible with these principles.

Considering that the basis of terror investigations, which are shown as the grounds for the appointment of trustees, are the actions and statements in which politicians share their critical views and organise protests, obviously, the appointment of trustees constitutes a serious intervention against freedom of expression. This intervention is not in line with the requirements of a democratic society, nor is it proportionate, for the reasons detailed above. Terror investigations are not the only factor that violates freedom of expression in the context of trustee appointments. Removing the person whom the people prefer because they find their views compatible with them from power constitutes a serious violation of freedom of expression.

Likewise, the fact that this practice is based on terror investigations launched against the political party activities of elected co-mayors and that it mainly targets municipalities won by the Kurdish political movement harms the freedom of association of both voters and elected officials. The fact that election campaigns, protests and press statements organised by HDP or DBP become grounds for dismissal from office is a violation of freedom of expression, as well as the right to association, assembly, and demonstration.

Finally, the dismissal of a person who has no election impediment or a conviction should be a temporary administrative measure. Transactions carried out based on this temporary tutelage authority, which should be interpreted in a limited way, are incompatible with the presumption of innocence, which is absolutely protected even within the scope of Article 15 of the Constitution, even under the state of emergency. Preventing municipal council members, who have no obstacle to be elected, from performing their duties indicates a collective punishment practice[32].

This fact is observed in the report of the Venice Commission. According to the Commission, the provisions of the Emergency Decree affect not only the person alleged to have committed a terrorism-related crime, but also all municipal council activities and all council members who are free from such an accusation (para. 81). The Commission continues by stating that in this new regime, there is not much room left in practice for local affairs and transactions to be carried out by locally elected people, and states that this is a collective punishment, referring to the European Commissioner for Human Rights.

Indeed, voters see the trustee appointments as a violation of rights. 77% of voters interpret this practice as an intervention in the right to vote and be elected. Again, the rate of voters who think that the trustee practice has a negative impact on freedom of expression is 75.9%. This opinion, which increases in direct proportion to the level of education, reaches 79.6% among voters with postgraduate education. This rate does not only consist of voters who voted for HDP in previous local elections. Nearly 60% of CHP voters, 64.3% of İYİ Party voters and half of the voters who stated that they did not vote in the previous elections believe that the trustee practice negatively affects freedom of expression.

32 https://www.gazeteduvar.com.tr/gundem/2019/08/21/kayyim-uygulamasi-hukuka-ve-anayasaya-aykiri/.

Likewise, the voters think that the trustee appointments constitute an interference to the freedom of association. While 70.8% of voters see this as an intervention, voters with this view have spread across various opposition parties, just like voters who think there is a violation of freedom of expression.

Conclusion and Recommendations

1. Along with the right to vote and be elected, freedom of expression, freedom of association and the right to autonomy of local governments have been violated through trustee appointments. Turkey's violation of both its own laws, especially the Constitution, and the international conventions it is a party to, and the fact that it does not face any consequences for this, is an important problem on the eve of local elections.

2. Trustee appointments are implemented as a practice based on the "recentralisation" of regions where Kurds live densely. By usurping the will of the people in Kurdish cities and eliminating local representation, the authoritarian administration has consolidated its power by pushing the Kurds out of legal politics.

3. Trustee appointments cause disruptions in local services and ignore the needs of local dynamics. This practice further deepens the disadvantaged position of the local vis-à-vis the centre. It should not be forgotten that democratic control in local services has also been eliminated through trustee appointments. In this respect, the accountability and transparency of local governments have been restricted and control over the use of resources has become impossible. As a result, news about unlawful benefits provided to various groups and that properties owned by municipalities are being sold, transferred, or allocated illegally are reflected in the press. The possibility of both administrative and judicial control over such practices has disappeared because of the trustee appointments.

4. With the appointment of trustees, the law has been instrumentalised in accordance with the will of the government. It is against the law per se to criminalise the political activities of elected local administrators, which consist of the exercise of their fundamental rights and freedoms, their expressions in press statements, and the meetings and marches they attend. Linking this to the appointment of trustees results in the recentralisation of local governments through arbitrary practices.

5. To date, trustees appointed almost exclusively (with 4 exceptions) to municipalities won by the Kurdish political movement have also restricted the use of the Kurdish language in the public sphere. In addition to artistic and cultural activities in Kurdish, practices such as Kurdish and multilingual education and public services such as in women's shelters or nurseries have been eliminated because of trustee appointments. Thus, the services received by locals, especially members of minority groups have been limited and, in some cases, eliminated.

6. As a result, being unlawful, the trustee appointments harm social peace as a step towards the exclusion of Kurdish politics from the legal political domain. The expulsion not only of political representatives but also of the Kurdish voters themselves out of the legal political sphere are serious enough to have consequences that go far beyond being a local government problem.

7. In this context, the end of this practice, which was initially limited to the state of emergency, and the return of Turkey's administrative organisation to the framework drawn in the Constitution are the prerequisites for local elections to be held on a democratic basis.

8. The democratic quality of local elections depends on local government bodies regaining their guarantees, the framework of which is drawn by the Constitution and international law. Local elections should be conducted without the shadow of trustee appointments, and trustees should be removed from being a political bargaining tool.

9. Appropriate and effective legal mechanisms must be established to restore the rights of elected local administrators who have been removed from office through the practice of trusteeship.

10. In order to effectively audit the actions taken during the trustee period, transparent, participatory and effective auditing mechanisms should be presented, and retrospective auditing of trustee practices should be ensured.

11. Considering that the main opposition party did not bring the trustee practice before the Constitutional Court for the constitutionality review, it is also very important that it strives to reduce the effects of the legal, political, and social damage created by the appointment of trustees.

12. There is an imminent danger that this unlawful practice will affect the municipalities where all opposition parties won/will win. In this respect, it is recommended that the necessary initiatives be taken in the GNAT to remove this practice, whose illegality has been demonstrated above, from the legal order and that this unlawfulness be kept on the agenda before the local elections.

13. Keeping in mind the difficulties faced by the HDP as a legal entity by facing a party closure case, and by the MPs and locally elected representatives by legal harassment, the effective use of legal remedies against these attacks maintains utmost importance.

14. There continues to be a great need for the DEM Party, especially before the local elections, to share the impact of the trustee appointments with the relevant bodies of international conventions and charters, both through legal and diplomatic means.

15. It is important for the DEM Party, together with civil society and human rights organisations, to conduct in-depth investigations on the effects of trustee appointments on the public and local governments in order to be able to draw up the human rights costs of trustee appointments.