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**THE ALTERNATIVE SERVICE METHODS IN MUNICIPALITIES**

**( The example of Metropolitan Municipality of Istanbul )**

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**Servet ÇİÇEK**



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## TUTANAK

.....SERVET.....ÇİĞEK.....'a ait

“...Alternative..Service..Methods...i.o..Municipalities....”  
(The example of Metropolitan Municipality of Istanbul)  
çalışma 70.... dk.'lik süre içinde savunulmuş ve jüri tarafından  
nu...Yönetimi.. Anabilim Dalında YÜKSEK LİSANS TEZİ olarak oy  
ğıyla / oy cokluğuyla kabul edilmiştir / edilmemiştir.  
..... yariyil ek süre verilmiştir.

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## ÖZET

1970'li yıllarda itibaren ülkemizde yoğunlaşan köyden kente göç olgusu hızlı ve çarpık kentleşmeyi de beraberinde getirmiştir. Çarpık kentleşme sonucu olarak da özellikle İstanbul, Ankara, İzmir, Adana, Diyarbakır gibi metropoliten yerleşim biçimini olma özelliği kazanan büyük şehirlerde öbü alınamaz problemleri beraberinde getirmiştir. Çalışmamızda bu problemlerin çözümü için belediyelerin kullandığı ve kullanılması bizce gerekli olan kamu hizmeti yöntemleri üzerinde durulmuştur.

Günümüzde tüm etkileriyle yaşanan hızlı kentsel büyümeye süreci, yerel hizmetlere yönelik talepte büyük bir artış ve çeşitlenmeyi beraberinde getirmektedir. Bu gelişmeler, mahalli idarelerde yeni ve dinamik bir yönetim anlayışını getirmekte ve bu çerçevede, insana yönelik, daha yaratıcı, esnek ve rasyonel yönetsel yapılar ve tekniklerin geliştirilmesine olan gereksinimi ortaya çıkarmaktadır. Bu kapsamında, mahalli idarenin geliştirilmesini hedefleyen kurumsal düzenlemelerin önemli bir boyutunu, kentsel hizmetlerin sunulması konusundaki alışagelmiş yaklaşımların yeniden gözden geçirilmesi oluşturmaktadır. Mahalli İdareler, bir yandan hizmet sunumunda etkinlik ve verimliliği artırmak, öte yandan halkın yönetime ve hizmet sunum sürecine katılmasını özendirmek amacıyla, kentsel hizmetleri doğrudan kendileri sağlayacak biçimde sağlayacak biçimde teşkilatlanmak yerine, bu hizmetlerin giderek daha büyük bir bölümünü alternatif hizmet sunma yöntemleri çerçevesinde üretmeye başlamışlardır.

Çalışmamızda, bu belediyelerin hizmet yürütme yöntemleri ve politikaları İstanbul Büyük Şehir Belediyesi dikkate alınmak suretiyle, teorik ve uygulama yönünde incelenmeye çalışılmıştır. Bu yapılrken, özellikle Türkçe kaynaklardan,

çeşitli kuruluşların bu konu hakkında yayınladıkları raporlardan ve çeşitli kaynak eserlerden faydalانılmıştır.

Bu çalışmada, mahalli yöneticilere ve mahalli yönetim alanında çalışanlara, beldelerine ve hemşehrilerine hizmet sunarken, izleyebilecekleri farklı yöntemler konusunda bir çerçeve çizmektedir. Bu çerçeveye, alternatif hizmet sunma konusundaki bir takım ilginç yöntemlerinden farklılaşma eğilimi gösteren seçeneklere dayandırılmıştır. Çalışmada, kentsel hizmet sunumunda farklı yöntemler uygulanmasına yol açan kararların ardından da yatan gerçeklere dikkat çekilmesi amaçlanmıştır.

Yine bu çalışmada, bir yandan kamu hizmetlerine olduğu ve yerine getirilmesi yöntemleri; diğer yandan, belediyelerin kamu hizmetleri içindeki yeri ve hizmet sunma yöntemleri üzerinde durulmuştur. Son bölümde de İstanbul Büyük şehir Belediyesi'nin sorunlarının çözümüne ilişkin temel yaklaşımlar ve izlenecek alternatif hizmet yöntemlerine ilişkin değerlendirmeler üzerinde durulmuştur.

Belediyelerin yürüttükleri hizmetler çok çeşitli olduğu için kullandıkları hizmet yöntemlerinin de çok farklı olması doğaldır. Belediyeler, hizmetlerin yürütülmesinde kurum dışı hizmet yöntemlerine daha çok önem vermelii ve gönüllü kuruluşlarla işbirliğini geliştirmelidirler.

Artık kamu yönetimi, belediye hizmetlerinin halka tek aktörlü işleyen bir yapı değil, gönüllü kuruluşlarında piyasa kurallarını öne çıkardığı çok aktörlü bir yönetim biçimine dönüştüğü bir yönetim biçimine dönüşmüştür. Bu yapılarken de belediyelerin kamusal sorumlulukları daima göz önünde bulundurulmuştur.

## BSTRACT

Since 1970, increasing immigration in our country from village to the city has brought fast and distorted urbanization. Especially in metropolises such as İstanbul, Ankara, İzmir, Adana and Diyarbakır there emerged many problems as a result of distorted urbanization. This study aimed to emphasize techniques and methods of public service used by municipalities for the solution of these problems.

Today increasing urbanization with its effects courses to increase and diversification in the demand for local services. All of these developments have brought new and dynamic management understanding in the local administrations and in this aspect it made necessary to develop rational, creative and elastic methods and administrative entities. Therefore it is necessary to review traditional approaches on the delivery of services in cities, which aimed to develop local administrations. Local administrations try not only to increase effectiveness and productivity in the delivery of service but also to accelerate participation of citizens in administrative apparatus and in the delivery of service. Thus municipalities have began to focus mostly on alternative methods of service delivery rather than on organizing for the direct delivery of city services.

Our study aimed to analyze service delivery methods and policies of municipalities by taking metropolitan municipality of İstanbul into consideration in terms of theory and practice. Mostly Turkish resources and reports of different institutions related to this matter and other resources are used in doing research.

The aim of this study is to draw a framework to local administrators and those who work in the field of local administrations. When providing service this framework depends on options that have diversified tendency in the alternative service methods. It is

ned in this study that real reason behind the use of different methods in the delivery of city service.

This work deals not only with methods in public services and but also with the use of municipalities in public services and the delivery methods. The basic approaches of Metropolitan Municipality of Istanbul on the solution of problems and alternative methods are analyzed in the last part.

It is natural that municipalities have different service methods because of implementing different services municipalities should attach more importance to service methods not by developed institution should be improve cooperation with non-governmental organization.

Public administration is no longer one dimensional process continued from municipalities to the public. But, administration transformed into multi dimensional process in which non-governmental organization method rules had become more important.

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## LIST OF ABBREVIATIONS

KİT	Kamu İktisadi Teşekkülerİ
İSBF	İstanbul Üniversitesi Siyasal Bilgiler Fakültesi
PTT	Posta Telgraf Telefon İdaresi
İETT	İstanbul Elektrik Tünel Tramvay İşletmesi
T.C.D.D	Türkiye Cumhuriyeti Devlet Demir Yolları
SKİ	Ankara Su VE Kanalizasyon İdaresi
İSKİ	İstanbul Su ve Kanalizasyon İdaresi
İC	Infrastructure Coordination Center and Transportation Coordination Center
CPA	The National Center for Policy Analysis and Adam Smith Institute
ME	Municipal Economic Enterprises
İTON	Istanbul Beton Elemanları A.Ş
FALT	Istanbul Asfalt A.Ş
İGDAŞ	İstanbul Gaz Dağıtım A.Ş
JLA – EMME	Uluslararası arası Yerel Yönetimler Birliği Doğu Akdeniz ve Ortadoğu Bölge Teşkilatı
YKOME	Altyapı Koordinasyon Merkezi
DP	Devlet Planlama Teşkilatı



## INTRODUCTION

"It takes our attention that from 1970's, in various countries the new policy searching have been initiated to increase the efficiency and productivity of the public services. Because the classical administration, as it expanded so much with respect to structure and functions, proceeds slowly and inefficiently and becomes insufficient to perform new duties. For that reason, the subjects of redefining the role of the state in economical and social life and in relation to this, the subject of the reduction of the public sector comes to the agenda. Thus, there emerged policies with respect to changing or variation the classical service methods.

In our country where, for many years most of the local services were tired to be executed from the center, with the recent regulations, the transfer of some basic powers and duties to municipalities such as preparing the construction plans which in fact belong to the municipalities, the decentralization of some services executed from the center, all have led the local services to be supplied to the public faster and more effectively, the effective usage of resources and the mobilization of the local resources.

The need for revitalization of the non-traditional solutions and the new styles of thoughts led by the efforts to keep the growing rate of the public expenditures in a low level most saliently has showed itself in the local governments.

Today, the growing process of the urbanization with its full effect has brought the increase and variation directed at the local services with itself. These developments have brought a new and dynamic understanding of administration in the local governments and with that frame, these developments have produced the needs for the improvement of more creative, flexible and rational administrative bodies devoted to humans. In that context, the revision of the customary approaches in providing the urban services constitute the substantial side of the institutional arrangements that aims to improve the local administration.

The local governments, in one hand for the sake of increasing the effectiveness and productivity in providing services, on the other hand with the aim of encouraging the people the participate in the process of administration and providing services, instead of organizing themselves for supplying the urban services directly, have begun to produce increasingly most parts of these services with the frame of alternative methods of providing services.

The aim of this study is to perform a depiction of the different methods for the local governors and the ones who study about local administration while they are providing services for their towns and fellow-townsman. This context has been based upon the options that tend to differ from some interesting methods. In the study; taking attention to the realities behind the decisions that give the way to the application of different methods in the providence of urban services is aimed.

Again, in this study, on one hand what the public services are and their methods of application, on the other hand, the place of the municipalities in public services and their methods of providing services are mentioned. At the last part, the extensively applied servicing methods are being mentioned in the Metropolitan Municipality of Istanbul.

In our work, the service executing methods and policies of the municipalities regarding the example of Metropolitan Municipality of Istanbul are tried to be examined from theoretical and practical sides.

While this is done, especially the Turkish resources, the reports of different institutions issued about this subject and the interviews with the governors have been used. The monthly bulletins of the Metropolitan Municipality of Istanbul have also been used as a resource with respect to their relation with the subject.

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## CHAPTER I

### THE QUALITY OF THE PUBLIC SERVICES AND THEIR METHODS OF PROVISION

In this chapter, the concept, meaning, composition, principles and properties of the public service are mentioned. Firstly, the description and the classification of public services in various aspects have been made then, the methods of their application have been examined.

#### I.1. The Concept of Public Service

The subjects that are being examined under that main title will be more about the meaning, elements, principles and properties of the public service. For introduction to the subject, firstly, the public service has been defined. The execution of the service by the public juridical persons, the direction of the service to public and its usefulness for public, the continuity and regularity, that are the elements of public service have been examined. After that, the properties of the public service have been tried to be explained. After the elements of the public service, lastly, the principles of the public service have been mentioned.

##### I.1.1. The Meaning of Public Service

The public service comes forth as a flexible concept that changes according to the place it is used. It is necessary to think what the public service means due to

the place it is used. As this is the case, it is also possible to make a common definition of the public service.<sup>1</sup>

In the literature of the administrative law, the Public Service can be described as “the continuous and regular actions” that are provided for the public for the sake of meeting the general collective needs and providing the public interest by the state or public juridical persons or under their supervision and control.<sup>2</sup>

The concept of public interest is defined with regard to the organic, material and formal aspects. According to this;

In the organic aspect, the public service is the sum of all agencies and fiscal tools in order to execute a duty that were assigned by a public juridical person. As it is seen in that definition, the mentioned thing is an organization namely the government.<sup>3</sup>

In the material aspect, the public service is described as the activity that has a public interest in its satisfaction and that meets a social need.

In the formal aspect, the public services are the actions that are executed by public juridical persons or by the private enterprise under their supervision and control with the aim of meeting a social need that has a public interest in its satisfaction.<sup>4</sup>

When the meeting of the general and common needs in the society depending upon a method with the principle of division of labor is talked about, the state interferes that sphere and subject and provides the satisfaction of that need. This action of the state is mainly in three types. These can be counted as, the public service, secondly, the support of private enterprises that are for public interest; thirdly, the security that is the protective administration service.<sup>5</sup>

<sup>1</sup> P.F., Bowers, *Private Choice and Public Welfare*, The Economic and Public Goods, Hinsdale Illinois The Dryden Pres, 1974, p.22.

<sup>2</sup> S.Sami, Onar, *İdare Hukukunun Umumi Esasları*, , Hak Basm, Istanbul, 1966, p.13-4.

<sup>3</sup> Julius Margolis and H. Guitton, *Public Economics*, Macmillian Press, London, 1969. p.98-144.

<sup>4</sup> İsmet, Giritli ve Tayfun Akgünér, *İdare Hukuku Ders Notları*, Istanbul, Filiz Press, 1987, p.127. Onar , 27.

<sup>5</sup> İlhan, Özay, *Günlüğünde Yönetim*, Alfa Press-Delivery, Istanbul, 1994, p.239.

The public needs are called as the public services in the public law. Who determines various public services in fact? In other words, who determines which services are the public services? These services must be compatible with the demands of the individuals who constitute the society. But in that sense, it is impossible to sum up all the needs and demands of the individuals one by one and perform a collective service. There may be some people who do not want the services of the public works and health, even security to be the public services. For that reason, without considering the individual demands and wants one by one, the services that are determined for the general interest and need for the society by the authorized political organs are described as the public services.<sup>6</sup>

As it is seen, what the public services mean is considered again with the frame of newly emerging needs and an evident description is tried to be reached.

The public service, for most of the time, has been seen as the cause of existence of the administration, even of the state.<sup>7</sup> It is not so wrong to say that the actions of administration are mainly consisted of executing and applying the public services, because according to the doctrine of public services, the cause of existence of the state is to work for the interest of the society, to engage in the enterprises that are necessary and beneficial for the public and to execute the activities. State, according to this view, is the whole of the organization of the public services. So that, even in the descriptions of the state, the identification of the public services with the state is seen. As in the description such as “state, the sum of the public services”<sup>8</sup>.

In the socialist thought, the sphere of the public services is widely considered. The execution of all public services by the state is demanded. Whereas the liberal view has claimed that the state should have a limited place and the private enterprise should be given more importance.

According to a general description, the public services are the general and regular services that are executed for the public with an organization depending upon

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<sup>6</sup>Akif, Erginay, *Kamu Maliyesi*, Savaş Publications, Ankara, 1992, p.11.

<sup>7</sup>Ricardo, Coase, “The Problem of Economic Cost”, *Journal of Law and Economics*, vol.1,1960. pp. 1-44

public power and specialization, for the sake of meeting the needs of all and keeping the interests of all.<sup>9</sup>

According to this description, the elements of public service are these:

- 1- Being an enterprise established or executed by the state or other public juridical persons or under their supervision and control or with the attendance of some of them.
- 2- Being established in order to meet and satisfy the general and collective needs and to provide public interest and being supplied for general usage.
- 3- Working in a continuous and regular way.<sup>10</sup>

### I.1.2. The Elements of Public Service

There are some elements of public services. We can count them as such: The execution of the service by public juridical persons, the direction of the services to the public and being beneficial for the public, being continuous and regular of the service. Now, we try to examine them in order.

#### I.1.2.1. The Execution of the Service by Public Persons:

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<sup>8</sup>Ernest J., Mishan, "The Relationship Between Joint Products, Collective Goods, and External Effects", *Journal of Political Economy*, vol.2, 1969, pp.329-348.

<sup>9</sup>Zerrin, Toprak, "İl Özel İdarelerinin Görevleri ve Kamusal Hizmet Yaklaşımı", *Türk İdare Dergisi*, vol.62, no.387, 1994, p.158.

<sup>10</sup>Onar, op.cit. p.14.

It stems from the concepts that the individuals have started to live as a society, the things they needed have increased and they have not been able to meet them by themselves or at the basis of their families. The transition from the community to the society, the emergence and development of some rules of the concept of division of labor happened with the establishment of this principle. The needs of the individuals have increased day by day. Although there are efforts and actions of one person, there is a strong need of groupings of men and goods, for the meeting of the others. Thus the groupings of goods and services have been constituted, that can go into many activities such as foundations and cooperation by developing a judicial personality.<sup>11</sup>

When the modern societies are observed, it has been seen that some of the needs are met by private real or juridical persons in the framework private law due to the market economy, namely the price that comes according to demand and supply<sup>12</sup> People meet the goods and services from the market that they did not produce.<sup>13</sup> On the other hand, it is a fact that the similar, even the same needs will be and are met by the public juridical persons or institutions called as the administration by the actions executed under the supervision and control of the administration.<sup>14</sup>

Considering the establishment and execution of the public services are the duties of the state, if these needs are met and satisfied by individuals or private enterprises, in this case, it has been argued that the subject of the action does not form a public service.

Are the public services the ones that are only performed by the state, local governments or other public institutions? Can the public service be performed by the private persons with a Franchise contract? It can be performed. In that case the private person is subject to the supervision and control of the administration. It is said: "the public services are the actions that are executed for meeting the demands

<sup>11</sup> Özay, op.cit., p.240.

<sup>12</sup> Kenan, Bulutoğlu, *Kamu Ekonomisine Giriş*, Filiz Kitabevi, Ankara, 1986, p.6.

<sup>13</sup> Ragıp, Sarıca, *Administration Law*, (From The Lecturing Notes, 1970), p.59.

<sup>14</sup> Onar, op.cit., p.14.

that the general interest of the public requires.”<sup>15</sup> Besides, the private enterprises that are general, common and continuous, such as transportation, communication and education at the same time that satisfy the essential needs, in the organic aspects, that is to say in the strict and technical aspect, are not public services; in the doctrine they are called as 'Functional Public Services' besides 'Virtual Public Services'.<sup>16</sup> In just the same way, in Turkish Law, the council of state has mentioned the service that is in character of the public duty in the decision below, without giving it's name as 'Virtual Public Service'.

For some services, at that branch, the specialists and public institutions can be formed. Except this, as mentioned before, the public services can be formed by private persons with a Franchise contract. In that case, the private person is subject to the supervision and control of the administration and the service performed is a public service.<sup>17</sup>

In the law of state officials, ten classes of services are mentioned. While from these services, for example, education and schooling services are given by the state, nowadays also the private schools can give this service. At the same time, the private schools may pursue a profit aim in that. But, they are subject to the supervision and control of the administration. As the service is again a public service, the view is well known that the condition is not valid that the service it is only met by public juridical persons.

The administration and also the private enterprises can perform the meeting of the common and general needs in the society. The only difference is that, when the

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<sup>15</sup> Onar, op.cit. , p.33.

<sup>16</sup> R., Dorfman, “General Equilibrium With Public Goods” in *Public Economics*, Mac Million Press, London, 1969, p.247.

<sup>17</sup> There are ten types of services in the law of state officials. As following these;

1. General Administration Service
2. Technical Services
3. Health Services
4. Education and Schooling Services
5. Advocacy Services
6. Religious Services
7. Security Services
8. Assistance Services
9. Civil Administrative Services
10. National Intelligence Services

private enterprise is mentioned, it is called as “virtual” or “functional public service”.<sup>18</sup>

The most important element of the concept of the public service is not the style of administration, but rather its aim, and the quality of the organ that takes the responsibility of it. “The public services are the actions that are directly performed or are being done by the state and other public juridical persons under order and their responsibility to meet the general common needs of the society, people, public or communities, for the sake of supplying these properly.”

The public service can also be described as the administrative actions that supply and provide a performance to the individuals and societies. Nowadays these actions are provided by private persons more than the public juridical persons. But when all the public services are considered, it is seen that these services are much more provided by public juridical persons.

#### I.1.2.2. The Direction of the Service to Public and its Usefulness for Public

The direction of a service to public can not be enough for it to be regarded as a public service. But the general idea is that the services that are directed to public are the public services. But again, some writers argue that some services that are directed to public are not public services. For example, the providence of the urban private 'Taxi' transportation by the private enterprise hinders it to be a public service. But here, the thing that should not be forgotten is the necessary conditions for a service to be regarded as a public service. These are:

First; the direction of a service to public and its usefulness for public. This condition exists in the taxi example above.

Second; the execution of the service either by the public institutions or by the private persons under the control of related public institution. Again, in the taxi example mentioned above, the private persons that make this transportation are again

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<sup>18</sup> Özay, op.cit., p. 247.

under the control of a public institutions. As it seen, the service done has also the second condition of being a public service.<sup>19</sup> Generally, the description of the public service is also depended upon the criteria of Public Law. But taking the public interest criteria and defining the public interest depended upon it seems too hard where the concept of public interest itself is an undefined concept, which is sometimes explained as the definite interest of the society, a group or a class and sometimes of the individuals.

The concept of public interest is pointed out in Meydan Larousse that it can be examined in two groups as political and legal; Politically, the public interest is a matter of choice and also the public interest emerges by holding the interest of the greater group' s interests rather than the smaller group' s interests and the thing that weights according to the modern values should be preferred as the public interest.<sup>20</sup>

The services that are indirectly beneficial to the public are not counted as the public services. To be a public service, it should be directly directed to the public. It is defined that the public interest exists in the services that the administration executes directly by itself and also in the actions of the administration, the public interest exists indirectly.<sup>21</sup>

The public service, with that property of itself, differs from the private enterprise and actions and for that reasons the services that are related to private goods of the public organizations are not counted, as the public services. With that respect it is possible to separate the services of the SEE's (KIT) as the services that provide an interest to the public directly and indirectly. Railways and electricity services are the public services that are directly provided for the public.

It is said that, the actions such as coal mining, iron and steel production and textile industry can not be counted as public services.<sup>22</sup> But the service provided is an economical public service and although it is indirect, it is defended by some writers that they can be counted as public services.

<sup>19</sup> A. Şeref, Gözübüyük, *Yönetim Hukuku*, Turan Publications, Ankara, 1994, p.223.

<sup>20</sup> H. Aydin Tuncay, *İdare Hukuku ve İdari Yargının Bazı Sorunları*, Danıştay Publication , (Ankara: 1972, p.21.

<sup>21</sup> Giritli-Akgüner, op.cit., p129.

<sup>22</sup> Balta, op.cit., p. 19.

The public services are the services that are supplied to everyone. When the public service is established, the users are not selected by the administration. People benefit from these services under equal conditions, if it is provided that the service is supplied under the equal conditions, (like walking through the streets or resting in the park)

#### I.1.2.3. The Continuity and Regularity of the Service

As a rule, the public services are continuous. Hence, there can be a public service that is periodical or temporary. The temporary services that are executed in the earthquakes or floods are the public services. By its own nature, some of the public services should carry continuity. Every kind of cutting, hesitation and limping cause serious depravations in the order of the society. For example, in a certain time, when the water does not flow, the electricity is off and the wastes are not collected, the social life in that city will be paralyses. Here the important thing is the continuation of the public services actually. In the Law of State Officials, there is a provision that a resigned officer waits until an the officer or an agent comes instead in a month.<sup>23</sup>

In order to meet the demands of the society and to provide the public interest, the public service should be met without stopping and properly. In fact, as this action has been never or in completely done by the private enterprise, it is charged by the public organizations and executed as a public service.<sup>24</sup>

Unless the public services are removed by the administration, these actions will continue with respect to both legality and action. Thus, there's the rule of attachment and obligation in the public services instead of freedom. The public service is given to the administration as a duty to be obliged to perform directly or indirectly, but exactly with a law. The continuity should be seen as both a legal and actual action. These explanations take place in the Law of State Officers;

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<sup>23</sup> Law of State Officers with no. 657, Article 94

<sup>24</sup> Gözübüyük, op.cit., p.221.

- a) According to the 94<sup>th</sup> Article of the Law of State Officers with number 657, the officers of the state can abdicate the office by applying to their institutions with a petition. The acceptance of the abdication is possible with appointment of other person to his place or completing the time of waiting. But, in the conditions of emergency law, wars and extraordinary situations, this time period can always last much more. This situation is an example of the necessity of the continuation regarding the service.
- b) The right of strike: The rights of trade union forming and strike are not given to the officers in 1982 constitution and in the Law of State Officers.<sup>25</sup> But with the new amendment made, it is aimed to give the right of formation of unions to the officers.<sup>26</sup>

### I.1.3. The Principles of Public Service

The principles of the Public Service are these: the continuity of the service, second, the equal providence of the service; third, the compatibility of the service with changes; fourth, and the last, the use of the service without price.

Now let's see these shortly :

#### I.1.3.1. The Continuity of the Service:

The most important determinant factor of the public service is that it carries continuity. Not exposing the service to discontinuity is a principle. Due to this principle, the precautions are taken against the situations that stop the continuity of

<sup>25</sup> D.M.K, Article. 94.

<sup>26</sup> The amendment that is thought to be made about this subject is still in the agenda of TGNA

the public services and limitations are brought. For example; the tools and vehicles that are assigned for the public service can not be sequestered. In most countries, non-recognition of the right of strike to officers, prohibition of the strike, their limitation -even if it is recognized-, are for the continuity of the public services.

The continuous actions constitute the bulk of the public services. These actions and also some of the public services have temporary properties. For example, the services, which are made by the administration during a disaster in order to meet the newly emerging needs, are temporary services. The situations such as floods or earthquakes may be good examples to these kind of temporary services.<sup>27</sup>

The continuity of the public services should not mean that they are without intervals. "The action is proportioned with the need".<sup>28</sup> There can be doctors on duty in a hospital in the holidays and day-off, again in the holidays the schools can be closed. This is related with the style of providence and principles of the service. But whatever the thing done is the public service.

The continuity of the public services is for the providence of the public interest. It can be a matter of fact for a public service to be executed and then to be abolished when the need ends. But this does not influence the continuity principle of the public service.<sup>29</sup>

#### I.1.3.2. The Equal Provision of the Service

The public service is supplied and provided under the objective and equal conditions. As the aim of the public service is the public interest, the administration should act impartially by obeying the objective principles. The individuals either in usage, or in participation are equal with respect to the public services. But this equality is current for the ones that are under the same legal conditions. Anyone

<sup>27</sup> Balta, op.cit., p.21.

<sup>28</sup> Birsen, Çırakman, "Kamu Hizmeti", *Amme İdaresi Dergisi*, Vol.9, 1976, p.77.

<sup>29</sup> OECD,18.Administration as Service the Public Client, Paris, 1987, p.29.

could not be Franchised. Noticing no difference with regarding the provisions that the service requires between the individuals is a necessity of the equality principle.

The public service is applied to the ones that are in the same situation according to the same conditions. Equality is the necessity of the democratic state of law. Equality under the law has reflected to the public services. For that reason, all the citizens are equal in front of the public services with respect to rights and duties. Equality and similarity is a matter of fact when there is uniformity.

Also in France, as in Turkey, the individuals are equal in front of the public services but this equality is not absolute. Equality exists as a principle. But as the service addresses the general interest, in the cases where the private interest hinders the general interest, the private interest is taken into consideration.<sup>30</sup>

#### I.1.3.3. The Insurance of the Harmony of the Service to the Charge;

According to this principle, the public services, by considering the changing and developing conditions of the day, should adapt themselves. The public service is changeable. That is to say, it should adapt itself to the developing needs of the society and the technology, because the providence of a need as a public service is directed to the aim of meeting the needs of the individuals and the society in that subject in the most suitable way. As the common interest and the needs of the society change, also the Public Service should change. Here, the administration uses its discretionary power and by following the necessities of the age, adapts the service according to the necessities of the age.<sup>31</sup>

In the face of the changing conditions, the new methods, tools and regulations should be given a place immediately in the organization and execution of

<sup>30</sup> Vecihi, Tönük, "Amme Hizmetinde Amme Hukuku ve Hususi Hukukun Yeri", *İdare Dergisi*, vol. 171, November-December 1994, p.190.

<sup>31</sup> Giritli- Akgüner, op.cit., p.137.

the public services. The public services are the services that are directed to the interest of the society. For that reason, it's not a matter of discussion to protect and to use the special interests. The needs are unlimited and they are subject to change. The technology changes with a vertiginous speed. Thus, in an aspect, the changes emerge in the tools and methods of the public service. Precisely, these changes willingly or unwillingly, influence the change of the public services, with that respect, both the organization and the style of execution of the public services can always be changed.<sup>32</sup> But the speed and the border of the change differs according to the economic, scientific and social level of the country where the administration exists.<sup>33</sup>

#### I.1.3.4. The Use of the Service without Price

When the public services are limited, they are, in the real meanings, non-priced and free. The basic principle in the supply of the public services is that, the ones who benefit from the service do not pay a price. The distribution of the cost between the citizens, as in the case of deciding the type and price of services, is done by the political methods. For that reason, there is no importance of the production technology of the public services that the users pay for them.<sup>34</sup>

As the number of users of the public services increase, the principle of usage without price had to be left. This produced a sharp rivalry situation on the public service. As a result of that, the public service becomes service that is complained about.<sup>35</sup>

Since the number of the people who benefit from the public services increases, it is seen that the ones who do not benefit from these services also carry the burden of the services that are provided freely. Thus by regarding the economic

<sup>32</sup> Onar, op.it., p.21.

<sup>33</sup> Yıldızhan Yayla, *İdare Hukuku*, Filiz Kitabevi, İstanbul, 1985, p. 66.

<sup>34</sup> Bulutoglu, op.cit., p.10.

<sup>35</sup> Cemil, Oktay, *Yükselen Siyasal İstemler Karşısında Türk Siyasal Sistemi ve Kamu Bürokrasisi*, İ.Ü.S.B.F. Yayımları, İstanbul, no.13, 1983, p.35.

well being of the people, it is accepted to get a special amount. In reality, it is defended that the amount taken was not a price.<sup>36</sup>

In fact, people participate to the costs of the public services by paying taxes and expenses. The price that is separately taken from the users of the service should be determined not according to the cost of the service, but to a principle of a fair tax. For this reason, the money paid is not a price.<sup>37</sup>

#### I.1.4. The Properties of the Public Services

The changes in duties of the state influenced the public service in a great extent. This enlarged the sphere of the public service. Big developments have taken place in the public services that are in social and economical nature. It would be useful to touch upon some of the properties of the public services.

1. The public services are the activities that are open to the usage of the individuals. The equality principle is taken care of in the usage.
2. The public service is a service that is directed to public and beneficial for the public.
3. The public services, as a rule, are provided by the public organizations. It is not obligatory for the public services to be executed by the public organizations. This service can be provided under the control of the public organization by the private sector.
4. The public service can not only be territorial, local or regional, but also be directed to only a distinct part of the society. The national security is

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<sup>36</sup> Yayla, op.cit., p. 67.

<sup>37</sup> Çirakman, op.cit., p. 84.

territorial, that the municipal bus service is local and the primary education is a service directed to a distinct part of the society.<sup>38</sup>

5. Regarding a service as a public service or not is directly related to the conditions that the society exists in. counting a service as a public service or not is much more determined by the political decisions.
6. The direction of a service to the public is enough for it to be regarded as a public service. (For example, a transportation service made by taxi.)
7. The public services, as a rule, are continuous services. Therefor, there are public services that are continuous or temporary in nature.
8. It is not necessary for the service for being counted as the public service to be the subject of monopoly. The services that are similar in nature are both can be executed by the public and private sectors. As in the case of state theatres and private theatres.
9. The public service can be both priced or free Most portion of the public services are free it is a rule for the services, that are economic in nature, are with a price.( Such as Railways or PTT.)
10. The excitability of a service as a public service by the public organizations can only be possible with the permission of the legislative organ. Being detailed of this regulation is neither obligatory, nor necessary. The constitution generally determined the duties of the local institutions. To meet the common and local needs of the people of provinces, municipalities and villages, the local organizations can transform some services to the public services.
11. The public service is supplied objectively. In the participation and usage of the public services by the individuals, the equality principle prevails. The ones who are in the same legal position, benefit from the public services in the same conditions.

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<sup>38</sup> Paul. A. Samuelson and William D. Nordhous. Economics. Mc Graw-Hill. 1989.p.763

12. It is not necessary for the public services to be executed in compliance with the rules of the public law by the public institutions. According to the quality of the services also the rules of the private law are applied. Especially in the public services with the economic nature, the rules of the private law are much more influential than the rules of the public law.<sup>39</sup>

Consequently, two obligatory conditions can be mentioned for the public services.

First; the supply of the services for the public and their usefulness for the public.

Second; it is necessary for the service to be executed both by the public organizations and by the private persons under the control of the related organization.<sup>40</sup>

## I.2. The Types of Public Services

The public services that their number and kinds are day by day increasing, can be classified from different angles.

Due to leaving the actions, that the public organizations undertake, to the realm of private enterprise or not, the monopolies or non- monopolies public services are a matter of speech. Although, some properties could be seen in their legal regimes, there is not an important difference regarding the essence.

According to the place of work, while the public services can comprise the whole country, it can only be limited with a region, a locality or a town.

In the first situation, the central, in the second situation, the local public services are mentioned. There is difference between these two with respect to their duties. For example, State Railways of Turkish Republic (TCDD) in the extent of the

<sup>39</sup> Gözübüyük, op.cit., p.222.

<sup>40</sup> Ibid., p.223.

country: Istanbul Electricity, Tunnel and Tramway (IETT) in Istanbul and around it perform the national and local public services related with transportation.

The public services can also be classified according to the type of their usage. The individuals benefit from the public services either one by one or directly, together or indirectly. ( Like education, hospital, water, gas, electricity, telephone, telegram, posted services ) . They benefit from these directly.

The people who concern with the situation, benefit from the registry matters, land registration and ownership and various public works without contacting with the public institutions all together and indirectly. For example, the services of construction, maintenance repair and, illumination of the roads and bridges are in this context.

The main types of the public services are derived from the classification that are made according to their subjects. According to this, it is seen that four types of public services exist:<sup>41</sup>

- a) Administrative Public Services.
- b) Economic Public Services
- c) Social-Scientific Public Services
- d) Cultural. Public Services

As the subjects of the public services can not be put into one of these four types completely and certainly. They are separated by , regarding the dominant qualifications. This separation is much more important and effective with respect to the legal regime of the public services, and it is used for determining all kinds of the density of the public and private administrative methods. That is to say, as a rule, the administrative public services are tied to public legal regime; the economic and social services to the provisions of the private law, the scientific cultural public services to a mixed system.<sup>42</sup>

<sup>41</sup> Ibid., p. 224

<sup>42</sup> İsmet, Giritli and Pertev, Bilgen, *İdare Hukuku Ders Notları*, İstanbul, 1967, p.115.

### I.2.1. Classification According to Law

In the constitution, the concept of the public service is sometimes used to express a definite organization, namely the administration; sometimes to express a definite activity. In these two articles of the constitution:

The provision that “every Turk has the right to enter public services” talks about a definite organization. The expression that the private enterprises that are in nature of public service can be nationalized under the conditions that the public interest make necessary takes the public service as a action.

“With the aim of providing efficiency and harmony in satisfying the public services, a central administrative organization including cities more than one, can be established.”<sup>43</sup>

“The fundamental and continuos duties, that the public services make necessary that state, state economic enterprises and other public juridical persons are responsible to execute, according to the principles of general administration, are performed by officers and other public personnel.”<sup>44</sup>

Turkish Criminal Law, in order to subject to a different judgement, holds the comprise of the concept of the public service more widely by saying that “the ones who are performing a legislative, executive or juridical public service permanently or temporarily; without or with a payment; willingly or unwillingly are counted as officers.”<sup>45</sup>

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<sup>43</sup> Türkiye Cumhuriyeti 1982 Anayasası, Article. 126/3.

<sup>44</sup> Türkiye Cumhuriyeti 1982 Anayasası Article 128/1.

<sup>45</sup> Türk Ceza Hukuku, Article 279.

The Law of State Officers distinguished the public services to ten groups with a very general classification.

### I.2.2. Classification According to the Qualification of the Service

The public services can also be classified according to their qualifications. The public services can be classified as administrative public services, economic public services, social public services, scientific public services, technical and cultural public services according to their qualifications. Now we touch upon these:

#### I.2.2.1. Administrative Public Services

The administrative public services comprise all the actions that state has been performing and that their subjects are not in the new economic, social and scientific-cultural nature. These are as such: National Security, Justice, Education, Health, and Public Works.

Generally, the rules of public law and methods of public administration are applied to these kinds of services, but in different cases, the principles of private law can be benefited. All the elements of the administrative public services, namely their powers, methods, personnel, assets and budgets are subject to the regime of public law; the conflicts stemming from the actions and operations are in the duty of administrative judiciary.

Under the circumstances where the laws and court interpretations permit, the methods of private law can be applied for these kinds of services and the conflicts stemming from these are solved in the judiciary. For example, the simple contracts

that the administration makes with regard to classical public services are principally subject to the control of Law of Debts and courts of justice.

#### I.2.2.2. Economical Public Services

The economical public services are in industrial and commercial nature, such as railways, gas, electricity and telephone, which have begun to emerge from the second half of the 19<sup>th</sup> century, besides the services generally executed by the method of Franchise; especially after the first world war are activities that the states directly perform with the private persons in industrial, commercial, agricultural and fiscal realms.<sup>46</sup>

Although it is not easy to distinguish the old industrial and commercial public services aiming to meet the general needs of the people being under the monopoly of the administration, from the private enterprises; it is also impossible to find a leading and exact criteria that is beneficial to separate the new economical public services from the private actions in the same subject with the same methods. The subjects and the methods of administration of these economical public services have really taken place in the realm of action of the private enterprises, and the ways and methods they use have been the same. Furthermore, the actions of the private enterprise continue side to side with these.

Regarding this, it is not possible to count the new economical functions of the administration as public services. But, the economical public services are much more different than the private activities with regarding both their establishment and some of their elements, and their aims and controls. These public services are established by a law or an administrative operation based on it; their assets are provided by state or public juridical persons some of their personnel are in the nature

of the agencies of the administration, some of their assets are in nature of public assets; more important of all, their aim is not to get a capitalistic profit and gain; but rather, realize the interest of the society. All of these are subject to the rules of public law and shape the public relations. Thus, these properties of the economical actions of the administration form the qualification of the public service and hinder them engaging into the private enterprise completely.

As a result of this, they are subject to the regimes of both public and private law.

The public administration rules are applied to some of the problems of the economical public services while the methods of private administration are applied to some of subjects. For example; as the general principles of continuity, changeability and equality are current with regard that they can use the public powers such as expropriation, fining, applying the collection of public debts, and making administrative contracts. On the other hand, for the economical public services, to work with the private enterprises that are their rival in the market economy, it is accepted and necessary that they should obey the industrial and commercial principles and methods and the provisions of the private law in their linear order and actions.

It is not necessary for the economical public services to be organized in a definite institution. Public administrations and institutions can either execute the mentioned services directly or by the different types of state economic enterprises, which are these kinds of public institutions and Franchised companies.

#### I.2.2.3. Social Public Services

As a kind, the social public services are in the tendency of expansion. The activities that meet the social needs such as retirement, health, employment agencies,

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<sup>46</sup> Bulutoglu, op.cit., p. 21.

social security, resting, enjoying are counted such as social public services.<sup>47</sup> Social public services are the services that are looked for in the industrializing countries and its importance increases day by day. The providence of social security is the necessity of the principle of social state. This aspect of the social state is regulated in a detailed way in the “Social and Economical Rights and Duties” section of the Constitution. In the 60<sup>th</sup> Article of the Constitution, the rule of “Everyone has the social security right. State takes the necessary precautions that would provide this security and establishes the organizations.” has taken place.<sup>48</sup>

The social security services can be executed both by the state and the private sector. The Employment Agency can be given as an example to the social security services that are under the monopoly of the state. The aim of public interest is much more salient in the social public services than in the economical public services. The public aspect carries weight. The rules of private law are applied to these in a definite extent. Exceptionally, the subjects and problems of private actions that are alike public services, have been subject to principles and methods of “Private Administration”; the subjects and issues except these have been subject to the principles and rules of Public Administration.<sup>49</sup>

#### I.2.2.4. Scientific, Technical and Cultural Public Services

Nowadays, the importance of the scientific, technical and cultural public services has increased extensively. Besides the scientific and technical subjects, the cultural activities, such as theatre, music, painting, sculpture have been in the realm of state's activities. The countries that want to develop in scientific, technical and cultural realms recognized autonomy to the institution that works in this realms.<sup>50</sup> (The Institution of Scientific and Technical Investigation of Turkey, The Commission of Atom Energy, Turkish Institute of Standards, National Productivity

<sup>47</sup> Gözübüyük, op.cit., p.224.

<sup>48</sup> Türkiye Cumhuriyeti 1982 Anayasası , Article 60.

<sup>49</sup> Lütfi, Duran, İdare Hukuku Ders Notları, İ.H.F Publication,İstanbul, 1982, pp.317-8.

<sup>50</sup> Gözübüyük, op.cit., p.224.

Centre). The radio, television and public communication agencies are in the same status. These kinds of services have recently been increasing their importance.

### I.3. The Methods of Provision Public Services

Known that, both a laws can establish a public service or an administrative action by depending upon the power, which was openly given by the legal regulations. In the establishment phase, it has been increasingly obligatory to indicate by which methods and whom the service would be executed. The legislative organ, in every subject can transform every activity that it wishes to the public service, or establish by organizing in that way; there is not a strange point in the differentiation of the methods of execution from each other. Besides this, there is a benefit in separation or the methods of execution of the public services, by using an organic criterion as by “The Public Juridical persons in Public Sector” and by “Real and Juridical Persons of Private Law”.<sup>51</sup>

#### I.3.1. The Style of The Execution of The Public Services by Public Persons (Consignment)

The public juridical persons execute the public services with the consignment method. This method is the direct execution of the public service, directly with there own organization, tools, meals, personnel and assets.<sup>52</sup> It is not necessary to execute the service certainly according to he rules of public law. It can be executed with the units where the rules of private law were applied partially or

<sup>51</sup> Özay, op.cit., p.260.

<sup>52</sup> Gözübüyük, op.cit., p.225.

fully. Just like in the State Economic Enterprises. The thing that separates the consignment from the other methods of application of public services is the undertaking and execution by the public juridical person. There is no importance whether the law applied was private or public law.

Social assistance and Solidarity Foundation is the institution, although it was fully established according to the methods of private law, that there would be no hesitation when it executed this public service by the consignment method. Although, their establishment was made according to the provisions of the civil law; as their resources are public supports, their officers and authorities are the agencies of public administration, and for the reason that these foundations execute the social assistance and solidarity public service, just like Retire Fund, Social Security or Bağkur<sup>\*53</sup>, it is necessary to count this as a consignment method.<sup>54</sup>

### I.3.2. The Execution of the Public Services by Private Persons

#### I.3.2.1. Direct Provision Method

Belong to the damage and loss of a public service to the administration, it is the execution of the public service by the private law juridical person that is assigned to execute the service by giving a share upon the profit.

In the Direct Provision method, a contract with a mixed nature has been signed between the administration and private law juridical person just as in the Franchise of public service, and this is counted as administrative.<sup>55</sup> The only difference between them is on the point to whom the loss belongs. If the damage

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<sup>53</sup> Bağkur is a kind of social security system.

<sup>54</sup> Özay, op.cit., p.262.

<sup>55</sup> Onar, op.cit. , (Quoted from İlhan Özay) p.541.

belongs to private law juridical person, it is Franchise; If it belongs to administration, there is the Direct Provision method.<sup>56</sup>

In the Direct Provision, the capital belongs to the administration. The private law juridical person, execute the service by using its own private knowledge and labor. It meets its costs from one portion of the price that was taken from the users of the service. The amount left according to the contract. In case of loss, the loss is met by the administration. It is not a widely used method.

#### I.3.2.2. The Method of Farming Public Revenues

It is the execution of the public service in return for a price predetermined by the private law juridical person. It is executed by a contract signed between the administration and private law juridical persons. In the method of farming public revenues, that was used in the period of the Ottoman Empire especially in the realm of collecting taxes and left too many bad memories, after a specific amount taken from the public was left to the administration, the remaining belonged to the tax-farmer namely the private namely the private law juridical person.

Farming public revenues has gained another different meaning by the time and as the construction of the administration are also mentioned as such, the difference between the Franchise method is that one only comprises the construction while the other also comprises the enterprises. Less differences exist between public farming revenues and Franchise. When the supply of virtual public services comes to minds, the most frequently applied method is the permission method.

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<sup>56</sup> Ozay, op.cit., p.263

### I.3.2.3. Permission Method

The services that are in nature of answering the common and general needs by the permission method are executed with the permission given to private law juridical persons by the administration.<sup>57</sup>

As the aim is public interest in the virtual and other public services, the execution of these services in the frame of certain rules is talked about. It is natural that the permission, given to the persons who do not obey these rules, cause the limping of the service and are responsible to supply these services is cancelled. The execution of these kinds of services by the private law juridical persons does not depend on a contract. For the service to be met, the one sided permission of the administration is enough.

If we a look at the examples that are frequently repeated in our country, the services that are executed in the borders of municipalities, mass transportation, special education institutions and the hospitals are all the public services executed by the permission.<sup>58</sup>

Although the permission given in the virtual public service is an interior “intrenseque” control, the control in the others exterior. This is related with the special position of the private enterprise in the permission can get a profit at the end of the gratuitous principle of the public service, the price that was demanded from the user is determined by the administration.<sup>59</sup>

<sup>57</sup> Gözübüyük, op.cit., p.226.

<sup>58</sup> Milton Keynes, *Getting Closer to the Public: Local Government Training Board*, Grillford Press, Newyork, 1987, p.22.

<sup>59</sup> Ozay, op.cit., p.226.

#### I.3.2.4. Franchise Method

The meeting of the public service, depending upon a contract with the related administration, according to the Turkish Law, by a private law juridical person in the status of a limited company, is called as the method of Franchise.<sup>60</sup> The most important property of this service is the belonging of the capital and risk to the private enterprise that is one of the parties of the Franchise contract, the other is the recognition of some Franchises by the Franchise contract in the advantage of the juridical person that took the Franchise and not forming a monopoly for the one that took the Franchise.

The Franchise contract is one of the actions of the administration that is not one sided and the most typical one. This operation is a “mixed operation”.

The most important property that differs the Franchise contract from the permission is its formation of a monopoly. The investment and application that are accepted as belonging to the administration except the monopoly, are transferred to the private law juridical person with the essential but superior powers for the execution of the service, such as demanding an expropriation in the advantage of itself.

Being Franchised that is the most important property of the public service, is transferred to the private law Franchise method, all the principles that are dominant in the public service such as continuity, changeability and being adapted is transferred to the company of the private law juridical person that is responsible.

As the Franchise is given for a definite period, the normal expiration type is the completion of the time envisaged in the contract. In that case, all the assets and rights are transferred to the administration. In just the same way, it is clear that the model of build run-transfer in fact is a Franchise contract that will be mentioned later on.

For a contract to be a Franchise contract, the council of state should investigate according to 'The law of Franchises Regarding the General Interests' of the date of 10.06.1910, the decision of the council of ministers and an approval of the

legislative organ is needed. It is a constitutional rule for the council of state to investigate.<sup>61</sup>

#### I.3.2.5. Founding Running and Giving back

The basic of the Founding running and giving back that is said to be called as the Turk Model in the world and mentioned with the name of a politician who invented this, is seen as “The Law About the Giving Work of the Institutions except Turkish Electricity” and the “Regulation” tied to it, issued in the official Newspaper dated as 19<sup>th</sup> December 1984.<sup>62</sup>

The method of Founding running and giving back by the law with the number of 3996. According to this law, the Founding running and giving back model is not a Franchise contract, the laws related with the Franchise can not be applied to these. This is a contract of private law. Thus, it does not take place in the contracts of the public law. But just as in the Franchise, at the end of the movable possessions and real estates, borrowings and debts are transferred to the administration.

It can be said that in fact Founding running and giving back Model is not an other thing rather than the Franchise for Özay, the reason that this model is called different than the Franchise is:

- a) The negative attitude stemming from the history
- b) The elimination of the legal regulations and compulsions related with the subject.<sup>63</sup>

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<sup>60</sup> Yayla, op.cit., p.123.

<sup>61</sup> Özay, op.cit., p.226.

<sup>62</sup> Official Gazette, 23th February 1987, 19381

<sup>63</sup> Özay, op.cit., p.273.

### I.3.2.6. The Partnership Regulated by Private Laws

The associations such as Red Crescent, Association of Protecting Children and Turkish Air Association take place in these kinds of associations. This kind of associations are counted as powerful to execute some public services. These are the associations that are beneficial to the public and to the public institutions.

The legal regulation envisages the acceptance of working of some of the associations for the public interest that “at least for one year have been in action... their aims and the actions, to realize that aim, are in the extent and nature of giving beneficial outcomes in the countrywide.”<sup>64</sup>

The aim of these organizations is to serve the public interest. According to the result drawn from the text to the law, continuity in the service and being beneficial to the public namely the general interests are the aims of these associations.

### I.3.2.7. Non-Governmental Organization

According to the Non-Governmental Organization, the associations that at least for one year have been in action, and their aims and the actions are in the extent and nature of giving beneficial outcomes in the countrywide, can get the status of the Associations that work for the public interest with the decision of related ministry, the recommendation of Ministry of Internal Affairs, The Board of Administrative Affairs of the Council of State and the approval of the Council of Ministers.

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<sup>64</sup> The Law of Associations with the number of 2908 and date of 6<sup>th</sup> October 1983 issued in the official Gazette, in 7<sup>th</sup> October 1983 with number 18184.

Different from the other associations, this kind of associations are recognized the Franchise of using the public assets and getting assistance from the public.<sup>65</sup>

It is emphasized in the doctrine that some of the foundations remaining from the Ottoman times should be counted as an institution beneficial to the public.<sup>66</sup> In the reality, although they are not placed to among the institutions beneficial to the public as they are not in the status of an association, most of their actions are real public services. It will be true to count the foundations as the institutions working for the public interest.<sup>67</sup>

We said that the participation of the private law juridical persons to the providence of the public services is realized in different ways. These can be both with the Franchise forming public revenues or Direct Provision contract, and in the frame of volunteer actions together with the public juridical persons that are charged with a service. Today, many associations and foundations beneficial to the public act parallel to the public juridical persons with respect to their aims.

Sometimes, there are some foundations that are established to the model of foundation completely with their public resources. Just as the Social Assistance and Solidarity Foundation. It can be said that these foundations are placed in the public sector and form a kind of organizations and providence of the public sector as they are established in the frame of the laws, not with the will of private law real person.

Thus, although they are established according to the foundation model, the kinds of juridical personality that have public position and actions, in addition that are placed in the public sector, have been carrying the marks of the styles of providence of the public services in the times of Ottoman Empire.

In the Ottoman State Organization, the foundations had a great influence in providing the public services. But, the issues of establishment of these foundations and planning according to the public services are more important. Especially the “trust deeds of a foundation” take attention in the Ottoman Cities. Most foundations

<sup>65</sup> Gözübüyük, op.cit., p.227.

<sup>66</sup> Onar, op.cit., p. 680

<sup>67</sup> Ibid.,

such as cook, houses, fountains, hospitals are assigned for the public service. Although the bases are founded in the Islamic Law, at the beginning the term “charity” is used more, instead of foundation. The grants and acquisitions without a response, with the intention of being closeness to God (for an aim that suits the will of God) had been meeting the meaning of “charity”.<sup>68</sup> According to this, all the actions that are for the interest of the public have been in the comprise of the condition of “closeness” that are religion approved<sup>69</sup>. The immovable periodical assignments of the Honoured Prophet (be peace upon him) with the title of the head of the state or the caliphs, even if they were not eternal, were also a current charity.<sup>70</sup>. From this, the Foundation Charity came into existence and later on the beneficial institution that is called as foundation and that is established in order to supply services to the public.

Thus, the foundation institution in the Islamic Law has came into existence as such. This has continued from the Ottomans up to now.

The question of whether the foundations can be an alternative method in providing the public services is on the agenda. The answer that will be given to this question has been carrying importance with respect to our study and this will be evaluated in the other chapter.

It is known that the qualities of the services that are supplied in the foundations have been increasing everyday. Besides the foundation hospitals, today's, the selection of the foundation model by the private education institutions, also the foundation model can be said to carry the superiority's that are acquired by the supply of the services by the state, because of not following a profit aim. For that reason it is inevitable that the foundations are the alternative services units. Because the historical roots and the current applications have been showing this.<sup>71</sup>

<sup>68</sup> Hüseyin, Hatemi, “Osmanlı’ da Toprak Düzeni ve Vakıf Kurumu”, *Osmanlı Ansiklopedisi*, 1994, p. 210.

<sup>69</sup> Hüseyin, Hatemi, “Tanzimattan Cumhuriyete Vakıf”, *Tanzimattan Cumhuriyete Türk Ansiklopedisi*. İletişim Publication, vol.6, 1994, p.1669.

<sup>70</sup> Hüseyin, Hatemi, “Vakıf Kurumunun Tarihi Gelişimi”, İstanbul Vakıflar Bölge Müdürlüğü 3. Vakıflar Haftası Armağanı, 1994, p.2.

<sup>71</sup> Zerrin, Toprak, “Kamu Hizmetlerinde Verimliliğin Sağlanmasında Alternatif Kurum Olarak Vakıf”, T.I.D., no.403, June 1994, p.76.

## INTRODUCTION

It takes our attention that from 1970's on, in various countries the new policy searching have been initiated to increase the efficiency and productivity of the public services. Because the classical administration, as it expanded so much with respect to structure and functions, proceeds slowly and inefficiently and becomes insufficient to perform new duties. For that reason, the subjects of redefining the role of the state in economical and social life and in relation to this, the subject of the reduction of the public sector comes to the agenda. Thus, there emerged policies with respect to changing or variation the classical service methods.

In our country, where most of the local services were tired to be executed from the center, with the recent regulations, the transfer of some basic powers and duties to municipalities such as preparing the construction plans which in fact belong to the municipalities, the decentralization of some services executed from the center, all have led the local services to be supplied to the public faster and more effectively, the effective usage of resources and the mobilization of the local resources.

The need for revitalization of the non-traditional solutions and the new styles of thoughts led by the efforts to keep the growing rate of the public expenditures in a low level most saliently has showed itself in the local governments.

Today the growing process of the urbanization with its full effect has brought the increase and variation directed at the local services with itself. These developments have brought a new and dynamic understanding of administration in the local governments and with that frame, these developments have produced the needs for the improvement of more creative, flexible and rational administrative bodies devoted to humans. In that context, the revision of the customary approaches in providing the urban services constitute the substantial side of the institutional arrangements that aims to improve the local administration.

The local governments, in one hand for the sake of increasing the effectiveness and productivity in providing services, on the other hand with the aim

of encouraging the people to participate in the process of administration and providing services, instead of organizing themselves for supplying the urban services directly, have begun to produce increasingly most parts of these services with the frame of alternative methods of providing services.

The aim of this study is to perform a depiction of the different methods for the local governors and the ones who study about local administration while they are providing services for their towns and fellow-townsmen. This context has been based upon the options that tend to differ from some interesting methods. In the study; taking attention to the realities behind the decisions that give the way to the application of different methods in the providence of urban services is aimed.

Again, in this study, on one hand what the public services are and their methods of application, on the other hand, the place of the municipalities in public services and their methods of providing services are mentioned. At the last part, the extensively applied servicing methods are being mentioned in the Metropolitan Municipality of Istanbul.

In our work, the service executing methods and policies of the municipalities regarding the example of Metropolitan Municipality of Istanbul are tried to be examined from theoretical and practical sides.

While this is done, especially the Turkish resources, the reports of different institutions issued about this subject and the interviews with the governors have been used. The monthly bulletins of the Metropolitan Municipality of Istanbul have also been used as a resource with respect to their relation with the subject.

## CHAPTER II

### THE ROLE OF MUNICIPALITIES IN PUBLIC SERVICES AND THEIR SERVICE DELIVERY METHODS

As in the most of the developed countries, the municipalities in our country have been in charge of important duties to increase level of welfare of the citizens. Especially, after 1984 Local Administration Elections, the regulations which increase the powers and resources of the municipalities and bring the grand city governing system (Metropolitan Government) in the big cities are in the position of a reform in our history of municipal works.<sup>1</sup>

In our country where most of the local services were tried to be executed from the centre for many years, with the regulations made recently, the transfer of some basic powers and duties to the municipalities that in fact belong to them such as preparing the plans of the public works, the decentralization of some services executed from the centre, have given way to the supply of the local services to the town people faster and more effectively. The more effective usage of the resources and the more effective actuating of the local resources. These regulations at the same time, are very important with regard to the future of our municipalities that are the building stones of the democracy and the closest local administration units to the public.<sup>2</sup>

<sup>1</sup> Danielson Michael and Ruşen Keleş, The Politics of Rapid Urbanization. Government and Growth in Modern Turkey. Holmes and Meier Press. Newyork. 1985 p. 129

<sup>2</sup> M. Brown and W. Hompton. Local Democracies A Study in Comparative Local Government.. Longman Cheshire Press. Melbourne. 1983 P.122

Nowadays, the place of the municipalities among the institutions that provide public services, has been heavily increasing. The most important reason in that, is the provision of the local common interests in its place and time, the increase of effectiveness and productivity in the services.<sup>3</sup>

The aim is to increase the welfare and happiness of the town people.

## II.1. The Municipalities in Turkey Respective of Perspective

The development in the origin and meaning of the word of “municipality” should be known in order to understand what the concept indicates by the word.

### II.1.1. The Concept and The Definition

Municipality (Belediye) is derived from the word “beled” in Arabic. According to the dictionary meaning, “beled” means city and a place of settlement. Also the word “beledi” expresses the meanings of, belonging to a city, the government of a society of people living settled and the government of a society of people living settled and the government of a city.<sup>4</sup>

In the French system, that had influenced Turkish administrative system and law in a great extent, the equivalent of the word of “municipality” is “municipalite”. In the origins of this word, these are municipe or municipum. Municipe or municipum had been used for the cities conquered in the rising period of the Roman Empire and left free in an Extent. Some definitions may be done about this concept. From these;

<sup>3</sup> Rethinking Local Services Examining Alternative Delivery Approaches, International City Management Press. Washington D.C. P114

<sup>4</sup>Turkish Dictionary, (Ankara Türk Dil Kurumu, 1974).

First; The settled community: The municipality requires setting from a place. For that reason, it is a product of a settled civilization not a nomad life.

Second: City or Town Community. The municipality is not under the rule of any settled community. This community should not be with a few houses or a very limited population and divide into separated units of settlement that the relation between them is low. It is true that the units of settlements of every country or region show differences according to their conditions of population and geography. But to mention about the municipality, a settled community is needed such as a city or a town.

Third: Local Government. The municipality is not a component of the state administration. With regard to this, when we talk about the municipality, a unit of administration different than the central administration that forms the state administration should come to the minds. In other words, the municipality means that the people living in a place commonly and forming the city or town should make the decisions that would govern themselves. But this does not mean independence. In the opposite position, the municipality would be mentioned as a separate state. So, when we talk about the municipality, a local administration working under the control of the state administration namely the central administration should be about the limited but important subjects in accordance to the laws that the state issued.<sup>5</sup>

The settled community has been showing the concept of fellow-townsman and its importance, the criteria of city and town have been confirming the different position of the municipalities from the villages or provincial private administrations, the local government has been emphasizing the indispensability of the elections in the municipal administrations and the necessity of being autonomous as regards the budgets and financial resources peculiar to themselves.<sup>6</sup>

The definition of the municipality in the dictionary is as follows:

<sup>5</sup> Yıldızhan Yayla, "Belediye nedir?", Marmara ve Boğazları Belediyeler Birliği, no: 87/2, (İstanbul, 1987), p. 8.

<sup>6</sup> George Barbour. Excellence in Local Government Management. UILA-EMME and OECD –P – UMA press. P.26

An organization that performs the public services of a city or a town such as cleaning, illumination, water, control of the tradesman and its members are elected by the people and that has a juridical personality. (is a municipality).<sup>7</sup> Some substantial elements of this definition are lacking. Today's, the locality of some services such as illumination and water are begun to be discussed. Also all the members of the municipal organs may not come to power with an election. For that reason it is necessary to legalize the concept of municipality more.

According to the law of municipalities with the number of 1580, the municipality is “a juridical personality that is responsible for the organization and provision of the common and civic needs of the municipality and its inhabitants in a local nature”. In this definition, both the election and autonomy are mentioned.

The 127<sup>th</sup> Article of the constitution has been giving all the elements that may form the definition of the municipality. This definition is the most current and scientifically valid definition. According to this, “the municipality is the public juridical person that its principles of establishment are mention in the law in order to meet the local common needs of its' inhabitant, and its decisive organs are formed by election.”.<sup>8</sup> This definition is also lacking, but again, the constitution eliminates these lacking. According to the constitution, the settled people in the areas larger than the village form the inhabitants of the municipality.

As a local administration, the municipality is regularized in accordance to the principle of decentralized government. It is inspected by the state. It is supplied a resource proportionally to its duties.<sup>9</sup>

As a result, we can say that, the municipalities have a local nature and this nature is to meet the local common needs.

Secondly: we can say that it expresses a level of settlement in the scale of a city and a town.

<sup>7</sup> Dictionnaire Larousse, Ansiklopedik Sözlük, Sabah Yayıncılık .1996. Vol.1, p. 335

<sup>8</sup> 1982 Turkish Constitution, Article 127

<sup>9</sup> Gözübüyük, op.cit., p. 101

Thirdly: we can say that it has a participatory structure compatible with the democracy.

Lastly: we can say that it has an autonomy namely a juridical personality, a separate budget and organs and a power to make decisions on behalf of itself; but at the same time, it is not independent, it is under the inspection of the state.

#### II.1.2. The Meaning of The Municipalities in Turkish Administration

The Constitution of Turkish Republic with the 127<sup>th</sup> article has counted and limited the provincial private administration municipality and village as a category. According to this article, the municipality is also a local administration. The characteristics that it is a constitutional institution have provided significant guarantees to the municipality.

Existence Guarantee: The envisage of the municipality by the constitution is a hindrance of this type of local administration to be cancelled by a law. Because of this, the municipality has been protected even against the legislator. In the circumstance that the constitution is protected in that form, the institution of municipality is under the guarantee.

Duty Guarantee: The constitution has determined the duties of the local governments in a general frame and as a basic principle. Here, the meeting of local and common needs of the people.

Thus, in opposition to this regulation, it can be considered to transfer the duties of the municipalities in local nature, as usual, completely to the units of the central administration or other institutions even by a law.

Our constitutions did not separate the local issues and central duties and powers.

With regard to pointing out the legal status and the place of the municipalities in Turkish administration there is a especially important decision of Constitutional Court. The Constitutional Court, while examining an annulment demand of a provision of Turkish Electricity Institution Law, has mentioned its interpretation about this subject. According to the Constitutional Court, it is obvious that the electricity that was used by the inhabitants living the territories of a municipality of a city or a town meets the common and local needs. According to the provision of the Constitutional regulating the local administration, the meeting of this need is among the duties of the municipalities. But, due to the general social-economic structure of the country, the acquisition of meeting this need inside or outside of the municipal territories by the central state administrative or by a newly established public institution does not let the duties of the local governments mentioned in the Constitution to be transferred to the central administrative institutions. Even that, on the contrary, the supply of the new incomes and fiscal resources that are necessary for these local governments to perform their duties is obligatory. Because the Constitution also ordered this. Thus, Constitutional Court has made this interpretation taking into account. The acquisition of importance and content of the issues in the realm of duty of the local governments in the past, in the countryside, due to the changing social-economic conditions and except this, emphasizing the necessity of leaving the local issues at its locality.<sup>10</sup>

It can be said that, the legislator is obliged to leave the issues of meeting the needs that their local nature continues, to the local administrations. but the needs of the region even the country's took the place of the local needs, in that situation, the duties about this issue can be transferred to the central institutions or the specially charged institutions working under their supervision. But it can be said that those local units can only meet the local common needs in the best and most effective way. Also, according to the size of the problems, accepting the formation of a unity among the local administrations, our constitution has targeted the execution of the issues at the local level as possible.

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<sup>10</sup> Constitutional Court, 10.5.1977-E.1976/57-K.77/71 (Official Gazette 26.12.1977)

Income Guarantee: the Constitution of Turkish Republic also ordered the supply of the sources of income proportional to the duties of the local administrations.<sup>11</sup> This means that, the municipalities will have incomes to the extent of the expansion and abundance of their duties.

Constitutional Court has shown the importance of this constitutional principle in its decisions. According to the constitutional Court, it is possible to assist the local administrations from the state budget. But this is an assistance that can be made when some conditions are realized. Also the law determines these rules. Otherwise, the suppression of the central administration may be mentioned. for preventing this, Constitutional Court in a decision concluded that, it is required by the Constitution that the ties and relations between the local and central administrations by the election of the public, attaching them to the influence of the central administration in a way, in reality, is not suitable for the aim followed by their establishment and the election of their general decisive organs by the public.<sup>12</sup>

### II.1.3. The History and Development of Municipal Works in Turkey

Under this title, the definitions that are suitable for the aim of mentioning the Turkish Municipal works with regard to the periods will be given place.

#### II.1.3.1. The Classical Age

Ottoman State, since the year of 1299 following the establishment, has begun to expand considerably through both the East and Africa and Europe. In the first years, the Sultans had begun to appoint “kadi” s (Muslim judges) to the cities

<sup>11</sup> 1982 Constitution, Article 127 (last sentence).

<sup>12</sup> Constitutional Court, 23.25/10/1969-E.67/41-K.69/57. (Official Gazette: 12/3/1971).

they conquered on behalf of their names to execute the legal, administrative and municipal works and to be responsible to the Sultans. The kadıs were the only responsible and had the last saying persons of the place that they were powered as the conquered places expended, the country also expended and the kadıs began to move away from the Sultan. Some intermediary ranks and titles were brought. Just like Kazasker (Chief Military Judge) and Kadiyul Kudat (Highest Judge). These ranks were related with the grand vizier (Sadrazam). Up to Tanzimat period, the local administration besides the central administration did not mentioned.<sup>13</sup>

In the establishment and rising periods of Ottoman State, it can be said that according to its age, there existed a city life at a highly considerable level. In the city, there is various and organized guilds. The kadıs appointed by the state, were both judges, and also governors, governor of a sub-province and even were doing the jobs just like the duties of today's majors. Since the working people of the city were collected under the guilds that were a type of association, the related proceedings of the kadıs were becoming easier.

The developing city life increased the division of labor. There were public officers appointed by the state assistance the kadıs in security issues such as ihtisap ağası, subaşı (police superintendent) and asesleri. Pazarcıbaşı (market superintendent) who was always regulating the bazaar and the market; mimarbaşı (Chief Architect) who was supervising and controlling the public works took place among these officers.<sup>14</sup>

Kadıs were also protecting the local security with the title of the highest chief of the municipal police in that city. For example: they were performing the duties such as fixing the prices of the essential goods, controlling these fixed. Prices, controlling the suitability of the foods and drinks to the health conditions and whether the measurement tools were deficient or not.<sup>15</sup>

<sup>13</sup> Behiç Çelik, "Türk Belediyeciliğinin Tarihi Gelişimi", *Yeni Türkiye*, issue:4, (May-June 1995), p. 588

<sup>14</sup> M. Akdağ, *Türkiye' nin İktisadi ve İctimai Tarihi*, Ankara, 1956, p. 12

<sup>15</sup> Onar., op.cit., Vol. II, p. 662

While performing these duties of the kadıs, they're closest and executive assistant was the *ihtisap ağası*. Since Istanbul is both the capital and a city with a large volume of business, kadi of Istanbul or with the other name have: Master of Istanbul had three assistants in the municipal police issues. There were two new assistants regents working in Yağkapanı and Unkapanı and also Ayak regents controlling the weighing and measurement devices in the markets and bazaars.<sup>1679</sup> changing and developing conditions showed that, up to Tanzimat and Islahat Periods, new regulations were needed in Istanbul.

#### II.1.3.2. The periods of Tanzimat and Islahat

With Tanzimat Decree (Ferman), Turkish Administrative structure, in the years following this date, started to slide to the Western standards by leaving its own traditional organization rapidly. In just the same way, Istanbul Prefecture that was established in 1885 and can be counted as the first Turkish Municipality in the modern sense, has come into force with its own regulation. The development period of the Empire has been the scene to the decomposition of the order in the city life. Because, in one side, the power of the central administration has declined, in ordered side, the foundations that their income reduced has not been able to perform the services as in the past. The first step that the periods of Tanzimat and Islahat took was away from the understandings of local democracy and autonomy yet.<sup>17</sup> The wish for the west showed itself also in the administrative structure. The amazement felt for the regularity of the western cities can be shown besides the reasons of this. French Municipal system, that was suitable for the centralization was appropriated, as it was suitable for the soul of Tanzimat.

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<sup>16</sup> op.cit., p. 663

<sup>17</sup> İlber Oltaylı, *Tanzimattan Sonra Mahalli İdareler (1840-1878)*, TODAİE, Ankara, 1974, p. 58

First direct regulation related with the municipality was made under the influence of these conditions.

We will be contented with pointing out these.

a) The Regulation of Istanbul Prefecture: with a regulation of 1854, Istanbul Prefecture was established. It was an example of a municipal work first in the western sense but very limited. The governess and the incomes were met by the state. The Prefecture also had a council. But this council was abolished three years later as it did not perform the works assigned to it. A commission called as the Regularity of the city undertook its powers. If the Sultan approved the decision of the commission again, the Prefecture was executing this decision.<sup>18</sup>

b) 1857 Regulation: after the first try, Istanbul was divided into 14 Municipal departments. The Municipality chose the sixth department as the development area. It also became successful. The cause is that, this region was Beyoğlu, as it is known, the population in Beyoğlu was non-Muslim with a majority. It has been seen that, also here the activities were made with the foreign influence and mostly the foreigners benefited from this service closer to the foreigners.<sup>19</sup>

c) 1864 Dated Provincial Regulation: with that regulation, the first regulation related with the peripheral municipalities was made. The sub-provinces were divided into villages, and in every village, a municipal department had been established. But, the distinction of the administration of village and municipalities was not made and no detail was gone into. The first establishment municipality in the periphery was able to be possible in 1867. For that reason, two regulations were issued that were putting in order the duties of the commissions of the municipal departments, their elections and the duties of the officers that would work there. By that way, it was accepted that the formation of the municipal councils would be by a kind of two stages election, and firstly the “budget of the municipality” term had been used. In 1871, a Provincial Regulation similar to this was also issued.

<sup>18</sup> S. Tümerkan, *Türkiye’ de Belediyeler, Tarihi Gelişim ve Bugünkü Durum*, İçişleri Bakanlığı Yayınları, İstanbul, 1946, p. 25.

<sup>19</sup> Adalet Aladağ, *Türk Yönetim Tarihi Ders Notları*, 1994.

d) 1868 Dersaadet Regulation of Municipal Administration: With this regulation, 14 Departments were established in Istanbul that was thought to be established before. Istanbul Prefecture had the power of administrative control over these departments. The most important property of this regulation is that it accepted the one stage open inventory voting system. By that way, the councils of municipal departments were formed. This is an important development with respect to democracy.<sup>20</sup>

#### II.1.3.3. The Meşrutiyet<sup>21</sup> Period

The first Meşrutiyet Movement brought the Jurisdiction that municipalities would be organized with a private law and working on this realm: "Dersaadet Municipal Law" was put into effect in 1877. According to this law, the municipalities had three distinct organs as mayor, municipal council and municipal community. The third organ consisted of the members of other two organs and substitute members. Central administration was choosing the major by appointment from among the members of Municipal Council. Besides classical municipal functions, this organization was executing the works that are performed by central administration today such as census, property registration...

In the period following the proclamation of 2<sup>nd</sup> Meşrutiyet, no beneficial development happened in Turkish municipal works, moreover the provisional Provincial Act (1913) abolished the autonomy of municipalities and they had turned out to be an official department of state authority.<sup>22</sup>

<sup>20</sup> Yayla, op.cit., p. 22

<sup>21</sup> Meşrutiyet refers to the Constitutional Government period starting in 1876 with the implementation of Kanuni Esasi.

<sup>22</sup> Çelik, op.cit, p. 592

#### II.1.3.4. The Period of Turkish Republic

We can analyze this period under two sections differentiating between two acts. One of them is Municipality Act with number 1580. The second one is The System of Municipality with number 3030.

The municipal system of Ottoman State has persisted until 1930. When the administration of Republic decided that they were not successful enough in municipal work, the French Municipal Act was taken almost without change and put into force in 1930. The contrariness to scientific facts would be said as the ground. This act would give the opportunity to the people of town to control the municipal administration effectively and establish a contemporary, modern municipality, which has distanced from centralist mentality. Thus, such kind of a contemporary municipality was aimed.

1961 Constitution has attached local administrations and so the municipalities, and their constitutional democratization, autonomy, and control to contemporary bases. 1982 Constitution also stayed loyal to same principles. Thus, the institution of municipality began to institutionalize. It can be said that in 1930, municipality mentality, which distances from the centralist mentality, started to take place instead of a mentality considering municipality as supervisor controlling people of the town.

1982 Constitution accepted that, special administrative body could be brought for grand residency centers. So that, to bring a solution to the metropolitan city problem which emerged as a result of industrialization, population increase and urbanization has been aimed. Starting from March 1984, our country passed to the metropolitan municipality system in grand cities, which have more than are districts in classical sense. This system basically consists of one main city municipality in center and district municipalities connected to this.

Metropolitan Municipality Administration is a new model that is brought for coping the difficulties of the grand cities increased in great measures because of problems such as environment, infrastructure, housing.

This model aim the coordination in between various service agencies mutually related to each other in metropolitan area, when it ensures the participation of people to the administration by protecting local features of the announced districts. By this way, benefiting the advantages of the large-measured units economically is ensured in one hand, by giving place to district municipalities, an emphasis on the importance, of small-measured units, in terms of democratization has been made . Nearby to all, efficacy and coordination in services was aimed at the same time.

Besides, in the period before 1980, there emerged different municipal agencies in the districts, villages and quarters, which are at the area of metropolitan municipalities now. To solve this problem, “The Law on the Annexation of The Residency Areas near by the metropolitan cities to Main Municipalities” was accepted. The municipalities and villages, which stand near by the cities with a population of 300.000, were annexed to the main-city municipality by being converted into a department or a quarter. As a result, in three big cities (Istanbul, Ankara and İzmir) main-city municipalities were established and called as “Metropolitan Municipality”.

In order to establish a metropolitan municipality in one residency area, there needed more than one district. In a residency unit in which metropolitan municipality would be settled, first of all the establishment of more than one distinct had to be realized. Thus, metropolitan administration comes into being...<sup>23</sup>

The year of 1984 will be remembered as the year of new construction in Turkish Municipal Work, since Metropolitan Administration was established in cities like Istanbul, Ankara and İzmir. Now, by the year of 1995, there exist fifteen municipalities under the scope of the law about the administration of Metropolitan Municipalities. These are; Istanbul, Ankara, İzmir, Adana, Bursa, Gaziantep, Kayseri, Diyarbakır, Erzurum, Samsun, Eskişehir, İzmit, Antalya and Konya.

<sup>23</sup>Bilal Eryılmaz, *Kamu Yönetimi*, Üniversite Kitabevi, İzmir, 1994, p. 162

In the seven lately established (by the Decree with the force of law with number 504) municipalities, instead of district municipalities, sub-graded rank municipalities were built.<sup>24</sup>

## II.2. The Municipalities and Their Functions in Turkey

The services those municipalities supply for citizens differ from one country to another and change by time. Because of the changing conditions, some services are taken from municipalities and given to the central administration for realizing social welfare. On the other hand, the number of increasing public services that fall into the municipalities' share is increasing gradually.

In determining the duties and powers, mainly three principles can be mentioned. First one, "general power principle"; the second, "power principle"; and the third, "schedule principle".<sup>25</sup>

According to the general law principle; municipalities are powered to execute all the local services that are not left to another administrative agency or that are not abolished by law. As there existed this kind of provision in the Prussian Law of 1870, also today the situation is such in Germany and Holland.<sup>26</sup>

According to the power principle (ultra vices doctrine); municipalities can function only on matters that the legislative organ clearly (authorizes empowers). That is to say; municipalities had to get power from the central administration for each service they want to carry out.

According to the schedule law; in these countries adopting this principle, the services, which the municipalities carry out is limited. Thus, in the 15<sup>th</sup> article of the

<sup>24</sup> Çelik, op.cit., p. 594

<sup>25</sup> Ruşen Keleş, *Yerinden Yönetim ve Siyaset*, Cem Yayınevi, İstanbul, 1992, p. 176

<sup>26</sup> Ibid., p.177

Municipal law with no.1580, the duties of the municipality are indicated as 76 paragraphs. Nearby, Municipal Law gives place to the General Power Principle. From this point of view, the duties of a municipality defined in law are these. (these duties are gathered in a total of 77 articles in the Municipal Law with number 1580 that is accepted in 3<sup>rd</sup> April,1930).

We can classify the duties of municipalities through the following criterion:

1-According to the level of income:

2- Those obligatory for all municipalities

3- The voluntary duties

According to the level of income;

1- The obligatory duties for all municipalities

2- The obligatory duties for municipalities whose income is more than 50.000TL.

3- The obligator, duties for municipalities whose income is more than 200.000TL.

4- The obligatory duties for municipalities whose income is more than 500.000 TL.

5- The voluntary duties for all municipalities.<sup>27</sup>

Today, the determination of municipalities-duties according to their income and division of labor to, has lost its meaning. The amounts indicated above means nothing in today's conditions and the duties enumerated under these articles have become obligatory for all municipalities.

The Obligatory Duties for All Municipalities;

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<sup>27</sup> The Law of Municipalities with no.1580, Article 15

All the duties given by 15<sup>th</sup> article of Municipal Law and other acts, become obligatory nowadays. These duties are for ensuring the welfare and happiness of the country's people. So, whatever their income is all the municipalities are responsible for realizing these duties within the bounds of possibility.

### **The Voluntary Duties;**

Since there are a lot of obligatory duties of municipalities that are enumerated in law, very few municipalities succeeds in performing all of these. When it is the case, it becomes impossible to come turn for voluntary duties. Besides, municipalities are in pursuit to realize these obligatory duties they take upon under very hard conditions.

## **II.2.1. The Functions of Municipalities in the Traditional Concepts**

It is possible to analyze the duties of municipalities by classifying is five groups as; public works (prosperous), security, social, regulatory and transportation.<sup>28</sup>

### **II.2.1.1. Government Service**

The first of duties of municipalities are those related with public works. These includes the issues as building and looking after the necessary establishments and public buildings for the needs such as shelter, entertainment, shopping and resting, organization of environment, building of roads, movements for the happiness and ease of people of the town living in municipal borders.<sup>29</sup>

<sup>28</sup>Eryılmaz, op.cit., p. 150

<sup>29</sup> E. S. Savas The Key to Better Government, Privatization. Chatham House Pres. Newjersey.1987p.62

Nowadays, municipalities show effort to engage in new works on this sphere.

#### II.2.1.1. Social Service

It comprises the issues related with the enrichment and improvement of the social life of people of the town. To build and run the places like library, health establishments, sport establishments, theater, cinema, zoo... However, municipalities are obliged to take precautions for the care and protection of the homeless children. Since such services are related directly with the material opportunities (conditions) of municipalities, they show tendency to increase with economic development. In the sixth five years development plan it is mentioned that the contributions of local administrations on the issues of social service and assistance will be increased.<sup>30</sup>

#### II.2.1.3. Protective Service

Municipalities are liable to perform protective duties such as cleanliness of the places open to public and the foods and drinks which are sold here, protection of the life and property security of the people against dangers, preventing the pollution of environment in town borders. There is provision in 15<sup>th</sup> article of Municipal Law related to this issue. According to; to take care of the cleanliness, safety and hygienic of places open to public such as restaurant, casino, cafe, coffee, house, pub, hotel, theatre, inn and public bath and the materials consumed in those places, to clean the

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<sup>30</sup> The Sixth Five Years Development Plan (1990-94)

streets and environment, to set up a fire-brigade organization and prevent and extinguish the fires are the duties of municipalities.<sup>31</sup>

#### II.2.1.4. Regulatory Service

To organize and improve the streets and squares of the town in accord to a plan and a program. To design construction plans and programs in order to regulate the construction and development of the town, and to implement those. To set up storehouses of official sale of foodstuffs for the protection of the consumers. To classify the places for food and drink, entertainment, resting and passing the night and determine their prices. To administrative the advertisement works in places belonged to public like square, main street and street. To determine the dispersed sale prices of essential consumer commodities such as bread, meat, coal and firewood. To establish fruit-market for the wholesale buying and selling of the fresh fruits and vegetables can be enumerated for some of the regulatory duties of municipalities.

#### II.2.1.5. Transportation Service

Municipalities are responsible for administrating the transportation duties in municipal borders. Municipality ensures the transportation whether by its own resources or by the collective transport vehicles of the private persons. Municipalities are ornamented with necessary powers for that issue.<sup>32</sup> However, in metropolitan cities transportation function counters with many kinds of difficulties.

<sup>31</sup> The related Law (The Law of Municipalities Law), Article 15

<sup>32</sup> The Highways Traffic Act with no.6085 has given an important part of duties and powers of municipalities about highway traffic to provincial traffic commissions. The Highways Act with

## II.2.2. Metropolitan Municipalities and Their Functions

Provincial Administration, in which the social effects of changing conditions and problems are seen, is facing to the problems emerging from the high population increase and industrialization that show a fast increase in recent years in our country. As a result of this; in grand settling centers as Ankara, İstanbul, İzmir on top of these, a fast urbanization fact came into the agenda. The development in these cities, surpassing the municipal borders, expanded in an unplanned and uncontrolled way around the city center.

The unplanned and uncontrolled physical development in metropolitan cities, paved way to many important changes in social structures, economies and settling styles of these cities. Unplanned and uncontrolled construction increased the housing, transportation, and environment problems more and insufficiency of infrastructure appeared in an evident way.

In consequence, the problems of metropolitan cities have reached to a point of dissolution by existing laws and arrangements. And this necessitated new arrangements.

Firstly, the statement of “special administrative forms” that took place in 127<sup>th</sup> Article of our new Constitution fixed the necessity of a new arrangement clearly. In 8<sup>th</sup> March 1984, Council of Ministers passed the Decree with the force of law about the administration of Metropolitan Municipalities. According to this; in three metropolitan cities (İstanbul, Ankara and İzmir) main city municipalities were established with the name Metropolitan Municipality.<sup>33</sup>

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<sup>33</sup> Local Government and Metropolitan City Management Report. Ankara.19994. p.2

The law on Election of Local Administration with local Headmen and Council of Elders (Village Council) was brought as the first regulation. With the 5<sup>th</sup> Article of the same law, the regulation of legal status of metropolitan administration was put into force.<sup>34</sup>

The aim of this law is to organize the legal status of metropolitan municipal administration in a way that ensures planned, programmed, efficient and harmonious, execution of services.<sup>35</sup>

This law comprises the principles and methods on the establishments, duties and powers of metropolitan and district municipalities and their relations with central administration and other local administrations.

#### **The Duties of Metropolitan Municipalities;**

Making investment plans and programs of metropolitan cities to ensure environmental health and its protection, to give license for opening and working of first, second and third class unhygienic establishments, to built or to have built to run or to have run places, far sprat resting, entertainment etc., to construct green areas, parks and gardens. To execute inside the metropolitan city such as water supply, sewerage, all kinds of gases, central heating and collective transportation, and to built or to have built, to run or to have run necessary establishments. Adding to those; the common city services such as making construction plans, building sewerage, water supply, collective transportation, environment health, central heating, fire brigade, passenger and cargo station, construction of main roads and street ways are under the responsibility and power of metropolitan municipalities.<sup>36</sup>

Also metropolitan municipalities have the duty and power to solve the conflicts between district municipalities and to coordinate the constabulary and other services.

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<sup>34</sup> Number 2918, on the other hand, increased the duties and powers of municipalities. See the law with no.2918, Article 4, 10, 12, 18, 130.

<sup>35</sup> The law on the approval by change of the degree with the force of law about the Administration of Metropolitan Municipalities with number 3030, 9.7.1984, 18453.

<sup>36</sup> Ibid., Act 6

### II.3. The Service Methods of Municipalities and Their Properties

In the last quarter of 20<sup>th</sup> century, in parallel to a tendency all over the world, narrowing the scope of direct public expenditures entered in to the agenda of all public administrations in national, regional and local level in recent years.

Because the services run by the state increased nowadays, public institutions has extended in terms of their structures and their functioning has gained a complex and technical quality. The negative effect which emerged as a result of this expansion, resulted as both delay on meeting services and decreases in the quality of services.

New policy search for increasing efficacy and efficiency in public services began as from 1980'ies in our country. It has become so hard and expensive to find solutions in classical administrative structure. The reason for that is widening of classical administration in terms of structure and functioning, expansion the service spheres, increase of demand for public services, and disfunctioning of the apparatus. Due to these facts, the definition of the role of the state in economical and social life has been defined once again and reducing the public section comes into consideration. However, policies have emerged for diversification and improvement of classical service methods.

After 1980 in our country, parallel to this general political tendency important policy alternations occurred in public service realm. This change has happened in both the scope and practice if public service. Being the basis of public services realized by public institutions modified partially; the private sector has been started to be benefited in this issue.<sup>37</sup>

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<sup>37</sup> Turgut Tan, "Kamu Hizmeti Özelleştirme, Bürokrasının Azaltılması Üzerine", *Türk İdare Dergisi*, Özel sayı, (Mart 1998), pp. 81-90

In accord with this idea, the management methods of private sector have taken the place of traditional service mentality in public institutions.<sup>38</sup>

The policy alterations seen in central administration affected both local administrations and especially municipalities. After 1980, solution has been found to the financial problem, which was the most important problem for municipalities, and the incomes of municipalities, have been increased. With the Law with number 2380 and date 2.2.1981, a share of %5, and with the law issued later /3004 and 3239) a share of %9.25 was left over the total collected money from local tax revenues.

Nearby these changes, their functions have been altered. The power to regulate and apply construction plans in municipal borders was left totally to municipalities.<sup>39</sup>

For increasing efficacy and efficiency in municipal services, special administration bodies under the name of "Metropolitan Municipality" was constituted in 1984 in grand cities.

With their increased incomes and expanded service methods, municipalities in one hand were trying to make the traditional urban services work better, on the other hand entered to new functions including commercial, economical and social aspects.<sup>40</sup>

They have begun to use new production and financial methods in the execution of services. However, instead of doing the services themselves, they have attached importance to the policy of having services done and executed. As a result of this, there became certain improvements in efficacy and efficiency of municipal services. Privatization has found an implementation area on this context.<sup>41</sup>

<sup>38</sup> Bilal Eryılmaz, "Belediye Hizmetlerinin Yürütlmesinde Alternatif, Kurumsal Yöntemler", *Türk İdare Dergisi*, (1989), p. 17

<sup>39</sup> The Law of with no.3194 and date 3.5.1985, Article 8

<sup>40</sup> Eryılmaz, op.cit., p. 18

<sup>41</sup> Bernard Gournay. "Yönetim Bilimine Giriş"( Çeviren İhsan Kuntbay.). TODAIE .press. Ankara.1971.p.27

### II.3.1. The Role of Private Sector in Provision City Services

In order to decrease constraints on public resources and increase efficacy and efficiency in services, shifting some parts of traditional responsibilities of local administration to private sector emerged as a strong alternative.

#### II.3.1.1. Privatization

The difficulties in comparing the public services with services realized by private sector at the same framework concerning the quality.

Quality and quantity of these services constitutes a structural obstacle which direct the discussions and evaluations on this issue. However, the idea that sees the execution of process of service by both public and private sector in a mixed way is more beneficial than the exclusion of private sector from urban service is dominant today.<sup>42</sup>

But the weight of private sector in producing urban service differs from one country to another and moreover from one local administration to another. Since urban service is under consideration, the discussion has been going on constantly for long years about which sector will fulfill the services whether local administration or other organization than local administration. There are two thesis on this issue; pro privatization opinions and anti privatization opinions.<sup>43</sup>

<sup>42</sup> Belediyelerde Alternatif Hizmet Sunma Yöntemleri, Yerel Yönetimin Geliştirilmesi Programı El Kitapları Dizisi, Toplu Konut-IULA EMME, İstanbul, 1993, p. 5

<sup>43</sup> E.S. avas.op.cit.p. 8

### II.3.1.1.a. The Opinions for Privatization

The proponents of privatization advocate the necessity of shifting the production of goods and services from public to private sector in order to satisfy the needs of consumers, increase efficiency, and decrease expenditures.

- 1- Enterprises would work in a more efficient way due to the market conditions in which more than one producer exist instead of monopoly. The cost of public services will fall down because of competitiveness of the market. Thus; it would be possible to shift public resources to other areas or to decrease the tax rates.
- 2- Public institutions utilize the encouraging methods in increasing administrative performance less when compared with private sector.
- 3- Consumers will be more satisfied since they will have the chance to choose in between goods and services produced by various alternative firms.
- 4- The opinion is widespread that the level of goods and services produced by private sector, in another say, the level of output is more in comparison to public sector.
- 5- Privatization stands as a good solution to ensure betterment in services without increasing the taxes.
- 6- Public sector happens to be generally less successful than private sector in utilizing resources. Private firms have more chance in competitive system since they can put into usage the new equipment compatible with their establishment instead of the old one fast. The public assets are mishandled more when compared to private sector.

7-Finally, the usage of resources is determined with consideration of market conditions in private sector, however in public sector the political preferences are taken into consideration.<sup>44</sup>

#### II.3.1.1.b. The Opinions Against Privatization:

Within the context of privatization discussions, many insist on considering private sector incompatible with the concept of public service. At the discussion related to the subject, opponents of privatization set forward a series of negative factor as proof to their arguments. In this context, the opinions against privatization can be summarized as follows:<sup>45</sup>

1- It is claimed that privatization will give rise to unemployment. However it is a hard work to evaluate the effects of privatization on unemployment, it is generally the reality that after the transfer of work areas from public sector to private sector private firms utilize more less resources than public administration. In evaluating macro-economic effects on this issue, it is necessary to analyze how the cost savings emerging as a result of privatization is dispersed and where they are spend.

2- It is advocated that privatization means increase in prices for various consumers.

3- Privatization envisages that service will not be brought to non-profitable and remote areas. In this context, there is the fear that the scale economies in using establishment and equipment will not be secured.

4- There is the idea that only profitable service areas will be privatized in privatization.

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<sup>44</sup> op.cit.p.89

<sup>45</sup> Burhan enatalay, maliye teorisi ders notları , 1992

5- It is put forward that the privatization will decrease the wage levels and worsen the working conditions.

6- The idea that privatization leads to abuses and favoritism is dominant.

7- At the end of privatization, problems may emerge in supervising services.

8- Privatization at the end elicits monopolization.

9- As a consequence of privatization, public interest is affected in negative respects. The opinion that privatization may bring about worsening and hitches in the services supplied for special sections of the society as elders, disabled, poor etc.

After these general discussions it would be exactly beneficial to take up the increasing role of private sector in supplying urban services.<sup>46</sup>

#### II.3.1.2. Role of Private Sector in Provision Urban Services

The opinion that “The organizations other than local administration, mainly private sector must play more serious and important role in provision urban services” is based upon the main ideas below.<sup>47</sup>

Provision the services with a less cost.

- The results of made on the economical outcomes of realization the urban service by private sector or other alternative service methods show that local administrations generally obtained important resource savings.<sup>48</sup>
- The alleviation of the serous financial and administrative burden on local administrators.

<sup>46</sup> Belediyelerde Alternatif Hizmet Sunma Yöntemleri, p.14

<sup>47</sup> Ibid., p.14

<sup>48</sup> Ibid., p.14

The capacities of local administrations which meet with increasing and differentiating demands for service day by day, remain behind of the demands in many times. In our country, the local administrations which have limited resources are under a heavy burden. To alleviate this, the utilization of private sector or organizations other than local administration in widespread manner seems a good alternative.

- The provision of the services that can not be satisfied properly.

Related directly to the alleviation of the financial and administrative burden on local administrations, local community members and groups, especially voluntary persons and organizations or private sector organizations would go into charge in order to meet some services that are in the traditional responsibilities of local administration but can not be satisfied properly. Amongst these services like waste disposal, protection of environmental, libraries, scavenging service and also crèche, family crisis centers, women shelters, family consolation offices might be counted.

- Augmentation of efficacy and efficiency by encoring competition.

As it is the case in many public institutions, local administrations also fulfill some of their functions in an un-competitive environment. However, this causes inefficacy in resource utilization. On the other hand, since private sector organizations are operating continuously and efficiently in order to stay in the market. The participation of the private sector in executing local services is exactly giving opportunity to make competitive conditions operate in the areas under the monopoly of public and to carry out efficacious and efficient service.

### II.3.2. Privatization's in Municipalities

Municipalities are local administrative units that are responsible for provision various local common needs of that town. The responsibility of fulfilling the increasing public services day by day with the urbanization and industrialization in recent years, directed municipalities to find service producing methods with new resources. Because the existing conditions do not suffice to satisfy fast increasing needs financial problems in municipalities, control of executorship, obsolete production methods, the problem of qualified personnel and technical equipment have driven municipalities to privatization in certain realms. In parallel to the liberal economy policies of Turgut Özal Government which was in power since 1984, privatization practices began in municipalities. Privatization condensed in metropolitan municipalities instead of small and middle-sized municipalities.<sup>49</sup>

Privatization's in municipalities shows different qualities with privatization in state economic enterprises. Municipalities do not have great problems as State Economic Enterprise since they are executing services in local level. So, the privatization does not happen in a way that public shares are sold to people.

Privatization becomes generally in sort of “Contracting Out/Contract”, “Compensation”, Leasing the Enterprises, Raising of Municipal Monopolies, Transferring the administration to private sector.

When privatization of a fundamental urban service is mentioned (for example privatization of scavenging service, as a general application), the Contracting Out of this service to private sector in defined framework has been understood. In this case; local administration continues to be responsible for the service and preserve the service liabilities to the town people. The one who is responsible for any limping occurring in scavenging service is exactly again the local administration.

In execution of Public Services, there exist three parties as regulator, producer and consumer. Municipalities do the services they are responsible for whether directly or have them done. When a contract is made with private contractor for realizing public services as roads, sidewalks, municipality gets the position of "regulator"; private contractor "producer" and people "consumer".

These three factors; regulator, producer and consumer; are in a functioning order related to each other in terms of power, control, production and finance. These relations take various forms and bring out different service models.<sup>50</sup>

Considering the municipalities, there is benefit to give place to service methods and model shortly. By this way, we can give information about the alternative service methods that is supplied in municipalities.

### II.3.2. The Service Agents

In general, there exist three participants in the delivery of public services as; the 'service arranger-manager' i.e. the owner of the service, the 'service producer' and the 'service consumer'. The consumer is the one that receives and benefits the service. As the consumer might be an individual, a household, everyone residing in a defined geographical area, or, a group of individuals with distinctive features such as farmers, old people etc. can constitute the service consumer.

The service producer is the agent that directly performs the service or conveys the service to the consumer. This agent might be a state department, a voluntary organization, a private firm or the consumer itself. For instance, the General Directorate of the Police executes the security services; the municipality constructs roads and pavements, foundations help the poor people; a factory carries its wastes with its own vehicles. In the last example; the factory plays both the roles of 'consumer' and 'producer'. With its necessity of collecting the wastes, he is at the

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<sup>49</sup> Eryılmaz, op. cit., p.32

position of 'consumer' and by performing this work with its own vehicles, at the position of 'producer'.

On the other hand, the service arranger is the agent who assigns the producer to the consumer, or in another say, detects the producer who will serve the consumer. As the arranger might be a public institution such as ministries or municipalities, also a voluntary organization such as foundation or association, or the consumer himself might be.

When a municipality made a contract by the way of Contracting Out with a firm for the construction of road or pavement, in this treatment, the municipality is the arranger, the firm is the producer and the people who will use the road or the pavement are the consumers of this service.

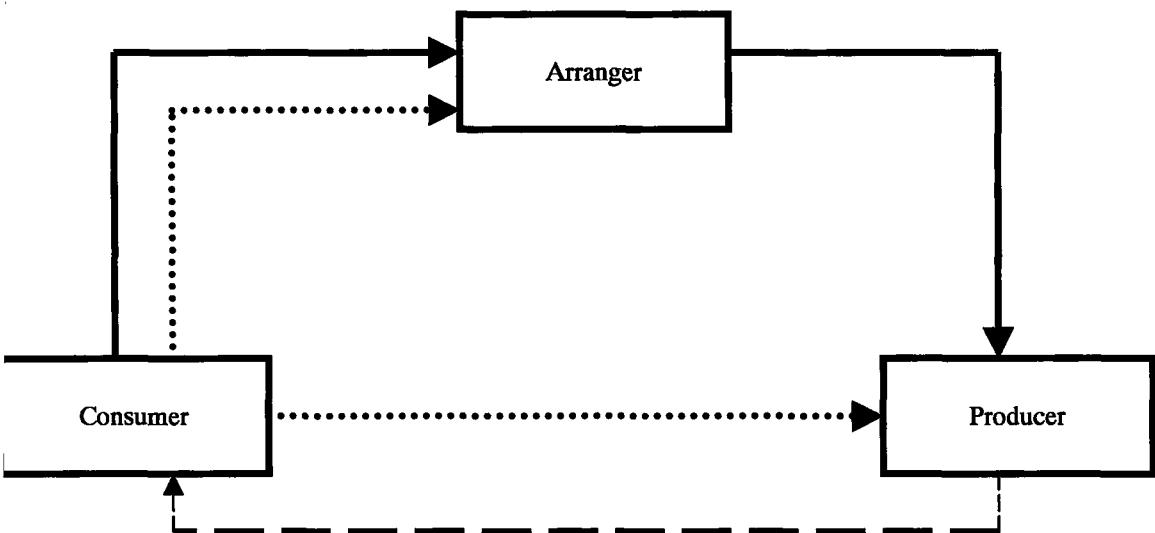
The agent, which arranges the public service, has both the authority and responsibility of deciding and controlling the one who will produce the service. The service arranger can also directly produce the service as it can have the service done by a private firm or a voluntary organization.

These three participants or actors, arranger-producer-consumer, are in a functioning order in which they are connected to each other through authority, service delivery and financial relations. These essential relations are shown in the below figure. As it can be understood from the figure, solid line shows the authority relation, dashed line, the service delivery and the dotted line, the payment

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<sup>50</sup> Eryilmaz, Kamu Yönetimi, p.169

Figure 1. The Relationship between the Service Agents



### II.3.3. Alternative Service Methods in Municipalities

Moving from the privatization framework, the scope and examples of supplying urban services by alternative methods will be analyzed in this section. With its statements "...to have made and done...", "...to have made...", "...to have made and managed...", "...to give Franchise..." etc., the municipal law with number 1580 which is fundamental act of our municipalities, draws a broad area in the issue of supplying alternative service. Samely, the Law Related to Metropolitan Municipalities with number 3030 includes more clear statements as; "...to do and to have done", "...to manage or to have managed", "...establish, to have established", "...provide its realization...".

Moving from this perspective, there will be different methods in provision urban services. In this comprehension, the provision of services by alternative service methods do not mean the removal of local administration control over services.

These methods depend on the approach that supply of a service by a different method instead of by the administration directly will ensure many multi-dimensional benefits to local administration. The application of alternative methods comes true only in sort of preserving its fundamental responsibility in respect to the aforesaid service.<sup>51</sup>

The issue of supplying urban services with different methods can be examined under many various headings. We will mention here ten methods of approach

These are the above mentioned ten methods of approach;

- ❖ Contracting Out
- ❖ Cooperation between administration
- ❖ Franchise contract
- ❖ Rental/Administration contract
- ❖ Founding- Running- Giving Back
- ❖ Subsidy
- ❖ Voucher method
- ❖ Municipal companies
- ❖ Voluntary organizations

Now, let we shortly look over these approaches.

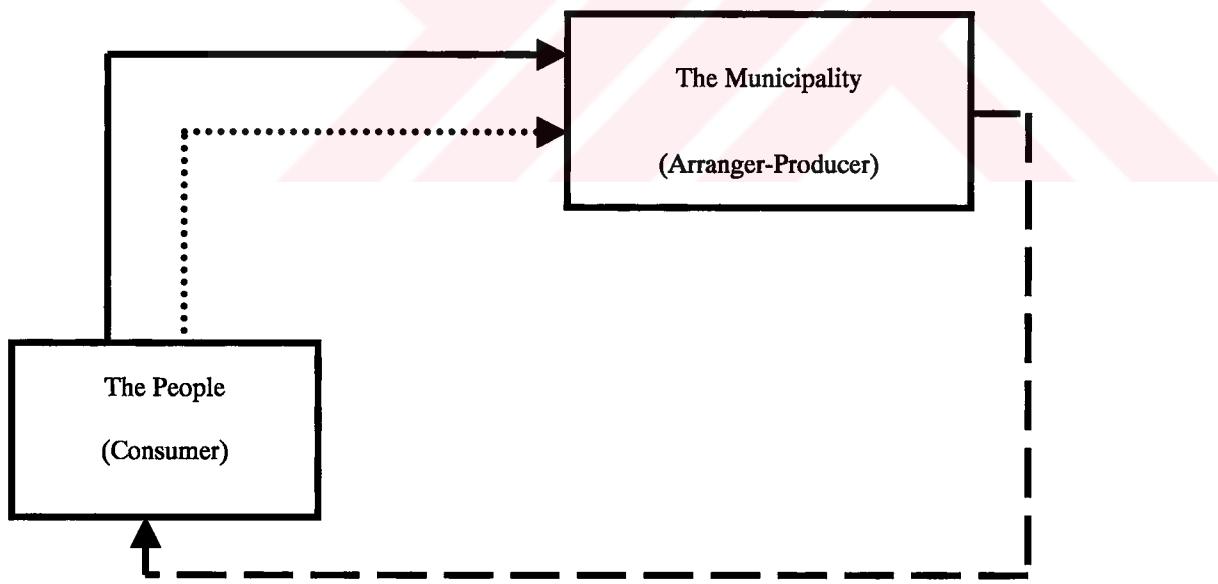
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<sup>51</sup> "Belediyelerde Alternatif Hizmet Sunma Yöntemleri", p. 23

### II.3.3.1. Municipal Governmental Organization

This model describes the execution of certain works by the organization and personnel of municipalities without interference of any special contractor or any other public institution. It is also called “trust method. This method is the method of doing the services by the administration with their own technical equipment and personnel. The services such as waste disposal, scavenging service, water, construction, collective transportation and constabulary are executed by this method. In this method, the one who regulates service and who executes it practically is the same unit, the municipality. Consumers pay the charge for service to the municipality. On the other hand, a great part of this kind of services are financed through taxes.

Figure.2. The Municipal Governmental Organization



The services managed with this method is organized in various types; those with independent budget, those with supplementary budget, those with circulating

capital, or department type. These organization types differ according to the quality or importance of the service.<sup>52</sup>

Basically the most applied method in performing municipal services is “Contracting Out” method. To do work by the hand of state is an exceptional case in today’s conditions. However to have works that can not be adjudicated and some services done with “trust” method is legal requirement. In case that there is enough labor force, technical equipment and machines of the administration, these construction works in which there is no benefit of “Contracting Out”, reparation and transportation services in restricted zones and such services and such services are executed with “trust” method.

The public institution related to trust method itself becomes the general contractor, and has the work done by dividing it to sub-contractors.

Municipalities look for ways to be more efficacious by organizing some fundamental services out of their traditional structure. The best examples to this are bus department and water and drainage (corporation service). Those corporations, which have separated budget apart from municipal budget, are bifurcated according to whether they are established through a special act or not. Such as Istanbul Electricity, tunnel and tramway (IETT), Istanbul Water and Drainage Corporation (ISKI), Ankara Electricity, Natural Gas and Bus Corporation.

Apart from these, there are corporations with supplementary budget that are established by decision of municipal council.

Amongst the corporations that are managed by separated budget apart from municipal budget, the most important is the water and drainage (corporation service) as regards to its being a new organization.

There exist some distinctive aspects of water and drainage (corporation service) than other municipal corporations. These are in a great extent related to functioning logic of the service. The functioning of service is convenient to logic of private sector. General office of Water and Drainage Service is not subject to State

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<sup>52</sup> Eryilmaz, op.cit., p.20

Contracting Out Act with no. 2886. Works like purchase, sale, renting, hiring out, research and development, project, map are all executed according to the principles of by-law determined by municipal council. The Law with no.3305 and date 5.6.1998 which charged some of articles of law with no.2560 and added some articles brought the principle that in determination of price-lists about water and drainage service, after the expenditures of administration and management, and renewal, amelioration and enlargement expense of which depreciation are written as expenditure are calculated, profit proportion not least than %10 would be added.<sup>53</sup>

By the new legal arrangement, metropolitan municipal councils would determine the water and drainage price-lists by adding profit in proportion they want with the condition that it would not be less than %10.

#### II.3.3.2. Cooperation Among Administrations (Intergovernmental Agreement)

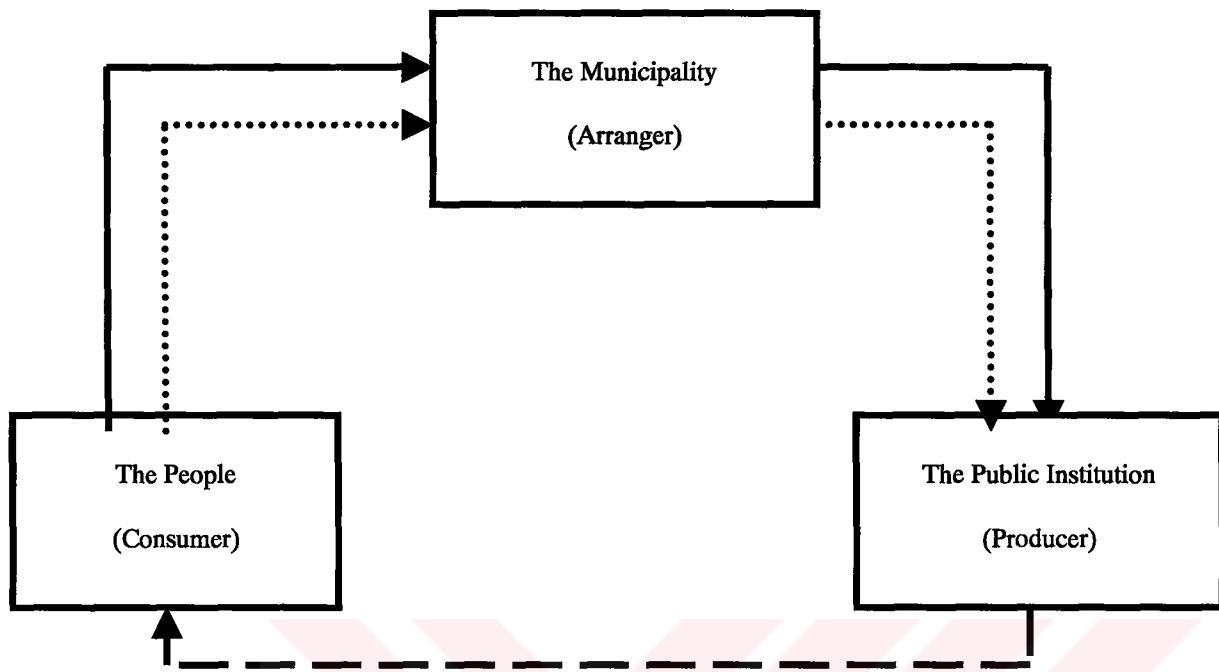
Instead of carrying out services directly themselves, municipalities can buy and have the service done by contracting with another municipality or a public institution. It would give useful results benefiting from the institutions, which have professional personnel in the fields that necessitates technical equipment and profession. It can't be said that there is tight cooperation amongst municipalities in our country. Generally all municipalities tend to have service vehicles and perform services themselves.

In the case that a municipality hires another municipality or a public institution to supply a service, the role of the municipality is arranger, the role of the contracted agent is producer and the role of the people is consumer.(Figure.3) In this method, the consumers make the payment of the related service to their own municipality.

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<sup>53</sup> Eryilmaz, op.cit., p. 22

Figure.3. Cooperation Among Administrations



Cooperation among administrations is institutionally executed in two types in our country as among central and local administration and amongst local administration.

The recent sample of institutional union between local central administration are Infrastructure Coordination Center (ICC) and Transportation Coordination Center (ICC) which are constituted in metropolitan municipalities by law with no:3030 (Article.7). These centers execute the coordination of infrastructure works and land /sea transportation in metropolitan cities. Coordination center works as a committee constituted by representative of municipality and related public institutions and organizations in the metropolitan municipality's structure.

Unifying the development plans about infrastructure investments made by public institutions and organizations in borders of metropolis and draft projects in accord with annual plans, Infrastructure Coordination's Center converts them to final programs. These final programs are taken into "common projects" which had to

be realized by more than one institution and organization. The funds allocated to budgets of state, municipalities and other public institutions for infrastructure services and taken under a common program are transferred to “Infrastructure Investment Fund” which is constituted in Infrastructure Coordination Center.

Transportation Coordination Center is responsible for determining the routes, time-schedules and ticket-price-lists of collective transportation vehicles according to the city transportation plan and execution of these tariffs. When carrying out these works, necessary coordination is ensured with provincial traffic committees.

The decisions about collective transportation taken by this center are binding for all related municipalities.

Example of institutional collaboration amongst local administrations is “unions”. The organizations formed by local administrations in order to execute definite services in-between themselves are called “local administration unions”. It is clear that there are lots of benefits of performing services together and in pieces. A local administration unit whose target is to deliver the best and the prolific service would collaborate and cooperate with another local administration. Local administration unions are constitutional institutions. (Constitution: Article.116/3)<sup>54</sup>

As Local Administration Unions function for public benefit, they can also pursue profit aim. Nearby the unions targeted economic objects, there exists unions executing infrastructure (road, water, bridge) services. Most of municipal associations are established because of economic necessities.

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<sup>54</sup>1982 Turkish Constitution, Article 116/3

### II.3.3.3. Franchise

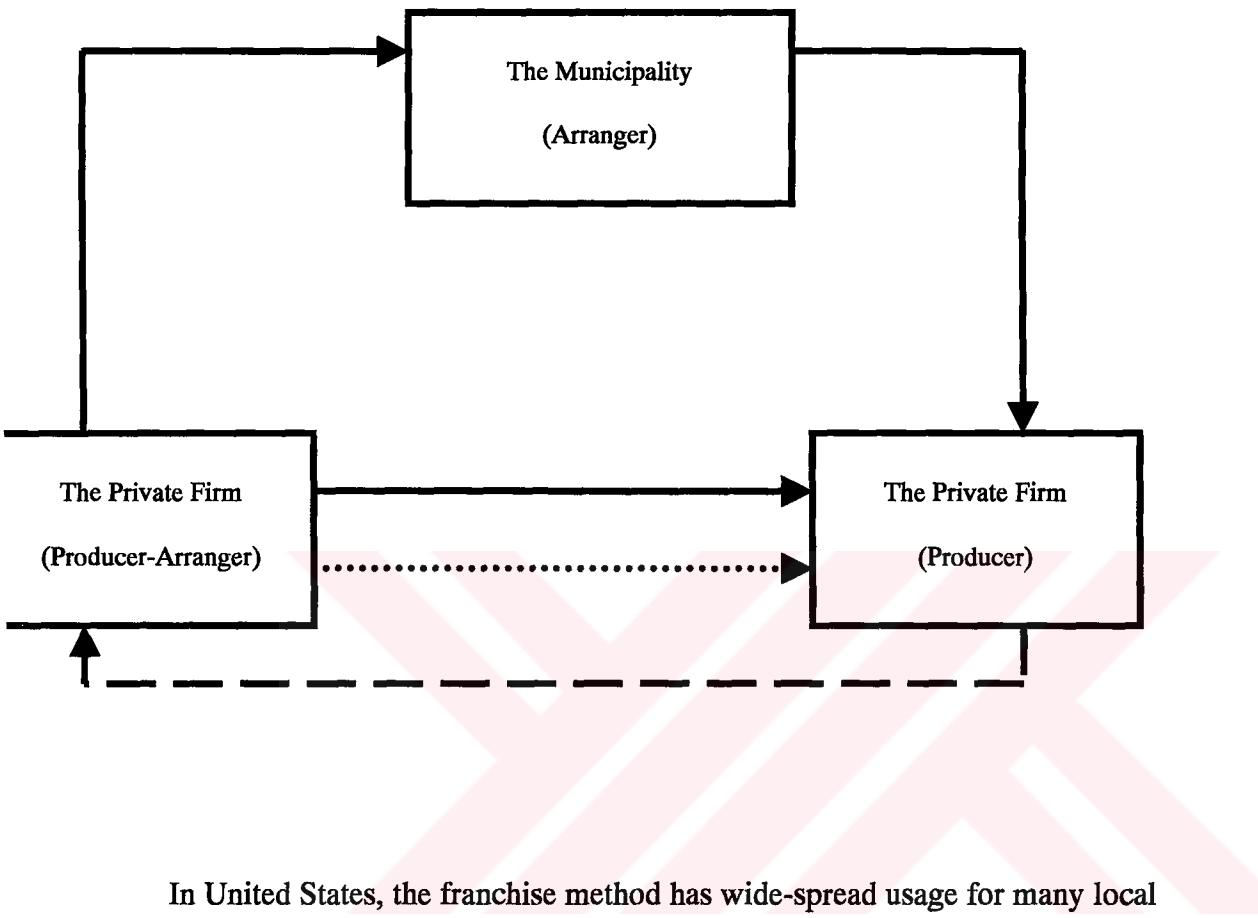
The Franchise or franchise is another institutional structure used for the delivery of certain public services to a private firm by the public authority in the status of monopoly, usually with price regulation by a government agency. Franchise is a method that is implemented in goods and services, which are “natural monopolies” such as water distribution, natural gas, sub-way, railway and drainage. As franchise can be awarded to only a one person or a private firm, it can also be given more than one firm as in the case of taxis, or minibus. It is called multiple franchise. As a matter of fact, this type of franchise is the most convenient one for the free market economy in which the ones who receive the service have the opportunity to influence the market through their demands.

Franchise is given for constructing and managing a public service. For this reason, the right of establishment and management must belong to municipality for the establishment and execution of a public service by the method of franchise. Also; it is necessary that law should frankly have given permission for that.<sup>55</sup>

In Franchise method, as in Contracting Out, municipality is the arranger and a private organization is the producer of the service; however, the two can be distinguished by the means of payment to the producer. In Contracting Out, consumer pays to public institution which then pays the producer, however, in Franchise method, the consumer makes the related payment to the producer directly. In Franchise method, the related public institution has also authority to make arrangements on the quality and level of the service, and in some circumstances, on the price. These relationships among the participants of service in Franchise arrangements are illustrated in Figure.4.

<sup>55</sup> Necmeddin Ergin, “Umumi Hizmetlerin İmtiyaz Yolu İle Kurulması ve İşletilmesi”, *Belediyeler Dergisi*, year:5, no:52, (December 1939), p. 14

Figure.4. Franchise Method



In United States, the franchise method has wide-spread usage for many local governmental services such as: waste-collection, bus-station and airport operation, utility billing, utility meter reading, vehicle towing and storage, ambulance service, street lighting etc.<sup>56</sup> As indicated above, it is the general conviction that this method is particularly suitable for the services that are qualified as 'natural monopolies' and common utilities such as electric power, gas and water distribution, telephone service.<sup>57</sup> Also, this method is widespread in France. For a long time, the water systems of many cities are executed by private sector through this method.

In our country, municipalities have opportunity to have certain services done by private firms through franchise method. The 19<sup>th</sup> Article of Municipal Law

<sup>56</sup> John C. Goodman, "Privatization-The Proceedings of A Conference", The national center for Policy Analysis and Adam Smith Institute, NCPA, Dallas, 1985, p. 110.

<sup>57</sup> E.S. Savaş, p. 15.

with no.1580 sets forth the principle that some important public services (such as water, natural gas, tramcar, steamship, bus and train) are established and managed by the municipalities itself, and ensures practicability for different service methods for other than mentioned public services. We can enumerate these methods as such;

- 1- Establishing and managing by municipality
- 2- Giving Franchise to private firms
- 3- Executing by the firms in which municipalities have shares
- 4- Hiring

As indicated before amongst these, Franchise is not a usual and common method. There exists partnership in the third method. What is indicated here is the execution of service jointly by a firm working according to the Turkish commercial Law and municipality.

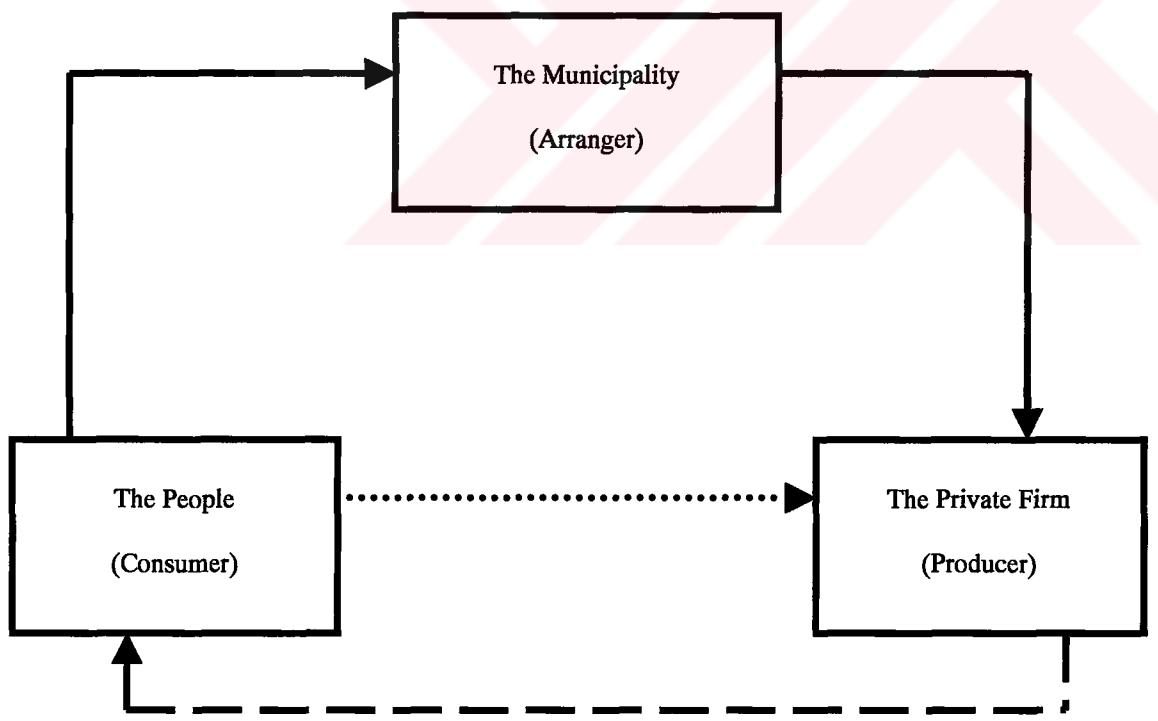
In the last method; municipality makes the investment concerning the service, but adjudicates the execution to private sector. This is called “management contract”.

#### II.3.3.4. Founding – Running- Giving Back

Founding – Running- Giving Back method is a kind of Franchise. It does not bring much burden to municipalities, also ensures advantages from the point that it forms its own sources. This method is based on the principle that the establishment of public service by private firms on the real estates belong to public sector, management of these for certain periods and transfer to public administration at the end of the period without any pay. It is implemented as a daily type of Franchise by Turgut Özal Government which came to power in 1983.

The legal bases of Founding – Running- Giving Back method from the point of municipalities are the State Contracting Out Law with no.2886 and the Municipalities Law with no. 1580.(Article 19, 70)<sup>58</sup> Based on these laws, municipalities have some of the public services done by private firms or foreign organizations through this method. It is beneficial that this method, as an important tool of the free-market system, is utilized in fields that necessitates advanced technology and foreign investment. By means of this method, the establishment and operation of a public service is materialized in a more short time. Otherwise, if the idea that the municipality maintains the service itself is adopted, it means that it will be postponed till municipality can find the necessary sources.

Figure.5. Founding – Running- Giving Back Method

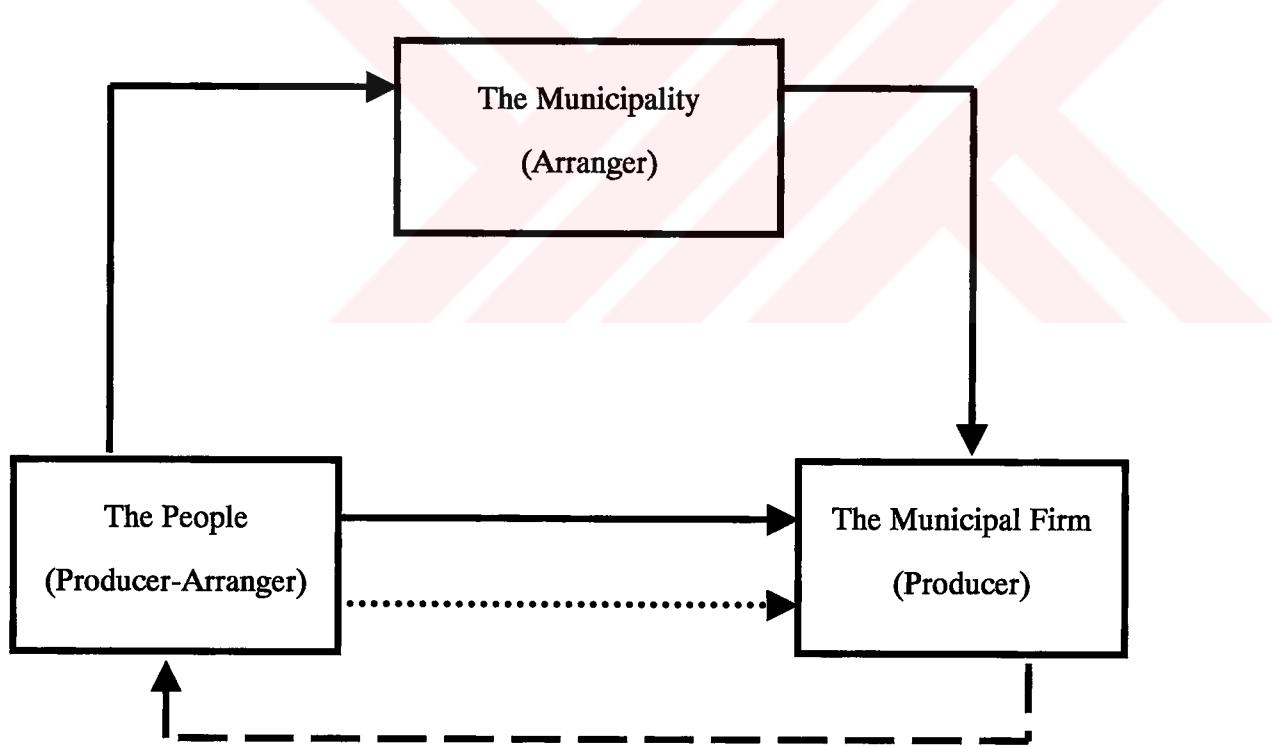


<sup>58</sup> See in this issue: H.Engin Şenalp, Ali Bilir, "Yap-İşlet-Devret Modelinin Mahalli İdareler

### II.3.3.5. Municipal Companies - Municipal Economic Enterprise(MEEs)

The municipalities transform their enterprises into companies in order to perform some public services more efficaciously and slip out the rigid rules and bulky functioning of public law and public bureaucracy. Also, there are other reasons for the compensation of municipalities. The first of these is the problems emerging from the employing of workers in the prevailing personnel regime. Second, the idea of freeing from the control of the central administration. And third, to ensure by companies, the return of a part of public funds which passed on private firms by the way of Contracting Out.

Figure.6. Municipal Companies



Depending upon the power granted by the law with no.1580, municipalities can establish company or participate in current companies. On the other hand, the general principles of Turkish Commercial Law give municipalities opportunity to build companies. Due to this, municipalities tend to a fast “compensation” in 1984. In consequence, similar to SEEs, Municipal Economic Enterprises emerged in metropolitan municipalities.<sup>59</sup>

MEEs are founded for more wide-spread service, but at the end they became clumsy in a lot of fields.

Nowadays, the municipalities, being parallel to the privatization in services, attempt to ensure quality and efficacy in services by coursing to the voluntary organizations and foundations.

#### II.3.3.6. Hiring/Management Contract

In Hiring/Management Contract Method, capital spending and construction of plants necessary for producing service are taken upon by local administration, however the management of serving period is entrusted to another organization. Local administration hires the plants and connected equipment with a certain price within the scope of a contract, which is ordered for a certain period or arranges contracts aimed at the management of services. The management of public services especially these which can not be worked in an efficient way, by this method ensures certain gains to local administration.

The differences between this method and Franchise method are these: First one is about the forefront investment spending. The organization that takes over the Franchise ensures investment and running capital concerning the supply of service

<sup>59</sup> Some these companies: İstanbul Belediyesi Bakım Sanayi ve Tic. A.Ş. (ISABAK A.Ş.); İstanbul Beton Elemanları A.Ş. (İSTON A.Ş.); İstanbul Asfalt Fabrikaları Sanayi Tic. A.Ş. (İSFALT A.Ş.); İstanbul Ulaşım San. ve Tic. A.Ş. ; İstanbul Mezbaha ve Rendering Tes. A.Ş. ; İstanbul Halk Ekmek A.Ş. ; İstanbul Gaz Dağıtım A.Ş. (IGDAŞ); *İstanbul Büyükşehir Belediyesi Faaliyet Raporu*, 1988, p. 253-9

and takes upon the risk of service. However, in hiring method, forefront investment spending are realized by local administration and only administration and management of current plants are matter of course.

Secondly, the period of service in hiring method is shorter than in Franchise method. The reason is that the company that is in renting position ensures only running capital instead of investment capital. And this can be regained in a shorter time.

Third of these is that the managers of the service pay a certain price to local administration and as a result of this the certain investment outlays that local administration has done can be compensated.

Another method that gives way to pass over a lot of problems that Franchise method causes is the management contract depended on profit-share. In this method, the local administration takes upon the forefront investment spending and in scope of that the establishment of plants. On the other hand the management of service and the plants and their overhaul are given to the private sector enterprise. Whole risk belongs to the local administration in this method. In recent years, it is seen that the gap emerging from the decrease in privilege contracts is filled by hiring and management contracts. This method is preferred more by both local managers, specialized firms on public service and other enterprises.<sup>60</sup>

#### II.3.3.7. Subsidy of Service

By subsidy of service, it is aimed that the firm, person or non-profit organization given the power to give service is supported financially or in other ways thus the quality and price of service is preserved in certain level.

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<sup>60</sup> Belediyelerde Alternatif Hizmet Sunma Yöntemleri. p. 36

Subsidy is used to present some services cheaper or gratis to a certain group in cases that service has the property of basic human requisite or the encouragement of consumption is needed taking care of more comprehensive public benefit.

Five methods are used for this purpose:

First; making financial aids directly to the voluntary organization

Second; ensuring equipment and tools.

Third; assigning a vehicle of the local administration to the voluntary organization.

Fourth; local administration encourages the provision of service by separating allocated funds that can not be used except the financing of a certain service.<sup>61</sup>

Fifth; local administration can demand as a pre-condition for the subvention, ensuring of certain financial source for using at the same service from the enterprise that will benefit from the mentioned subvention.

#### II.3.3.8. Voucher Method

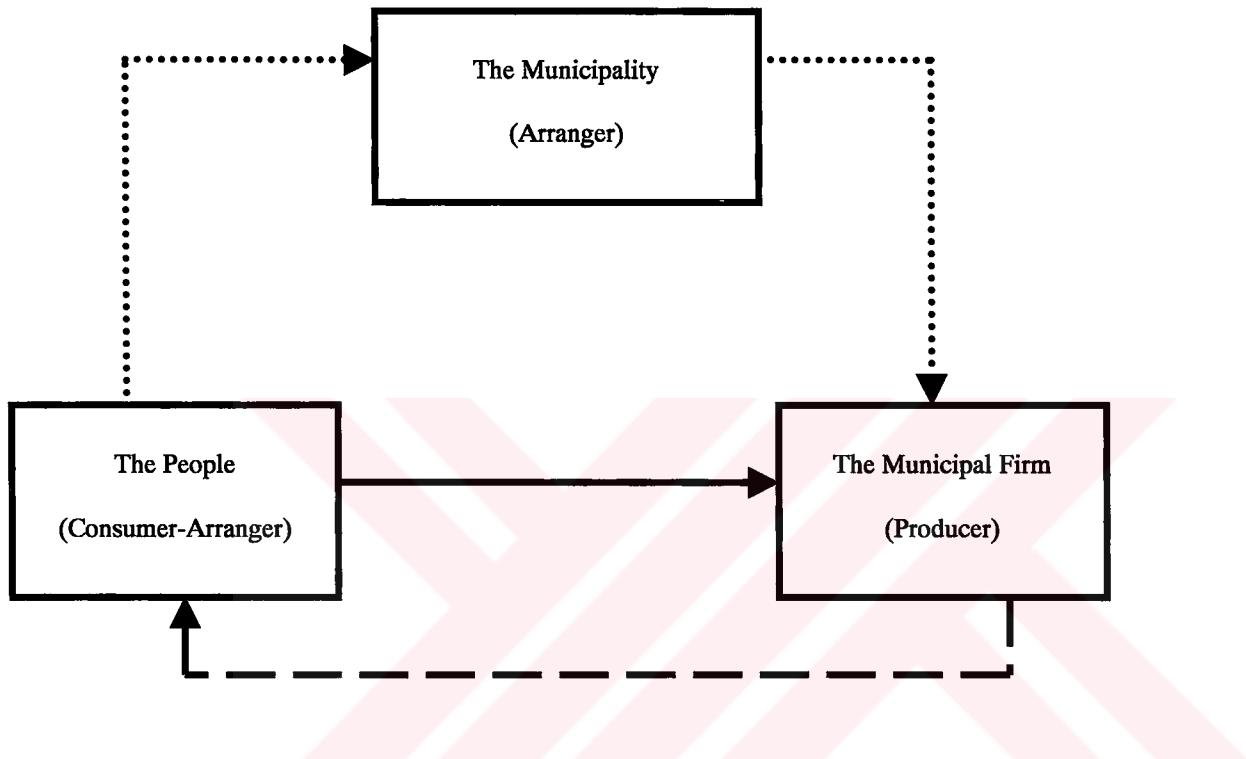
The Voucher method is also designed to encourage the consumption of particular goods by a particular class of consumers. Voucher system depends upon the idea, to provide financial support, particularly to the low-income groups, in order to facilitate for them the purchase of certain goods and services which are utilized wide-spread. The aim of this method is to ensure freedom of choice and consumption for low-income groups. Bulutoğlu explains this as follows: "Voucher method is used for supplying the services which are for some section of the society such as the old,

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<sup>61</sup> Senatalar, a.g.e

the lower-income group, the disabled and securing the arrival of aids that are carried out.”<sup>62</sup>

Figure.7. Voucher Method



In this method, it is aimed that some parts of society mentioned above can benefit from the services cheaper than the applied price-list, or without any pay. Consumer of the service is given a Voucher pointed out this situation, and he/she uses the advantages of this coupon. Producer of service demands the pay of manifested coupons for service from administration.

Usage of Voucher method instead of cash aid prevents the misuse of the assistance.

<sup>62</sup> Bulutoğlu, op.cit., p. 166

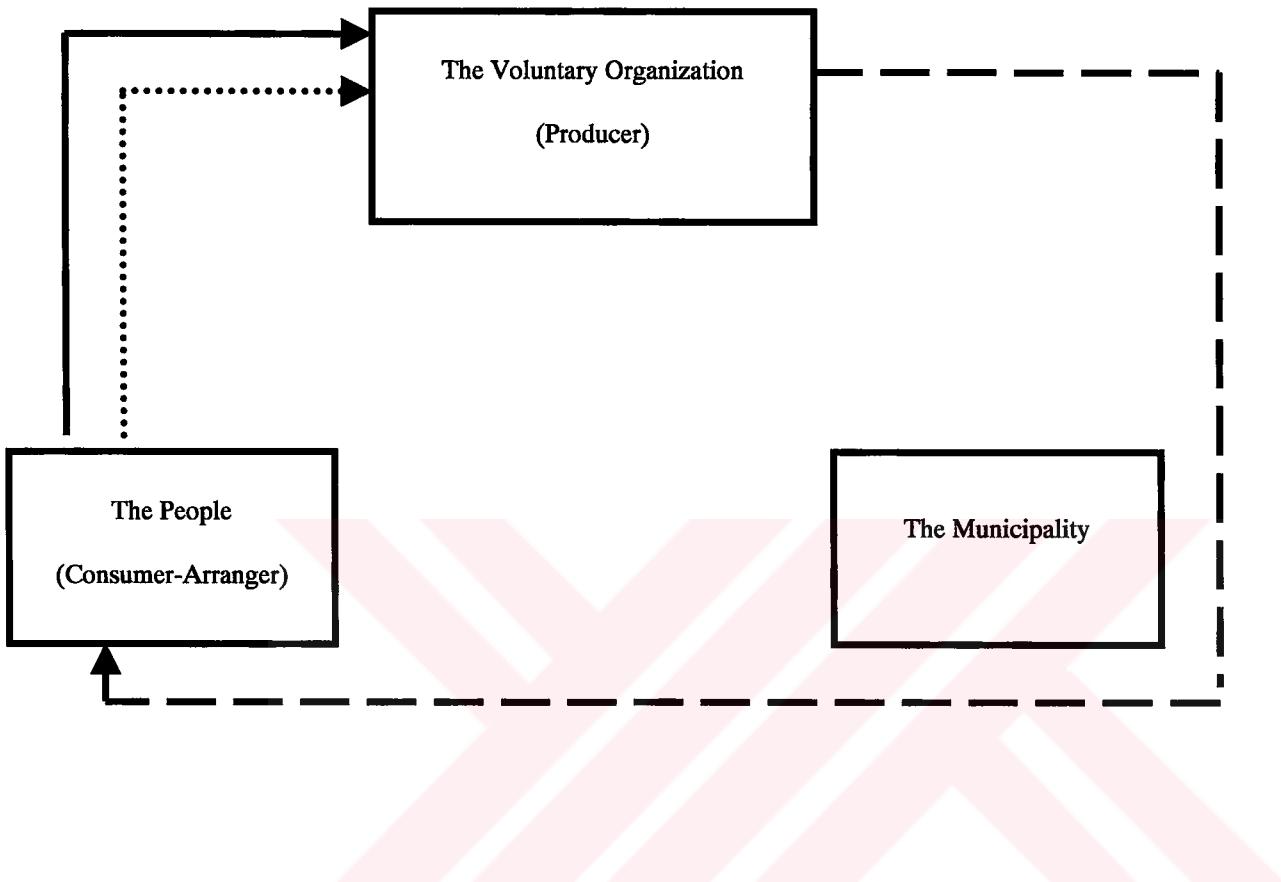
Voucher method must be well-planned and well-budgeted in order not to bring heavy burden to local administration and extreme and unjust burden to other citizens.

#### II.3.3.9. Voluntary Organizations

A part of public services is realized by voluntary organizations like wakfs(foundations) and associations. The reason is that the administration can not transfer enough sources to whole service fields. From this point of view, there emerges a need for utilizing the potential opportunities and sources of the society. Since they are built for social aims, voluntary organizations do not look for profit and their members work idealistically without any pay. For making savings in public resources and mobilizing the potential power of society, these organizations can be utilized more. As a matter of fact, in recent times, voluntary efforts exhibit an important improvement in certain fields such as environment protection, fire protection, recreation programs etc. especially in developed countries and metropolitan cities. For instance, the % 90 of fire brigade services in United States constitutes from voluntary organizations. In this country, voluntary organizations are an important sector. The proportion of this sector in USA's gross national product is more than % 6 and they play an important role in balancing the other two sectors (public and private sector).<sup>63</sup>

In this method, the voluntary organization acts as service producer and either produces the service directly, using its members or employees, or hires and pays a private firm to do the work. On the other hand, the people are both service arranger and consumer. On the other hand, the municipality is left out of the participants of the public service.(See Figure.8) When a voluntary organization engages in the business of supplying private goods, such as a housing or food cooperative, it is no different from a private, non-profit firm operating in the market.

Figure.8. Voluntary Organization



The involvement of the people to public service and their voluntaries is related with the moral and cultural internal dynamics of countries. Churches in West and Wakfs in our country have played important roles in carrying out services throughout history. The 16<sup>th</sup> century Ottoman Society was defined as "Paradise of Wakfs". Since there were lots of wakfs realizing public service in every fields that could be thought.<sup>64</sup>

It would be convenient to search the reason for that in the fundamental philosophy of the state. The state did not consider itself responsible of giving public service to its subject. In this case, only wakfs were left as organizations to supply

<sup>63</sup> Robert P. Corman, "The Realities of Profitization and Privatization in the Non-profit Sector", *Private Means Public Ends*, pp. 101-16

<sup>64</sup> Turan Yazgan, *Görüşler*, İstanbul, 1977, p. 15

these services.<sup>65</sup> Municipal services were depended completely upon the wakf model in Ottoman.<sup>66</sup>

Wakfs can also fulfill vital functions today in execution of public services. They can take on the duties such as developing social responsibility, ensuring social peace and solidarity, reducing the inequality in income distribution of society. Thus; minimizing the problems emerging from the structure and functioning of the clumsy central and local public organizations would be possible due to the wakfs.

In our country, developing the wakf organizations takes place in development plans.<sup>67</sup> This institution would be effective in execution of public services as school, hospital, rural health center and crèche etc. by preserving its traditional role.

#### II.3.3.10. Contracting Out

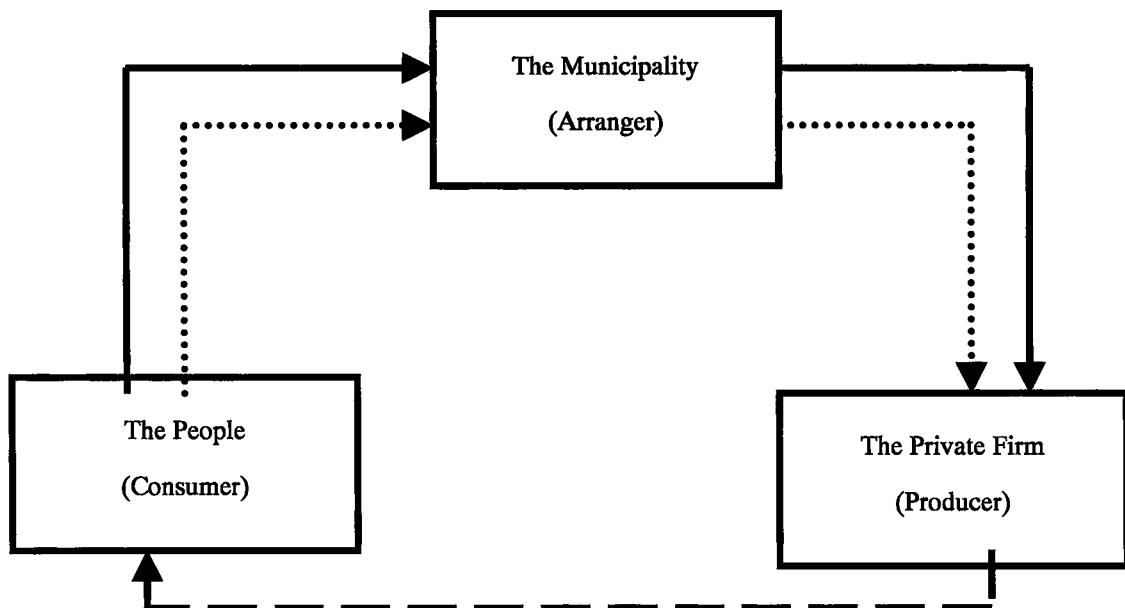
Contracting Out is the execution of public goods and services by the private sector enterprises through a contract. In Contracting Out instead of supplying the service with its own departments and personnel, related administrative unit has the service done by private firms for efficacious service and resource allocation. It is claimed that Contracting Out is a cheap, good-quality and efficacious service production process.<sup>68</sup> In this method, the municipality is the service arranger, the private firm is the service producer and the people is the service consumer.(Figure.9) The people make the payment of the related service to the municipality and the municipality gives it to the private firm.

<sup>65</sup> Erol Kozak, *Bir Sosyal Siyaset Müessesesi Olarak Vakıf*, Akabe Kitabevi, İstanbul, 1985, p. 20

<sup>66</sup> The State Planning Organization

<sup>67</sup> Ömer Faruk Batırel, "Türk Devlet İhale Sistemi Değerlendirmesi", *Bütçe Uygulaması ve Denetim Semineri*, Anadolu Üniversitesi Yayınları, no:52, Eskişehir, (1984), p. 77

**Table.9. Contracting Out/Contract**



Local administration can use this mostly-used method for the fulfillment of more than one service of more than one service defected at the supply of a service completely or partially.

There exist many advantages of Contracting Out method. These can be enumerated as follows:

- Contracting Out method can ensure the provision of service in lower prices since it will bring competitiveness amongst the firms which join the Contracting Out. Thus firms which will produce the best quality service with the least cost will win the Contracting Out.
- The profit motive in private initiative will limit the budget growth by taking the place of execution of budget and overbidding of personnel number tendency in public sector and in the long run will prevent the growth of administrative body.

- By the implementation of this method, there will be savings from the personnel expenditures.
- In the absence of bulky bureaucracy, the emerging problems would be solved effectively in short time.

The importance of Contracting Out in the execution of public services comes from that it makes utilizing from the competitive environment of the market possible. In the meantime, Contracting Out is a means of privatization of public services. The local administrations in United States, England and Japan succeed in making % 40-60 savings in waste-collection services.<sup>69</sup> Especially in United States, Contracting Out method is considered as one of the most efficient and efficacious way for the delivery of public service.<sup>70</sup> On the other hand, the municipal service of street cleaning, waste-collection and collective transportation and some parts of the services carried by the National Health Department are delivered through this method by private sector in England.<sup>71</sup>

The researches made on this subject displays that many public services can be produced with lesser costs by Contracting Out method. For instance, a comparative research made about eight public services in twenty different countries in 1984 has put out the following results.

<sup>69</sup> Calvin, A. Kent, p. 14

<sup>70</sup> Ruth Hoogland Denog, *Contracting Out For Human services, Economic, Political and Organizational Perspectives*, University of New York Press, 1984, p. 3

<sup>71</sup> Berar Altıntaş, *Kamu İktisadi Teşebbüslerinin Özelleştirilmesi ve Özelleştirmenin Sermaye Piyasasına Etkileri*, Sermaye Piyasası Kurulu Yayımları, no:8, Ankara, 1988, pp. 91-2

Table.1.The Ensured Savings by the Contracting Out Method

<u>Services</u>	<u>The Ensured Savings (%)</u>
Street cleaning	43
The cleaning of the public buildings	73
Traffic-signal installation	56
Tree trimming	37
Waste-collection	42
The arrangement of the payrolls	No differentiation done whether by private firm or public institutions
Asphalt repair	96
Grass maintenance	43

Source:<sup>72</sup>

Contracting Out is a well-known method which has been implemented for a long time. In the first article of State Contracting Out Law; it is said that 'purchase, sale, service, construction, rent, barter and transportation works of departments involved in general budget, departments with supplementary budget, special administration and municipalities is executed according to the principle of this law.'<sup>73</sup> Accordingly, Contracting Out method can be applied to the above-mentioned services. In development plans, it is suggested that the municipalities have the works which can not be performed efficiently by them done by private firms with

<sup>72</sup> Calvin,A.Kent, Sanura P. Wooten, "Privatization: The Entrepreneurial Response", *Entrepreneurship and the Privatizing of Government*, p.146

<sup>73</sup> The State Contracting Out Law with no.2886, 8.9.1983, Article 1

**Contracting Out.**<sup>74</sup> Particularly, Metropolitan Municipalities started to utilize more from the Contracting Out method as a means of privatization after 1984.

In the Contracting Out method, the contractor engages in supplying a specific service in a standard and period defined in contract at a previously determined price.

The losses that emerge when increasing costs exceed the pay of the contractor and the profits that emerge when the pay of the contractor exceeds the costs belong to the contractor.

- a) **Fixed Contract Allowance:** The period of service is generally a budget term. This is also valid when inflation is low. Contractor makes the work in the possible shortest time in order not to be affected from price increases. This is its greatest advantage.
- b) **Contract Allowance Subject to Escalation:** especially in case that inflation rate is high, the funds for compensating long-run price increases are included to the Contracting Out proposal, in this way the possible price increases are attempted to be compensated. If Contracting Out is a long-term, escalation is adapted in contract allowance in the end of a period according to a determined index.<sup>75</sup>
- c) **Fixed Allowance-Plus-Initiative Subsidy:** there also exists a fixed contract which includes costs and a definite profit margin but various initiative subsidies is suggested when the work is completed early.
- d) **Cost Contracts:** In this type of contracts, the expenditures made by the contractor regarding to a service is covered by local administration. In exchange for the service a determined profit margin is accepted or previously determined allowance is paid to the contractor.

<sup>74</sup> The State Planning Organization, The Fifth Five Years Plan, p. 169

<sup>75</sup> "Belediyelerde Alternatif Hizmet Yöntemleri", p. 26

The most vital factor that limits the implementation area of this method is that a great portion of the financial risk is charged to local administration.<sup>76</sup> It is two type.

First; Cost-Plus-Fixed Price,

In addition to the merits at the expense of expenditures concerning service, a previously determined fixed fee is paid to the contractor.

Second; Cost-Plus-Initiative Subsidy,

Still a definite fee is paid to contractor in return for its merits, but different from the previous method this merit is paid not in sort of a fixed fee but as a fee proportional with expenditures.

Contracting Out method is known and applied method from of old in our country. By the state Contracting Out Law with no. 2886<sup>77</sup>, it is possible that purchase, sale, service, construction, rent, transportation works of departments involved in general budget, departments with supplementary budget, provincial special administrations and municipalities are being done through Contracting Out method by private sector. According law, this five method is applied in Contracting Out. These are;

- Confidential Proposal
- Confidential Proposal amongst definite demands
- Public Proposal
- Bargaining Method
- Competition Method

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<sup>76</sup> Ibid., p. 27

<sup>77</sup> Official Gazette, 19.9.1983 no:18161

Which of these procedures will be applied is determined by the administration in accord with this law according to the quality of the work.<sup>78</sup>

Municipalities have their works mentioned in the law done by private sector by choosing the highest of proposed allowances on condition of not being under the estimated allowance in augmentation, the deemed suitable one of the proposed allowances on condition of not passing over the estimated allowance in reducing. On the other hand in Contracting Out in which no allowance estimating is made, the deemed suitable one of the proposed allowances is chosen by the municipality. At the system in force, instead of the least proposed price, a pricing system called “suitable allowance” is brought in works executed by reducing procedure. The public institutions involved in law will make their evaluations and preferences according to this suitable allowance in the Contracting Out.<sup>79</sup>

It is not decisive that the most lowering amongst the willing of the job will get it in Suitable Allowance Model. Administration evaluates the proposals and Contracting Out is given to the most suitable firm according to the conditions in the Contracting Out. It is observed that this suitable allowance model is the most appropriate method through the efficacy approach.

The success of Contracting Out is depended upon the well-calculation of the estimated allowance and the degree of density in the competitiveness of the service in the market. There are some negative aspects of this method. The most crucial of them is the possibility bribery. This kind of things would remove the target of Contracting Out. Because of abuses, the benefit which would be achieved, would disappear.

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<sup>78</sup> The State Adjudication Law, Article 35.

<sup>79</sup> The last change made in 2.3.1984 and last paragraph of the article 28 of The State Adjudication Law with no 2886, Official Gazette, 26.01.1985, no:18647

## CHAPTER III

### THE SERVICE METHODS IN ACTION ISTANBUL METROPOLITAN CITY

In this chapter, the service methods that are used widespread in Istanbul Metropolitan Municipality are dwelled upon. These methods are: Franchise, Contracting Out, Municipal Governmental Organization, Voucher Method, Municipal Private Companies, Subsidy and Non Governmental Organization.

When the service methods concerned in this chapter are examined, the privatization is also taken into consideration. Now, let we analyze these methods one by one in detail.

#### III.1. Municipal Governmental Organization

Similar to other metropolitan municipalities, Istanbul Metropolitan Municipality meets many important services by organizing them out of traditional municipal structure. By this, the ways of being efficacious in services is sought. Because, these services can be executed more efficiently and efficaciously in the semi-autonomous statute in administration, budget and running of service. The best example to this is the Bus Administration. It was established through a special law. Istanbul Electricity, Tunnel and Tramway Administrations give service in transportation sector in Istanbul. In last years, this institution could not be efficient at the expected level. It closed the 1995 year with deficit.

When the case is evaluated from the framework of privatization, the share that the IETT gets from the transportation at the boundaries of Istanbul Metropolitan Municipality worthies attention.

The number of people carried daily by

Buses	1700000	% 23.2
Private buses	500000	% 6.8
Minibuses	1000000	% 13.6
Dolmush	50000	% 0.7
Taxis	600000	% 8.2
using their personal cars	1200000	% 16.4
Tunnel	20000	% 0.3
Tramcar tramcar is not considered) <sup>1</sup>	600	%0.1(the speedy

IETT remains insufficient in meeting the passenger demand. And it is impossible that it can surmount this major problem. For this reason, 'Private People Bus' project has started in many bus lines. The IETT buses are leaving their places to private people buses day by day. The reason of this is the wish to put an end to the annual deficits which exceeds two trillions.<sup>2</sup>

Istanbul Metropolitan Municipality has the tendency to lessen the excessive work burden by materializing the same thing in different service realms.

<sup>1</sup> The Report of IETT Bus Administration Department, 1995.

<sup>2</sup> Monthly Report, İstanbul Metropolitan City Press, March, 1994, vol.15, p.23.

### III.2.Franchise

The first and the most important of the service methods applied in Istanbul Metropolitan Municipality is 'Franchise method'.

According to the definition in the State Adjudication Law; 'the purchase, sale, service, construction, rent, transportation works of departments involved in general budget, departments with supplementary budget, provincial special administrations and municipalities are being executed through the provisions written in this law'.<sup>3</sup>

The law with no.3030 which organizes the administration of the Metropolitan Municipalities is prepared with a liberal understanding and incites the delivery of the services by private contractors. In its article that organizes the duties of the metropolitan municipalities(Article 6), the law uses the concepts like '..to have made' and '..to have managed..' for twelve different duties concerned with the delivery of the services. In the fifth five years development plan<sup>4</sup>, the adjudication method is recommended to the municipalities. On the other hand, this law makes the privatization of the municipal services through Contracting Out model possible.

For the enterprises that take place in the administrative structure of the Metropolitan city, not only one adjudication system, that is to say the law with no.2886, but different adjudication methods that are organized differently cording to the institutions are implemented. For example, the adjudication's concerning the purchase and sale of the electricity, natural gas, tramcar and tunnel enterprises managed by provincial special administrations, municipalities, or the institutions bound to these are being executed according to the provisions of the regulation<sup>5</sup>

<sup>3</sup> State Adjudication Law, Article 1.

<sup>4</sup> Fifth Five Years Development Plan, p.169.

<sup>5</sup> Some articles of this regulation were changed in 1986 by the Internal Affairs Ministry: Official Gazette, no:19015, 10 February 1986.

dated 1.7.1947 which was arranged according to the third article of the Law with no. 4768. On the other hand, the adjudication methods which will be carried out in every kind of affairs related with the fulfillment of the duties given by the laws with no. 2560/3009 and 3305 -such as purchase, sale and construction of movable and immovable property, service, altitude establishment over immovable, research, project, map and constancy etc.- of the water and drainage administrations that take place in body of metropolitan municipalities are organized according to the regulations made by the related Metropolitan Municipality Assembly. The reason for this application is cutting down the delay and difficulties originated from the State Adjudication Law with no. 2886.<sup>6</sup>

The success of Contracting Out method is depended upon the well-calculation of the estimated allowance and the degree of competitiveness in the service market. There are some negative aspects of this method. The most important of these are bribery and corrupt practices. This kind of unlawful actions both remove the benefits of adjudication and moreover cause that the institution makes losses. Since there is no control on the quality of the service, the service will not be realized efficiently and efficaciously, properly to its target.<sup>7</sup>

In Turkey, the adjudication system of which the application realm broadens day by day has became a privatization tool which has been employed frequently after 1984 by the municipalities, particularly by the metropolitan municipalities.<sup>8</sup> Some municipalities (such as Istanbul, Izmir...) have the cleaning of the public buildings of the municipality made by private entrepreneurs, on the other hand some of them (Adana) privatized their waste collection affairs, economic and tourist enterprises by this method.

<sup>6</sup> Eryilmaz, op.cit., p. 39.

<sup>7</sup> J. John and C. Cohn, Ries *Alternatives to City Departments* in Alternatives for Delivering Public Service, Ed. By E. S. Savas, Baulder Press, Westwies, 1977, p.116.

<sup>8</sup> Eryilmaz, op.cit., p.539.

In Istanbul Metropolitan Municipality, the adjudication method is implemented as an alternative service delivery method.<sup>9</sup> Amongst the most valid reasons of this is meeting the service in the most efficacious and efficient way. On the second hand, the insufficiency of the resources of the municipality and the nature of certain municipal services that necessities expertise are other reasons of that.

In Istanbul Metropolitan Municipality, the ‘stream amelioration works’ can be shown as the examples of the services performed by Contracting Out method.

From 27 March 1994 on, Istanbul Metropolitan Municipality organized adjudication’s for the amelioration of ten streams. The streams which were adjudicated are these: Ayvalıdere, Çırpıcı, Turşucu, Beykoz, Siyavuşpaşa, Kurbağalıdere, Savaklar, Çamaşırıcı, Küçükkyalı and Tuzla Deresi.

A sample application to the steam amelioration works which are considered in the framework of construction affairs mentioned in the second article of the State Adjudication Law takes place in the abbreviations part of the study.

Istanbul metropolitan Municipality utilize from all types of adjudication methods. The differences between the methods alters according to the scope and nature of the work. The reason for that is to obtain saving in services.

### III.3. Non Governmental Organization Organizations

In cooperation with many Non Governmental Organization organizations, Istanbul Metropolitan Municipality makes many activities in health, education, culture and sport areas. Amongst these, particularly foundations and associations are collaborated in many realms and by the way the cultural improvement of the society is tried to be ensured.

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<sup>9</sup> Ömer Dinçer, Consultant, 15.9.1995 dated Interview Notes.

In our country, the development of the foundations and the related precautions are adopted as a state policy and take place in development plans. The ‘wakfs’ which are traditional institutions have a great capacity in contributing to Istanbul Metropolitan Municipality in the process of service delivery. The foundations which are effective in health clinic, hospital, school, crèche, old age asylum and similar social public services can be beneficial to Istanbul Metropolitan Municipality in this realm.

#### **III.4. Voucher Method**

The voucher method provides financial support to the low-income group in order to facilitate them the purchase of certain goods and services which are utilized wide-spread and enables the free utilization of the consumption preferences of the individuals in the market. For instance, a person from low-income group can buy food and clothing which is sold in market at a lower price than the market price. When these foods and clothing is bought, a part of the price is paid by the person who will utilize these.

However, voucher method is not implemented by Istanbul Metropolitan Municipality nowadays. In past years, this method was used in ‘bread and milk’, however it was abolished since this method got out of its target.

#### **III.5. Municipal Private Companies**

Through compensation, the movable and immovable goods are not transferred to private sector but instead, they are taken from the juridical personality of municipality and transferred to another judicial personality which works according

to the Turkish Trade Law. The movable and immovable values which passed to this juridical personality keeps on a relationship of administration and possession. In the established companies, the share of the municipality is %50 and over.

There exists many companies in the structure of the Istanbul Metropolitan Municipality. Their activity subjects are very varied. These companies are established as 'Corroborative Companies'. A part of the goods and services produced by these companies are purchased by the Istanbul Metropolitan Municipality itself. According to the some statistical numbers, İGDAŞ serves to private sector at proportion % 90. On the other hand, this proportion is % 60 in İSTAN and % 65-70 in ISFALT.<sup>10</sup>

The municipal companies join to the adjudication's held by the Istanbul Metropolitan Municipality as the other companies do. As a matter of fact, the Istanbul Metropolitan Municipality gives Opriority to these companies in the purchase of goods and services.

Nearby some beneficial aspects, the execution of the services by municipalities through companies exposes some problems in terms of coordination, supervision and administration. There is no direct control and authority of municipal assemblies over the companies which are established by municipalities or in which they have shares. Justly the municipal assemblies have voice in the stage of establishment or joining to a company. For this reason, the lack of supervision can bring about arbitrariness. Nowadays the works for the revision of municipal companies are going on.

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<sup>10</sup> Monthly Report, op. cit., p.25.

### III.6. Subsidies

In the subsidy of service, the person or non-profit organization given the power to give service is supported financially in order to ensure that the people getting services can utilize from these services cheaply and in a better quality.

In the Istanbul Metropolitan Municipality, this method is implemented rarely, almost never.<sup>11</sup> Only, it was implemented in bread for a period. However, reduced price lists are implemented for some profession groups (students, PTT, justice, teacher and police) in IETT buses, in another say, the service is being subverted

Also the municipality contributed to educational services by granting scholarship to students in October of 1995.

### III.7. Contracting Out

The contracting Out method is another important method that is applied frequently in Istanbul Metropolitan Municipality. The reason for this is producing the service at cheaper costs and diminishing the personnel and vehicle expenditures.

For instance, Istanbul Metropolitan Municipality preferred to use their service vehicles by the method of contracting Out. Through this method, the municipal organization makes saving from both plus vehicle costs, care-repair expenditures and driver's salaries. In addition to these, the vehicles hired from the companies are both new and convenient for the target.<sup>12</sup>

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<sup>11</sup> Dincer, op.cit.,

<sup>12</sup> Monthly Report, op.cit., p.21.

On the other hand, Istanbul Metropolitan Municipality has hired its own immovable properties in order to obtain plus income. Besides, it gives the right of management to private persons for the management of floor parking lot in the boundaries of Istanbul through this method. However, this method has left its place to a new practice. In this new application, the floor parking lot is being built by the private sector itself, and so the right of management belongs to it.



## CONCLUSION

We have examined the main institutional methods in the execution of municipal services.

In order to meet the urban services of better quality and more widespread, local administrations give importance to the delivery of services by alternative service methods through decreasing the direct inputs and contributions in the process of service production. Because of their autonomous structure municipalities are not only democratic institutions but the organizations where new service delivery methods and techniques are developed and applied. Each municipality tries to find out and implement better service methods. In the progressing market conditions, it is not necessary that each kind of service is produced by municipal organization. Having the works other than those which are natural monopoly (such as water, drainage, metro etc.) done by private sector through 'adjudication/contract' or 'hiring' method will increase efficiency and administrative effectiveness. The privatization of local services must be taken into consideration in this perspective. Because by this method, the local administration will all the time have the opportunity to perform its 'responsibility' to the public as being the unit that arranges the service.

The service that have the most troubles in our country is the public service. During the study, we have analyzed the methods of the delivery of public service in detail. Nowadays, municipalities and particularly Istanbul Metropolitan Municipality give importance to 'adjudication/contract' method. Adjudication/contract method is implemented at almost every fields successfully.

On the other hand, it is impossible to see developed collaboration amongst local administrations in terms of producing service. Municipalities wish to possess technical rigging and service production organization in every field. However this is almost impossible and moreover an unnecessary idea. This incident increases the

expenditures made for tools-vehicles and public buildings and causes hidden unemployment and idle capacity.

When the subject of whether meeting the services directly by the local administration itself or through alternative service methods is evaluated, especially the advantages and disadvantages of transferring the responsibilities of local administrations to private sector have been discussed.

The more the specificity of the service is increased and the government is able to monitor and control the contractor's performance, the more successful will be the alternative methods based upon contracts. On contrast, the transfer of services - which are not specified unambiguously, of which the works it included, its timing and costs are not defined in detail- to the organizations other than the local administrations will be problematic.

When 'adjudication of service' is considered, projection of the service, the selection of the contractor through an adjudication in a competitive climate, the monitor and control of the contractor's performance appropriately in a transparent process will comprise the source of a political and social legitimacy of this service delivery method.

One another aspect in the process of meeting the urban services, is the participation issue which is important at least the utilization from private sector effectively. As a matter of fact, to ensure that the local people participate in the service delivery process have been one of the fundamental targets of many institutional and administrative reform endeavors at last decades. The reason for this is the idea that the control of local people over the local administration will increase.

On the other hand, the participation of people to the execution of local public services as 'producer' and the precautions taken for this brings about the lightening of the excessive service burden over the local administrations.

Only the public resources are not enough for the finance of services at local level as in the central level. By the participation of people to the delivery of services,

the potential and inactive resources will be utilized through the organizations through the organizations such as wakfs, foundations, etc.. and by the way services will be met in a more efficacious and efficient way. It is the general opinion is that the services will be controlled better in terms of cost and quality when people pay directly to the 'producer' of the service.

How much the alternative methods become widespread, the role of the municipal administrations will not diminish.

In this scope, it is necessary that the local administration make some institutional arrangements to develop mechanisms in order to ensure decentralization in meeting services, to evaluate and compare different service delivery methods, to evaluate cost analysis and socio-economic effects of the service, to strengthen the capacity of controlling the process of performing service.

As a last point, it must be implied that alternative service delivery methods and process would mean something with the general political, economic, social and institutional conditions of the local administration and in a wide framework that stretches from strategic planning to transparency and participation, from moral and institutional values to financial management.

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