

# Election Safety and Combining Ballot Boxes

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- **Is the institutional structure sufficiently trustworthy regarding management and supervision of elections in Turkey?**
  - **What are the regulations introduced by the Election Safety Law and what are their purpose?**
  - **What does the decision to move and combine ballot boxes mean? Are the criticisms justified?**
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In many regards, the snap elections on June 24, 2018 will be an election of firsts for Turkey. Presidential and parliamentary elections will be held concurrently for the first time and some political parties will partake in the elections having formed alliances. At the end of the elections, constitutional amendments approved by a popular vote on April 16, 2017 will fully enter into force, and Turkey will adopt a new government system. With all these aspects, the snap elections in Turkey make the headlines; however, election safety, impartiality, and the legal and administrative measures taken on these matters are also being debated by certain individuals. In the past, similar concerns and claims about election safety and irregularity were raised, as seems to be the case for the upcoming elections. Another first in the upcoming elections is the combining of certain ballot boxes. However, both institutional mechanisms on management and supervision of elections in Turkey, which are directly guaranteed by the Constitution, and the country's experience of over 70 years in multiparty elections prove that such concerns and claims are unfounded.

Before touching upon the regulations in general and the measures taken recently about election safety, two points need to be underlined.

The first point is that the diversity of possible interferences in elections seems to be a problem stemming from the advancements in technology and communication channels, and is impossible to deal with through classical methods. As it is the case with the allegations about the latest U.S. presidential elections and the Brexit referendum in Britain, there is always a possibility for even the most developed countries to face election manipulations. Since it is impossible for the Supreme Board of Election (*Yüksek Seçim Kurulu*, YSK) or any other election board to single-handedly deal with similar situations, all public institutions, particularly informatics bodies, will take necessary measures to prevent any interventions. Besides, it should be underlined that Turkey has not witnessed any such issues so far in its democratic elections history.

The second point is that the terrorist organization PKK to this date has prevented a free and fair election environment (in eastern and southeastern Turkey) by

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pressuring/harassing electors, candidates and political parties. Particularly in the June 7, 2015 elections, the PKK and its elements in cities of the region exploited the Resolution Process and committed acts of crime to coerce the democratic process. Nonetheless, both the safety measures taken by the state in recent years and the legal regulations to be discussed here have largely eliminated probable threats to election safety in the region.

### **ELECTIONS ARE CONDUCTED BY THE INDEPENDENT ELECTORAL JUDICIARY UNDER THE OBSERVATION OF POLITICAL PARTIES**

The first multiparty elections in Turkey were held in 1946, but they are remembered in association with non-democratic implementations such as “overt balloting and covert vote counting.” Therefore, the next election on May 14, 1950 is considered as the start date of fair and free multiparty democratic elections in Turkey. This means that Turkey has almost 70 years of democratic experience in multiparty elections. In actuality, the election experience dates back to the period of the 2<sup>nd</sup> Constitutional Monarchy in the late 19<sup>th</sup> century. After the adoption of the multiparty election system for fair and impartial management and audit of elections, Turkey passed the Election Law<sup>1</sup> in 1950, formed election boards in provinces and counties, and established the YSK (Supreme Board of Election) in the capital Ankara. The Constitutions of 1961 and 1982 also stated that elections shall be conducted under the management and supervision of the judiciary, and assigned this task to the YSK.

Various models on the management and audit of elections exist in democratic countries.<sup>2</sup> Although different intermediary models exist, there are generally two methods to give the mandate to supervise elections in democratic countries: assigning the task to parliaments or to independent judicial bodies. Turkey has adopted the latter and furthermore, has not only left the task

of auditing to a specialized judiciary body but also the administering of elections - as it is the case in many countries.<sup>3</sup> In this regard, the YSK is described, in the Constitution and the laws, as an institution having the sole and broad authority on elections both administratively and judicially. Thus, from the beginning to the end, the authority to conduct all kinds of acts regarding the management of the elections including resolution of objections is constitutionally granted to the YSK.

According to the Constitution, the YSK members are selected by and from among the members of the Supreme Court of Appeals (in Turkish *Yargıtay*, an independent specialized court for appeals of civil and criminal cases) and the Supreme Judiciary Council of State (in Turkish *Danıştay*, an independent specialized advisory and appeals court for administrative, legislative and gubernatorial cases and acts). There is absolutely no influence of any political body in the election of the YSK members.<sup>4</sup> Representatives of political parties also observe members of the YSK and participate in all procedures and discussions of the board but are not entitled to vote (Law No: 298, Article 17). Similar to the YSK, provincial and district election boards run by the YSK also have local representatives of political parties. In a nutshell, all elections in Turkey are supervised and conducted by the independent judiciary, and all proceedings of these judicial bodies are conducted under the observation of the political parties participating in the elections.

The formation of ballot boxes, the establishment of the electoral judiciary, and voting and vote counting are administered and conducted by the judiciary under the observation and non-voting participation of political parties. On the election day, besides the presiding officers

<sup>3</sup> See Kemal Gözler, *Anayasa Hukukunun Genel Teorisi*, Vol. I, (Bursa: Ekin Yayınları, 2011), pp. 718-719.

<sup>4</sup> The 1982 Constitution, Article. 79/4: “The Supreme Board of Election shall be composed of seven regular members and four substitutes. Six of the members shall be elected by the General Body of the Supreme Court of Appeals, and five of the members shall be elected by the General Body of the Supreme Judiciary Council of State from among their own members, by secret ballot for each member by an absolute majority vote of the total number of members. These (elected) members shall elect a chairperson and a vice chairperson from amongst themselves, by absolute majority and secret ballot.” See “Türkiye Cumhuriyeti Anayasası”, *TBMM*, <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>, (Access date: June 7, 2018).

<sup>1</sup> “Milletvekili Seçimi Kanunu”, *Resmî Gazete*, February 21, 1950, Issue 7438, <http://www.resmigazete.gov.tr/arsiv/7438.pdf>, (Access date: June 7, 2018).

<sup>2</sup> Levent Gönenç, *Türkiye’de Seçim Uyuşmazlıkları ve Çözüm Yolları*, (Ankara: Adalet Yayınları, 2008), pp. 30-37

of the ballot committees in each precinct, who are public servants, political parties participating in the election assign members to the ballot committees as representatives and observers during voting and counting. During overt vote counting, political party representatives in ballot committees partake in the determination of the nature of each vote openly exhibited to all members and the observing public; any issues are resolved at the location by approval of committee members and representatives; and unresolved issues are recorded and testified with all the evidence to be forwarded to the higher boards and finally to the court if warranted. Vote counting at ballot boxes at the precincts, combining ballots at the provincial district election boards, and then at the provincial election board, and finally the distribution of the deputies for the province by tallying the votes of the parties and the election results, entirely take place under the observation and representation of political parties - all verifying the authenticity and correctness of all the documents and records by cross-signing them to that extent and retaining wet copies for their parties' cross-checking, and recording and reporting purposes to validate the results for themselves independently. Considering that major parties successfully get organized for and on the election day and work at the polls meticulously, one can easily and clearly conclude that any claims regarding the safety of voting and counting in the elections are unfounded. Multiple procedural redundancies, representations, observations, and instant recordings and hardcopy documentations of these procedures above and beyond electronic processes built into the system, make it almost impossible to rig any election results and not to catch any deliberate or accidental irregularities in the election.

### **THE ELECTION SAFETY LAW AND COMBINING OF CERTAIN BALLOT BOXES**

In addition to these general provisions, several legal regulations have been made and new measures have been undertaken in recent months, among which the law<sup>5</sup> dated March 13, 2018, also known as the

<sup>5</sup> "The Law on Basic Provisions of Elections and Voter Registers, and Amendments in Some Laws", *Resmi Gazete*, March 16, 2018, Issue 30362, <http://www.resmigazete.gov.tr/eskiler/2018/03/20180316-28.htm>, (Access date: June 7, 2018).

"Election Safety Law," takes the lead. With this law, regulations have been introduced not only regarding election safety but also to provide conformity with the constitutional amendments of 2017 and the possible forming of alliances among political parties for electoral purposes. First of all, the provisions prohibiting the formation of political party alliances in parliamentary general elections in the 1982 Constitution were annulled and the principles of the "electoral alliance of parties" were determined. In order to increase participation in the elections, the authority to install mobile ballot boxes has been granted to the YSK to serve voters who are bedridden due to illness or disabled. The minimum age for being elected to parliament has been reduced from 25 to 18 by a Constitutional amendment in 2017. For the purpose of election safety, regulations have been introduced prohibiting propaganda in the buildings where citizens cast their votes, and preventing uniformed and armed individuals, other than law enforcement officers, from entering these buildings thereby paving the way for law enforcement officers to facilitate and oversee election safety.

The law also put an end to the debate regarding unstamped envelopes of several previous elections and the April 16, 2017 referendum. The clause approved in Article 9 of the law is as follows:

However, the envelopes not stamped with the seal of the ballot box committee but having the YSK watermark, logo and the seal of the district/ (town) election board; and the envelopes with stains and/or line marks on them are valid, if it is not unambiguously clear that the envelopes have been deliberately stained and/or line marked.

According to the law, a vote cannot be invalidated if the envelop has the YSK watermark and logo and is stamped with the seal of the district election board, but is not stamped with the seal of the ballot box committee. In fact, it would be inaccurate to say that debates on the issue before this arrangement were meaningful. Because, in the past, plenty of votes were declared invalid as some of the ballot box committees were negligent and/or forgetful to stamp envelopes al-

though the voters committed no fault in casting votes and delivering the envelopes into the boxes. That is to say, debates have been engaged in to invalidate electors' votes because of the fault of the ballot box committees. The YSK has solved this problem with its decision in the April 16, 2017 referendum. Debates and uncertainties ended with the law.

The most controversial clause in the election safety law is about combining ballot boxes and merging of voter lists. The matter is regulated in Article 2 of the law as follows:

If necessary for election safety (and voter security), in case the governor or provincial election board chairman makes a request at least one month before the voting day, the YSK may move the polls to the nearest election districts, combine electoral districts (except for elections for mukhtars), and organize voter lists in a mixed manner, and decide on the declaration of these matters.

Accordingly, with the request of the Office of Provincial Governor or the chairman of the district election board, the YSK is entitled to decide in favor of merging ballot boxes and arranging combined voter lists.

The purpose of this decision<sup>6</sup> is given in the law's preamble as to enable voters, in accordance with the principles of freedom of election (or freedom in voting) and secret balloting without any influence, pressure, coercion, or intimidation on voters, to exercise their voting rights in places where it may be difficult to provide such election safety and freedom. It is also emphasized that this regulation eliminates a void in the legislation and makes it possible to move the ballot boxes to a different voting location in the same neighborhood if natural disasters such as earthquakes, floods, and fires present obstacles for voters.

The main purpose of this regulation is to prevent the PKK terrorist organization from pressuring voters, candidates or political parties in remote and small settlement areas. With this provision, the security of voters

will be more easily secured both on the day of the election and after the election. Even if safety is provided on the voting day, electors must be protected from threats because of their votes after the election. In places with ballot boxes with a small number of voters, it was easy to estimate which parties the voters voted for; thus, in the past, voters were threatened by the terrorist organization. With the merger of the voter lists and the transfer of ballot boxes to another precinct, the principle of secret balloting is honored and voters will be sheltered from worrying about any threats based on the election results after the election – this is achieved by making it very difficult for the terrorist organization to infer correlation of results to any group of voters.

One of the criticisms about moving ballot boxes is the decision to merge them on the request of a governor. It is argued that the electorate will be pressured in favor of the ruling party because the governor is a bureaucrat appointed by the government, and that elections will, therefore, not be free and fair. However, the authority to request the merger of ballot boxes is granted to governors because they are the highest authorized civil servants in provinces in terms of public security and use of law enforcement officers. Even if the criticisms may be justified, the ultimate decision to merge ballot boxes rests with the YSK, not the governor. For this reason, the criticisms on granting a governor the authority to request the merger of ballot boxes are unrealistic.

In addition, the moving and merging of ballot boxes takes place within the same electoral district and in close proximity. It is not possible to change constituencies in favor of any party by moving voters to other electoral districts. As a matter of fact, the YSK has decided to transport ballot boxes to a distance of no more than five kilometers. So, there is no gerrymandering<sup>7</sup> to be practiced on this matter.

6 "298 Sayılı Seçimlerin Temel Hükümleri ve Seçmen Kütükleri Hakkında Kanun ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun Teklifi (2/2137) ve Anayasa Komisyonu Raporu", *TBMM*, <https://www.tbmm.gov.tr/sirasayi/donem26/yil01/ss534.pdf>, (Access date: June 7, 2018).

7 The term "gerrymandering," a portmanteau of Gerry and salamander, was coined by governor of Massachusetts Elbridge Gerry in 1812. Gerry drew a picture map of the district as if it were a salamander in shape. The lines of these districts gave Gerry's party an advantage in the upcoming election. Ever since, the term has been used to refer to any deliberate redrawing of voting districts to influence the outcome of an election.

Based on the regulation in the act, the YSK evaluated the requests from governorships for the transfer of ballot boxes for the June 24, 2018 election, and decided to move ballot boxes in certain regions of 19 provinces. The YSK chairman Sadi Güven stated that the decision to move ballot boxes for 144,000 voters was about ensuring that "the voters can cast their ballots at their own free will." On the other hand, however, to prevent a low turnout, the distance to move ballot boxes was set at a maximum of five kilometers.<sup>8</sup> As clearly understood from the YSK's decision, this regulation solely serves to hinder the terrorist organization PKK from pressuring voters and parties, and ensure free and fair elections.

In fact, the Constitutional Court rejected the case filed by the main opposition party for the annulment of these provisions on May 31, 2018.<sup>9</sup>

The court stated that the purpose of this regulation is election safety, and made the following definition:

In the most general sense, election safety means that elections are held in an environment of peace and security; it requires the electorate to cast their votes with their own free will under no pressure and no influence, and taking the necessary measures to identify this will in a healthy way and ensure the protection of this will.

<sup>8</sup> "YSK 144 Bin Seçmeni Taşdı", *Hürriyet*, May 28, 2018.

<sup>9</sup> "Esas Sayısı: 2018/69 ve Karar Sayısı: 2018/47", *Resmî Gazete*, May 31, 2018, <http://www.resmigazete.gov.tr/eskiler/2018/06/20180606-12.pdf>, (Access date: June 7, 2018).

According to the court, the transfer of ballot boxes is a limitation on the voting right, but this restriction for election safety does not harm the essence of the right to vote and is an acceptable and moderate limitation in a democratic society. It is not possible to rig voter registrations and voting since the merger of ballot boxes is done after the voter lists are finalized. Furthermore, the court emphasized that the authority to decide on governors' requests (for moving ballot boxes) still rests with the YSK, and has found no contradiction with the law that the elections should be held under the conduct and control of the judiciary. Finally, the court stated that the conditions under which the YSK will exercise this authority are clearly defined in the law and rejected the request for its annulment by determining that the article is not contrary to the Constitution.

In conclusion, on account of Turkey's experience in elections and by virtue of the recent measures taken, the June 24, 2018 elections will take place in a safe and free environment. In the past, appeals and complaints about elections were generally made by the losers of those elections and were not based on concrete grounds. As may be recollected, many claims had also been made on the eve of the June 7, 2015 elections, but they ended once the results were announced. It is understood that all claims of election irregularity are indexed to election results. For this reason, the electoral judiciary must be trusted and the will of the electorate must be respected.



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