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Annulment of the Istanbul mayor election on March 31 2019 and legal assessment of the do-over of the election on June 23 2019

ABSTRACT – Two acknowledged and significant candidates ran against each other for being the metropolitan mayor of Istanbul on March 31, 2019: Ekrem İmamoğlu as the candidate of CHP and İYİ Party (Nation’s Alliance) and Binali Yıldırım as the candidate of AKP and MHP (People’s Alliance). Sadi Güven, the chairman of the Supreme Board of Elections, declared that Mr. İmamoğlu had won the election on April 1, 2019 but the votes from 84 ballot boxes weren’t counted yet due to the objections. However, AKP objected the results and the Supreme Board of Elections decided to annul and re-run the Istanbul mayoral election on May 6, 2019. Later, Mr. İmamoğlu who got 54,21% of the total votes became the new mayor of Istanbul with the results of the June 23, 2019 elections. The difference between the number of the votes increased to 800 thousand from 13 thousand. This increase can be explained with some reasons. uncertainty of the causal relation between the annulment of the election and the justification of the annulment and the reaction of the people towards the legitimacy of the annulment.

KEYWORDS – Turkish law, election, annulment election, mayor of Istanbul, democracy, legitimacy

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1. Introduction

There are 30 metropolitan municipalities, 51 provincial municipalities and 922 county municipalities in Turkey. The voters of the metropolitan municipalities vote for the metropolitan mayor, county mayors, the municipal council and neighborhood administrators (neighborhood representative and board of alderman). In 2019 this election was held on March 31. Ekrem İmamoğlu was elected as the metropolitan mayor of Istanbul. However, Istanbul metropolitan municipality election was re-run with the decision of The Supreme Board of Elections (SBE) and voters in İstanbul went to the polls again only for the election of the metropolitan mayor on June 23, 2019. The mayoral election history of Istanbul for the last 30 years is as follows: In 1989 Nurettin Sözen (from Social Democratic Populist Party) was elected as the mayor of Istanbul by getting 35,95% of the votes. After 5 years, in 1994, Recep Tayyip Erdoğan (from Welfare Party) became the new mayor of Istanbul by taking the 25,19 % of the votes which was considered as a milestone in his political life. Later, in 1999 Ali Müfit

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Gürtuna (from Virtue Party) became the new mayor with 27,52% of the total votes. Kadir Topbaş (from Justice and Development Party – AKP) was elected as the metropolitan mayor of Istanbul with 45,3% in 2004, with 44,71% in 2009 and with 47,9% in 2014. The 2019 election was annulled by SBE and had to be re-done. While Republican People’s Party (CHP) and Good Party (İyi Party) constituted Nation’s Alliance, Justice and Development Party (AKP) and Nationalist Action Party (MHP) entered the election under People’s Alliance.

Republican People’s Party (CHP) + Good Party (İyi Party) → Ekrem İmamoğlu (*Nation’s Alliance*)

Justice and Development Party (AKP) + Nationalist Action Party (MHP)
→ Binali Yıldırım (*People’s Alliance.*)

Felicity Party (SP) → Necdet Gökçınar

Other Parties and Candidates

Two acknowledged candidates ran against each other for being the metropolitan mayor of Istanbul on March 31, 2019: Ekrem İmamoğlu as the candidate of CHP and İYİ Party (Nation’s Alliance) and Binali Yıldırım as the candidate of AKP and MHP (People’s Alliance). Mr. İmamoğlu used to be the mayor of Beylikdüzü county and his services there were appreciated. On the other hand, Mr. Yıldırım was the former Transport, Maritime Affairs and Communications Minister of Republic of Turkey. On May 22, 2016 he was charged with forming the government by President Recep Tayyip Erdoğan and he became the Prime Minister after forming the 65th government of Republic of Turkey on May 24, 2016. He fulfilled his responsibility as the last prime minister of the parliamentary system on July 9, 2018. He served as the first Turkish parliamentary speaker after the elections held on June 24, 2018. He was also entitled to the State Medal of Honor on July 13, 2018 for his outstanding achievements by President Recep Tayyip Erdoğan. Finally, he was nominated as the metropolitan mayor of Istanbul candidate of AKP for the mayoral election on March 31, 2019.

This paper is about the metropolitan mayor of Istanbul election held on March 31, 2019, objection of AKP to the election, the annulment decision and the reasoned decision of The Supreme Board of Elections and re-doing process of the election on June 23, 2019.

2. Electoral process of March 31, 2019 election and annulment decision of the Supreme board of elections (sbe)

Anadolu News Agency (AA)¹ started broadcasting less than an hour after the election was over although there was still broadcast ban on the night of March 31, 2019 and created a misleading perception by announcing that Mr. Yıldırım got 63,84% while Mr. İmamoğlu got 33,94% of the votes. AA stopped broadcasting around 11.30 p.m. after 98,8% of the ballot boxes were counted. Right at that time Mr. Yıldırım announced that he had won the election. Likewise, AKP provincial organization stated that they won with a difference of 3870 votes around 4 a.m. However, the chairman of the Supreme Board of Elections, Sadi Güven declared that Mr. İmamoğlu had won the election on the morning of April 1, 2019. Güven also indicated that Mr. Yıldırım's victory was not accurate via the quotation of '*We are not providing data to Anadolu News Agency.*' Besides, he added that while 4.159.650 votes for Mr. İmamoğlu were entered to the system, the votes for Mr. Yıldırım was 4.131.761; and the votes from 84 ballot boxes weren't counted yet due to the objections.

According to the Law on Basic Provisions on Elections No. 298, Article 130, an extraordinary complaint was lodged in within 7 days from the date of the drawing up of the return in question due to the facts that may change the results of the elections. AKP submitted a 44-page extraordinary petition

¹ Anadolu News Agency is an international Turkish news agency the headquarter of which is in Ankara, Turkey. It was founded by Mustafa Kemal Atatürk, Halide Edip Adıvar and Yunus Nadi to announce the news during Turkish War of Independence on April 6, 1920.

to SBE. Claims such as unstamped and unsigned vote-counting sheets, assignment of 6,539 ballot box officials out of 31,680 among the people who weren't civil servants despite the explicit provision of the law, 2,308 restricted voters, 1,229 dead voters, 10,290 voters whose names are listed both in the prison list and in other voters' lists were included in the extraordinary petition.

The Supreme Board of Elections accepted the objection of AKP and decided to annul and re-run the Istanbul mayoral election on May 6, 2019. This decision and the new date for the next election which is June 23, 2019 was announced by AKP's representative at the Supreme Board of Elections Recep Özel via Twitter as "İstanbul local elections will be held again. May it go well." With this decision Ekrem İmamoğlu who was the Mayor of Istanbul had to return his certificate of election after working only for 18 days². It was announced that Governor of Istanbul will substitute as the mayor of Istanbul although this was against the law. Since, the person to substitute this position should have been chosen by the Istanbul Metropolitan Municipality Council. The annulment decision of SBE taken with a majority vote of seven against four was explained as the chairmen and the members of some ballot box officials were not civil servants despite the explicit provision of the law.

While everyone was impatiently waiting for the justification of the decision, the Supreme Board of Elections announced their reasoned decision with decree no. 4219. With the dissenting opinions of the four judges from SBE, the reasoned decision, explained in a 250-page document, pointed out "ignorance of the obligation on the fact that the chairman and the members of the ballot boxes have to be civil servants" as "the fact that may change the results of the election". To sum up, after the examination of AKP's extraordinary objection, the first twelve pages of the reasoned

² <http://www.hurriyet.com.tr/gundem/istanbul-secimi-iptal-edildi-ysk-karari-4e-karsi-7-oyla-aldi-41205741>

decision of the SCE explained the objections and the reasons were included between the pages 200 and 212.

The annulment decision of SBE explained the reason as follows: *“Although the irregularity in 108 ballot boxes and voting of 706 restricted /dead/mentally defective voters wouldn’t enure the result of the election by themselves, when the illegal assignment of the balloting committee chairs and members are considered, all of these factors are regarded as reasons affecting the reliability and safety of the election.”* Sadi Güven, the chairman of the Supreme Board of Elections, and the members Cengiz Topaktaş, Kürşat Hamurcu and Yunus Aykın submitted dissenting opinion.³ The opponent members declared their disagreement by underlining that voters aren’t responsible for the assignment of the balloting committee, that AKP representatives were also in charge of the relevant ballot boxes, besides the irregularity on the vote-counting sheets and number of the restricted voters wouldn’t change the result of the election. The discrepancy between the opponent brief decision and the reasoned decision was emphasized as well. They also stated that although the brief decision was based on the connection between the organization of the ballot box committees, two more reasons were added to the reasoned decision. As vote-counting sheets and restricted voters, who have right to vote and to be elected, were included to the reasoned decision afterwards, it didn’t comply with the brief decision.

The fundamental ground for the reasoned decision of the Supreme Board of Elections was the irregularity in the assignment of the ballot box committees and members. The verdict emphasized that the election was held via 31,186 ballot boxes all around Istanbul and that a chairman, a regular member who is a civil servant and a substitute member who is also a civil servant had to be assigned to these ballot boxes. Therefore, 93,558 civil servants were required for the mayoral election of İstanbul. Whereas,

³ https://www.aa.com.tr/uploads/userFiles/d7949134-ce71-4b68-82e5_458179071638/YSK-Istanbul-gerekceli-karar.pdf, 211

considering that only 220 thousand civil servants were assigned to the ballot committees, ignorance of this requirement by the district election boards without any reasonable or legal reason harmed the safety of the election. Besides, the assignment of 754 ballot box chairmen who weren't civil servants was presented as the crucial reason for the annulment in the justification. Likewise, it was also highlighted that the number of the citizens who cast their votes in these 754 ballot boxes (212,276 voters) wouldn't change the result of the election as the difference of the votes were 13,276.

3. The reasons of the opponent members and legal evaluation of the decision of supreme board of elections

One of the members of the Supreme Board of Elections Kürşat Hamurcu explained his disagreement as follows: "The objection petitions not only include any valid reasons but also didn't present any concrete, accurate and precise evidences or documents on the direct effect of the annulment of the mayoral election. There weren't any concrete claims or consents on how the interference of the assignment of the chairman of the ballot-box committee who was not a civil servant with the knowledge and consent of the representatives of five political parties affect the impartialness and objectivity of the election. It was illegal to approve the annulment of the election based on hypothetical and suppositional reasons regarding the assignment of chairmen who are not public officials which disregard the will of the voters."⁴ Hamurcu didn't approve the decision of the majority by declaring that the claims of AKP weren't strong enough to affect the results of the election on March 31, 2019 and that they weren't supported with concrete evidences.

⁴ https://www.aa.com.tr/uploads/userFiles/d7949134-ce71-4b68-82e5_458179071638/YSK-Istanbul-gerekceli-karar.pdf, 231

Another member, Cengiz Topaktaş, expressed the reason of his opponency as follows: “Regarding the requirement on the assignment of one regular and one substitute member among the civil servants and assigning the vacancies among individuals living in the vicinity and not having any obstacles to be commissioned in the ballot-box committees in accordance with the Law on Basic Provisions on Elections No. 298, Article 2, appointment of the chairman and members of the ballot boxes who aren’t civil servants wouldn’t be an absolute justification for the annulment in itself. Recounting of the votes didn’t display any mistakes except the expected mistakes of fact and counting errors based on the votes regarded as invalid due to the correction of the mistake of fact. District election boards accompanied the recounting of the votes and all the ballot papers were re-examined. The legitimacy of the results submitted by the ballot box committees was confirmed one more time with the recounting conducted by the district election boards. It is unacceptable to annul the election of the Istanbul mayoral election despite the double recounting of the votes and referring the improper formation of the ballot box committees. Unsealed ballot papers were regarded as valid during the referendum held on April 16, 2017 by SBE in order not to harm the will of the voters.”⁵To sum up, Topaktaş didn’t agree with the majority defending that deciding on an annulment without proving that the formation of the ballot box committees affect the result of the election and harm the will of the voters was not correct.

Yunus Aykın, an opponent member of SBE, explained his disagreement as follows: “As there weren’t any evidences or justification demonstrating any suspicious attitude or behavior against the Law on Basic Provisions on Elections No. 298 in their actions or precautions on the election day, the objection towards the formation of the ballot box committees should be rejected.” Aykın, also stated that SBE rejected the annulment of the previous

⁵ https://www.aa.com.tr/uploads/userFiles/d7949134-ce71-4b68-82e5_458179071638/YSK-Istanbul-gerekceli-karar.pdf, 225

elections after the objections conducted with similar reasons. Aykın, who didn't agree with the claim that restricted citizens vote for the election, mentioned that votes of 601 restricted voters wouldn't directly affect the result of the election considering that there are 10,560,963 voters living in İstanbul.⁶ A same situation was seen for Mustafa Kemalpaşa decision where the free will of the voters were privileged.

The Chairman Mr. Güven also disagree with the annulment decision and he stated that: "The irregularity of the ballot box committees shouldn't cause any illegitimacy. Any objection to these committees, after they were approved and definite, cannot be asserted as an annulment reason of an election by itself. There wasn't any proof necessitating the annulment of the election with respect to the direct effect of the election over the correction of the mistakes of facts made during the mayoral election on March 31, 2019 by recounting of the invalid votes regarding the irregular assignment of the ballot box chairman who works with five representatives of the political parties in accordance with the Articles 21 and 25 of the Law on Basic Provisions on Elections No. 298."⁷ Therefore, Mr. Güven disagree with the majority / reasoned decision due to above mentioned grounds.

Before analyzing the annulment decision of the Supreme Board of Elections, the number of the members required for SBE should be examined. Article 79 in Constitution of the Republic of Turkey is about the general administration and supervision of elections.

Article 79 - Elections shall be held under the general administration and supervision of the judicial organs. The Supreme Board of Election shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end, carry out investigations and take final

⁶ <https://www.aa.com.tr/uploads/userFiles/d7949134-ce71-4b68-82e5-458179071638/YSK-Istanbul-gerekceli-karar.pdf>, 242

⁷ <https://www.aa.com.tr/uploads/userFiles/d7949134-ce71-4b68-82e5-458179071638/YSK-Istanbul-gerekceli-karar.pdf>, 221

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decisions, during and after the elections, on all irregularities, complaints and objections concerning the electoral matters, and receive the electoral records of the members of the Grand National Assembly of Turkey and presidential election.

No appeal shall be made to any authority against the decisions of the Supreme Board of Election.

The functions and powers of the Supreme Board of Election and other electoral boards shall be determined by law. 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 Board of High Court of Appeals, and five of the members shall be elected by the General Board of Council of State from amongst their own members, by the vote of the absolute majority of the total number of members through secret ballot. These members shall elect a chairperson and a vice-chairperson from amongst themselves, by absolute majority and secret ballot.

Amongst the members elected to the Supreme Board of Election by the High Court of Appeals and by the Council of State, two members from each group shall be designated by lot as substitute members. The Chairperson and Vice-Chairperson of the Supreme Board of Election shall not take part in this procedure. The general conduct and supervision of a referendum on laws amending the Constitution and of election of the President of the Republic by people shall be subject to the same provisions relating to the election of deputies.

This article clearly depicts that the Supreme Board of Elections “is composed of seven regular members and four substitutes”.

The Law on Basic Provisions on Elections and Voter Registers Article 113 is about the “Decisions to Resolve Objections”.

Article 113 - In the event a higher board finds that an objection against the decision of a lower board is justified, the same higher board shall also decide about what is to be done. Boards shall deliver decisions by an absolute majority of the votes. In the event of the equality of opposing votes, the vote of the chairman shall prevail.

The Supreme Board of Elections shall convene with its full number of members to deliberate over objections against returns to be delivered to the elected. On other matters, a majority of the members shall be sufficient for deliberations. In both cases, decisions shall be delivered by an absolute majority of the votes.

In the event of the equality of opposing votes, the vote of the chairman shall prevail.

As mentioned above The Supreme Board of Elections “convene with its full number of members” in any case of objection.

According to Constitution of the Republic of Turkey, the Supreme Board of Elections must constitute seven members. When some of these seven members are not present, the substitute members are called in. However, the annulment decision was taken with the attendance of eleven members – both regular and substitute members. All the members must attend the council and according to the Constitution required member is seven. Inclusion of the substitute members wouldn't increase the required number of the members. Bülent Tezcan, who is the Deputy of Aydın of Republican People's Party (CHP) and a member of Parliamentary Constitution Committee, emphasized the illegitimacy of the decision of the Supreme Board Elections as follows: “The previous practices in the last 6 years, making decisions with eleven members, wouldn't mean that they were constitutional. Taking decisions with the attendance of regular and substitute members is unconstitutional. Besides, this is not a valid defense.”

However, attendance of eleven members of the Supreme Board of Elections for the annulment decision on the election held on March 31, 2019 wasn't emphasized at all. A similar issue was discussed before as well. Then attendance of all the members – seven plus four – was accepted as there wasn't any statement depicting that substitute members attend only when the regular members do not attend. Nevertheless, non-existence of such a statement wouldn't mean that the Supreme Board of Elections make decisions with eleven members. Even, gathering of the Supreme Board of

Elections with eleven members, which is unconstitutional, shouldn't be legitimated.

Another discussion matter is on the underlying meaning of the last clause of Article 79 in the Constitution of the Republic of Turkey which is *“No appeal shall be made to any authority against the decisions of the Supreme Board of Election.”* The Supreme Board of Election interpret the “all members” expression in The Law on Basic Provisions on Elections and Voter Registers Article 113 as eleven – both regular and substitute members. Besides, they claimed that the justification cannot be annulled based on the above-mentioned statement of Constitution. However, gathering of the Supreme Board of Election is not a justification, it is an administrative act and is also remediable.

4. Conclusion

After the election held on June 23, 2019 Ekrem İmamoğlu, candidate of Nation's Alliance was elected as the mayor of İstanbul with 4.741.870 votes and a rate of 54,21%. On the other hand, his rival Binali Yıldırım, candidate of People's Alliance got 3.935.444 votes and a rate of 44,99%. The difference between the number of the votes increased to 800 thousand from 13 thousand. To my knowledge the main reason behind this increase is the presidential regime accepted in 2018. A president shouldn't be the leader of any political party. Legislation must be free. The Grand National Assembly of Turkey should present free will without any restriction. The founding philosophy of Republic of Turkey is based on The Grand National Assembly of Turkey which also means the legislative organ. The representatives of the public are crucial for the community ever since the foundation of Republic of Turkey. The executive organ is beneath the legislative organ. Legislative, executive and judicial powers cannot be combined. Therefore, the presidents should stay away from politics. However, with the new system

the impact of legislation has went down. For instance, while six members of the Supreme Council of Judges and Prosecutors consisting of thirteen members are chosen by the President and he also chooses approximately four out of the rest seven members as the leader of the political party. Besides, the President Recep Tayyip Erdoğan held public demonstrations for the mayoral elections. It can be stated that the victory of Ekrem İmamoğlu presented the reaction of the people to the new regime. Moreover, the causal relation between the annulment of the election by the Supreme Board of Elections and the justification of the annulment wasn't understood at all. As a result, the difference was almost 800 thousand in the election held on June 23, 2019 and Ekrem İmamoğlu became the new mayor of Istanbul.