

# **JUDGING THE JUDICIARY: LOCAL ELECTIONS**

## **What Has Happened?**

YSK [Supreme Election Council] announced its ruling –which is non-appealable- on 6<sup>th</sup> May. It annulled the Istanbul’s Mayoral vote and called for a rerun on 23<sup>rd</sup> June 2019 on the grounds that balloting committees were formed unlawfully and that their members were not public servants as required by the relevant law.

What Has Happened in the Local Elections 2019? For details, see: <http://www.dusun-think.net/en/turkey-today/what-happened-in-the-2019-local-elections/>

## **JUDGING THE JUDICIARY**

Having assessed the process that resulted in the rerun of the Istanbul Mayoral Election, our “Shadow Court” ruled the following:

### **SUMMARY OF THE JUDGMENT**

**17<sup>th</sup> June 2019**

- 1) YSK ceased updating election results that night for a long time, meaning that it did not fulfill its duty and responsibilities required by law.
- 2) That some ballot boxes began to be recounted without being ordered by the YSK and that the results of the recount were deemed valid were the violation of the principle of lawfulness.
- 3) The YSK promptly rejected any request for ballot boxes in other cities to be recounted while it allowed 51 ballot boxes in 21 districts of Istanbul to be recounted. Those rulings violated the principle of equality because they were not fully- and adequately-reasoned.
- 4) The relevant law states that if balloting committees are formed unlawfully, it is considered to be “absolute unlawfulness”. And appeals against the unlawfully-formed balloting committees are subject to time limitation. It was therefore unlawful that the YSK accepted the AKP’s appeal, which had not been made within the pre-specified time limitations.
- 5) The AKP had at least one representative –as did other parties- in the board in charge of appointing ballot box committees, meaning that the AKP itself confirmed that the committees were formed as required by the relevant law. The appeal was thus nothing but abuse of right and the YSK helped the AKP be able to do so by accepting it.

- 6) The YSK's ruling on the rerun of the election contradicted the relevant law, its own practices and the relevant regulations. The reasons put forward for the ruling were unsatisfactory and illegitimate. The ruling was thus a violation of right to vote, one of the basic civil rights protected both by the Constitution and international conventions.

### **REASONED JUDGMENT**

The YSK annulled the Istanbul Mayoral Election held on 31<sup>st</sup> March 2019 upon the appeals made by the AKP and ruled that it be rerun on 23<sup>rd</sup> June.

It is stated in the Article 3 of the Law on Organization and Duties of the Supreme Election Council that "The Council shall fulfill its duties and exercise its powers independently and impartially. No organs, offices, authorities or persons shall give orders and instructions to the Council". And the Article 6 states that "The Council is responsible both for taking measures necessary to ensure that the whole electoral process is implemented properly and for investigating any electoral frauds, and reviewing and making final decision on any appeals and complaints made during and after election day". When the emphasis both on its independency and impartiality and on its authority to make final decision on complaints and appeals are considered together, it could be said that the Council functions as a kind of court. And it consists already of judges and is referred in the Article 79 of the Constitution as a "judicial body", of which rulings may not be referred to the Constitutional Court or European Court of Human Rights. Hence it is a body that can be addressed under "Judging the Judiciary".

Faik Oztrak, CHP's Vice President and Party Spokesperson, announced late that night that the YSK ceased updating election results. That is completely unlawful practice that indicates that the YKS have not fulfilled its law-required duties. In the supplementary Article 9 of the Law on Basic Provisions of Elections and Voter Registers No. 298 (here after referred to as Law), it is stated that "Supreme Election Council takes all necessary measures for headquarters of political parties to simultaneously monitor ballot scaled electoral results sent by District Election Boards to Supreme Election Council in electronic environment, upon their request and to protect such information in computer. Political parties may not send this information to their organizations or third parties within the period determined by Supreme Election Council. Supreme Election Council takes all necessary safety measures for data bases that will be opened to headquarters of political parties". That the YSK did not take necessary measures means that the Council did not fulfill its duties required by the relevant law.

Upon the AKP's appeal that ballot boxes in 39 districts be recounted, the YSK ruled on 3<sup>rd</sup> April 2019 that invalid votes in 8 districts be recounted. The Council announced also that in the districts where recounting had already begun before the official ruling was declared, the

new results would be accepted valid. However, that is a violation of the principle of lawfulness because a practice can have legally binding results only when it is pre-specified in the relevant laws. It is deprived otherwise of legal validity, and unlawful.

During that period the debates hinged around a concept, which gravitated an unprecedented attention: Official mandate. Official mandate is legally not a constituent element for the-new-elect mayor to take office. It is just a declaratory record of official results.

On 9<sup>th</sup> 2019 The YSK rejected the AKP's request that all votes cast in Istanbul be recounted. Although the AKP was critical of the ruling, it was consistently completely with the Council's previous judicial practices. But The Council allowed 51 ballot boxes in 21 districts of Istanbul to be recounted. There is no doubt that appealing against election results and requesting a recount are as legitimate as making propaganda, voting and public counting of the votes. However, those should be applied equally in all cases. The appeals made by the opposition parties for the recount of ballot boxes in the provinces where the AKP won with a slight margin were swiftly rejected. And the official mandates of some the-new-elect mayors who had been public servants before being removed from their jobs by a series of emergency decrees were not given or revoked. Those practices have violated the principle of impartiality.

The AKP also demanded that the votes cast by the people who had been removed from their jobs by emergency decrees be deemed invalid. The Party built its appeal on the Article 8 of the relevant law, which states that "the following shall not be entitled to cast vote: ... (2) Persons prohibited from public service". The YSK rejected that appeal and ruled that those people could cast vote. A person can be denied the right to vote only when a court deprives him/her of exercising that right. Emergency decrees are just administrative measures, not judicial rulings. There are already members of parliament to have been removed their posts by emergency decrees. If they had been denied the right to vote, that would have conflicted with their already-exercised right to stand for election.

The YSK ruled on 7<sup>th</sup> May 2019 that the Istanbul Mayoral election be rerun. 4 out of total 11 members (7 full and 4 substitutes) voted against the rerun of the election. Reasoned statements included in the Council's final decision that were written by those members who voted against clearly indicates how unlawful the decision was.

The Council's decision was built on two columns: the first one is the appeals against the so-called unlawfully-formed balloting committees. The relevant articles of the Law state that balloting committee members have to be public servants (a chairman, a principal member and a alternate member). It is added, however, that in the election zones where it is required that non-public-servant persons be appointed due to non-availability of public servants, "members" of balloting committees can be appointed among those who are not prohibited from public service (the chairperson has to be a public servant). That is, a principal member and an alternate member can be appointed from among the non-public-servant persons.

Thus the YSK's ruling is contradiction in this respect with the relevant Law. What is more ironic is that the rerun election held on June 23<sup>rd</sup> has been supervised by the exactly **same** balloting committees!

Additionally whether any appeals against the way balloting committees are formed produce legal consequences depends on if they are made within the time limitations (2 day following the date the committees are formed) pre-specified by the relevant Law. And the AKP had submitted no complaints regarding balloting committees within the time limitations. Thus, it can be fairly said that the YSK has helped the AKP misuse the right by processing its overdue appeal.

The second reason the YKS' ruling was built on was the faults in ballot counting sheets. Actually the YSK itself acknowledges that the faults cannot be a valid reason to annul elections: "Our Council established that ballot counting sheets, which are one of the most important elements in certifying election results, have not been documented at 108 ballot boxes. That has damaged the credibility of the results at those ballot boxes. Although faults in ballot counting sheets do not constitute a reason for annulling elections, our Council assessed the faults and unlawful appointment of the chairpersons of balloting committees together". In sum, the YSK annulled the election on an invalid basis.

As mentioned in the reasoned statements submitted by the against-voters, election safety and the right to vote are mutually complementary principles. Election irregularities should be investigated to determine whether they have direct impacts on the results. Legal and administrative actions should be taken against those determined to have impacts on elections. However, they cannot be used as pretexts to annul elections. The YSK' ruling therefore both contradicts its previous legal practices and caused unlawfulness.

As specified in the reasoned statements submitted by the against-voters; **The YSK burdened the voters with its own fault –appointment of non-public-servant chairpersons. There were no evidence and documents that established substantial reasons for the votes cast to be deemed invalid. The ruling was thus a violation of right to vote, one of the basic civil rights protected both by the Constitution and international conventions.**