MAKALE (Araştırma Makalesi)

AN EVALUATION OF THE REGULATIONS REGARDING THE ELECTION OF MAYORS AND THE TERMINATION OF THEIR DUTIES

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ABSTRACT

Although there can be differences in specific conditions, the administrative organizations of states are generally formed according to two main systems of central management and local management. In Article 123 of the Constitution of the Turkish Republic, the establishment and duties of the administration are based on the principles of central management and local management. Central management (centralisation) means that public services are managed and conducted by the state from a single centre. Local management (decentralisation) means that local public services and some public services with technical features are conducted by public bodies organized outside the central state administration. Decentralized government organizations are separated into two, as decentralized government organizations (public institutions) in terms of service, and decentralized government organizations (local administrations) in terms of location. There are many different types of public institutions, such as universities, public economic projects, Social Security Institution, and the General Directorate of State Water Works. Local administrations are limited to

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three forms of “provincial administration”, “municipality”, and “village”. It is stated in the Constitution that local administrations will be established to meet the common needs of the people in the province, municipality, or village. The decision-making bodies of local administrations are established in elections by legally entitled voters. There are three municipal bodies of local administration; municipal council, municipal committee, and municipal mayor. The aim of this study was to evaluate the conditions of election and termination of municipal mayors.

Keywords: State, administrative organization, local administration, municipal bodies, mayor.

BELEDİYE BAŞKANLARININ SEÇİMİ VE GÖREVLERİNİN SONA ERMESİ HAKKINDA BİR DEĞERLENDİRME

ÖZ

Devletlerin idari teşkilatları, kendi özel şartlarına göre farklılıklar gösterse de genellikle iki ana sisteme göre şekillenmiştir. Bunlar merkezden yönetim ve yerinden yönetim sistemleridir. Nitekim Anayasamızın 123’ncü maddesinde de idarenin kuruluş ve görevleri, merkezden yönetim ve yerinden yönetim esaslarına dayanır denilmektedir. Merkezden yönetim (merkeziyet), kısaca kamu hizmetlerinin tek bir merkezden, devlet tarafından yönetilmesi ve yürütülmesi manasına gelir. Yerinden yönetim (ademi merkeziyet) ise yerel nitelikli kamu hizmetleri ile teknik özellikleri olan birtakım kamu hizmetlerinin merkezi idarenin yani devlet idaresinin dışında örgütlendirilmiş kamu tüzel kişileri tarafından yürütülmesi anlamına gelmektedir. Yerinden yönetim kuruluşları kendi içinde hizmet yönünden yerinden yönetim kuruluşları (kamu kurumları) ve “yer yönünden yerinden yönetim kuruluşları (mahalli idareler)” olmak üzere ikiye ayrılmaktadır. “Kamu kurumları” üniversiteler, kamu iktisadi teşebbüsleri, Sosyal Güvenlik Kurumu, Devlet Su İşleri Genel Müdürlüğü gibi kuruluşlar olup sayıları çok çeşitlidir. Mahalli idareler ise sınırlı sayıda olup, “il özel idaresi”, “belediye” ve “köy” olmak üzere üç tanedir. Zira Anayasamızda mahalli idarelerin; il, belediye veya köy halkının mahalli müşterek ihtiyaçlarını karşılamak üzere kurulacağı hükmüne yer verilmiştir. Mahalli idarelerin karar organları kanunda gösterilen seçmenler tarafından seçilerek oluşturulur. Mahalli idarelerden belediyenin organları belediye meclisi, belediye encümeni ve belediye başkanı olmak üzere üç tanedir. Bu çalışmada belediye başkanının göreve gelmesi ve görevini sona erdiren haller ele alınacaktır.

Anahtar Kelimeler: Devlet, idari teşkilat, mahalli idare, belediye organları, belediye başkanı.

I. INTRODUCTION

Municipalities in Türkiye are regulated with two different laws[1]; the Metropolitan Municipality Law no.5216 and the Municipality Law no.5393. The first is a specific law and the second, a general law. Subjects not regulated in the Metropolitan Municipality Law no.5216 can be found in the Municipality Law no.5393. Therefore, the Municipality Law is cited in many parts of the Metropolitan Municipality Law. For example, in the last paragraph of Article 12 of the cited law, it is stated that the provisions of the Municipality Law will apply to metropolitan district municipal councils and other matters related to their working procedures and principles.

Similarly, in the second paragraph of Article 17 of the same law, it is stipulated that the deputy mayor of the metropolitan municipality will be determined in accordance with the procedures in the Municipality Law.

The definition of a municipality is stated in Article 3 of the Municipality Law no.5393 as a public entity with administrative and financial autonomy, established to meet the common needs of the residents in the locality with decision-making bodies elected by voters. In the same Article the municipal bodies are stated to be a municipal council, municipal committee, and municipal mayor. There are no regulations related to the election of the municipal bodies in the Municipality Law no.5393. The elections are conducted in accordance with the principles and practices in the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972.

The head of the municipal administration and the representative of the municipal legal entity is the mayor. In other words, the highest

[1] For detailed information about the emergence of the municipality system, see: OSTEN, Necmi: İdare Hukuku Dersleri, Başnur Press, Ankara 1968, p. 142-144. Municipal administraton in Türkiye was first established in İstanbul in 1854. ATAY, Ender Ethem: İdare Hukuku, 3rd Edition, Turhan Bookstore Publishes, Ankara 2012, p. 305.

hierarchical leader of the municipality is the mayor. Although there are no principles and practices related to the election of the mayor in the Municipality Law no.5393, the conditions for termination are regulated.

II. THE ELECTION OF A MUNICIPAL MAYOR

The highest hierarchical leader of the municipal administration, which is the local administrative unit, is the mayor[2]. The representative of the municipal legal entity and the municipal administrative body is the mayor.[3]

The mayor is elected by citizens living in the locality[4]. The locality is defined as the place where the municipality is located in the Municipality Law no.5393. The regulations for the election of a mayor are stated in the Metropolitan Municipality Law no. 5216 and the Municipality Law no.5393. Revisions related to this subject were made in the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972. This law states the principles for candidacy and election, and election districts with the election system, procedures, periods and times of the members of the provincial council, mayors and municipal council members, village and neighbourhood headmen and members of the council of aldermen.

The principles and procedures related to election and political activities are stated in Article 67 of the Constitution. In the second paragraph of that article it is stated that that the elections will be held under the management and supervision of the judicial bodies according to the principles of "free", "equal", "secret", "single stage", "universal suffrage", "open counting and inventory". A similar provision is made in

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2 DURAN, Lütfi, İdare Hukuku Ders Notları, Fakülteler Press, İstanbul 1982, p. 144.

3 EROĞLU, Hamza: İdare Hukuku Dersleri, Sevinç Press, Ankara 1972, p. 171; ÖRNEK, Acar: Kamu Yönetimi, B Publishing House, İstanbul 1988, p. 120.

4 Since 1963 municipal mayors in Türkiye have been directly elected by the voters: GÖZÜBÜYÜK, A Şeref and TAN, Turgut: İdare Hukuku Volume 1 Genel Esaslar, Updated 5th Edition, Turhan Bookstore, Ankara 2007, p. 279; GÖZLER, Kemal: İdare Hukuku Volume I, Updated 3rd Edition, Ekin Publishing House, Bursa 2019, p. 563.

the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972.

Local administrators and therefore, municipal mayoral elections, are conducted under judicial management and supervision according to the free, fair, secret, single stage, universal suffrage, and open count and inventory principles. It is useful to briefly mention these principles as they are important at the constitutional level. The principle of a free vote is that the voter uses their vote in an election without exposure to any intervention or pressure and can be described as being able to vote for whichever political party they wish[5]. The principle of a fair vote refers to a single vote for each voter[6]. A secret ballot refers to the vote of each voter not being known by others[7]. The aim of this principle is for the voter to avoİd pressure or negative responses because of the choice made in the election[8]. A single-stage election refers to direct, unmediated elections of representatives[9]. Open count and inventory means that the

5 According to the Constitutional Court, the principle of free voting is that the voters cast their votes without being subjected to any illegal interference, pressure or influence, and a free election is an election in which votes are cast in this environment. Constitutional Court, E. 2008/33, K. 2008/113, Decision Date 29.05.2008, T. C. Resmi Gazete Date-Number: 05.07.2008-26927.; KARATEPE, Şükrü, Anayasa Hukuku, Savaş Publishing House, Ankara 2013, p. 278.

6 According to the Constitutional Court, the principle of equal voting means that every vote is considered to be of equal value and requires a fair balance to be established between the votes cast in the electoral districts and the number of members of parliament to be elected. Constitutional Court, E. 2009/88, K. 2011/39, Decision Date 10.02.2011, T. C. Resmi Gazete Date-Number: 18.02.2011-27850.; GÖZLER, Kemal: Anayasa Hukukunun Genel Esasları, 13th Edition, Ekin Press Publishing Distribution, Bursa 2021, p. 305.

7 ANAYURT, Ömer: Anayasa Hukuku Genel Kısım, Updated 6th Edition, Seçkin Publishing, Ankara 2023, p. 583-585.

8 According to the Constitutional Court, the principle of secret ballot was accepted to ensure that voters have the right to vote of their own free will, without being under any influence or pressure. The purpose of a secret ballot is to keep the voter away from all kinds of environmental influence while voting. Constitutional Court, E. 2008/33, K. 2008/113, Decision Date 29.05.2008, T. C. Resmi Gazete Date-Number: 05.07.2008-26927.

9 A single stage election does not mean a single round election. In a single round election, whoever has a simple majority of votes wins the election. In

votes are counted and recorded openly in front of the public. Universal suffrage refers to the right of each citizen to use a vote regardless of conditions such as wealth or gender[10].

However, it must be stated that the principle of universal suffrage does not prevent the introduction of some objective criteria to be able to vote[11]. The conditions to be able to be a voter are stated in the Constitution and in the Law on Basic Provisions of Elections and Voter Registers no.298. Accordingly, to be able to use the right to vote, an individual must be a Turkish citizen, aged over 18 years, with no restriction or prohibition from public service. However, there can be some conditions determined in legislation that will prohibit an individual with the right to vote from voting on an election day. Article 67 of the Constitution states that privates, non-commissioned officers, and military students in the armed forces, and inmates of penal institutions, except for those convicted of crimes of negligence[12], will not be able to vote. There is a similar provision in Article 7 of the Law on Basic Provisions of

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two-stage elections, voters elect delegates and delegates elect representatives. TEZİÇ, Erdoğan, Anayasa Hukuku, 21st Edition, Beta Publishing, İstanbul 2017, p. 339.

10 TEZİÇ, p. 305.; ANAYURT, p. 569.

11 TANÖR, Bülent and YÜZBAŞIOĞLU, Necmi: 1982 Anayasasına Göre Türk Anayasa Hukuku, 12nd Edition, Beta Publishing, İstanbul 2012, p. 218.; KARATEPE, p. 280.

12 For detailed information about the concept of negligence and crimes of negligence, see: DÖNMEZER, Sulhi and ERMAN, Sahir: Nazari ve Tatbiki Ceza Hukuku Genel Kısım, Volume II, Revised 10th Edition, Beta Publishing, İstanbul 1994, p. 244 etc; İÇEL, Kayıhan: Ceza Hukuku Genel Hükümler II, Beta Publishing, İstanbul 2013, p. 202 etc.; ÖZGENÇ, İzzet: Türk Ceza Hukuku Genel Hükümler, Revised and Updated 9th Edition, Seçkin Publishing, Ankara 2013, p. 251 etc.; SOYASLAN, Doğan: Ceza Hukuku Genel Hükümler, Updated 6th Edition, Yetkin Publications, Ankara 2014, p. 436 etc.; TOROSLU, Nevzat and TOROSLU, Haluk: Ceza Hukuku Genel Kısım, Savaş Publishing House, Ankara 2015, p. 216 etc.; KOCA, Mahmut and ÜZÜLMEZ, İlhan: Türk Ceza Hukuku Genel Hükümler, Revised and Updated 6th Edition, Seçkin Publishing, Ankara 2013, p. 180 etc.; ÖZTÜRK, Bahri and ERDEM, Mustafa Ruhan: Ceza Hukuku Genel Hükümler ve Özel Hükümler, Changes Made 5th Edition, Turhan Bookstore, Ankara 2007, p. 160 etc.; DEMİRBAŞ, Timur: Ceza Hukuku Genel Hükümler, Updated 9th Edition, Seçkin Publishing, Ankara 2013, p. 383 etc.

Elections and Voter Registers no.298, but the phrase, "except for those convicted of crimes of negligence" is not included. Therefore, it would be appropriate to include the phrase in Article 7 to expand the right to vote.

The election district for mayoral elections is stated in Articles 3 and 4 of the Law on Basic Provisions of Elections and Voter Registers no.298. Each locality is an election district for a mayoral election[13]. For the election of a metropolitan municipality mayor, the metropolitan municipality borders form the election district.

In respect of the election system and procedures, a majority system is applied in municipal mayoral elections[14]. The majority system can be defined as a system in which the candidate who receives the most votes is elected[15]. Thus, in mayoral elections in Türkiye, the candidate who receives the most votes in the electoral district wins the election.

At what intervals local administrative elections will be held is stated in both the Constitution and in the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972. According to these regulations, mayoral elections are held every 5 years. The starting date for mayoral elections is the 1st January of the fifth year of the election period, and the voting day is the last Sunday in March of the same year. It should be noted that the third paragraph of Article 127 of the Constitution was changed with the Law of Changes to the Constitution no.6771. With this law, the provision was removed that stated that general or by-elections for local government bodies or members of these bodies, which must be held within one year before or after parliamentary general or by-elections, will be held at the same time as parliamentary general or by-elections. Rather than completely removing this provision, it would have been more appropriate to replace "one year" with "six months". It is a fact that an election not only creates

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13 SANCAKDAR, Oğuz, US, Eser, KASAPOĞLU TURHAN, Mine, ÖNÜT, Lale Burcu and SEYHAN, Serkan: İdare Hukuku, Expanded and Updated 7th Edition, Seçkin Publishing, Ankara 2018, p. 174.; for the definition of the constiutency concept, see: TANÖR and YÜZBAŞIOĞLU, p. 221; ANAYURT, p. 635.

14 ÇAĞLAYAN, Ramazan: İdare Hukuku Dersleri, Updated According to The New Sistem 6th Edition, Adalet Publications, Ankara 2018, p. 182.

15 GÖZLER, Anayasa Hukukunun Genel Esasları, p. 316.; EREN, Abdurrahman: Anayasa Hukuku Dersleri, Updated 3rd Edition, Seçkin Publishing, Ankara 2021, p. 375.

a severe burden on the economy of a country, but there is also great effort and time expended. Therefore, when there is an interval of six months or less between general and local elections, conducting the elections at the same time would minimise the potentially negative effects in terms of the national economy, the time and effort involved, and the election atmosphere.

The qualifications to be elected as a mayor are stated in Article 9 of the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972. Accordingly, for an individual to be elected as a mayor, they must be a Turkish citizen aged over 18 years, and not have any restrictions as stated in Article 11 of the Parliamentary Election Law no.2839. The provisions for who cannot be elected as a Member of Parliament are stated in Article 11. Taking these regulations into consideration, for an individual to be eleccted as a mayor, they must be a Turkish citizen, aged over 18 years[16], have at least a primary school level of education, not be restricted, have no connection with the military, not be prohibited from public service, and with the excepton of crimes of negligence, not have served a prison sentence of a total of 1 year or more, not have been sentenced to severe imprisonment, whatever the period, and not have committed some crimes stated in the law, even if pardoned. It is not mandatory for mayoral candidates to be a member of a political party[17].

The conditions for election as a mayor are the same as those for parliamentary election. The duties of both mayors and members of parliament are extremely important. Therefore, the utmost care should be taken in the determination of the personal characteristics of individuals who will be elected to these positions. The regulations aim to allow these positions to be taken up by individuals who are well equipped, well educated, knowledgeable, broad-minded, visionary, and are aware of and up-to-date with the current world. In this context, it is useful to state that the minimum requirements for election are age and education.

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16 The previous age of 30 years for election as a member of parliament was changed to 25 years with Article of Law no.5552, dated 19.10.2006, and was then reduced to 18 years with Article 8 of Law No.7140, dated 25.04.2018.

17 AKYILMAZ, Bahtiyar, SEZGİNER, Murat and KAYA, Cemil: Türk İdare Hukuku, Expanded and Updated 17th Edition, Seçkin Publishing, Ankara 2023, p. 326.

Age can be said to be a marker of maturity of people. Therefore, the ability of people to undertake some duties may be dependent on a minimum or maximum age condition[18]. For example, people under a certain age cannot be assigned to a civil service posting, or those who have reached a certain age, generally 65 years in Türkiye, are obliged to take retirement. There are age limits in respect of voting and being elected.

There is no worldwide accepted age for voting and being elected, and the age for these varies from country to country. In some countries the voting age and the age at which one can be elected are the same, whereas in some countries the age for being elected can be a little older. In countries with two parliamentary chambers (upper house, senate, etc.), there can be a higher age requirement for election to the upper house than for the lower. There can be said to be a general worldwide tendency to lower the age limits for voting and being elected.

The regulations related to the age at which an individual can be elected, defined in previous and the present Constitution can be summarised as follows: according to the 1876 Legal Base, a candidate had to be 40 years old to be a member of the Upper House (Article 61) and 30 years old to be a member of the Lower House (Article 68). In the Constitutions of 1924 and 1961, the age for election of a member of parliament was defined as 30 years (Article 11, Article 68)[19]. In the first version of the 1982 Constitution, the age for election of a member of parliament was defined as 30 years (Article 76). The age limit of 30 years was decreased to 25 years in Article 1 of Law no. 5551, dated 13.10.2006. The age limit of 25 years was reduced to 18 years in Article 3 of the Changes to the Constitution Law no.6771, dated 21.01.2017 (item 76).

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18 ZANOBINI, Guido, İdare Hukuku, Cilt I, M. Sadık Kağıtçı Press, İstanbul 1945, p. 93-95.

19 In the period of the 1924 Constitution, municipal mayors in Türkiye were elected by the municipal council, and in the period of the 1961 Constitution, started to be elected by voters. GÜNDAY, Metin: İdare Hukuku, Renovated 5th Edition, İmaj Publishing, Ankara 2002, p. 432. Before to republic period they became mayors by appointment. DERBİL, Süheyp: İdare Hukuku, Cilt I, Recep Ulusoğlu Printing House, Ankara 1940, p. 308.

Thus, it can be seen that in Türkiye at present, an individual aged 18 years can be elected as a mayor. It can be claimed that 18 years is an extremely young age at which to be elected. At this age, an individual has only just finished high school and most probably has not started university. It can also be suggested that at this age an individual does not have sufficient life experience, accumulated knowledge and skills. A municipal mayor is a heavy duty with a great many responsibilities. Just as there are small municipalities in Türkiye with populations of a few thousand, there are also municipalities with populations approaching twenty million. An individual who will administer a municipality with a population of millions will be required to be well equipped with qualifications, skills, accumulated knowledge and experience. Therefore, it would be appropriate to raise the minimum age to 25 or 30 years for candidates to be elected to the position of municipal mayor. For example, it is stated in the Article 2 of the Military Service Law no. 1111 that the military service age will begin in January of the year in which the person will be 20 years old. Thus it is mandatory for a person to be 20 years old to be able to undertake non-officer military service, so it can be said that considering 18 years as sufficient for the position of mayor or member of parliament is a regulation open to criticism.

One of the conditions stated above for election as a mayor is an education level of at least primary school. The academic opportunities have increased significantly in Türkiye and there are now institutions providing extremely high quality education. Türkiye has well educated, well equipped manpower. It would be appropriate to apply more stringent conditions to certain positions to incrase the competence, quality, and efficacy of the services provided.

In respect of the election conditions of mayors, new objective criteria can be introduced according to the population of the municipality. For example, the mayoral election conditions can be weighted proportional to the population. Different standards can be introduced for mayoral candidates of small places with a population of a few thousand and for the candidates of large cities with a population of millions. In this sense, to be able to be a candidate for the position of metropolitan municipal mayor there could be additional conditions to those defined in law, such as having completed at least 4 years of higher education, having worked for at least 5 years in the public and/or private sector, and being aged at least 30 years. For municipal mayor candidates where the population does not exceed 10,000, a minimum age of 25 years and

having finished high school could be introduced as additional conditions to those defined in law.

Finally in this section, it is useful to mention the mayoral candidacy of public officials. In the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972, which regulates the principles and practices related to the election of local administrative bodies, there is no provision related to resignation from public office to be able to be a mayoral candidate. However, it is stated in Article 17 of that law that it is not mandatory to resign from duties to be able to be a candidate for election as a member of parliament, municipal mayor, member of a provincial council or city council, or a neighbourhood headman. In Supplementary Article 3 of the same law, it is stated that with the exception of some public officials, if an individual resigns from the civil service and is elected mayor or cannot be a candidate again or re-elected, when an application is made to the directorate to which the previous institution is bound within 2 months of the announcement of the election results, the individual can be re-assigned to their previous duties or to a position equivalent to the nature and characteristics of the institution from which they resigned. It is also stated in Article 36 of the same law that when there are no specific provisions in this law, provisions will be applied that do not contradict the Law on Basic Provisions of Elections and Voter Registers no.298, the Political Parties Law no. 2820 and the Parliamentary Election Law no. 2839. In Article 18 of Parliamentary Election Law no. 2839, it is stated that public officials cannot be candidates unless they resign from duty one month before the start of the elections. Therefore, public officials who wish to be a mayoral candidate must resign from duty. Thus the provision in the above-mentioned Article 17 that resignation is not required to be a candidate for election as a member of parliament, municipal mayor, member of a provincial council or city council, or a neighbourhood headman is contrary to the principle of equality. Just as for public officials, it would be appropriate especially for members of parliament and mayors to resign from duty when they are candidates in mayoral elections.

Candidates in elections must compete on equal terms. The public duties of some candidates with positions such as mayor or member of parliament create an advantageous environment over other candidates. There is also the possibility that candidates with the authority to use public power will use this personally in elections. Therefore, resignation

from duty should be stated in law when mayors and members of parliament are candidates in mayoral elections. Thus, the principle of equality would be met and rumours or the possibility of using public opportunities for subjective outcomes in elections would be prevented.

III. TERMINATION OF MUNICIPAL MAYORALTY

The conditions for the termination of the office of mayor are stated in Article 44 of the Municipality Law no. 5393. According to this article, mayoralty can be terminated in two ways. The first is that the mayor themself terminates the office and the second is that the position of mayor is terminated with the decision of judicial bodies in conditions listed in law. However, the termination of mayoral duties is not limited to the conditions listed in Article 44. This subject will be addressed later.

For the termination of mayoralty by the mayor themself, there are two conditions. The first is that the mayor is deceased. In this case, the municipal council is called to a meeting by the Governor within 10 days. Under the leadership of the deputy mayor, or when not available the second deputy mayor, or in his absence, the oldest council member, the municipal council meets to select a chairman.

The second situation for self-termination of the mayoralty is that the mayor resigns from the position. Resignation or withdrawal is explained as a unilateral decision[20], and is not dependent on the acceptance of any authority. When a mayor resigns, the mayoral duty automatically ends. Just as mayoral candidacy is a right, so resignation from the postion of mayor is also a right. It is stated in Article 18 of the Constitution that this cannot be attempted to be forced by anybody. Again, in Article 48 of the Constitution, freedom to work is guaranteed by stating that everyone has the freedom to work in the field they wish. Freedom to work is defined as the freedom of everyone to work in the profession they wish and cannot be forced to do so[2121]. Therefore, a person who no longer wishes to undertake the duty of mayor has the freedom and right to be able to terminate mayoral duty with their own

20 GİRİTLİ, İsmet, BİLGEN, Pertev and AKGÜNER, Tayfun: İdare Hukuku, Revised 2nd Edition, Der Publications, İstanbul 2006, p. 677.

21 Constitutional Court, E. 2016/141, K. 2018/27, Decision Date 28.02.2018, T. C. Resmi Gazete Date-Number: 29.03.2018-3037.

unilateral statement. When a mayor resigns, the municipal council is called to a meeting by the Governor within 10 days. Under the leadership of the deputy mayor, or when not available the second deputy mayor, or in his absence, the oldest council member, the municipal council meets to select a chairman.

Termination of mayoralty with the decision of a judicial body can be applied when some conditions are met as stated in Article 44 of the Municipality Law no.5393. The first of these conditions stated in the article is that the mayor has abandoned the position without explanation for a continuous period of 20 days and this is defined by the local civil administration authority. This provision is similar in part to the provision in the Civil Servants Law no. 657. Article 125 of this law, which determines the types of disciplinary penalties and the acts and situations for which punishment will be imposed, states that a civil servant who does not undertake duty for a total of twenty days in a year without explanation will be punished with dismissal from public service. The difference between the two regulations is in the form of the absence from duty. Thus, for the process of termination of mayoral duty to be initiated there must be an absence without explanation of more than 20 days continuously, whereas for a disciplinary investigation of a civil servant, there must be absence without explanation of a total of 20 days in a year. Therefore it can be said that the principle of equality is not fulfilled.

Moreover, there can be said to be a deficiency on this subject in the Municipality Law no.5393. There is no regulation stating within a total of how many days the duties of a mayor can be terminated when there is absence of several days at different times and not continuously. Therefore, it would be appropriate for a provision to be made in Article 44 of the Municipality Law no. 5393 related to the termination of the mayoral position for absence of how many days per year in total when there is piecemeal absence from duty without explanation of less than a continuous period of 20 days.

The second condition when the mayoralty can be terminated with judicial decision is the loss of eligibility for election. The conditions to be eligible to be a mayor are not limited to being a Turkish citizen aged over 18 years with an education level of at least primary school, but also include not being restricted, having no connection with the military, not being prohibited from public service, and with the exception of crimes of negligence, not having served a prison sentence of a total of 1 year or more, not having been sentenced to severe imprisonment, whatever the

period, and not having committed some crimes stated in the law. These conditions are valid both when a mayoral candidate and throughout the period of office. When these conditions are lost or have been found to not be fulfilled, the mayoralty will be terminated with a judicial decision. For example, if it emerges that a mayor did not finish primary school, the office is terminated with a judicial decision. Or if it emerges during the period of office that the mayor is restricted for reasons such as mental health disease or deficiencies, extravagance, alcohol or substance dependence, or other poor lifestyle choices[22], the office must be terminated with a judicial decision. Or if the mayor during the period of office is sentenced to imprisonment, even if less than one year, or to longer term imprisonment, the position of mayor will be terminated.

A third reason for the termination of the position of mayor is the doumentation of a disability or disabling disease by an authorised healthcare institution during the term of office. An individual in the position of mayor may become disabled or contract a disease that will prevent the person from working. When the disease or disability is determined to be of a severity to prevent fulfillment of mayoral duty with an authorised healthcare institution report, the mayoralty can be terminated with a judicial report.

The last of the conditions in which the mayoralty may be terminated by a judicial decision is that the mayor participated in the actions and processes causing the termination of the municipal council. The elections for the mayor and municipal council are held separately. Therefore, the termination of the municipal council cannot automatically terminate the position of mayor[23].

In Article 30 of the Municipality Law no.5393, a municipal council can be abolished for two reasons. The first is neglect within the period of duty of the municipal council resulting in interruptions or delays in the work of the municipality. The municipal council is the decision-making body of the municipality and as such has significant duties and authority, stated in 20 subclauses of Article 18 of the said law. A second reason for abolition of the municipal council is decisions taken by the council on political issues not relevant to the duties of the

22 The reasons for restrictions are regulated in Article 405 and subsequent articles of Turkish Civil Law no. 4721.

23 AKYILMAZ,SEZGİNER and KAYA, p. 329.

municipality. If one of these reasons occurs, the municipal council is dissolved by the decision of the Council of State upon notification to the Ministry of Internal Affairs. However, the office of the mayor can be terminated in other conditions.

The elections of local adminstrations are held every five years. Therefore at the end of this 5-year period, the mayoralty will be terminated. When a decision is made about incompetence of the mayor, again the mayoralty will be terminated[24]. In Article 26 of the Municipality Law no. 5393, the decision of incompetence of a mayor can be taken in two forms. The first is that the decision of incompetence is made related to an activity report and the second is that it is made as the result of a motion of no confidence. The procedure for a decision of incompetence related to an activity report is as follows: if the explanations of the activity report of the previous year presented to the council by the mayor are not seen to be sufficient by a three-quarter majority of the full number of council members, the minutes covering the discussions with the decision of incompetence are sent to the local civil administrative authority by the deputy chairman of the council. The Governor sends the file to the Council of State with a reasoned opinion. If the decision of incompetence is agreed by the Council of State, the mayor is removed from office. The procedure for a decision of incompetence as a result of a motion of no confidence is as follows: a motion of no confidence in the mayor can be given with the signatures of at least one-third of the total number of council members. The motion of no confidence is put on the agenda with the vote of the absolute majority of the full number of council members and cannot be discussed until 3 full days have passed. When the decision of incompetence of the mayor is made by a three-quarter majority of the full number of council members, the minutes covering the discussions with the decision of incompetence are sent to the local civil administrative authority by the deputy chairman of the council. The Governor sends the file to the Council of State with a reasoned opinion, and if the decision of incompetence is agreed by the Council of State, the mayor is removed from office.

That the resolution of claims related to the gaining of a position of authority of elected bodies of local adminstrations and the supervision

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24 ÖZYÖRÜK, Mukbil: İdare Hukuku Ders Notları, 2nd Grade Program Dublicating, 72 Dublicator Typewriter Photocopy, Ankara 1982, p. 214.

of their loss will be through judicial means is an appropriate regulation constitutionally guaranteed. However, that local administrative bodies or members of these bodies who are investigated or prosecuted for crimes related to their duties can be removed from duty by the Minister of Internal Affairs for an indefinite period until a definitive decision is made, is a regulation open to criticism. As the Minister of Internal Affairs has the discretionary authority to decide on removal[25], there is the possibility that this power may be used for political motives rather than for the public interest. Therefore, it would be more appropriate for this authority to be given to neutral judicial bodies.

The procedures to be followed in the event of a vacant mayoral position are defined in Article 44 of the Municipality Law no.5393. When there is a vacant mayoral position for any reason, the municipal council is called to a meeting by the Governor within 10 days. Under the leadership of the deputy mayor, or when not available the second deputy mayor, or in his absence, the oldest council member, the municipal council meets to select a chairman when the mayoral office becomes vacant or there is a punishment of prohibition from public service beyond the election period.

If there is a long time to the election when there is a vacancy because of the death, resignation, or conviction of the mayor, it would be more appropriate for the mayor to be elected directly by the voters. When a mayor is suspended from duty, arrested, or or prohibited from public service for a period that will not extend beyond the normal election time, the deputy mayor is selected. However, if a mayor is suspended or arrested, or prohibited from public service because of terrorist crimes or aiding and abetting terrorist organisations, a new mayor is appointed by the Minister of Internal Affairs in metropolitan and provincial municipalities, and by the governor in other municipalities. The person to be assigned as mayor by these authorities must be eligible to be elected as mayor.

IV. CONCLUSION

In the Constitution, the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen

[25] ULUSOY, Ali D: Türk İdare Hukuku, Revised 6th Edition, Yetkin Publications, Ankara 2023, p. 249.

no.2972, and the Law on the Basic Provisions of Elections and Electoral Rolls no.298, it is stated that elections will be conducted according to the principles of free, equal, secret, single-stage, universal suffrage, and open counting and inventory.

Of these principles, it can be said that the principle of universal suffrage is not dependent on any condition of the right of citizens to be able to use their vote. However, this principle does not mean that all citizens without exception will be able to use their vote as they wish. There are some objective criteria related to being able to vote and being able to use the vote on election day. In both the Constitution and the Law on the Basic Provisions of Elections and Electoral Rolls no.298, some objective criteria are defined.

However, there is a difference between Article 67 of the Constitution and Article 7 of the Law on the Basic Provisions of Elections and Electoral Rolls no.298, which define those who cannot use their vote on election day. In Article 67 of the Constitution, it is stated that except for those convicted of crimes of negligence, prisoners in penal institutions cannot vote, whereas in Article 7 of the Law on the Basic Provisions of Elections and Electoral Rolls no.298, all prisoners are excluded from voting. Therefore, it would be appropriate to add a statement to the third subclause of Article 7 related to the exception of those convicted of crimes of negligence.

In both Article 127 of the Constitution and Article 8 of the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen no.2972, it is stated that local administration elections are held every 5 years. The second sentence of the third paragraph of Article 127 of the Constitution was removed with the Law of Changes to the Constitution no.6771. Before this change that local administration elections were to be made within one year before or after parliamentary elections, they had to be held at the same time. Rather than completely removing this sentence, it would have been more appropriate to replace “one year” with “six months”. As it can be said that each election places a substantial burden on the economy of the country, an interval of six months or shorter between parliamentary and local elections would be beneficial for the economy of the country, and in terms of the time and effort expended, and would minimise the potentially negatve effects of the election atmosphere. It would therefore be appropriate to include a provision in the Constitution that mayoral elections should be held together with parliamentary elections.

The conditions to be elected as a mayor and to be elected as a member of parliament are the same in Türkiye. Both of these positions are extremely important. Therefore, in the determination of the qualities of the person who will take up these positions it would be appropriate for the regulations to allow the opportunity to a person who is well equipped, well educated, knowledgeable, broad-minded, visionary, and is aware of and up-to-date with the current world.

Thus it would be rational to make some changes to the age and education requirements for election. According to the current regulations in Türkiye, an 18-year-old can be elected as a municipal mayor. It can be said that 18 years is an extremely young age at which to be elected mayor. It can also be suggested that at this age an individual does not have sufficient life experience, or accumulated knowledge and skills. A municipal mayor is a heavy duty with a great many responsibilities. Just as there are small municipalities in Türkiye, there are also municipalities with populations of millions. An individual who will administer a municipality with a population of millions will be required to be well equipped with qualifications, skills, accumulated knowledge and experience. Therefore, it would be appropriate to raise the minimum age to 25 or 30 years for candidates to be elected to the position of municipal mayor. As the education opportunities in Türkiye have increased significantly, the condition of further education should be introduced for those who are going to undertake significant duties such as member of parliament or mayor. Generally, mayoral election conditions are weighted in direct proportion to the population. In other words, there can be different conditions for mayoral candidates in a locality with a population of several thousand and for mayoral candidates in large cities with a population of millions.

Every citizen who is eligible for election according to the conditions defined in law can be a mayoral candidate from a political party list or independently. Public officials who wish to be a mayoral candidate have to resign from their duties. However, in Article 17 of the Law on the Election of Local Administrations, Neighbourhood Headmen and Councils of Aldermen, no.2972, it is stated that it is not mandatory to resign from duties to be able to be a candidate for election as a member of parliament or mayor in local elections. This provision is contrary to the constitutional principle of equality. Therefore it would be appropriate to state in the legislation that members of parliament and mayors, in the same way as for public officials, have to resign from their duties to be

able to be candidates in mayoral elections. Otherwise, the positions or titles such as member of parliament or mayor of some candidates would create an advantage over other candidates against whom they are competing in the election. There is also the possibility that candidates with the authority to use public power would use that for personal outcomes in the election, so it should be stated in law that those with the authority to use public power should resign from their duties when they are candidates in mayoral elections. This would both meet the constitutional principle of equality and avoid rumours or the possibility of being able to use public opportunities for personal outcomes in elections.

Conditions for terminating the office of municipal mayor are regulated in the Municpality Law no. 5393. One of these conditions is that the mayor has abandoned the position without explanation for a continuous period of 20 days and there is a similar regulation in the Civil Servants Law no. 657. Article 125 of this law, states that a civil servant who is absent from duty for a total of twenty days in a year without explanation will be punished with dismissal from public service. Thus, for the termination of mayoral duty there must be an absence without explanation of more than 20 days continuously, whereas for a civil servant, absence without explanation of a total of 20 days in a year is sufficient. This is contrary to the principle of equality. In Article 44 of the Municipality Law no. 5393 there is no regulation related to the termination of the mayoral position for absence of how many days per year in total when there is piecemeal absence from duty but not continuous. It would therefore be appropriate to include a provision in this article stating when the mayoralty can be terminated after a total of how many days absence in a year when it is less than 20 days continuously. The case of “deemed to have resigned”, which is exemplified in the Civil Servants Law No. 657, could also be added to this article. In this sense, it would be appropriate to add a provision to the article that a mayor who is absent from duty for ten days continuously without explanation will be deemed to have resigned.

In Article 127, it is stated that there will be judicial oversight on the subject of resolution of claims of gains and losses of the position of authority of elected bodies of local adminstrations. It is also stated in the same article that local administrative bodies or members of these bodies who are investigated or prosecuted for crimes related to their duties can be removed from duty by the Minister of Internal Affairs for an indefinite period until a definitive decision is made.This provision is also included

in a parallel regulation in Article 47 of the Municipality law no.5393. However, there is no regulation related to the period of suspension from duty. It is only stated in the second paragraph of Article 47 that the decision for suspension from duty will be reviewed every two months and will be revoked if the decision is not found to be in the public interest. It would be appropriate to make some cchanges to both Article 127 of the Constitution and to Article 47 of the Municipality Law no. 5393. In this framework, first it could be stated in the Constitution how long the maximum period of suspension from duty could be. However, there may be the question of the probability that an investigation or prosecution could continue for a long period. In such situations, suspension from duty becomes de facto dismissal.

Secondly, it would be appropriate to transfer the authority for removal from office from the Minister of Internal Affairs to the judicial body. Such a regulation would conform to the principle that the resolution of claims and losses of the positions of elected bodies of local administrations should be conducted by the judiciary. Moreover, giving the power of dismissal to the Council of State could protect the political administration from the criticism that more often the decision has been taken to remove mayors from opposition parties.

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