



APPENDIX

Law No 7102 on the Basic Provisions of Elections and Electoral Registers and Law on Amendments in Some Laws

Mr Devlet Bahçeli, president of the Nationalist Movement Party, announced on 8 January 2018 that his party would support the ruling AKP leader Recep Tayyip Erdoğan in the presidential elections, and the debate on "electoral alliance" thus began. The draft legislation for electoral alliance was prepared by the AKP and MHP in a very short time and submitted to the Turkish Parliament. It was accepted without any changes on 13 March 2018 with the votes of both parties and despite all objections raised by the opposition at the Constitutional Committee as well as the general assembly. The "electoral alliance" bill consists of 26 articles and makes amendments in four laws.

HDP's Objections and Position

The right to elect and be elected is a Constitutional right; democratic states are obliged to ensure that all necessary conditions are met in order to guarantee that the will of voters is fairly represented. This includes all the regulations and legislation that ensure the implementation of basic principles such as impartiality, independence, transparency, secret vote/open counting by means of various control and supervision mechanisms as well as technical regulations to make voting easier.

We think that this electoral alliance bill undermined most basic criteria for fair and free elections: further destroying pluralism, these changes will obstruct fair representation of different ideas and segments of population; it may make voting almost impossible in some regions due to new technical regulations that make voting difficult; armed police or other security forces can be used to put pressure on the voters; regulations such as counting unsealed votes as valid will manipulate election results and lead to a various unlawful practices that would damage voters' trust.

1. According to the Article 1 of the bill, voters who live in the same building will be able to register at different polling stations. This would make it possible to directly intervene in the voter lists by eliminating the capacity of residents to check and supervise them. With this change voters can no longer check whether people living in the same building or on the same street are actually listed on the voter list, or whether the people not living in their building or street are listed on the voter list. It may also allow a large number of people without voting rights to vote in the relevant polling district (in violation of Article 67 of the Constitution, Article 2 and 6 of Law 298).

Contact: international@hdp.org.tr **Web:** www.hdp.org.tr

Address: Barbaros Mah. Tahran Cad. Büklüm Sok. No: 117 06680 Çankaya, Ankara - Turkey

Phone: +90 312 427 17 80 **Fax:** +90 312 4288957



2. Article 2 of the bill provides governors with new powers that do not have a place in the election law. Governors are now authorized to move and/or merge ballot boxes and form lists of mixed voters. Considering that governors and district governors have been appointed by the Turkish government to replace mostly jailed Kurdish mayors in 94 municipalities, governors and district governors now have extraordinary powers in all decision-making processes regarding Kurdish voters in Eastern and Southern Anatolia. Granting such powers to governors, who work under direct orders from the government, undermines the principles of neutrality and independence as well as the civilian nature of elections, particularly in Kurdish provinces.
3. Moving ballot boxes will also make it more difficult for voters to access them and prevent many citizens from voting. Inability to access ballot boxes will lead to the fact that the will of many citizens will not be reflected in the ballot; a constitutional right will thus be violated.
4. The fact that the election of the President and parliamentarians is held on the same day and the regulation to put the two votes in the same envelope are contrary to the principle of separation of powers. The executive body is elected with the votes given to elect the president and the legislative body is elected with the votes given to elect parliamentarians. Elections of executive and legislative organs should be made separately.
5. According to the Article 8 of the bill, the authority to summon police force, which was previously granted only to the chairs of the ballot boxes, is now granted to everyone. Pro-government citizens can easily abuse this authority in a very dangerous and arbitrary manner by informing on opponents for no legitimate reason. Under emergency rule, social polarization among diverse sectors of the population with different political orientations has particularly increased. By removing voters or observers of the opposition parties from the ballot boxes by the force of police, this regulation paves the way for practices that can make it impossible to check and monitor the casting and counting votes, particularly in the Kurdish provinces where the police is deeply politicized and hostile to local people.
6. According to the new bill, chairs of the boards for each ballot box will be determined among public officials who serve in the district. This regulation can undermine the most fundamental principle of any democratic election: to ensure the impartiality, monitoring, fairness and democratic nature of elections, electoral processes should be carried out by political parties and under judicial supervision. That is why it is necessary to establish ballot-box boards with the participation of political parties and taking into account the mechanism of checks and balances. Determining the chairs of ballot-box boards among public officials who work under direct orders from the government clearly violates the principle of checks and balances in the elections.
7. Removal of the concept of "ballot box area" from the law leads to serious ambiguity. For instance, the boundaries of many buildings in which the ballot boxes are placed are not apparent. Moreover, the concept of "outbuilding" is open to interpretation and

Contact: international@hdp.org.tr **Web:** www.hdp.org.tr

Address: Barbaros Mah. Tahran Cad. Büklüm Sok. No: 117 06680 Çankaya, Ankara - Turkey

Phone: +90 312 427 17 80 **Fax:** +90 312 4288957

speculation. It is necessary to write articles of the law in a clear and explicit way so as to prevent any arbitrary space for manipulation.

8. The most controversial item in the new bill is concerned with the regulation to count votes in unsealed envelopes as valid. As it is known, in the referendum for the presidential system on 16 April 2017, and in clear violation of the Article 98 of the Law No. 298, the Supreme Electoral Board decided on the day of the referendum that votes in unsealed envelopes would be accepted as valid. This totally unlawful decision of the Board was announced with an SMS message without giving any justification or clarification as per the conditions under which it can be applied. This intervention shadowed the results of the referendum and led to irreversible consequences. With the new bill, the government first of all admits that it was unlawful in April 16 referendum to count votes in unsealed envelopes as valid. The bill just legalizes an unlawful practice.
9. Article 20 of the bill, which is one of the most disputed items, favors the political parties that form an official electoral alliance with respect to the ten-percent national election threshold. More precisely, if the total number of votes received by two allying parties is ten percent or more, then both parties pass the election threshold. This regulation puts in a disadvantageous position those political parties who do not form electoral alliance. The AKP made this amendment specifically for its political ally MHP, which has the risk of remaining below the ten percent electoral threshold, and in clear violation of both the Constitution and universal law. Rather than abolishing the extremely high and anti-democratic ten percent threshold, which is retained in the law to exclude the Kurds from parliamentary politics, the AKP has circumvented it by allowing the MHP to pass the threshold through an electoral alliance. Needless to say, this change is not democratize and pluralize parliamentary politics, as the AKP claims.
10. This regulation is also problematic in the sense that it puts pressure on smaller parties to form alliances with bigger ones simply because of the risk of remaining under the threshold. If a political party that gets only two or three percent of the national vote forms an alliance with a party that passes the national threshold, it may gain seats at the parliament. Yet, a political party that does not form an electoral alliance may have no parliamentary representation even if it gets 9,99 of the national vote. This is not simply against the Constitution but a greatest disrespect to people's will. The national electoral threshold should be either abolished or reduced to a reasonable level to enable pluralism and fair representation.