REFERENDUMS AND E-VOTING IN TURKEY

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Abstract

Today, we can define referendum as the reflection of majority of the public's choices' to polls and the change of applications from a legal text to a fulfillment of public's demand. Referendum is not only to vote the legal text but also to exhibit the public's opinion. The referendums which the participation rate is very low cannot be considered as they have met the desired results. Thus, using the modern technology, an increase in participating referendums can be provided.

If the public could not exhibit its own opinions for some reasons, then these reasons should be investigated. Especially as the latest referendum has fall upon both the end of summer holiday and the religious festival, many voters were not able to go to polls. The rate of voters, who were in resorts during the election period, decreases if the elections are made during summer period. Changes in constitutions are all the public's concern and they are the country's assurance. Academics on political science, state that the real constitution of a country, is the "election system". As politicians have decided to get the public opinion in such important issues, then, participation of public to referendum should be boosted.

E-voting should be developed for the referendum process and the opinion of the majority of public should be obtained this way. The main point of the study is described as the voters who could not vote as they were in their summer houses or resorts. By utilizing information technologies, the voter files can be confirmed more efficiently, and they could be able to move to the resorts to increase the participation by e-voting. In this sense a bivious study is needed. Changing the voter files with automation system and having a steady, reliable and participating referendum pattern by e-voting, is expected from the Supreme Election Committee. In the study, the rates of the voters will be analyzed who were their summer houses in Kuşadası during the September, 12, 2010 referendum.

Key words: *referendum, e-voting, voter, voter file, tourism.*

JEL Classification: H7 - State and Local Government

1.What Is a Referendum?

Referendum provides the reflection of public's decision to government directly. In other words, referendum is a process which people state their opinions apart from political restraints. Referendum is a democracy model. And it is applied to citizens about a decision that has been taken or to be taken by the legislative body (Çam, 1987; 168). A referendum can be either binding or consultative. A binding referendum becomes law as it passes; a consultative referendum only provides advice to law-makers (Shalom, 2003; 192). Semi-direct democracy consolidates representational democracy and direct democracy. The main scope of semi-direct democracy is referendum. In some conditions referendums may be compulsory. Changes in the constitution of Switzerland are a good example of it. The condition that is not so compulsory is the one when the parliament decides to submit the law to referendum. Essentially referendums are considered as the active participation of public. It is important to define referendum and plebiscite concepts. While referendum means voting of legal texts, plebiscite means voting individuals by public (Çam, 1987; 168-169).

Referendum is polling that is mostly used to determine the public's decision on important issues or acceptance of laws, changes in constitutions. Referendum is a good example of a direct democracy that reflects the decision of public to government. In representative democracy, the people who the public chose try to reflect the decision of public. Referendum that is seldom made in Turkey is frequently used in developed countries. Although the word plebiscite is used instead of referendum, they are different from each other. Plebiscite which means the decision of the parliament comes from the word plebiscitum in Latin. Plebiscite is a question that came up to publics voting by one of the legislation organs. In other words plebiscite means voting of confidence. In the ancient time sites, plebiscite means public that has the civic rights, whip together like a real government and legislation organ, and vote for individuals. However today, public that gather once in a year in the cantons of Switzerland and some American commune, use this method to control only the administrators and to communicate their offer (http://www.uzmanportal.com). In Switzerland nearly every decision is voted on by the public, which is more than 400 times, between 1848 and 1993 (Shalom, 2003; 192).

Because of the difficulties in applying direct democracy, representative democracy system is preferred. In order to approach the direct democracy system, semi-direct democracy system is preferred. Referendum is one of these systems.

Participation of public in government issues, which is called as semi-direct democracy, choosing representatives is not the only duty of the voters. The voters have the authority to make a constitution and legislation, by their votes. (http://www.uzmanportal.com). Besides, some democratic theorists think that in representative systems, the election of the public officials is a poor way of translating the public's will to the government. Also, for some theorists, democracy itself is a mean to achieve the most possible development of each and every human being, and that will be an important part of human development (Ranney, 1996; 179-180).

To distinguish this concept from general and local elections would be an appropriate approach. Generally, election is defined as "making politics after choosing the officers" or "oya seçim to choose people who will work for the government" (Üste, 1999; 6). Although general and local elections can only be made in their legal sure, referendum does not require such a time interval. But early elections, is to bring forward the elections in their legal öngörü.

Political science has developed within the framework of political philosophy and constitution law. As referendums are used in creating constitutions, they have an important role in modern political science (Kapani, 2003; 25-26). During the law making process, the parliament benefits public management. One of the points of origin of the laws or changes in laws that will be discussed in the parliament is ministries. The rate of becoming law of these is high (Öztekin, 2002; 196-197). Through ages, referendums within public management have an important place.

Referendum is a system that has been administered after the French Revolution in 1789. Today, it is in some of the American state constitutions. This is also called as the public acknowledgement or public veto. Like in Weimer Constitution of Germany, if the head of state wishes, before affirming an act, he may require the publics' vote. A referendum is made either after making a new constitution or making important legal changes, in order to refer the public's opinion. Affirming of the new constitutions of Turkey, France and Switzerland happened so. This is called as Referendum of Constitution. The first referendum in Turkey was for the Constitution of 1960.   62% of the votes was Yes and 38% No; thus the Constitution of the Constitutional Assembly was affirmed. The acceptance rate of the constitution prepared by the Danışma Parliament in 1982 was 92%. The new constitution was accepted by unanimously and has the acceptance of the voters. Making a referendum of the laws is a main principle in the USA and Switzerland. French Constitution of 1946 was the only constitution that was rejected by public

in the first voting when it was submitted a referendum. However, this constitution was accepted in the second tour. (http://www.uzmanportal.com)

2. Thoughts about Referendum

Referendum or public vote is a method used in democracy. However there are various discussions about referendum. There are two main concepts. These are as follows:

- **<u>Party to referendum</u>:** their thoughts are set up on the "non-transferability of independence" of Jean Jacques Rousseau. They submit that sovereignty belongs to public and it cannot be assigned to another person. Any law that was not affirmed by public is not valid. Asking for the public's opinion and a solution, teaches the public to think in public issues. In brief, they submit that public voting provide the public's democratic education (Örmeci, 2010; 2-4).

- **<u>Object to referendum</u>:** Public voting is nothing more than taking the opinions of uninformed people about sophisticated issues. Ordinary citizens cannot perceive the laws that are created about sophisticated issues, efficiently. They think the public forms its conviction according to the newspapers they read or by the TV channels mostly under the control of the governing party (Örmeci, 2010; 3-5).

As well as keeping the stabilization of the country, public voting can also create instability. Public voting can provide social compromise; prevent anarchy, depressions and political tension. However making referendums frequently create an election climate, compound political conflicts and deteriorate the economic balance. Besides public voting may turn into a voting of confidence.

3. The Referendum Requirements

According to the Turkish Constitution of 1982, a referendum is designed as it follows:

- The elections and referendum are done under the control and supervision of judicial organ in the basis of a free, equal, confidential, direct, general ballot-open counting inventory.

- Every Turkish citizen who is over 18 has the right to vote and to participate in referendum.

- Electoral laws are made in a manner that reconciles the principles of justice in representation and stability in governing.

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- Like general elections, the management and control of referendum is done by Supreme Election Board.

4. Referendums in Turkey

Until today, six referendums are made in Turkey. The Constitutions of 1961 and 1982 are the ones that are admitted by referendums.

- **Constitutional Referendum of 1961:** This is the first referendum made in Turkey. According to the voting in July 9, 1961, the Constitution of 1961 was admitted by a 61,7% Yes to 38,3% No. In June 12, 1960, National Unity Committee decided to make a referendum to make changes in the Constitution. In this sense, the Constitution of 1961 was submitted for the public's will to make a democratic constitution (Gözübüyük, 2005, s. 70). In this constitution, as well as social and economic rights, issues like impunity, respect of private life, freedom of communication, security have also came up and has taken its place in the constitution that was voted in referendum.

- **Constitutional Referendum of 1982:** This was for the constitution of 1982 right after the 1980 Turkish coup d'état. The constitution was admitted by a 91,37% Yes to 8,63% No in the referendum in November 7, 1982. By voting yes the authority to make administrative operations were given to the President, which is different from the authorities given by the Constitution of 1961 (Gözübüyük, 1999, s.69).

- **Referendum of 1987:** The main point of the referendum in September 6, 1987, was about the continuance of 5 and 10-year political inhibitions that was introduced by the provisional application clause 4 in the Constitution of 1982. Supreme Election Board has announced the results of the referendum in September 12, 1987 and it was admitted by a 50,16% Yes to 49,84% No. So that the provisional application clause 4 was repealed and inhibited political leaders were again active in politics.

- **Referendum of 1988:** This is the first referendum which resulted in No votes. The reason of this referendum was give a decision about bringing the local elections forward that are mentioned in the Constitution of 1982, Act 127. The result was no (65% No; 35% Yes). Thus, the change was not accepted and the early election that was predicted to happen in November 13, 1988 was not made.

- **Referendum of October, 21, 2007:** The referendum that anticipated a change in the Act 4 of the Constitution of 1982, was resulted by a 70% Yes to 30% No. The articles that changed are as follows:

  - The President is to be elected by public votes.

  - The Presidential term is to be shortened from 7 years to 5 years.

  - The President may be eligible for the next Presidential term (5+5),

  - The election period of the member of the parliament is to be shortened from 5 years to 4 years.

- **Referendum of September 12, 2010:** The aim of the referendum was to change 26 Acts in the Constitution of 1982. These 26 acts have different issues. Changes that were planned in The Supreme Council of Judges and Public Prosecutors were the most discussed ones. Another important part of this referendum was that, the election period was like as if a general election was going to be made. Political parties have tried to explain the public why to vote Yes or No in a similar atmosphere like the ones just before a general election. The result was Yes (60%; 40% No). So that changes in 26 acts in the constitution was accepted.

5. How Can an E-Referendum Be Made in Turkey?

To make an e-referendum in a country, many factors are needed to gather. However the priority must be given to obtain the conditions to make it safely. Voting electronically has gone out of a theoretical issue in many countries and applied successfully in elections and referendums. In elections, instead of traditional ballots, technology is being used. E-voting is used to reduce election costs, accelerate the elections' every process, increase the efficiency of the election, to confirm and announce the results of the elections in a short time, to increase the validity of the results, prevent the duplicity, to secure the public order during the elections and increase democratic participation (Akın, 2006, s.33).

There are principles that must be determined during the development of e-voting. Stating these principles is also important in terms of providing a holistic system. These are as follows (Akın, 2006,s.34):

- **Adequacy:** Only people, who have the right to vote, should vote.

- **Uniqueness:** none of the voters should vote more than once.

- **Accuracy:** the election system should save the votes safely.

- **Integrity:** the vote should not be changed once before and after voted.

- **Verification and controllability:** during the counting, the system should provide an accurate counting.

- **Reliability:** the system should keep on working efficiently even if the electrics are gone or the internet connection is broken.

- **Confidentiality and prevention of pressure:** selling votes or pressing on the voter's right should be avoided.

- **Flexibility:** the machines used in elections should be synchronized with the vote forms.

- **Easiness:** the voters should vote using less and simple voting machines.

- **Certifiable:** the voting system should be testable whether they are fulfilling the requirements of the election system.

- **Transparency:** voters should have knowledge and understanding about the voting process.

- **Feasibility:** the voting system should be obtained in an acceptable cost.

The principles above will bring success if they are administrated together efficiently.   Today the information technology is evolving quickly, and e-referendum is not so far. The important point is to improve the IT network infrastructure and generalize the use of it. Besides, legal status of IT is needed to be reviewed. The development of e-voting will provide a shorter e-referendum process. India, Venezuela, Estonia can be the examples of e-voting.

6. The Point of View of E-referendum in Turkey

The principles of e-voting which should be met in order to make an e-referendum are explained above. In this study, the participation rates to the referendum of September 12, 2010 are analyzed, is discussed whether e-referendum system have the possibility to increase this rate.

The referendum of September 12, 2010 was made when the schools were closed and a religious holiday was also added on the summer holiday. The basis of this study is to determine if the voters in resort have turned back to their ordinary residence for the referendum. The rationale of Kuşadası is that, it is one of the important and preferred tourism destinations in Turkey and has many summer

houses. Especially determining the number of citizens staying in their resort houses and their main election center is important for the efficiency of the study. If the voters were at their summer houses during September 12, then they were not able to vote. In this study not only e-referendum, but also developing e-election environment which will support this concept, will show the subjectivity of the results. The study has two dimensions. Would the number of the voters increase if an e-referendum was made? How can the voters who are at their summer houses during the referendum date would vote if there was an e-voter file? As all the citizens have an ID number and with the help of IT, e-election environment may be developed, and if voters will vote somewhere different than their ordinary residence, then their elector roll can be transferred to the address which they chose.

7. Methodology

It has been hard to reach the data needed about e-referendum. The main reason is that political parties and local authorities do not have a systematic quantitative data that can be evaluated. Under this condition, the study was limited. Davutlar Municipality, which is a part of Kuşadası, has been chosen as a sample which has many summer houses. According to the interviews there are 15.000 summer houses in the area and the citizens were staying at their summer houses in the referendum day. Also 80% of the voters were to vote in different places. Citizens who had summer houses, has two different addresses which one of them is the place where they have to vote and the other where they were staying that referendum day. These data show that 80% of 15.000 citizens were not able to vote in the referendum.

8. Results

The people, whose ordinary residence was in different cities of Turkey, were at their summer houses in Davutlar for their holidays. It is clear that, as the referendum was made during the holiday, people who were at the age of voting among 15.000 families, were not able to vote.

To generalize, this situation is not different in many summer resorts. This study has revealed that, if a referendum is planned to make, the conditions should have been well arranged before all.   In order to make a referendum rationally, by e-voter rolls application, the voters should be made able to vote wherever they want with the help of IT. The election periods are not problematic only in summer periods but also in winter. To make elections in every season and date the conditions in the election system should be re-arranged. These data also brings up

the matter of how difficult to vote in different addresses. Especially in referendums the voters should be able to vote wherever they reside.

Discussions

Today, it is not so possible for the political operations to be not influenced from the development of information technologies. Politics is one of the main subjects that experience the sustainable and constant developments.

E-voting is submitted as a novelty to the needs of the political subjects of the modern world. Especially in the beginning of the 21st century, many countries have given a start to e-voting applications. The use of technological developments in scientific areas, will utilize the factors of management like staff, finance and organization.

E-referendum is not as common as a concept. Referendums are made just like general and local elections in countries. It is a kind of election that is used mostly by the countries which has progressed in democracy. So, in order to have the e-referendum concept to be applied in Turkey, the studies should be intensified. The result of the study strengthens this result. Referendum of 2010 was made for an important subject. It was about the changes in on Act 26 of the Constitution of 1982. As the content of the Acts are analyzed, they are for the future of the people. Voting as Yes/No is a process that must be considered as important.

According to the results of this study, in the referendum of 2010, many voters have not expressed their opinions in such an important issue. As the referendum date was fall on holiday, citizens who were on their summer houses could not vote. Kuşadası sample verifies this thesis. We can generalize this result as, if citizens who could not vote in Davutlar, were about 15.000, when all the resort places in the country is regarded, then many voters could not vote in the referendum of 2010.

As a result of this, e-referendum must be applied. The legal arrangements should be made in the parliament. By stepping up the studies in information law, the complications that can arise during election period should be eliminated. In such an information era, information technologies should be used instead of polls. So that, savings on staff, time and finance will be provided, the security problems will be removed and the election is to be accomplished in a small number of institutions.

Making the referendum electronically is not enough alone. Besides, e-voter rolls must be applied as the infrastructure of e-referendum. Especially, the referendum

of 2010 has brought up this need again. Voting in every place where the voters reside, should be predicated on before the referendums. Voters who have declared their residence earlier than a month their elector rolls should be taken to any address they stated. Thereby they can vote using their ID cards. This will show the importance of time savings and thus, having the ability to vote without any bureaucratic applications, will increase the number of participation. Moreover, as people can vote in any place, the critics about the dates which citizens are not at their ordinary residences will be eliminated. So that referendums will be made easily.

The elections that have been criticized most are about the date of them. However, elections made in winter also resulted in low participations due to climate conditions. Or the voters have to vote under hard conditions. Accomplishing the infrastructure for e-voting and e-elector rolls applications will remove these complications.

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