

Chapter 7

Problems Relating to the Right to Information in Turkey

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ABSTRACT

Traditionally, public administration has always preferred to work behind closed doors. However, the concept of participatory democracy, which developed especially after the 1950s, encouraged citizens to participate more in the decision-making mechanisms of the state. Turkey experiences many problems in exercising the right to information, which was enacted in 2003, arising from the administration's attitudes and behaviors and also from the legislation. Foremost among these are the fact that citizens have not been made sufficiently aware of this right and that the administration is reluctant to share information. An analysis of the data and statistics in Turkey shows a rising trend in the exercise of this right by citizens between 2004-2015. However, considering the size of Turkey's population, the rate can still be deemed low. Post-2015 figures show a radical decline in citizens' exercising of the right to information. This situation may be explained by the painful process that Turkey experienced from 2015 onwards and the state of emergency implementations that followed.

INTRODUCTION

Public institutions have always tried to make public decisions in secret. On the one hand, this tendency has aimed to protect public administration from external influences and pressure group interventions, while on the other it has been a result of the public sector's habit of looking down on citizens. In the 1960s, new developments,

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new movements and new administrative principles emerged in the field of public administration and democracy. The new understanding of public administration argued that the public sector must become more transparent when taking its decisions, be more participatory, and be based upon the principle of accountability. In the 20th century, in particular, government regulations relating to the daily lives of their citizens increased in number, and administrative actions and acts began to influence their lives more. Judicial review of the actions and acts of public institutions and organisations is one of the most important requirements of the rule of law and democratic state administration. From the 1960s onwards, legislative regulations were made in order to increase public participation in administrative processes, especially in Western democracies. In this period, international organisations also encouraged governments in this direction through the decisions, agreements and recommendations they made. The rapid transformation that took place in the fields of globalisation and communication especially after the 1990s brought about the obligation to protect personal data, and made it necessary for citizens to influence the decision-making mechanisms of their government more. In order to ensure this and create transparent administrative models based on participation, many governments started passing laws in those years that secured the right to information. International organisations such as the UN, the EU, the European Council, the World Bank and the OECD took efforts that supported these initiatives. Today, the right to information has become an indispensable part of the catalogue of constitutions addressing fundamental rights and liberties. The first legal regulation that directly formed a basis for the right to information in Turkey was the Law No. 4982 on the Right to Information of 9 October 2003. It can undoubtedly be stated that the European Union accession and harmonisation process were influential on the introduction of this law. In order to indicate the implementation of Law No. 4982 on the Right to Information, an implementation regulation was also issued on 27 April 2004. Then in 2010, the right to information became constitutional and was included in the Political Rights and Duties section of the 1982 Constitution, which is still in force.

The current study will firstly discuss the nature of the right to information and its function in a democratic society, and then describe the process of its introduction into legal texts. The next part will deal with the principles and rules necessary for the right to information to be realised. The regulations relating to the exercise of the right to information in Turkey and the procedures prescribed by those regulations will then be discussed. Finally, problematic areas relating to the right to information in Turkey and suggested solutions will be addressed.

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