DISPUTED RIGHTS AND CONTESTED ISSUES: A STUDY ON THE RIGHT TO INFORMATION IN TURKEY*

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ABSTRACT

Right to information has certain resemblances to right to petition. In addition to its strong ties with freedom of thought and expression, this right implies citizens' right to ask their administration to be accountable and transparent. In that context, the history of right to information can be traced back to the formation of the modern constitutional state. Regarding recent history of right to information in Turkey, its practices became the part of the political agenda at the end of 1990s and the legislation on right to information was enforced at the beginning of 2000s. As of 2019, right to information has been practiced for the period of 15 years.

The article aims to elaborate and discuss prominent issues in the practice of right to information in Turkey alongside the European experience. Within this aim, we will also focus on the decisions of the Council of Cassation of Right to Information in Turkey. Not only does this Council, like European Ombudsman, have the jurisdiction over the cases in the review process but also become the reliable guide with its precedents Last but not least, this article contains certain recommendations for improvement of the practice of right to information which has potential to foster the interaction between citizens and public authority.

Keywords: right to information; accountability and transparency of administration; interaction between citizens and public authority; political public sphere.

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TARTIŞMALI HAKLAR VE ÇEKİŞMELİ KONULAR: TÜRKİYE'DE BİLGİ EDİNME HAKKI ÜZERİNE BİR ÇALIŞMA

ÖZ

Bilgi edinme hakkı, dilekçe hakkı ile benzer özellikler taşımaktadır. Düşünce ve ifade özgürlüğü ile kuvvetli bağlarının olmasının yanı sıra bilgi edinme hakkı; aynı zamanda, yurttaşların, yönetimlerinden hesap verebilir ve şeffaf olmalarını isteme hakkını da bünyesinde barındırmaktadır. Bu bağlamda, bilgi edinme hakkının tarihi, modern anayasal devletin oluşumuna kadar götürülebilir. Bilgi edinme hakkının Türkiye'deki yakın geçmişine bakıldığında, bu hakka ilişkin uygulamaların 1990'ların sonunda, siyasal gündeme dahil olduğu anlaşılmaktadır ve bilgi edinme hakkına ilişkin yasal düzenlemeler, 2000'lerin başında yürürlüğe girmiştir. İçinde bulunduğumuz 2019 yılı itibariyle de, bilgi edinme hakkı uygulamaları, 15 yılını geride bırakmaktadır.

Makale; Türkiye'de bilgi edinme hakkına ilişkin çok önemli konuları, Avrupa deneyimine de değinerek, birlikte incelemeyi ve tartışmayı amaçlamaktadır. Bu amaç doğrultusunda, özellikle, Bilgi Edinme Değerlendirme Kurulu'nun kararlarına da odaklanacağız. Kurul; Avrupa sistemindeki Ombudsman gibi, kararların denetlenmesi sürecinde yargılama yetkisine sahip önemli bir merci olmakla kalmamakta aynı zamanda, içtihatlarıyla da süreci yönlendiren güvenilir bir rehber olmaktadır. Sonuncu ama son derece önemli olarak, makale; yurttaşlar ile kamu otoritesi arasındaki etkileşimi kuvvetlendirme gizilgücüne sahip olan bilgi edinme hakkı uygulamasının daha da geliştirilmesi amacıyla yapılan önerileri de içermektedir.

Anahtar Sözcükler: bilgi edinme hakkı; yönetimin hesap verebilirliği ve şeffaflığı; yurttaşlar ile kamu otoritesi arasında etkileşim; siyasal kamusal alan.

1. INTRODUCTION

Many valuable studies question the characteristics of the interaction between governing and governed in the era of modern state. The right to information is one of the rights which play leading role to promote the interaction between government and citizen. This right has points of resemblance to the freedom of thought and expression as well as citizen's right to ask their government to be accountable. It is a "right" with political and social implications: On the one hand, it can be a measure of the openness of the society, on the other hand it can give citizens a sense of ownership, and serve confidence in the legitimacy and appropriateness of public administration.

In Turkey, the regulations of the right to information, which purported to aim making the acts and actions of the government "public", have been discussed in the beginning of 2000s. The law on the right to information was enforced in 2004. This presentation aims to investigate legal procedures and practices of the right to information in Turkey. The most significant practices of the right to information and the main problems experienced during the period 2004-2018 will be handled and elaborated by considering the worldwide experiences and the discussions on the issue. Within that respect, this study will also explore the decisions of the Council of Cassation of Right to Information in Turkey, as the final authority, which reviews the decisions of partial or full refusal of access to information and documents by regarding the limitations of the right specified in the related legislation.

The statistical data on the applications for the access to information is made to public by the Turkish National Grand Assembly every year. Also, the decisions of the Council of Cassation of Right to Information are regularly published on its website. In our study, we will analyze this data and information and try to determine certain trends and explore some disputed issues in the practices of the right to information within the period between 2004-2018. Besides this, we consider the assessments and criticisms of the academicians, lawyers and experts on the practices and decisions related with the right to information in our analysis. Regarding the certain practices of right to information, regulated in the Law on Right to Information, which came into force in Turkey after 2004, this study aims to portray main lines of discussions and tensions related with the application process of right to information in the country case.

2. RIGHTS, LIBERTIES AND RIGHT TO INFORMATION

In the process of the evolution of modern/capitalist state, the classical liberal thought and certain practices inspired by this thought have offered leading principles and mechanisms for the abolition of the absolutist state's monolithic power structure. To some interpretations, the capitalist mode of production and the exchange relation in the market serves for the economy administered by its own rules, in other words, without requiring any political interventions to the market. In that understanding, the state's the function can be described in relation to its role for the sustainability of the market relations. In that sequence, law serves as an arbitrator between two different spheres, civil society and state. Accordingly, it is pretended that law acts as an arbitrator with having autonomy. "The rule of law" provides a basic norm which declares that political authority should act in conformity with the requirements of the law. According to Anderson, the relationship of governing and governed in the evolution of capitalist state became different and was "modeled on the business contract in commercial life. The rising bourgeoisie created the 'contractual state' in its own image, bolstered by economic doctrine of *laissez* faire which held the 'wealth nations' was increased by free market and minimal state involvement in the economy" (Anderson, 1986, p.6). The considerable function of the liberal state was to promise and protect "rights and liberties" of the individuals who established, in theory, their

own state by the social contract signed by two parties, ruler and ruled. The contractual state was imagined by eminent thinkers like Locke who was one of the most respected and famous liberal theorists (Skinner, 1978, p.239). His doctrine provided guiding principles for his era as well as for contemporary liberal thinkers.

In relation to the understanding of the "limited state" in the classical liberal thought, Vincent claims that "the central feature of the constitutional theory... is that it is a theory first and foremost of limitation". He continuously stated that constitutionalism and limits on the state are not "something 'attached to a State... A constitution is not an addendum *to* a State. The limitations are intrinsically part of and identifying features of that [liberal] theory" (Vincent, 1994, p.77-78). It can be concluded that the understanding and practices of the liberal state were grown in the conditions of absolutist era. Basic characteristics of the liberal state were pictured in relation to the practices of the absolutist state. The liberal state, however, is qualitatively dissimilar to the old one, the absolutist state. In other words, the liberal state did not come into existence as a result of the quantitative changes in the absolutist state. The existence of the liberal state, with its theory, owes to enormous transformations in the society, changes in the class relation, as a whole, to the great transformations in the relation between state and society. The waves of constitutionalism during the 18th and 19th centuries also served main principles and mechanisms to arrange and regulate this new relationship of state to society.

The transition from absolutist state to the new era has borne the traces of developments, beside the waves of constitutionalism, which draw up some important principles like rule of law, separation of powers, checks and balances. With the rule of law, another characteristic was attributed to the concept of limited state. Accordingly, "political power" should be exercised within the limits of "law" and government should be organized and conducted in conformity with constitutional principles. The constitution and constitutional principles as the body of supreme law should be a force to be reckoned with, i.e. acts and actions of government bodies and public officials are under control of law. In that sense, the state is organized in association with law.

J. Habermas known as the theorist of public sphere underlines the importance of constitutional movements and constitutional state in the history and in the development of public sphere: "The constitutional state as a bourgeois state established the public sphere in the political realm as an organ of the state so as to ensure institutionally the connection between law and public opinion" (Habermas, 1993, p.81). Habermas emphasize the worth of "individual rights and freedom and especially "freedom of opinion and speech, freedom of press, freedom of assembly and association" as the constituents of "rational-critical debate" in the formation of public sphere. Considering the relationship between individuals and political authority, he also mentions "right of petition". Right of petition as the predecessor of right to information is one of the important rights which serve the needs of individuals to interact with political authority. Especially regarding "political public sphere", individuals/citizens can be informed and then can control, criticize "political power's acts/actions" and influence public authorities to review and revise public policies and practices. applications.

> "Where the constitutional state did not emerge as a fact out of the older formation of a state structured by estates (as in Great Britain) but was sanctioned (as on the continent) by a piece of legislation on which it was founded, that is, a basic law or constitution, the functions of the public sphere were clearly spelled out in the law. A set of basic rights concerned the sphere of the public engaged in rational-critical debate (freedom of opinion and speech, freedom of press, freedom of assembly and association, etc.) and the political function of private people in this public sphere (right of petition, equality of vote, etc.)" (Habermas, 1993, p.83).

The position of "right to information" as a form of "right to petition" and its relation with "freedom of opinion and speech" in the development and sustainability of "constitutional state" are elaborated by leading authors interested with the issue. In the important study, "Global Network and Local Values", it is reported that freedom of information as the essence of right to information has two dimensions: on the one hand, this is a "right" regularized and conducted by law, "it is an individual right". On the other hand, this is a "right" which has certain political and social implications: "…in the social and political sense, it is a measure of the openness of the society". "The value involved" in "right of access to information" is stated in the following way:

> *Access to information gives citizens a sense of ownership of their society, and it creates confidence in the legitimacy and appropriateness of government administration. Freedom of information is a tool for engaging citizens in the work of government, alerting them to any excesses of government, and providing them with the basis to exercise their rights and obligations more knowledgeably. In Thomas Jefferson's words, 'The best protection of a democratic society is an informed public'* (Keller et. all, 2001, p.156-157).

It can be said that "freedom of information" serves a normative basis for transparent, accountable public bodies, and serves as a warning to authoritarian political practices which reminds the era of absolutist state like "raison d'état" characterized by "secrecy" instead of "publicity".

Todays, "right to information" is specified as the right which has a great value to provide certain mechanisms in the connection between individual citizen and state in the Europe and in the world. Right to information is one of the constituent parts of the European governance principles as "openness, participation, accountability, effectiveness and coherence" which are counted in "White Paper on European Governance" (White Paper, 2001). Despite the assessment reported that "efficient transparency requires a proactive approach and cannot be limited to access to documents" as a result of public consultation process concluded in the end of March 2002 on White Paper, it was declared that "right to access to documents" is an inalienable part of "the European Union's information and communication policy" (Commission of the European Communities, 2003:8, 11-18).

Since May 1999, the Treaty of Amsterdam has been in force, European citizens have enjoyed their right to information in accessing to the European Parliament, the Council and Commission documents. In this Treaty, there is an article specifying the principle of "public access to documents". The detailed procedure for enjoying the right to public access to documents" is specifically described in "the Regulation No 1049/2001". Alongside the supranational mechanism, some of the member states have their regulations on right to information at the national level. Regarding Turkey's case, it is seen that the right to information was regulated at the beginning of 2000's.

3. RIGHT TO INFORMATION AND TURKEY: A HISTORICAL SKETCH

Right to information came to the scene in Turkey at the end of 2003. The Law No:4298 which was promulgated in October 2003 and entering into effect in the beginning of 2004. The legislation on right to information is composed of this law, Regulation on the right to information and Circular Letter of the Prime Ministry, which was promulgated in the January 2004. The law on right to information was drafted by the party in power, Anavatan Partisi-ANAP (Motherland Party-MP) as a so-called important reform program at the end of 1990's. However, the preparations for legislation related with right to information were regarded by the public as endeavors to meet the requirements for the participation to the European Union rather than an effort to promote rights and liberties at the national level.

At the end of 1990s, the legitimacy of political system became questioned in relation to the different problems in the political arena. The actual political situation was more controversial and controversial. For example, an accident which can be seen, at first sight, as a clash of a car Mercedes with a truck near a town Susurluk has disclosed certain important secrets and this accident has been called as Susurluk Accident*.

When the Motherland Party seized the power, the Prime Minister Mesut Yılmaz gave importance to reconsider and inspect the secret relations which were disclosed by Susurluk Accident to some extent. Yılmaz indicated that the organized crime groups had strong relation with some state officials and had an aim to seize the control of the state administration. He also stated that "several public employees who involved in these crime organizations also involved in drug trafficking and other illegal affairs." The Prime Minister Yılmaz purported:

> Just before the Susurluk accident, the target of the organized crime organizations have been the state administration, the gangs collected members who were working at important positions of the state and started to be institutionalized by increasing their power within the state. There is a direct connection between terrorism, unemployment, ethical corruption and organized crime movements (https://www.hri.org/news/turkey/anadolu/1998/98-09-19.anadolu, *24.5.2008).*

In this political-social environment, the emphasis was on "illegal affairs" of public officials and problem of corruption in the legislation of right to information in Turkey. The right to information was presented as an important instrument to handle and solve the problems. The targets of practices of the right to information were labeled as "openness and accountability of public administration", on the other hand, the right to information became a significant part of agenda of Motherland Party as the party in power, at the last years of 1990s. The law was drafted by the Prime Ministry's officials, in a collaborative way by taking the opinions of academic member, experts as well as the media representatives. Some prominent members of the press, for example, Oktay Ekşi who was the head of the Council of Press dealt with the importance of the right to information in his column in various times. In his articles, he emphasized the significance of "public right to know" to serve the promotion of "the freedoms of press" (Ekşi, 2003).

The legislation on the right to information has been part of Turkey's participation program to the European Union at the beginning of 2000s. In these circumstances, the main aims of the laws were specified in the statement of the reasons (law) in the following way: "Transparency and publicity rather than secrecy, are main objectives of the regulation. Administrative acts and

* "It happened on the evening of Sunday, 3 November 1996. Late-night television viewers in Turkey saw their programme interrupted by a line of text appearing under the picture. It was shocking news. Three people were killed in a traffic accident near the town of Susurluk in western Turkey and a fourth injured. Ever since the advent of commercial television, people in Turkey had grown accustomed to this kind of *shock news*. Every night there were sensational interruptions especially inserted to boost viewing ratings. In retrospect most of them were pretty insignificant. The people who died in this particular accident were police chief Huseyin Kocadag, a man by the name of Mehmet Ozbay and Ms Yonca Yucel. The injured man was Sedat Bucak, a member of Parliament from the province of Urfa in the southeast of the country and known as the commander of an army of village guards set up to protect that region from the PKK, the violent separatist movement of Kurds. A couple of pistols, machine guns and a set of silencers were found in the wreckage of the car. Half an hour later a new line of information appeared on the screen: the deceased 'Mehmet Ozbay' was really Abdullah Catli. His name will not mean much to Turks under the age of 30, but the older generation certainly knows him. In the 1970s, Catli was the vice-chairman of the national organisation of *ulkucu* (literally idealists) better known abroad as the Grey Wolves. He has been wanted by the Turkish authorities since 1978 as the suspect in a number of murders, one of them involving seven students. He was also wanted by Interpol, because he had been arrested by the French and Swiss police as a heroin dealer, but escaped from a Swiss prison in 1990. The woman who died in the crash was his girlfriend" (Yesilgöz and Bovenkerk, 2004, p.585).

actions should be accountable to the public". During the discussions on the draft form of the law on the right to information in the parliament, the speaker of the party in power, Adalet ve Kalkınma Partisi-AKP (Justice and Development Party-JDP) purported that the legislation on the right to information aimed at achieving "accountability of acts and actions of the executive body which strongly needs to be transparent and accountable".

Regarding the scope of the right to information in Turkey, it can be said "public institutions and organizations and public professional organizations" are included whereas "private institutions and organizations" are outside the scope. Secondly, we can ask the question "who has this right?" This question can be replied as follows: "All legal and natural persons being citizens" have the right to information in Turkey. Beside them, "citizens of other countries" in Turkey enjoy this right in "the related issues with their occupation and in accordance with 'rule of reciprocity' ". In other words, not only "interested persons or bodies" but also "**all** legal/natural persons being citizens" have right to information. Depending on this significant characteristic of the right to information, all citizens can demand to have information without any needs to explain their interest with the issue. This feature of right to information in Turkey reminds us the system characterized with "right to know" rather than "need to know". "Right to know" is an inalienable part of the system of right to information in Turkey as in the European Community's system. Both systems granted right of access to all natural and legal persons. In other words, these persons do not have to justify their applications (Yasa [Law] No:4982, EC Regulation No:1049/2001). This is one of the important characteristics of right to information in Turkey, and this characteristic distinguishes this right from the right to petition and every citizen becomes able to have information of various issues and control the practices of public authorities as well as public policies.

Public administrative bodies have some "specific responsibilities for direct and easy accessibility of information". In Turkey, each public institution and organization have responsibility in the classification of the related documents as well as preparation of institutional web sites. Every public institutions and organizations should "keep the main documents in electronic form and provide the documents open to public". Also each public institution and organization should "establish and organize their 'right to information' units".

Turkey's system resembles the European supranational system on these issues. A report prepared by the European Commission purported that "public registers" can serve to facilitate the search of the documents. In addition, direct access to the full text of the documents in the registers can be possible. Server called EUROPA or services as EuropeDirect help citizens to access information in a direct and easy way. "Information services for the public" should be established by each institution and organization (Commission of the European Communities, 2004, p.40).

Also, the right to information has boundaries which resemble the boundaries of "the right of access to documents" at the supranational level in Europe. Main limits to the right to information in Turkey can be listed as follows: "Secrecy of state, public security, harm national economic interests; Secrecy of communication; Protection of institutional data (except persons employed in this institution and affected by the applications); Legal advice and opinion; Protection of inspections; Court proceedings; Information and documents related with civil and military intelligence (except persons whose career and prestige affected negatively)".

Regarding the current practices of the right to information, the annual reports on all public institutions and organizations' practices provides important data to evaluate the functioning of the system.

Table 1. Data on the applications to access information across 2004-2008

Year	**2004**	**2005**	**2006**	**2007**	**2008**
Total applications	**385.557**	626.789	**864.616**	939.920	**1.099.133**
Applications replied positively	**347.959**	542.364	**746.999**	751.089	**947.428**
Applications replied partially positive/partially negative (partial refusal)	**13.648**	21.712	**38.092**	108.530	**51.730**
Total refusal	**20.474**	54.234	**69.199**	70.378	**81.466**
Applications accessing information after extracting the secret/confidential information	**3.571**	5.979	**9.617**	8.151	**5.424**
Applications being directed to the other institutions to be replied	**9.695**	31.172	**58.093**	58.522	**78.227**
In default of unpaid admission fee the applications' supposed to be desisted	**210**	2.189**?**	**No data**	No data	**No data**
Appeals to the court on the case of refusal	**No data**	**311**	**539**	**554**	**424**

Source: Annual reports on right to information, BEDK 2005-2009, tbmm.gov.tr

Table 2. Data on applications to access information across 2009-2013

Year	**2009**	**2010**	**2011**	**2012**	**2013**
Total applications	**1.091.589**	1.353.620	**1.423.636**	2.092.463	**2.784.444**
Applications replied positively	**947.637**	1.098.870	**1.244.995**	1.924.603	**2.583.506**
Applications replied partially positive/partially negative (partial refusal)	**53.300**	75.925	**86.507**	79.014	**101.814**
Total refusal	**84.723**	89.749	**87.500**	82.814	**94.298**
Applications accessing to the information after extracting the secret/confidential information	**3.504**	8.427	**4.606**	6.032	**4.826**
Applications being directed to the other institutions to be replied	**72.080**	93.203	**102.219**	163.257	**156.716**
In default of unpaid admission fee the recourses supposed to be desisted	**No data**	No data	**No data**	No data	**No data**
Appeals to the court on the case of refusal	**745**	**716**	**720**	**840**	**603**

Source: Annual reports on right to information, BEDK 2010-2014, tbmm.gov.tr

Table 3. Data on applications to access information across 2014-2018

Year	2014	2015	2016	2017	2018
Total applications	**3.298.465**	1.190.325	**1.552.721**	1806.958	**1.733.779**
Applications replied positively	**3.118.864**	1.019.466	**1.308.105**	1.459.234	**1.428.357**
Applications replied partially positive/partially negative (partial refusal)	**71.964**	81.994	**111.930**	114.854	**136.339**
Total refusal	**99.166**	84.115	**125.761**	115.941	**133.208**
Applications accessing information after extracting the secret/confidential information	**8.471**	4.750	**6.924**	15.872	**35.875**
Applications being directed to the other institutions to be replied	**121.183**	154.853	**213.433**	101.057	**192.840**
In default of unpaid admission fee the applications' supposed to be desisted	**No data**	No data	**No data**	No data	**No data**
Appeals to the court on the case of refusal	**746**	**622**	**778**	797	**783**

Source: Annual reports on right to information, BEDK 2015-2019, tbmm.gov.tr

There were some increases in the number of the applications in the course of time. Considering the total number of applications, the number of 2012 is approximately is fivefold of the number of 2004. Regarding the practices of right to information in Turkey, it can be seen that increasing number of citizens applied to public institutions and organization to exercise their right to information at the last years of 2000s, hence, it can mean that the citizens regarded the right to information as beneficial. Total number of applications to access information in 2004 which was the first year for practicing the right to information, is 395,557. After three years, applications' number reached 939.920 in 2007. By continuously increasing, this number became 2.092.463 in 2012 and 3.298.465 in 2014, which is the peak point for the all period of 2004-2018 (BEDK, 2005 to 2019).

4. DISPUTED RIGHTS AND IMPORTANT PRECEDENTS: APPEAL PROCEDURE

As mentioned before, there are some similarities between the principles and mechanisms of right to information in Turkey and that of in the European supranational level. Nevertheless , procedures in relation to "the cases of refusal" are differentiated from another in each system. Whereas there is "second administrative appeal" is provided if an application to accessing documents was refused totally or partially in the European system there is no such mechanism Turkey's system.

In "second administrative appeal" at the European supranational level, the institution/organization which is reapplied is obliged to "re-examine this application" and to report the reason(s) of its own decision to the applicant. In the case that "the applicant is not satisfied of the decision which is given at the end of "the re-examination process", she/he can apply to "the European ombudsman", or bring a suit against this decision.

In Turkey, the appeal system for re-examination of applications was designed in a different form than that of the European supranational system and has been modified in the course of time. When regarding "the draft form of the Law No 4982", it can be seen that "the Council of Cassation for Secrecy" was given the power to re-examine the applications which were "rejected on the ground of secrecy of state and harming national interests". In the course of time, this Council was renamed and it was called as "the Council of Cassation for Right to Information" and then its scope was extended to all complaints by considering the criticisms directed to the process of re-examination. Todays, "the Council of Cassation for Right to Information" is authorized to "re-examine partial or total refusal of the applications on any grounds within the limits of the right to information". This Council consists of members from "the Council of State & the High Court of Appeals, from professors in law, a member from public professional organization of lawyers, a member from Ministry of Justice, members from officials at the higher level of the administrative bodies".

The Council of Cassation for Right to Information has some important decisions which have certain effects on the relations of citizens with the state. These decisions also have hallmarks of accountable state and they signal some changes in the notion of state as a political body.

Concerning the relationship between "public officials" and "state", some decisions of the Council on "reports of qualification" which are prepared by the superior to assess the qualities and performance of the inferior official every year as well as "reports of investigations". After the Law of Right to Information came into force, important number of public officials applied to access to information on their own report qualification and also report of investigation if there was. Prior to the enforcement of the Law of Right to Information, the content, judgements and results of the qualification reports, as a standard, are not open to the interested public officials. Due to this fact, some of the state's acts and actions in relation to public officials have remained unchecked. With the Council's precedents which declare that every public official has right to know the content of the qualification report on themselves in the case that this report affects her/his "work life and professional dignity". As a result of these precedents, "reports of qualification" became open to the public officials.

Some decisions of the Council of Cassation for Right to Information forced public institutions and organizations to change the manner of administration. For example, the decisions of the Council on the practices of "the Assessment Selection and Placement Center" which has the duty to manage the process of the public university entrance exams as well as foreign language exams for public officials and public service entrance exams etc. had tremendous effects. By

insisting on right to information in relation to all these exams, this Center was forced to release the correct answers of the questions.

Some of the Council's decisions have the effects of check and balances system. In Turkey, "local governments" are authorized to decide on "land appropriation, expropriation and construction". By its precedent on this issue, the Council promote citizens' right to know local policies and decisions. Thanks to this precedent, the citizens have opportunity to check and control local government's practices in general and also in particular issues especially related with "land appropriation, expropriation and construction".

Applications made by civil society organizations, labor unions and political parties to the Council have also important consequences to make "administrative acts and actions" to be public. According to our research's findings, these applications held small proportion of the whole applications to the Council at the beginning of the appeal process. But situation has changed over the course of time. When concerning the number of 2007, the applications of civil society organizations, labor unions and political parties to the Council correspond to 10% of the total applications. The year 2018 is also important since every 16 applicants out of a thousand, whose applications for accessing to information were refused, appealed to the Council of Cassation for Right to Information**.** This the highest ratio for the appeal process when concerning all the period between 2004-2018.

One of the interesting headings of the applications to the Council is related with relatively "new" generations of rights like "right to healthy environment", "rights of fetus" etc. It can be purported that applications of right to information have a capacity to promote the rights at the first and second generations as well as the right at the third and fourth generations. Various interesting headings of the applications concerning right to information can serve a purpose to broaden the scope of the practices of right to information in Turkey.

5. CONCLUSION: CONTESTED ISSUES AND RIGHT TO INFORMATION IN TURKEY

In Turkey, right to information came to the scene on the eve of 2000s especially in relation in to efforts taking action in the process of Turkey's membership to European Union. However, in retrospect, this right became a part of important political reform program at the end of 1990's to overcome the problems partly originating from unaccountable nature of some political relations as exemplified and became public with Susurluk accident, as we have mentioned before.

Also, right to petition in 1961 Constitution is the predecessor of right to information in constitutional history of Turkey. Right to information as a young relative of right to petition, aims to serve a purpose to revise the relationship between citizens and state, i.e. the governing and the governed, and revive "democratic participation" and contribute to the notion of "accountability and transparency of political acts and actions".

It is purported that the legislation on right to information basically aim to serve the purpose of "transparent and accountable" public administration. Right to information as a category political rights provides that governmental acts and actions are controlled and checked by "informed public". It strengthens political participation of the citizens and contributes to the legitimacy of state.

It is interesting to note that applications made by public officials to have information on "the reports of qualification" which are prepared by their superiors to qualify one-year performance

of the subordinates, and have certain important effects on the working life of the subordinates nearly constitute one-third of the initial applications. It can be evaluated that public officials, as citizens, have the advantages to access information on the reports which affect their interest, i.e. enjoy their right to information through which these official report as an administrative act being "public".

Whereas right to information is very important in realization of democratic society in which accountable and transparent government has part, it serves to this purpose when "integrity of all categories of human rights and freedoms is respected" including freedom of thought and expression, freedom of press, freedom of communication as well as social, economic and political rights. "Informed public" is not an aim in itself, however it is a major agent in the formation of political public sphere as Habermas stated.

Considering the appeal procedure in the mechanism of the right to information in Turkey, it can be said that "the Council of Cassation for the Right to Information" is a major constituent. The Council guided the functioning of the system through its important decisions which set precedents in the application of the rules and procedures of the right to information. Although we can see limited number of appeals to the Council in the first years of the process, the number was multiplying in the course of time. It can be concluded that "the Council of Cassation for the Right to Information" carries weight because it stands for proper execution of the rules and procedure, and for an accountable government.

In Turkey's case, "the right to information" which was considered to be a key instrument for ensuring accountability and transparency of governmental acts and actions became part of the national legislation in 2004 and its 10th anniversary was commemorated in 2015. As of today, this right continues to be enjoyed by the citizens and it maintains its life after 15 year-period. Regarding the total number of citizens applied to enjoy the right to information, it can be stated that there is a rise, with some exceptions, in the number over the period of 15 years. It seems that there is an increase in the number of people exercising this right. Nevertheless, it can be said the applications constitute small portions of the population when regarding the total number of the people over 18 years old. According to the data, the number of the applications only constitutes 3% of the population in 2012 and this number rose to 5% in 2014, but then it became decreased for the all period between 2004-2018.

As a conclusion, it can be stated that small number of the citizens exercised the right to information which was commemorated its 10th anniversary in Turkey and is 15 years old today, when considering the population of Turkey as a whole. It is necessitated that some actions should be taken to inform the people on their right to information in all parts of Turkey. Some measures need to be introduced for the effective enjoyment of the right to information in Turkey.

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