



NEJVYŠŠÍ SPRÁVNÍ SOUD



Seminar organized by Supreme Administrative Court of the Czech Republic and ACA-Europe

Supreme administrative courts and evolution of the right to publicity, privacy and information.

Brno, 18 May 2015

Answers to Questionnaire: Turkey



Seminar co-funded by the "Justice" programme of the European Union

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(Questionnaire)

1 Pursuant to Article 12 of Act on the Right to Information, Law No: 4982, the Board of Review of the Access to Information, has been founded to review the administrative decisions on appeals about the applications of right to information, and to make decisions regarding institutions and agencies on the exercise of the right to information. The functions and responsibilities of the Board are also laid down by "Regulation on Principles and Procedures for the Implementation of the Right to Information" The Board is composed of 9 members appointed by the Council of Ministers. They serve for four years and the members, who complete their time may be re-elected. The Board president is elected among the Board members.

In parallel with the Article 28 of the Directive 95/46/EC of the European Parliament and of the Council, the Draft Law on Protection of Personal Data envisions the foundation of a "Personal Data Protection Committee for monitoring institutions and agencies on processing of personal data and carrying out other duties prescribed by law.

2. The replies of the administration to the applications within the Act on the Right to Information, Law No: 4982, have the characteristics of administrative action. According to the Constitution of Republic of Turkey, recourse to judicial review shall be available against all actions of administration. The applicants whose applications for access to information are rejected, may appeal to the Board before appealing for judicial review or may bring directly an action to the administrative jurisdiction. Appeal to the Board suspends the time limit (60 days) to refer to the administrative jurisdiction. The applicants who alleged that their exercise of right to information obstructed and suffered from pecuniary loss and intangible damages, may bring directly a full remedy action or a full remedy action together with an annulment action. The actions in question, may be brought before courts pursuant to the Administrative Procedure Act, No. 2577.

The provisions regarding protection of personal data exist in the Constitution of Republic of Turkey and Turkish Civil Code. According to Article 20/3 of the Constitution, everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person's explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.

Pursuant to Article 24 of Turkish Civil Code, the person subject to assault on his personal rights may claim protection against the individuals who made the assault. Moreover, according to Article 135 and the following provisions of the Turkish Criminal Code, the acts of recording, delivering or acquisition of personal data unlawfully were penalised. Likewise, under Article 8 of the European Convention On Human Rights approved in 1954 by Turkey, it is stated that, everybody has the right to demand respect for his private and family life, his home and his correspondence.

3- When the personal data protection cases concern with regulatory administrative actions, the lawsuit would be examined by Council of State of Turkey as a first instance court and appeals would be reviewed by plenary session of the administrative law division of Council of State. Except regulatory administrative actions, the other cases are examined by first instance courts and the appeals would be reviewed by regional administrative courts.

4- Although some articles of the Constitution of Republic of Turkey have the basis of right to information, a constitutional amendment adopted in 2010 added the title of Article 74 of the Constitution on the right of petition to “the right to information and appeal to the ombudsman” Also the basis of right to information was provided by adding the following rule to the article: “everybody has the right to obtain information and appeal to ombudsman

However, before the above-mentioned amendment, the Act on the Right to Information, Law No: 4982, was entered into force on April 24, 2004 within the efforts of harmonization of European Union legislation. This Act, regulated the procedure and principles of exercising the right to information and also there is a regulation on implementation of the Act titled “Regulation on Principles and Procedures Regarding the Implementation of the Right to Information”. In accordance with the Article 12 of the Regulation, the Board of Review of Access to Information, has been founded to review the administrative decisions on appeals about the applications of right to information and to make decisions regarding institutions and agencies on the exercise of the right to information. The functions and responsibilities of the Board are also laid down by “Regulation on Principles and Procedures for the Board of Review of Access to Information”. Finally, a notification on the countries within principle of reciprocity regarding the act on the right to information and the regulation on implementation of it,, entered into force on October 17, 2008, which determined the countries within reciprocity principle for foreigners dwelled in Turkey and alien corporations engaged in Turkey.

5. As a general approach public institutions and government agencies in Turkey are reluctant to conveying information to public. Therefore, right to information has been legislated and retrieved a constitutional status in Turkey’s law system. Principally, use of this right is envisaged by European Human Rights Convention which Turkey also ratified.

6. Unfortunately there are some cases that right to information is abused or misused by petitioners. For example, public institutions occupied via lots of superfluous applications by petitioners who want to access information or data that are not concerning himself directly or indirectly. Also there are some petitioners who deliver data unfairly or use them in a non-purposed way. On the other hand, the insufficient measures for the protection of personal data at the services offered by public institutions and government agencies in Turkey through the internet, can be seen as a reason for the use of these personal data in a way that may constitute crime.

7. The information and documents regarding the duties and activities of the civil and military intelligence units (military units affiliate to Turkish Army and internal and external units affiliate to Prime Ministry) are out of the scope of this Act. However the information and documents, that affect the professional honor and working life of the persons, are within the scope of right to information.

The information or the document that is related to the administrative investigations held by the administrative authorities and which will; clearly violate the right of privacy of the individuals, endanger the security or the life of the individuals or the officials that carry out the investigation, jeopardize the security of the investigation, disclose the source of the information which needs to be kept secret, or endanger the procurement of similar information in connection with the investigation, are out of the scope of the Act.

The information or the document those disclosure or untimely disclosure will give rise to a criminal offence, endanger prevention and investigation of the crime or endanger the legal procedure for the detention and the prosecution of the criminals, obstruct the proper operation of judicial duty, violate the right to fair trial of a defendant in a pending case are out of the scope of this law.

8. It emerges as a serious privacy issue that wiretapping of some people's communications who are not a subject of criminal investigation but only in touch with people who are subject of criminal investigation by a court decision. This "third party" people are being wiretapped without having a court decision or a decision of competent authority. Only being in touch with a person that being wiretapped may cause to wiretapping of this third party people without any decision taken by authorities and this emerges as a privacy issue. However, this kind of wiretapping is not allowed by law and saved records qualified as illegal evidence by Turkish Courts.

Violation of privacy is defined as a crime in the Turkish Criminal Code. Any person who records personal information about individuals unlawfully is punished according to article 135/1 of the Code. Besides, according to foregoing Code, any person who records the political, philosophical view or religious concepts of individuals or personal information relevant to their racial origins, ethical tendencies, health conditions or connections with syndicates is punished too.