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RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

Regulations on Access to Government Information and Impacts on Open Government: A Case of Turkey

Kamu Bilgisine Erişim Düzenlemeleri ve Açık Devlete Etkileri: Türkiye Örneği

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Abstract

The fundamental elements of open government, i.e. openness, participation, and collaboration, can be secured through well-structured regulations governing access to information. Therefore, existing access to information regulations, which are based upon the pre-open government era, should be structured or updated under the mandates of open government. The present study assumes the perspective of the relevant literature to consider the effectiveness of regulations governing access to information in public's access to information, their relationships with the government, and the effects of open government on regulations governing access to information. With its starting point in the literature, the study assesses the scope of the existing Law on the Right to Information in Turkey, as a country preparing for an open government in line with specific criteria, and defines the effects of this Law on the preparations for an open government, as well as its current/potential shortcomings. Using document analysis as its research methodology, this study reveals that the Law on the Right to Information in Turkey does not sufficiently cover the requirements of open government. The research conclusions are presented along with recommendations for the updated structuring of the Law on the Right to Information.

Keywords: Open Government, Open Government Regulations, Right to Access Information, Government Information, Turkey

Öz

Açık devletin temel öğeleri olan açıklık, katılım ve işbirliği, iyi yapılandırılmış bilgi erişim düzenlemeleri ile sağlanmaktadır. Bu nedenle geçmişi açık devlet öncesine dayanan mevcut bilgi erişim düzenlemelerinin açık devlet gereklilikleri kapsamında yapılandırılması veya güncellenmesi bir gereklilik haline gelmektedir. Çalışmada bilgi erişim düzenlemelerinin kamu sektörü bilgilerine erişimindeki etkililikleri, açık devletle ilişkileri, açık devletin bilgi erişim düzenlemelerine etkileri literatür kapsamında değerlendirilmektedir. Literatürden yola çıkarak çalışmada açık devlet hazırlık sürecinde olan Türkiye'de mevcut Bilgi Edinme Kanunun kapsamı belirlenen kriterler doğrultusunda değerlendirilerek bu kanunun açık devlet hazırlıklarındaki etkisi ve karşılaşılabilecek/karşılaşılan eksiklikleri tanımlanmıştır. Doküman analizini araştırma yöntemi olarak kullanan bu çalışma Türkiye'de ki Bilgi Edinme Kanunu'nun açık devlet gerekliliklerini yeterli düzeyde karşılayamadığını

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ortaya koymaktadır. Araştırma sonuçlarında Bilgi Edinme Kanunun güncel yapılandırılmasına yönelik öneriler sunulmuştur.
Anahtar Kelimeler: Açık Devlet, Açık Devlet Düzenlemeleri, Bilgi Edinme, Devlet Bilgisi, Türkiye

1. Introduction

Advancements in digital technology have caused a course of transformation in administrations. Along with new approaches to administration, governments draft laws and implementing initiatives and investments to facilitate access to public-sector information in order to secure transparency, openness, and accountability. These practices can be described as fundamental requirements for the modernization of and effective governance in the public sector and are mostly structured in a complementary manner.

Allowing public access to government data has become a current topic along with the influence of new approaches on administration. The practices shaped in this context and conceptualized under "open government" can be defined as steps taken to declare public data, generated through public resources, on public platforms and in public formats and to allow the public to use and re-use such data for creating new economies and securing transparency, accountability, and a more advanced democracy in administration. The milestone for the open government movement is inherent in the initiatives shaped in the political promises of Former U.S. President Barack Obama in 2009. These initiatives originated from the "Open Government Directive" of 2009 (Owen, 2011, p. 94). This directive acted as a source of various derivative studies. Moreover, the U.S. was the first country to launch the data.gov project through the White House as a platform allowing public access to open government data (Tauberer, 2014; The White House, 2019).

The practical basis for the exchange of public data lies in access to information regulations. The association between these regulations and open government has also been emphasized in relevant studies (Janssen, 2012; Ubaldi, 2013). Access to information regulations both offers citizens the right to obtain public information and mandate governments to offer their information to citizens, transforming transparency from a mere definition or promise to a practically possible concept (Hood, 2006).

Access to information regulations can have different titles in different countries with some regulations structured before the open government movement. A large number of countries have enacted access to information regulations; however, such laws and regulations mostly pose restrictions to open government movements, failing to satisfy the modern requirements of open government (definitions of open government and access to information in electronic format) (Ubaldi, 2013). Laws quite often serve on a reactive plane and cannot secure the public's right to information as they set various grounds including confidentiality against requests for information (Karkın and Çalhan, 2012). On the other hand, laws not structured or updated under the requirements of open government can also undermine the effectiveness of open government

practices. This notion is regarded as a point of consideration to be addressed specifically by administrations in preparation for an open government.

In this vein, the study revolves around one underlying motivation concerning the need in right to information regulations securing the legal bases of the open government movement – a concept studied extensively around the globe in the last decade – for structures close to those in developed countries that provide for open government requirements and for the revision of right to information regulations for the foundations of an open government in developing countries including Turkey. In light of the aforementioned information, the study can be stated to pursue two specific objectives. The first is to contribute to the relevant literature by examining the associations between open government and access to information regulations, which aim to provide for the sharing of public-sector information, as well as by reviewing the reciprocal effects of these two elements. The latter objective of the study is to identify and offer solutions to, potential problems in the process for open government by analysing the scope of the Law on the Right to Information enacted in Turkey, as a country currently preparing for open government, in line with the findings in the relevant literature. In this context, the present study will draw attention to and raise awareness on the re-evaluation of access to information regulations and their adaptation to the structures of open government, especially in countries preparing for open government.

The study not only provides a literature review in line with the aforementioned objectives but also conducts document analysis on findings as to the compliance of the Law on the Right to Information in Turkey with open government requirements. The following parts of the study start with a chapter on methodology presenting research questions, methodology, and limitations followed by "Access to Public-Sector Information and Regulations" and "Regulations on Access to Government Information: Effects on Open Government (Data)" covering the literature review. The findings are presented under "Findings: Turkey on the Road to Open Government and Information Access Regulations". The Conclusions part evaluates the findings that reflect the current situation in Turkey among the findings of document analysis and discusses the same within the literature before moving on with suggestions for future studies around certain findings concerning the compliance of the right to information law in Turkey with open government requirements.

2. Research Questions, Methodology and Limitations

Study questions were expressed as follows according to the research objective:

Q1. What is the effect of information access regulations on open government practices?

Q2. To which extent does the Law on the Right to Information in Turkey cover the open government requirements?

The study considered qualitative data and was conducted through the document analysis method defined by Payne and Payne (2004: 4) as "techniques to categorise, investigate, interpret and identify limitations of physical sources in the private or public domain (personal papers, commercial records, or government archives, communications or legislation)". The most important indications of reliability are a categorisation system and a clear definition of every category (Gökçe, 2006: 83). The relevant categories were specified for validity and reliability. The study also performed a literature review and formulated a theoretical framework for information access regulations and their effects on open government. The study identified the recommended criteria and content for information access regulations with a relevant chart for the Law on the Right to Information in Turkey. In addition, these criteria were employed to develop the research instrument, which contains twelve questions reflecting major points for related laws in order to identify whether the Law on the Right to Information in Turkey covers the question statements. This study is based upon open government as a concept structured at different dimensions and in a variety of specialist fields (technical, political, and legal) focusing on assessing the regulations as the open government infrastructure.

3. Literature Review

3.1. Access to Public-Sector Information and Regulations

Information is the lifeblood of a robust democracy and a productive economy. Public-sector information holds a specific value in the light of the interaction between the public sector and citizens (Office of the Australian Government, 2013; Pollock, 2008). Defined as information generally owned and generated by public institutions (Pollock, 2008), public-sector information is formed through the meaningful interpretation of public data generated or provided by public institutions and as a concept, has been in more popular use especially after the dissemination of the concept of an information economy (Jasserand and Hugenholtz, 2012).

The communication between a government and citizens has a long past in terms of the historical process. However, concepts pertaining to the openness of administrative processes and the modern access to public-sector information emerged in the 17th and 18th Centuries, when concepts such as freedom of expression, freedom of press, and the right to information were also disseminated further and complemented with a legal basis starting with Western societies (Open Source, 2016a). At the same time, administrative processes inclined towards transparency and gave way to publicly available presentation of public-sector information. In this context, the public's exercise of the right to access public information is important for participation in democratic processes, confidence in administrations, prevention of corruption, provision of accountability, and support to decision-making processes (Bertot, Jaeger, Shuler, Simmons, and Grimes, 2009; Cullier and Piotrowski, 2009; Mulgan, 2007). Mass dissemination of information and communication technologies in the 1990s allowed for pragmatic change and further development in the right to information. In other words, the widespread utilization of such technologies improved the

capability of governments to offer public procedures on electronic platforms and the capability of average citizens to partake in processes concerning the prevention of poverty, the display of budgets, and public decision-making (Kaya, 2005; Mendel, 2008; Şengül, 2014). Accordingly, such developments also stimulated the demand of citizens to access information and, in turn, allowed citizens to act more consciously with such matters as participation in administrative processes, evaluation of policies, and access to budgetary information.

The relevant literature indicates that demands concerning the public announcement of government data have been shaped around the principles of openness, transparency, and accountability in administration (Gigler, Custer, and Rahemtulla, 2011). Open policies, legislation, rules, standards, and guidelines should be in place to establish how administrative processes will be/are maintained openly and transparently (Boserup and Christensen, 2005). The accessibility of public information and documents under administrative openness constitutes the source of the right to information and the essence of information law (Akıllıoğlu, 1990). Therefore, the legal basis should be provided to processes relating to "the duty of administrations to provide information" and "the freedom of the constituency to obtain information". Openness in public administration also entails the freedom of accessibility of information. The right to information is considered a fundamental right allowing for access to information (Adalı, 2004) and as an essential approach, provides individuals with access to information and prevents the release of incomplete information and the emergence of misunderstandings. In this framework, the adoption of access to accurate and complete information as a right can be regarded as an important step for an administration. However, the right to information defined as the right of the public to access governmental information is, at times, employed as a synonym to the concept of the freedom of information in certain legislation (Janssen, 2012). The right to information is structured in two main dimensions. The first dimension relates to the right of the public to access information generated through the government and governmental organs, while the latter refers to the obligation of governments to inform the public with respect to matters of public interest (Janssen, 2012). The regulation of the concept of access to information, which has emerged with the aim of meeting the need of individuals to be informed, and the public endorsement of such regulations constitute the basis of laws on access to information.

As governments moved closer to openness and transparency, the facilitation of access to information and the improvements of the relevant legislation came to the fore. Such laws and regulations under different titles and with occasionally varying scopes draw a framework for the right to information in general. Regulations concerning access to information have been formulated specifically to facilitate access to public-sector information. Access to information regulations may refer to varying content and scope, despite their similar bases, and are observed to be released under such titles as laws on access to and management of governmental documents, on public documents, on access to information, on open public documents, and on management of access to public documents (Durrant, 2006; Mendel, 2008; Winkler, 2011). Concepts including access to information, freedom of information, right to information, and right to know are structured through legal arrangements in general. Despite a large number of different terms

used, these regulations can be reportedly addressed under the comprehensive heading of "access to information regulations" (Durrant, 2006; Winkler, 2011). These laws and regulations have been issued generally with such aims as allowing citizens to request information, documents, and other materials retained by public institutions, as well as combating corruption and improving transparency (Durrant, 2006). Regulations concerning access to information are also important in securing integrity in the public sphere and to support modern administrative processes.

The first initiative that allowed for access to public information and a legal guarantee for the right to information was the "Freedom of the Press Act" enacted in Sweden in 1766 (Jasserand and Hugenholtz, 2012; Björkstrand and Mustonen, 2006). Following this act, no new regulation appeared for a period of almost 200 years, while developments pertaining to the right to information had accelerated in the 1900s (Bennett, 1997). Today, more than 90 countries have laws concerning the right to information and nearly 50 countries are in the ratification process for draft instruments (Access to Information Laws, 2012; Hazell, Worthy, and Glover, 2010). Furthermore, it should be emphasized here that the right to information, recognised as a constitutional right in 30 countries, should also be addressed in the context of human rights (Paradissis, 2009; Peled and Rabin, 2011). Most countries have placed a guarantee on the right to access public documents and information by instituting a constitutional right (Winkler, 2011). In the wider context, the right to access/obtain information, as an important pillar of democracy, is recognized as a human right (McDonagh, 2013; Mendel, 2008). A large number of international human rights organizations (United Nations, Regional Human Rights Organs, European Union, African Union, and European Council, etc.) accept that access to public-sector information is a fundamental human right and point out to a need for effective legislation to secure respect and guarantee to this right (Mendel, 2008).

Under open administration approaches, public information generated through public resources and business processes is offered to the public and individuals are allowed to access information and documents on administrative functioning. Even though laws on the processing and scope of requests for information became more widespread along with the 1990s, there are also various legislative instruments and laws for the release of and access to governmental information. The commonalities of different access to information regulations can be specified under the following headings:

- Who can request the relevant documents (requirements such as being a national, etc.);
- Public documents and data under legal protection;
- Appeals mechanisms;
- Pricing conditions for paid access to or use of information, if any;
- Conditions concerning copyrights;
- Practices and sanctions concerning access to or use of information;
- Conditions of access to or use of electronic data, documents, and information; and

- Limitations and exemptions relating to access to or use of electronic data, documents, and information (Banisar, 2004; Mendel, 2008).

The laws in question provide a guarantee for access to public-sector information despite their content varying between countries. In addition to the accessibility of public-sector information, security through regulations relates to the use/re-use of such information. In this framework, a UNESCO Paper and an OECD Recommendation [C(2008)36] followed by the "Recommendation of the Council for Enhanced Access and More Effective Use of Public-sector information [C(2008)36]" of 2008 were released for the updating of access to information regulations to address reusability. The aforementioned instruments provide recommendations concerning legal requirements and limitations (e.g. intellectual property rights) for the expansion of areas of use and re-use of public sector information with reference to their economic and social effects (Jasserand and Hugenholtz, 2012; OECD, 2008; Uhlir, 2004).

The main pillar for the use of public-sector information rests with "availability". In fact, legally and technically unavailable information cannot be put in use. In this framework, access to information regulations provides the legal basis for the use and re-use of public sector information and they should be established in clear terms. The release of information made available in suitable formats based upon technical infrastructure within a well-structured compatible legal framework will allow for the proper exercise of the right to information. The right to information has been governed by access to information regulations, which constitute the basis of open government understanding. Access to information regulations is of critical importance for the transparency of the public sector as they allow for the right to access information retained by governments.

3.2. Regulations on Access to Government Information: Effects on Open Government (Data)

The notion defined as the public release of public data generated through public resources represents the basis for the open government understanding, where the underlying idea pertains to the retention and preservation of information, data, and documents handled by public institutions not as elements to improve their internal functioning, but as public goods. On the global scale, movements for openness in public administration are realized through regulations allowing universal and fair access to information as a fundamental human right (Durrant, 2006). Regulations on access-to-information come to the foreground as valuable assets for the public release of information retained as public goods. Within the framework of the concepts of openness and transparency and according to the modern understanding of governance, governments are developing and updating laws on access to information, and implementing initiatives and investments to facilitate access to information and consider these processes as an essential requirement for public modernization and effective governance. Access to information regulations also constitutes the basic pillar for open government practices. The literature has also emphasized the association between open government and the right to information (Bates, 2011; Darbishire 2010; Janssen, 2012; Yu and Robinson, 2012). Both concepts pursue the same objective

of improving reachability and accessibility of public-sector information, fostering transparency and openness, and improving accountability. At this point, open government movements are also significant in their aims of producing innovative services, ensuring economic growth, and improving the efficiency of the public sector (Janssen, 2012; Yu and Robinson, 2012). Open government initiatives aim to allow access to public data in reusable formats through offers licenses. Access to public data is secured mostly through a reactive or proactive approach with most regulations concerning access to information following the reactive model. In this framework, data are accessible usually upon incoming requests with strict controls on information flows. At this point, the reactive model fails to satisfy most open government requirements (Francoli, 2011; Karkin and Yavuz, 2017). Here, there is usually an emphasis on a more proactive approach than the passive approaches in access to information regulations for public access to government data. Within the context of open government movements, public-sector information should be released proactively without waiting for a demand from the public (Darbishire, 2010).

Consequently, access to information regulations should be expanded and formulated to allow for the data to be released on publicly available platforms. While the presence of laws governing access to information (e.g. Law on Access to Information, Data Protection Law, and Law on the Protection of Personal Data) is one of the indicators of preparations for open government, existing regulations should be updated to ensure and support openness of data (Open Data Barometer, 2017; The World Bank, 2013). The approaches put forth in these indications reveal the obvious importance of updating the content of conventional Laws on Access to Information to cover electronic data and open government data.

The points of consideration for the preparation of access to information regulations in open government processes can be listed as follows (Mendel, 2008).

- *Maximum Openness/Comprehensiveness:* Regulatory provisions on access to information should be formulated with detailed content and scope with consideration for the electronic environment.
- *Obligation to Publish:* Key public information should be published actively at specified intervals and under specified categories in order to allow for the functioning of the right to information not only in response to requests for information but also with respect to the duty of administrations to inform the public.
- *Promotion of Open Government:* Access to information regulations should support open government practices. Regulations should ensure that government data are published in publicly open formats to support openness, transparency, and accountability in administration.
- *Limited Scope of Exceptions:* Possible grounds for exceptions include national security, defense, and international relations; public safety; crime prevention, investigation, and prosecution; private or public commercial and other economic interests; economic, monetary and exchange rate policies of the government; and confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

- *Processes to facilitate access:* The functioning of relevant processes should be explained clearly for the rapid and fair processing and conclusion of requests for information.
- *Costs:* The conditions of costs within the processes of public information should be specified.

A review of the Open Government Guide prepared with the support of the Open Government Partnership reveals the right to information as one of the main headings. At this point, the steps concerning the practical sustainability of the right to information in open government are addressed in four stages (Open Government Guide, 2017), which are presented in Table 1 with their content.

Table 1. Steps to be taken towards a sustainable right to information (Open Government Guide, 2017).

Initial	Intermediate	Advanced	Innovative
Adopt a law which recognises the right to information, according to international standards. Establish institutional structures for implementing RTI. Provide training to officials on record management and RTI implementation. Publish core information about the government on a proactive basis.	Ensure that each public authority puts in place core implementation systems on RTI Expand the scope of proactive publication Promote public awareness of the right to information	Align RTI law and practice with the highest international standards on RTI Establish best practice monitoring and evaluation systems on RTI Review and amend secrecy laws	Use IT to enhance access to information.

Access to information regulations should on one side guarantee the use of information, access to information, right to information, and freedom of expression, while governing different applicable restrictions, exemptions, and limitations, as well. Generally, the respective studies point out to such restrictions being governed within the context of the protection of the rights of others, national secrets, public welfare and ethics, and personal and sensitive data (Civelek and Aşık, 2011; Jasserand and Hugenholtz, 2012; Ubaldi, 2013). As restrictions lacking in legal basis will not be legitimate, certain laws and regulations stipulate restrictions or prohibitions concerning the use of public information and documents for specific purposes.

Transparency and confidentiality as to social values can be in contradiction at times within access to information regulations and the public release of data. The public release of data ensures transparency on one hand and brings along concerns pertaining to such public release violating confidentiality on the other. Current confidentiality laws within this framework are sometimes observed to pose an obstacle to open government practices (Kulk and Loenan, 2012). In this sense, a requirement emerges for the revision of existing laws within open government practices.

Open government practices cover more proactively published data as a difference from other practices concerning the rights to open access, open public data or access to information. Open government entails the publication of data other than personal data and state secrets in reusable formats, within the coverage of open licenses, and without any restrictions (Ubaldi, 2013). Legal pillars to be enacted within open government data are based upon access to information regulations. Such regulations function as a mechanism for the processes aimed at balancing access to open government data, protecting intellectual property rights, supporting availability, and sorting out government data containing sensitive elements (e.g. national secrets and personal data). Regulations in this area can be issued in the form of licenses formulated to govern the usability of publicly-available government data or laws, legislative instruments, and regulations arranging access to government data/information (Bureau of Communications Research, 2016). Legal structures prescribe limits to and actions for open data practices. In this respect, it is important for government policies and legislation to be able to function together (Van Schalkwyk, Willmers and Schonwetter, 2015).

The relevant literature points out to the importance of the update of existing laws on access to information within the framework of the public release, use and re-use of government data for the effectiveness of open government processes (Open Data Barometer, 2017; Mendel, 2008; Open Government Guide, 2017; The World Bank, 2013). Resources which can guide the updating or restructuring of the legislation include such references as "RTI Rating, Special Mandates 2004 Declaration, Tshwane Principles on National Security and the Right to Information, ARTICLE 19 Principles" mentioned in the Open Government Guide prepared by the Open Government Partnership (Article19, 1999; Ligabo, Haraszti, and Bertoni, 2004; Open Government Guide, 2017; Right2Info, 2013; RTI Rating, 2017).

4. Findings: Turkey on the Road to Open Government and Information access regulations

Even though there is no overarching policy in place for open government in Turkey, steps are known to have been taken for the initial stage. Various strategies, reports, and policy papers published in this framework offer reference to the goals to be pursued by the country in this field (Ministry of Development, 2013; Ministry of Transport, Maritime Affairs, and Communications, 2016). Turkey became a member of the Open Government Partnership in 2011 and presented an action plan in the same year (Ministry of Development, 2013; Open Government Partnership, 2017; Ministry of Transport, Maritime Affairs, and Communications, 2016). Turkey could not satisfy the

criteria concerning open government initiatives within the Partnership and needed to re-apply for membership in 2016. Despite the fact that Turkey commenced efforts for the relevant processes, the country was removed from the Partnership again in 2018 (Open Government Partnership, 2017).

The reasons for the limitation of open government with reports and strategies in Turkey are pointed out as the lack of general political ownership, lack of government policy, and disconnections among legal regulations (Eroğlu, 2017). On the other hand, the legal obstacles to open government in Turkey have been reported to focus on such headings as the prevention of data access and re-use due to inconsistent and dispersed legal arrangements; lack of legal clarity concerning the ownership of government data and conditions governing the position thereof; and insufficiency of laws on access to information (Eroğlu, 2017). In this context, Turkey does have a Law on the Right to Information when considered from the perspective of legal arrangements; however, it is also known that there are laws structured in a different manner which can be employed in the processes of access to and exchange of information.

In Turkey, although an initiative to focus on open government data policies has not been put into place, there have been laws, regulations and policy papers that provide a foundational basis for practices relating to open government data. When the conditions for open government data initiatives, known to have proceeded incrementally since the beginning of the movement around the world, are examined in the context of Turkey, it can be said that open government and thus the re-use of open government data have not been structured in accordance with the legal infrastructure and current practices (Ministry of Development, 2013). Today, there is no comprehensive legal framework covering the classification and definition of government data to ensure accessibility and re-use (Türkiye Bilişim Derneği, 2016). However, some of the provisions in the current regulations can be addressed further to formulate the necessary definitions in this respect.

When the development of open government is reviewed in accordance with the developments around the globe, the laws and regulations that are directly or indirectly associated with open government approach in Turkey can be listed as follows (Constitution of the Republic of Turkey, 1982; the Law Related to the Establishment…, 2004, Public Financial Management…, 2003, Turkish Court of Account Law, 2010; the Law Relating the Amendment…, 1988; the Electronic Signature Law, 2004; Regulating Broadcasting in the Internet…, 2007; the Law on Intellectual and Artistic Works, 1951; the Law on Criminal Records, 2005; Social Security Institution Act, 2006; the Law on the Ombudsman Institution, 2012):

Article 26 under the title of "Freedom of expression and dissemination of thought" in the Constitution of the Republic of Turkey;

Article 74 under the title of "the right of petition" in Constitution of the Republic of Turkey;

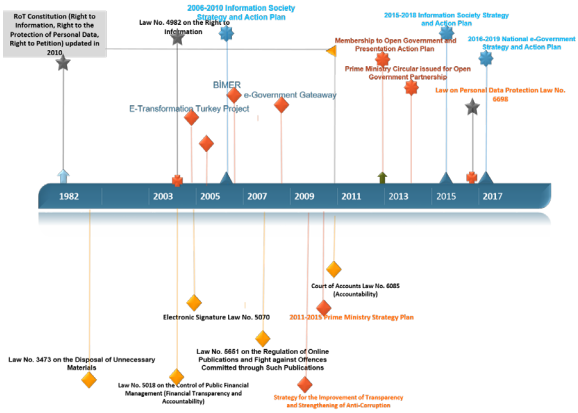
Article 20 of the Constitution states that "*[e]veryone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the*

correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives";

- Law on the Right to Information No.4982;
- Law on Personal Data Protection Law No. 6698;
- Provisions of Public Financial Management and Control Law No. 5018;
- Turkish Court of Account Law No. 6085;
- Law Related to the Establishment Council of Ethics for Public Service and Making Modifications on Some Laws No. 5176;
- Law Relating to the Amendment and Adoption of the Law Relating to Destroying Documents and Supplies No Longer Used, 1988;
- Electronic Signature Law No. 5070;
- Law No. 5651 on Regulating Broadcasting on the Internet and Fighting against Crimes Committed through Internet Broadcasting;
- Law No. 5846 on Intellectual and Artistic Works;
- Law on Criminal Records No. 5352;
- Social Security Institution Act No. 5502; and
- Law on the Ombudsman Institution No. 6238.

The Law on the Right to Information is complemented also by access to information regulations which may constitute a basis for the public release and utilisation of government data. When considered from a general perspective, these regulations are observed to feature variations in terms of their structures and do not represent a comprehensive specification for access to information. In addition to the abovementioned laws, the developments experienced, and policy regulations and laws put into effect in Turkey are as presented in the figure below.

Figure 1. Timeline of Turkey's Open Government Developments (Eroğlu, 2017).



The concepts of 'openness' and 'transparency' that are expected to be guaranteed in open government processes fundamentally depend on the right to information / the right of access to information. "Laws on the Right to Information", i.e. the practical representation of the right to information, should be structured accurately within the context of open government processes. In this respect, the present study continues with analyses on the content of the Law on the Right to Information in effect in Turkey, which is a country that has yet to complete the initial stage.

Another study undertaken with respect to the Turkish Law on the Right to Information reviewed the Law in terms of document management and emphasised in conclusion that the Law had not been structured with a sufficient level of compatibility for document management, a specification which is known to represent an important component of open government (Özdemirci, 2007). Specifically, with reference to the criticism expressed in the study to indicate that the Law had not been formulated through a process of consultation with a variety of disciplines notably including document management, the current understanding points out to the fact that the Law has not been subject to any amendment as would be required in response to an update.

The smooth functioning of open government is only possible with public institutions publishing the data in their possession in the correct formats and at a high quality. With a more generic expression, well-structured laws and regulations allow relevant practices to be supported at every stage of open government, while also improving their applicability and sustainability. Accordingly, it is of great importance to address access to information and the right to information within the premises of constitutional rights as the right in question comprises one of the main pillars of open government. When considered from this point of view, the Right to Information is observed to be defined as a constitutional right in Turkey (RoT Constitution, 1982). However, certain countries are known not to be able to implement the processes of open government despite the presence of such laws in effect, even though a large number of studies indicated that the foundations for the effective enforcement of and guarantee for the rights in question rest with the applicability of a Law on the Right to Information. Similarly, Turkey has not only put into effect constitutional articles defining access to information as a right but also secured the enforcement of the right to information in practice, both realised during the process of reforms effectuated within the framework of the process of accession to the European Union. Law No. 4982 on the Right to Information was issued in the year 2003 (Law on the Right to Information, 2003). The objective of the Law No. 4982 on the Right to Information is worded as "governing the procedures and principles pertaining to the exercise of the right to information by individuals in compliance with the principles of equality, impartiality, and openness, which stand as the requirements of a democratic and transparent administration". This perspective gives way to the understanding that the lawmaker has imposed on public institutions a mandate not only to facilitate access to the relevant information, but also to realise the rule of law on such grounds as democratisation, equality, and impartiality.

The present part of the study describes the criteria for laws on the right to information and criteria required by the open government as indicated in the relevant literature and analyses the extent to which the Law in effect in Turkey provides for the ideal structure by presenting the relevant information.

Table 2. Content Analysis for the Law on the Right to Information

Criteria	Content
Who can request the relevant documents (requirements such as being a national, etc.);	Article 3 defines who can request information.
Practices and sanctions concerning information access or use;	Article 6 defines the application procedure. Article 10 describes how one will access information.
Public documents and data under legal protection;	Article 15 defines Procedures Exempt from Judicial Control; Article 16 Information and Documents relating to State Secrets; Article 17 Information and Documents on the Economic Interests of the Country; Article 18 Information and Documents relating to Intelligence; Article 19 Information and Documents on Administrative Investigations; Article 20 Information and Documents on Judicial Investigations; Article 21 Information concerning the Right to Privacy; Article 22 Documents on the Confidentiality of Communication; Article 23 Documents concerning Trade Secrets; Article 24 Intellectual and Artistic Works; Article 25 Documents relating to In-House Regulations; Article 26 In-House Opinions, Information Notes, and Recommendations; and Article 27 Requests for Recommendation and Consideration.
Pricing conditions for paid information access or use, if any;	Article 10 states: "The applied institution may charge the applicant for the cost of the procedure as required for Access to provided information or documents to be added as income to the budget."
Appeals mechanisms;	Article 13 defines the Procedure for Appeals.
Conditions concerning copyrights;	Article 24 refers to the "Law on Intellectual and Artistic Works" for Copyright Conditions.
Conditions of access to or use of electronic data, documents, and information;	Not specified.
Limitations and exemptions relating to access to or use of electronic data, documents, and information;	Not specified.
Maximum Openness/Comprehensiveness:	No article for maximum openness/comprehensiveness.
Obligation to Publish (proactive publication):	No article prescribing an obligation to publish information or documents proactively.
Processes to facilitate access:	Access processes are defined in the context of data retained in printed form, while data in electronic format are not addressed with a definition.
Promotion of Open Government:	No Article defining open government.

A general review of the Table 2 indicates that the Law on the Right to Information, as an instrument known to be effective in open government processes, satisfies certain criteria, but not certain other criteria recommended to be covered in open government including conditions of access to or use of electronic data, documents, and information; limitations and exemptions relating to access to or use of electronic data, documents, and information; obligation to publish (proactive publication); clarification of access processes; and definition of open government. Many indicators pertaining to preparations for open government not only define the presence of laws governing arrangements for access to information (e.g. Law on the Right to Information and Data Protection Law) as a preparatory indicator but also recommend the update of such existing instruments to secure and support the openness of data (Open Data Barometer, 2017; The World Bank, 2013). When considered in this scope, an understanding emerges to the effect that there are shortcomings to be addressed with respect to the scope of the Law in spite of the effective presence of the Law on the Right to Information in Turkey.

The analysis of the Law through the Table above gives way to the observation that the greatest number of definitions is provided therein with respect to "the public information, documents, and data subject to legal protection", i.e. limitations concerning access to information. Part 4 of the Law covering Articles 15 to 28, i.e. 13 Articles (out of 33 Articles in the Law), are dedicated entirely to the description of "limitations to the right to information".

Under the Law on the Right to Information, procedures exempt from judicial control, and information and documents relating to state secrets, to the economic interests of the country, to intelligence, to administrative investigations, and to judicial investigations, information concerning the right to privacy, documents pertaining to the confidentiality of communication, documents concerning trade secrets, intellectual and artistic works, documents relating to in-house regulations, in-house opinions, information notes, and recommendations, and requests for recommendation and consideration are excluded from the scope of the said Law. A closer look at the articles describing limitations in the Law, such arrangements with a vague scope and an unclear legal definition as "Information and Documents Pertaining to State Secrets" (Article 16) or "Information and Documents Pertaining the Economic Interests of the State" (Article 17) are observed to bring forth significant limitations to the right to information. The multitude and "vagueness" of such arrangements that restrict the right to information on a variety of grounds indicate that such arrangements have been constructed within the framework of a logic that prioritises confidentiality and keeps openness and transparency in the background. When considered from the perspective of open government aiming to put public data generated through the use of public resources into public service and to secure the practical implementation of the principles of "openness, transparency, and accountability", great significance is attached to the clear designation of limitations.

Under the provisions of the Law on the Right to Information, "[i]n the event of an application for access to information concerning intellectual property, the relevant provisions of the Law on Intellectual and Artistic Works shall apply" (Article 24). The legal provision prescribing that

intellectual and artistic works will constitute a limit for applications for access to information is criticised for not being clear enough and for covering a narrow scope (Kaya, 2000). Intellectual and artistic works remain narrow in scope as they cover only a part of intellectual and industrial property.

Along with the advances in electronic platforms and the subsequent processing of business procedures in electronic environments, public administrations have adapted themselves to such changes with respect to both technical and legal infrastructure. On the other hand, a closer look at the Law on the Right to Information in Turkey gives way to the understanding that the Law does not govern the conditions of access to or use of electronic data, documents, and information and limitations and exemptions relating to access to or use of electronic data, documents, and information. This fact is estimated to have the potential to cause problems prospectively for the sharing of open government data, which we can consider to be the main structure of open government.

Another criterion specified in the Table above is "maximum openness/comprehensiveness" in laws on the right to information. When considered in this scope, the Law is observed not to provide for maximum openness/comprehensiveness as it includes a number of rather vague statements especially with respect to limitations; the relevant concepts (e.g. for state secrets or electronic documents) are not duly defined therein. By reason of the exclusion of data in the electronic environment, the Law is also considered not to offer a maximum level of comprehensiveness.

Practices undertaken within open government require more data published proactively as a difference to the other practices in place for open access, open data, or the right to access information (Darbishire, 2010; Open Government Guide, 2017; Ubaldi, 2013). A review of the Law finds it not to offer any content concerning the proactive publication of data, which is one of the most important characteristics of open government. In terms of the processes for access to information, the Law defines the processes following an application for information but fails to prescribe any regulation concerning access to open government data or electronic data. Finally, the Law is also observed not to offer any arrangement for the "Promotion of Open Government".

Laws on the Right to Information have been addressed and their effectiveness in open government demonstrated in a number of studies (Janssen, 2012; OECD, 2015; Tran and Sholtes, 2015, Ubaldi, 2013). The effectiveness of the Law on the Right to Information will create value for the acceleration of open government processes in Turkey as a country still at the initial stage to become an open government. The latest Evaluation Report published by the Grand National Assembly of Turkey (GNAT) in 2016 specifies a remarkably high number of applications lodged for information. At 1.552.721, this high number of applications is considered to have the potential to be regarded as an indicator of both a sufficient level of information attained by citizens on matters concerning them and a sufficient level of openness and transparency achieved by public agencies and institutions.

5. Conclusion

Fostering openness and availability in public-sector data is among the main objectives pursued by open government. On the other hand, the right to information allows a society to access such data that are generated through the utilisation of public resources and considered as public goods. Furthermore, the enforcement of the said right relieves society of the "traditional culture of secrecy" dominating the administration and provides for the realisation of openness, participation, and collaboration as the objectives of open government. The right to information acts not only as a means to secure the realisation of such objectives, but also constitutes the legal basis of open government. The effective exercise and guarantee of the right to information are dependent upon the presence of well-structured laws on access to information/the right to information.

Rising on a rooted past, laws on the right to information have been based on access to government information and documents in the structure of their initial examples. Moreover, these regulations mostly rely on a reactive exchange of information. In open government, however, the aim is to put raw data retained by public institutions into civil service, thereby achieving administrative principles (openness, participation, and collaboration), and to create such added values as innovation and economic growth through the use and re-use of such data. The realisation of open government depends on the proactive publication of non-structural raw data. In this sense, it emerges as a necessity for the laws on access to information, reportedly representing the basic legal instruments or open governments, to be structured in such a manner as to cover also the requirements of open government. The construction of the association between open government and access to information on an accurately structured legal architecture is of great significance for any effort to understand this organic bond. At this point, there are potential contributions to the literature and practices from a review of access to information regulations in Turkey as a country still in its infancy in open government applications.

Despite the presence of laws on access to information in place in a large number of countries, such laws are at times observed to impose limitations on open government as they do not cover access to information in electronic formats. Considering Turkey from this perspective, it is obvious that the Law creates a significant limitation for the open government as it has failed to maintain its currency in the abovementioned context even though it has been in place since the year 2003. Having initiated attempts for the Open Government Partnership since 2012, Turkey has not been able to gain a clear impetus in terms of its open government movement and this situation can be attributed to the fact that the Law has not been updated in terms of its structure. As a country that has secured minimum legal bases for access to information, Turkey is understood to be in an effort to support the sharing of data through separately structured laws that offer access to information in the context of a variety of practices.

The review conducted within the present study indicated that the existing Law on the Right to Information in Turkey has not been updated in line with the processes of open government.

Synergies should be created between public institutions and the civil society within the framework of modern approaches to public administration. The legal basis for such synergies may, in turn, be improved through current and sustainable structures for access to information. A review of the said Law, which establishes quite an important mechanism in terms of the efforts to secure transparency and openness, offers the possibility to form an idea on the status of Turkey with respect to the steps to be taken towards open government.

The general overview of the Law gives way to the consideration that the Law has the highest number of headings on confidentiality and limitations, but it is obvious that the vague expressions used in the definition of such conditions for confidentiality and limitations will lead to arbitrary applications. In fact, the definitions of such headings as "state secrets" are deliberated to preclude the practical implementation of the principles of transparency and openness as expected from open government, while causing them to remain in the background arbitrarily. The multitude of such vague expressions creates the impression that the right to information appears to be in place in theory, but depends, in fact, on the initiatives of the administration in practice.

Another obvious problem pertains to the article of the Law which governs copyrights. The Law prescribes copyrights be addressed within the framework of the "Law on Intellectual and Artistic Works". Nevertheless, it is also clear that the existing Copyrights Law in Turkey features a narrow structure that does not satisfy the requirements of the current age and fails to explain electronic platforms and practices and therefore, this article is in need of an update within the course of open government processes.

Today, public institutions conduct their actions and procedures in electronic environments, as well. Open government practices also entail the processing of raw data presented in electronic environments. Consequently, Laws on the Right to Information should also include provisions governing electronic data. In this sense, a significant shortcoming has been established in the Law on the Right to Information in that the Law fails to prescribe the conditions of access to and use of electronic data, documents, and information or limitations and exemptions concerning access to and use of electronic data, documents, and information.

The open government movement aims to generate new value-added products, to contribute to economic growth and to support innovation through the public use and reuse of raw government data. On the basis of such objectives, a political promise and a political value emerge for the administration along with the support extended to the principles of transparency and accountability in administration. The proactive publication of such government data without any prior request for the effective implementation of such processes is one of the most important elements that make up this mechanism. At this point, the inclusion of the proactive publication of data in access to information regulations is clearly a fundamental requirement. The publication of data concerning the main activities of public institutions at specified intervals is another element that will contribute to the improvement of access to information. In this framework, the

standardisation and mandatory enforcement of this requirement in current access to information regulations are of significance for open government processes.

A review of the Law in Turkey indicates a lack of provisions requiring the proactive publication of government data to be a fundamental shortcoming *en route* open government. Furthermore, the absence of a definition for Open Government points out to a lack of synergies between the open government movement and the Law on the Right to Information.

In general terms, the Law on the Right to Information should include definitions concerning Open Government and define the content and scope of open government data clearly to improve access to information. In this context, the Law should provide clear expressions on conditions of use, exchange platforms, responsibilities, limitations of use and exemptions (national security, public safety, personal safety, and confidentiality, etc.) relating to open government data. Once the Law is compliant to the requirements of open government and maximum openness, clarity, and currency on the basis of the organic bond between the open government movement and access to information regulations, the chances of success will improve for open government initiatives.

Finally, access to information lays the groundwork for open government processes. In this context, national policies and laws governing access to information should be revised around the requirements of open government. It is important for governments to have a consistent legal framework to facilitate access to and re-use of public-sector data and safe and secure exchange of information. Laws that have been devised in pieces and at varying degrees of effect or laws that have not been kept up-to-date sometimes cause confusion among end-users or make it more difficult for governments to implement the processes relating to the publication of data. Laws on access to information, laws on the use of public-sector data and guidelines and policies on the licensing of the data involved are regarded to be the milestones of open government movements. At this point, the formulation or update of laws on access to information specifically enacted for the right to information would bring forth an impetus to open government processes.

Relevant future studies are recommended to analyse Law on the Right to Information at regular intervals and to review it in terms of the technical, political and legal dimensions.

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