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**Subject: The exercise of the right of petition and access to information**

**Circular 2004/12**

A democratic and transparent administration which is based on equality and impartiality among the individuals requires that individuals should be able to appeal to public authorities and exercise their rights of access to information pertaining themselves or state activities. In a state of law, it is a fundamental quality that the individuals' rights and freedoms are respected with a view to achieve democratization, the rule of law and transparency in the relations between the administration and the individuals.

Our government's policy is to strengthen the relations between the individuals and the state and to answer the needs of the people at maximum level. The principle called "citizen oriented approach in public services" embodied in the Emergency Action Plan is the basis of our policy.

In this respect, the amendment made in Art. 40 of the Constitution of Turkish Republic concerning the protection of the fundamental rights and freedoms, dated 01.10.2001 Act No: 4709, provides that for all public activities and decisions, the individuals should be informed of the legal remedies, the venue and time bars for appeals against those transactions made by the public authorities. Accordingly the amendment made in Art. 74 concerning right of petition requires that petitioners should be provided with a written response.

With a view to implement those constitutional changes, the Art. 7 of the Act on the Exercise of the Right for Petition dated 01.11.1984 No: 3071, has been amended with a new legislation dated 02.01.2003 and No: 4778. Accordingly within 30 days, public authorities are required to inform the petitioners of the result of their applications including the legal grounds. In addition, the Act on the Right to Information which regulates the principles and procedure for right of access to information dated 9.10.2003 No: 4982, will enter into force as of the date 24.4.2004. Both legislations have significant importance and priority regarding the undertakings in the National Plan for the legal and administrative regulations and the improvement of the administrative practice in the field of the human rights.

However there exist complaints alleging that the application of the relevant statutory and constitutional provisions are neglected, that the public authorities fail to respond petitions timely and thus the right of access to information cannot be effectively exercised.

At this point, all ministerial bodies, governors, local authorities, municipalities and other public bodies are ordered to follow the below rules in their activities with a view to secure the effective exercise of the right of petition and right to information as provided in our law.

1) The right of petition is a political right which provides information through response, judicial review through complaints and democratic participation through proposals. Therefore,

a) Turkish citizens and foreign subjects resident in Turkey (with the condition of reciprocity and the petitions are submitted in Turkish language) have the right to appeal with a petition regarding themselves or their complaints and proposals pertaining public state activities to public authorities or to the National Assembly. All appeals made to public authorities which fall within the scope of the exercise of the right of petition shall duly be responded in accordance with the principles below.

- Administrative bodies which receive a petition from an individual or legal entity shall provide the applicant with a document of receipt free of charge and which contains the date of submission, entry number and the subject.
- The petitions which do not bear name surname, address or signature or which do not have a subject or which relates to a matter that is in the jurisdiction of the courts shall not be responded. However despite their defects, if such petitions contain sufficient information or documents or if the petition relies on facts of truth, the authorities may still take action accordingly.
- The applications which fall within the scope of the duty of other public bodies shall be directed to the relevant authority and the applicant be informed accordingly.
- It is a statutory requirement that the applications made by the individuals or legal entities regarding themselves or state activities shall be responded without delay. The relevant public authority is required to provide the applicant with the information as to the details of the administrative act carried out within 30 days. If the transaction or activity has not been finalized, the applicant shall also be informed of the result.
- Given the fact that the petitions submitted to the National Assembly should be reviewed by the Human Rights Watch Commission or the Petitions' Commission within 60 days, administrative authorities should also respond the petitions sent by the Petitions' Commission within 30 days.

b) Where petitions are submitted for the amendment or annulment of the administrative acts which can be appealed before the administrative authorities, the below procedure shall be followed in accordance with Art. 11 on Administrative Appeals and Respond of the Administrative Court Procedure.

- The application shall immediately be addressed to the administrative authority which has jurisdiction to amend, annul or reverse the appealed administrative act.
- The authorized administrative body receiving the application shall immediately review the legal aspects and the legitimacy of the objected administrative act and shall respond to the applicant accordingly.
- Where the administration refuses to amend, annul or reverse the administrative act, the respond to be given to the applicant shall

inform the legal remedies available and the time limits to use those remedies.

- 2) The principles concerning the exercise of the right to information have been set out in the Act on “Right to Information” (No: 4982) which will enter in to force on 24.4.2004. Thus,
- a) Public institutions and authorities and public professional organizations shall timely respond to the applications pertaining their activities made under the Act No: 4982 and provide the applicant with the existing documents with the exception those excluded by the Act.
  - b) Institutions and Organizations shall provide access to the required document or information within 15 days. However, where the required information or document is to be obtained from another unit within the applied institution or it is necessary to receive the opinion of another institution or if the scope of the application pertains more than one institution; the access shall be provided in 30 working days. In such case, the applicant will be notified of the extension and its reasons within 15 working days.
  - c) Apart from those that directly affect the professional life and dignity of the individuals; the administrative acts which are outside the judicial review, state secrets, information regarding economical interests, intelligence or judicial investigations and the information which violates privacy, freedom of communication, commercial secrets and the information protected by intellectual property regulations are exempted from the right to information. In addition, applications asking for advise or consultation or applications pertaining reports or documents which has already been open to public cannot be the subject of the right to information.
  - d) The public officers which negligently or deliberately fail to comply with the provisions of the Act on Right to Information shall be treated with disciplinary sanctions of the relevant regulations in addition to criminal liability where necessary.

Moreover, the individuals who orally apply to the public authorities shall be treated with hospitality and kindness. Such complaints shall immediately be reviewed and solutions will be found to the extent possible.

In this respect all personnel shall be educated and informed of the Constitutional and Statutory principles. The practice concerning the exercise of the right of petition and information shall be observed and reviewed in accordance with the current laws and those whose negligence have been proved shall be faced with disciplinary and criminal sanctions.

The 60 days period provided in Art. 2 of the Circular (1993/2) dated 22.1.1993 concerning the application of the Act on the Exercise of the Right of Petition (No: 3071), have been amended as 30 days in accordance with the new legislation. Prior Regulation on Citizens’ Applications dated 29.12.1994 No: 20369 have been annulled.

For reasons mentioned herein, the provisions of the Act on the Exercise of the Right of Petition and the Act on Right to Information shall fully be fulfilled by all public institutions and organizations in accordance with the principles set out above.

This circular enters into force on the date of issue in the Official Gazette.

Recep Tayyip Erdogan

Prime Ministry