Information Technology (IT) in Public Administration-5

Legal Context of IT and e-Government

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This section examines the legal regulations regarding e-Government applications. For this purpose, the relevant provisions of the Turkish Constitution, other legal regulations and secondary ones as bylaws are taken into consideration. In the last part of this section, legal regulations that do not exist yet but will be needed in the future for e-Government applications are discussed.

Before mentioning the e-Government legislation in Turkey, it is necessary to explain the difference between the concepts of "change" and "transformation" to understand why legal context is important.

Change is a natural and spontaneous phenomenon. Its control is difficult or impossible. Transformations are changes to achieve an objective and their control is possible with a good planning.
Cartoon: Open Data gestern
In this context, there are some elements necessary for the state to make a transformation towards the e-Government in accordance with the requirements of the information society. The main ones of these elements are the preparation and implementation of detailed strategic plans with sufficient technical infrastructure, educated personnel, high level political and administrative support. In this framework, it is important to prepare legal context that will set the rules and standards of this transformation.

The first provision that can be linked to e-Government issues is the 20th Article of the 1982 Constitution, which regulates the secrecy of private life. The initial form of this article is as follows.

«Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated.»

(As amended on October 3, 2001; Act No. 4709) «Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law, in cases where delay is prejudicial, again on the above-mentioned grounds, neither the person, nor the private papers, nor belongings of an individual shall be searched nor shall they be seized.»
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/her 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.

Article heading is arranged as «Privacy and Protection of Private life»
With this arrangement, the protection of the confidentiality of personal data, which is a sensitive issue in e-Government applications, is guaranteed by the constitution. But unfortunately, constitutional safeguards do not always prevent the errors in practice. For example, when Housing Benefit is paid to the beneficiaries, identity and social security numbers of 8 million citizens were published in the Official Gazette and posted online all over the world. This information, when the victims of bad faith are handed over, the owners of the numbers can be victims.
Your privacy is important to us. That's why we have our idiot employees wandering around with your personal data on their easily-stolen laptops.
Legal Provisions

1. There are also several legal regulations related to domains, service providers, content providers and use of internet in the Act of Regulation of Publication through Internet and Struggling with Crimes by Such Publications (dated 2006, numbered 5651). For example, a content provider is responsible for any content that is available on the Internet but is not responsible for the content of the other person to whom it is linked. Again with the same Act, types of objectionable content on the internet are defined. The Act also states how to prevent the publication of such objectionable content on the Internet, punishment against this content and the characteristics of the implementing agencies and the application tools are also defined.
Objectionable content sets according to Article 8 of the Act:

- In the Turkish Penal Code dated 26/9/2004 and numbered 5237;
  
  1. referral to suicide (article 84),
  
  ii. Sexual abuse of children (article 103, first paragraph),
  
  iii. Facilitate the use of drugs or stimulants (Article 190),
  
  iv. Hazardous substance for health (article 194),
  
  vi. Obscenity (Article 226),
  
  vi. Prostitution (Article 227),
  
  vii. Provide space and facilities for gambling (Article 228) [and],

- Crimes mentioned in the Act of Crimes against Ataturk dated 25/7/1951 and numbered 5816.
The law gives Telecommunication Authority (TİB) power to block websites. If the content you want to block is on a website in Turkey, the content can be removed or if it is outside Turkey, the access to the site can be prevented. There are administrative financial and penalties and imprisonment for those who do not fulfill blocking decisions. The way to go to the court against blocking decisions is open. At the core of the blocking application is the reporting of websites to the central system that citizens are disturbed by their content. The crime notice center of TİB may be applied by e-mail, telephone or text message (SMS).
2. The Law on the Acquisition of Information No. 4982 of 2003 regulates the methods and boundaries of using the citizens' right to access information of public organizations in a democratic, transparent and accountable management system. This frame also mentions the extent of the right to information in the law:

- Published or publicly disclosed information or documents,
- Government actions out of jurisdictional control,
- Information or documents related to the state secret,
- Information or documents related to the economic interests of the country,
- Information or documents related to intelligence,
- Information or documents related to the administrative investigation,
- Information or documents relating to judicial investigation and prosecution,
- Information or documents that can not be disclosed within the confidentiality of private life are outside the scope of this law (Article 8, 15-21).
Although legal regulations determine the access of state information and documents to the public by rules and limitations showing the exceptions, it can not be said that the habitual negative attitudes of the bureaucracy against access to the state information are completely over. In an interesting example, information about the types and value of gifts received by Turkish President from US President Obama during a visit was demanded. This demand was rejected at the beginning by the reason that the demanded information was an exception to the Act. The later on, upon a lawsuit, the authorities finally agreed to announce the gift list. The gifts given were a glass bowl and a trinket.
“Since 2009, federal regulations require all e-mails be preserved as part of an agency’s record-keeping system.”
3. The Electronic Signature Act dated 2004 and numbered 5070 regulates the electronic signature application with its legal and technical dimensions. As a result of this law, the electronic signature is legally equivalent and binding to the wet signature (hand signed).

4. The Universal Service Act of 5369 dated 2005 regulates steps and finance of service provision of communication by the government as a basic citizenship right. With this law, the state has aimed to provide uninterrupted and high-quality communication services to all citizens regardless of socio-economic differences among regions, and of disability.
5. In section 10 of the Turkish Penal Code no 5237 dated 2004, crimes like illegal entrance to an information system (Article 243), the destruction or blockage of a system, destruction or changing of data (Article 244) and abuse of the bank or credit cards (Article 245) are defined, and criminal penalties against these crimes are regulated.

6. Repeated items (242) in Electronic Media Records and Electronic Cases Document Regulation of Tax Procedures Law No: 213 dated 1961 (Supplementary article: 28/08/1991 3762/3 art.) bought the provision that "Documents issued by electronic devices and documents containing stamps issued by special devices shall be submitted to this Law." In an additional paragraph of the same law (28/12/2001, 4731 No./ Article 4.) regulated new concepts such as electronic books, electronic documents, and electronic records.

7. Article 15 of the Turkish Code of Obligations states that "secure electronic signatures will also result in all legal consequences of the signed signature."
BREAKING INTO GOVERNMENTAL INFORMATION SYSTEM. IT'S EASIER THAN SNAKE GAME!
“ I never realized computer crime was getting this serious!”
Secondary Legal Regulations

There are many examples of secondary regulations put into effect in the field of e-government. As an interesting example here is Regulation on the Establishment of the Disability Database and the Issuance of Identification Cards to the Disabled issued by the Ministry of Family and Social Policy (Official Gazette Date: 19.07.2008, Official Gazette No. 26941). The Regulation states that "the documentation of disability conditions for use in the enjoyment of the rights and services granted to persons with disabilities through this database" (Article 1) and "including disability information of those losing their physical, mental, social skills by 40% in the identity cards" (Article 2).
In this section, we focused on the legal arrangements related to central government. Legislation on e-Government applications in local government units such as municipal and provincial special administration laws will be examined between the lecture notes of the week on "e-Government applications in local governments." There is a list of areas where there is no legal regulation yet, but there is a need in this regard. For example, we mentioned that a provision in the privacy and protection of personal data entered the Constitution in 2010. A detailed legal regulation on this subject is on the agenda of the Grand National Assembly of Turkey. It has been stated that "hate discourse" on the internet on issues such as prejudice, racism, and discrimination should be prevented by a special law. The hate discourse on race, color, ethnicity, gender, sexual orientation, nationality, religion, etc. may aim to humiliate and humiliate individuals and groups because of their differences in this respect. Again, the subject of information ethics may be subject to a separate legal regulation.

Conclusion
Finally, the E-Government and the Information Society Law Draft, which includes detailed regulations on e-Government and envisages the agency model for institutional restructuring in this area has been removed from the agenda. This draft was addressing the management of e-Government applications in public institutions and it was envisaged that an e-Transformation manager would be appointed for each institution and an e-Transformation panel would be set up for coordination.