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Communication from an NGO (İfade Özgürlüğü Derneği ("İFÖD")) (27/04/2022) in the case of Cangi v. Turkey (Application No. 24973/15)

Information made available under Rules 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1436e réunion (juin 2022) (DH)

Communication d'une ONG (İfade Özgürlüğü Derneği ("İFÖD")) (27/04/2022) relative à l'affaire Cangi c. Turquie (requête n° 24973/15) ***[anglais uniquement].***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

RULE 9.2 COMMUNICATION

in the Case of Cangı v. Turkey (no. 24973/15)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

27.04.2022

An independent non-governmental organization specialized in defending and promoting freedom of expression

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

DGI Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the ECtHR

F-67075 Strasbourg Cedex

FRANCE

27.04.2022

Rule 9.2 Communication from İfade Özgürlüğü Derneği ("İFÖD") in the Case of *Cangı v. Turkey* (no. 24973/15)

1. The submission is prepared by **İfade Özgürlüğü Derneği** ("İFÖD" – Freedom of Expression Association), a non-profit and non-governmental organization which aims to protect and foster the right to freedom of opinion and expression in Turkey.

2. The aim of this submission is to update the Committee of Ministers concerning the failure of the Turkish authorities to implement the required general measures deriving from the case of ***Cangı v. Turkey***[1] fully and effectively as well as report and address the failure of judicial and administrative practice in fully aligning the domestic legal framework concerning the right to information with the European Court's case law.

Background

3. The case of *Cangı v. Turkey* concerns a violation of the right to information on account of the refusal of the Ministry of Culture and Tourism, Directorate-General for Preservation of Natural Heritage to provide an official copy of the meeting minutes in which the conservation plans for the ancient site of Allianoi and construction of the Yortanlı hydroelectric power plant had been discussed. In its decision, the Ministry of Culture and Tourism, Directorate-General for Preservation of Natural Heritage relied on article 26 of Law No. 4982 on Right to Information. According to article 26 of Law No. 4982, **unless otherwise decided**, the documents such as memorandums and recommendations that are necessary for the operation of a public institution are within the scope of the right to information. Subsequent to the applicant's request, the Directorate-General for Preservation of Natural Heritage decided to exempt the requested document from the scope of the right to information without providing any grounds for its decision. Although the applicant challenged the decision, the administrative courts dismissed the case and the individual application to the Constitutional Court was declared inadmissible. On 07.05.2015, the applicant lodged an application to the European Court claiming that his right to receive and communicate information of public interest as a citizen and member of a non-governmental organization has been violated.

4. On 29.01.2019, the European Court ruled that the interference based on article 26 of Law No. 4982 on the Right to Information was not in **accordance with the law**. In its decision, the European Court considered that there is no need to further examine whether the interference

[1] *Cangı v. Turkey*, no. 24973/15, 29.01.2019.

pursued a legitimate aim or whether the interference was necessary in a democratic society.[2] The European Court based its decision on the fact that the administration reversed the general principle in article 26 of the law by judging the requested document to be exempt from the scope of the right to information following the request of the applicant. Thus, although there is a prescribed interference stipulated by article 26 of Law No. 4982, it was clearly not in conformity with the law. The Court also noted that not only the Directorate-General for Preservation of Natural Heritage but also the Access to Information Review Board, and the domestic courts misinterpreted article 26 of Law No. 4982.[3] In this regard, the Court found the infringement was arbitrary and at the very least, manifestly unreasonable. Consequently, the Court decided that the refusal of the right to information request violated the applicant's freedom to receive and communicate information protected by Article 10 of the Convention.

5. The case of *Cangı v. Turkey* illustrates **structural problems** with respect to **the full and effective** enjoyment of the right to information as it is necessary in a democratic society. Notwithstanding, the implementation of Law No. 4982 on the Right to Information and especially article 26 of the law **lacks legal safeguards** for arbitrary interference of the public authorities with the right to receive and communicate information of public interest.

The Action Report of the Government

6. On 26.12.2021, the Turkish Government submitted an Action Report involving the case of *Cangı v. Turkey*.[4] In the Action Report, the Government argued that the interpretation of the wording of article 26 of Law No. 4982 **is neither unforeseeable nor reasonable.** The Government argued that there "is **no an ambiguity in the wording** of" article 26 of Law No. 4982 and that the violation in the case of *Cangı v. Turkey* has "stemmed **from the interpretation of the law**".

7. The Government further claimed that the case of *Cangı v. Turkey* is **an isolated incident**. In support of these arguments, the Government stated that the Access to Information Review Board acts in conformity with the case-law of the European Court. The Government argued that the Access to Information Review Board complies with the Court's case-law in the application of article 26 of Law No. 4982. According to the Government, the Board refuses applications falling within the ambit of this provision provided that there is a decision of non-disclosure taken by the relevant administrative authority prior to the requests seeking that information.

8. According to the Government, the existence of a prior non-disclosure decision issued by the administrative authorities was considered sufficient to argue that the Access to Information Review Board acts in conformity with the case-law of the European Court. The Government also presented two sample decisions delivered by the Access to Information Review Board, claiming that similar violations to *Cangı v. Turkey* have been prevented by the decisions of the Board. The Government also informed the Committee of Ministers that the decision of *Cangı*

[2] *Ibid,* § 43.
[3] *Ibid,* § 41.
[4] See DH-DD(2021)1125.

v. Turkey was translated into Turkish and the relevant authorities were informed to prevent any other similar violations occurring.

9. Finally, the Government argued that, since the case has an isolated character, the publication and dissemination of the judgment and the case-law of the relevant courts shall be sufficient in respect of the general measures. Therefore, the Government invited the Committee to close its examination in this case.

10. However, the current situation in terms of application of article 26 of Law No. 4982 is not as straight forward as the Government argues. As will be demonstrated in this submission, **(a)** the European Court ruled that article 26 of Law No. 4982 does not have legal basis; **(b)** the chain of rejection, dismissal as well as inadmissibility decisions by the relevant administrative bodies, the courts as well as the Constitutional Court strongly indicates that the issues arising from *Cangı v. Turkey* decision does not indicate toward an isolated character and certainly not a case of (m)interpretation of the law; **(c)** submission of two sample decisions from the Access to Information Review Board does not prove otherwise in the absence of access and review of all the decisions of the Board which lacks transparency; **(d)** the sample decisions (obtained from the Committee of Ministers) show that the problems with the application of article 26 of Law No. 4982 continue; **(e)** The Government did not submit any relevant court decisions or commented on whether there exists such decisions to support its argument that the case has an isolated nature and finally **(f)** there is no indication that the Turkish courts' jurisprudence including that of the Constitutional Court is compatible with that of the European Court in relation to right to information.[5]

11. None of the above has been explained in detail by the Government and submission of two sample decisions as well as the translation of the decision to Turkish **cannot simply be interpreted as compliance with the general measures** of the *Cangı v. Turkey* decision. As will be further detailed below, İFÖD contacted and officially requested from the Access to Information Review Board all its decisions (including the sample decisions) involving article 26 of Law No. 4982 but İFÖD's request was denied leading into a complaint to the Ombudsman.

İFÖD Complaint to the Ombudsman

12. On 30.02.2021, İFÖD submitted a right to information request to the Access to Information Review Board. In its request, İFÖD briefly explained the case of *Cangı v. Turkey* (no. 24973/15, 29.01.2019) judgement and the Committee of Minister's supervision procedure regarding the enforcement of the European Court's decisions. İFÖD further stated that as an NGO working on freedom of speech, it will submit a communication to the Committee in which it will observe the application of article 26 of Law No. 4982 following the European Court's judgement. In this regard, İFÖD requested (1) the two sample decisions of the Board that were presented in the Government's Action Report, and more importantly (2) all of the decisions issued by the Board within the scope of article 26 of Law No. 4982 on the Right to

[5] See generally *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 18.11.2016 and subsequent cases including *Cangı v. Turkey*, no. 24973/15, 29.01.2019.

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Information. However, on 03.02.2022, the Board, oddly, refused the request on the ground that there is no legal procedure designated to request information from the Access to Information Review Board. The decision of the Board does not meet the principle of legality from a number of aspects and at the very least is arbitrary and falls short of the requirements of Law No. 4982. Thus, on 16.03.2022, İFÖD filed a complaint with the Ombudsman Institution and asked the Ombudsman to investigate the unlawful refusal of information of the Access to Information Review Board which is an administrative institution within the scope of Law No. 4982. In short, the Board cannot exclude itself from the scope of the law just by stating that there is no "legal procedure to request information from the Board".

13. Secondly, İFÖD further argued that it is not the first time a right to information request was made to the Access to Information Review Board. According to the Report on Right to Information published by the Grand National Assembly of Turkey, there are numerous right to information requests made to the Board and the Board complied with at least some of those requests and provided the requested information.[6] Similarly, on 31.03.2011, the Board complied with a right to information request made by Prof. Yaman Akdeniz who is among the founders of İFÖD **(Annex-I).** Considering that the Access to Information Review Board was established for the enjoyment of the right to information, the refusal of İFÖD's request on the ground that there is no procedure regulating application to the Board was arbitrary.

14. İFÖD's request to access the decisions of the Board in full is crucial for assessing whether the European Court's decision was observed by the Board. İFÖD's complaint currently is under review with the Ombudsman's Institution and İFÖD will inform the Committee of Ministers about the outcome of its complaint.

İFÖD's Observations

15. İFÖD's request to have access to information from the Board, namely its decisions involving article 26 of Law No. 4982, which was ironically deemed not to be prescribed by law by the European Court was in essence similar to the case of *Cangı v. Turkey.* In the case of *Cangı v. Turkey*, the applicant was the representative of an NGO who was intending to use the information requested to pursue a legal case to stop the construction of a hydroelectric power plant at an ancient and historical site. The European Court drew attention to the applicant's role and his purpose to obtain the requested information. In this respect, the Court noted that

[6] According to the 2018 Report on the Right to Information published by the Grand National Assembly of Turkey, a total of 21 right to information requests were made to the Board. Out of these 21 requests, the Board provided information in relation to 8 applications admissible, provided information partially in relation to 3 applications and refused to provide information in relation to 10 applications. Similarly, in 2017 a total of 25 right to information requests were made to the Board, the Board provided information in relation to 5 applications, provided information partially in relation to 2 applications, refused to provide information in relation to 17 applications and directed one application to another public institution. See further the reports through https://www.tbmm.gov.tr/BilgiEdinme/KurulRaporlari

the applicant was a public watchdog who was planning to use the information for the public good.[7]

16. There is no doubt that by submitting a Rule 9.2 communication, İFÖD is acting as a public watchdog and the requested Board decisions will be used for the public good. The refusal of İFÖD's request clearly shows the principles set out by the European Court are not followed by the Board whose primary purpose is to ensure effective enjoyment of right to information.

17. Going back to the decision of the European Court, contrary to the Government's arguments, the case of *Cangı v. Turkey* is not a simple case of misinterpretation of article 26 of Law No. 4982 by the Access to Information Review Board. Before the applicant lodged an application to the European Court, he requested the information from the relevant administrative institution, lodged his objections with the Access to Information Review Board and he has exhausted the domestic legal remedies by applying to the administrative court and subsequently lodging an individual application to the Constitutional Court. Thus, until the European Court found that the interference was not in accordance with the law, the administrative institutions and domestic courts continued with the unreasonable and arbitrary application of article 26 of Law No. 4982. Therefore, the Government's Action Report does not consist of any explanation of how the necessary measures have been taken to prevent similar violations to occur or shed any light into "the problem solved" claim.

18. Notwithstanding, the Government did not present any evidence or information in relation to how the judicial practice is in alignment with the European Court's judgement. In the presence of the European Court's clear finding that the administrative institutions and also the domestic courts delivered decisions that is not in accordance with article 26 of Law No. 4982, the Government should be asked to provide evidence from the administrative and constitutional courts. İFÖD believes the two-sample decisions provided by the Board are not sufficient to assess the structural problems arising from the application of article 26 of Law No. 4982.

19. Moreover, İFÖD would like to draw the Committee's attention that the Constitutional Court of Turkey is yet to find a violation in relation to the right to information protected by Article 74 of the Turkish Constitution.[8] Furthermore, whether directly or indirectly related to the right to information, the Constitutional Court so far did not discuss issues related to the right to information in its case-law[9] or referred to the principles set out by the *Magyar Helsinki Bizottság v. Hungary* and *Cangı v. Turkey* decisions of the European Court.

20. The Committee should also note that the Access to Information Review Board is under the obligation to prepare and publish annual reports on the statistics involving Law No. 4982 and its application by the public institutions. This obligation is stemming from article 30 of Law No. 4982. According to this article, the annual reports shall include among other required

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7 See *Cangı v. Turkey*, no. 24973/15, 29.01.2019, §§ 34-35, in this regard see also, *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, 08.11.2016; *Falzon v. Malta*, no. 45791/13, 20.03.2018.

8 According to Article 74 of the Turkish Constitution "Everyone has the right to obtain information and appeal to the Ombudsperson."

9 See *Arif Ali Cangı* no. 2016/4060, 17.09.2020*, Adem Talas,* no. 2014/12143, 16.11.2017, *Nurcan Belin,* no. 2014/14187, 10.01.2018, *Erol Çiçek (2)*, no. 2017/22570, 29.09.2020 among others.

information also "the number of the rejected applications and statistical information about their categorization." However, the annual reports do not refer to the categorization of the rejected applications even though this is required by law. So, no one knows how many applications were rejected because they were deemed to involve "national security" or were deemed "in the interest of the economic well-being of the country" or for that matter deemed within article 26 of Law No. 4982. In the absence of statistical data and in the absence of the full assessment of article 26 related decisions of the Board, it is not possible to understand and examine the structural problem arising from the application of article 26.

21. Within this context, it should also be noted that the Access to Information Review Board was established in 2004, and as of end of 2020, the Board has issued 25.022 appeal decisions according to the official statistics. Nevertheless, almost all of the decisions delivered by the Board are not accessible apart from 50 (fifty) sample decisions.[10] As mentioned above, it is not even possible to access the Board's decisions through official right to information requests. This shows that **secrecy, rather than transparency** is the norm so far as access to information is concerned at the Access to Information Review Board level. Needless to say, İFÖD believes all of the decisions issued by the Access to Information Review Board should be accessible to public as there is great public interest with access to such information.

22. Regardless of the **limitations** mentioned above, İFÖD **managed to assess three decisions** of the Board related to article 26 of Law No. 4982. Two of the sample decisions were obtained through the Department for the Execution of Judgments of the European Court of Human Rights and one sample decision was found among the 50 decisions published by the Board on its website. Even with limited access to the article 26 related decisions, İFÖD believes that the sample decisions once again show that the application of article 26 of Law No. 4982 is not in line with the standards set by the European Court. The structural problems arising from the application of article 26 continue and indicate further arbitrary application as will be shown below.

23. First, sample **decision no. 2020/401 (11.03.2020)** concerns the applicant's request to access an investigative report about himself from the Council of Judges and Prosecutors. Following the refusal of the request, the applicant challenged the decision before the Board. The Board referred to a decision dated 03.01.2018 in which the investigative reports were considered within the exemption of article 26 of Law No. 4982. First of all, the requested report was about the applicant himself. Secondly, in a decision delivered on 11.02.2014, the 2nd Chamber of the Supreme Administrative Court considered that the respective investigative reports prepared by the Council of Judges and Prosecutors fell within the scope of the right to information.[11] In this regard, the Board refused the request with mere reference to the 03.01.2018 decision of the Council of Judges and Prosecutors, and it did not make any further assessment in terms of why the information was requested and whether the requested information fell within the other exemptions of the Law No. 4982 and therefore on which grounds this information was

[10] See https://bedk.adalet.gov.tr/SayfaDetay/kararlar13072021121109.

[11] See 11.02.2014 judgement of the 2nd Chamber of the Supreme Administrative Court, no. 2013/8596 and decision no. 2014/846.

exempted from the scope of article 26 of Law No. 4982. The Government, in fact does not provide comment on this sample decision nor explain it. However, İFÖD is of the opinion that the refusal of the right to information request on the ground that the Council of Judges and Prosecutors decided not to disclose the requested information prior to the applicant's request may be rather an arbitrary application of this provision amounting to in fact abuse of process. In the absence of a reasoned decision, the Government's claim that the Access to Information Review Board is functioning in accordance with the standards specified in the case of *Cangı v. Turkey* is very much disputed as the Board did not examine whether the administration's refusal decision on the basis of the standards set by the European Court.

24. The second sample **decision no. 2021/1035** (18.01.2021) is also questionable. In this decision, the applicant submitted a right to information request to access the names of the members of the Scientific and Technological Research Council of Turkey ("TÜBİTAK") who did not comply with the annulment decision of the Constitutional Court as he wanted to complain about those members. The Council rejected this request by referring to a decision of the Council of 08.01.2011 in which it was stated that the information of the persons drafting documents for the Council would be excluded from right to information requests subject to article 26 of Law No. 4982. The applicant complained to the Access to Information Review Board but the Board refused the applicant's claim by stating that the decision issued by the Scientific and Technological Research Council was in accordance with the law.

25. Article 26 of Law No. 4982 provides that unless otherwise decided "information and document qualified as opinion, information note, proposals, and recommendations which facilitate the execution of the activities of the institutions" shall fall within the scope of the right to information. Therefore, two conditions need to be met to exclude this type of information from the scope of the Law: (1) Information should be one of the items listed in the article; (2) A decision to exclude this information should be taken by the administration prior to the request. However, the applicant, in this case, requested information regarding professional information concerning commission members rejecting his petition for the reinstitution of his rights in accordance with the judgement delivered by the Constitutional Court. The requested information is not one of the items listed under article 26 of Law No. 4982. Thus, the Scientific and Technological Research Council of Turkey cannot rely on article 26 of Law No. 4982 to reject the applicant's request. However, the **substance of the request** was not discussed by the Access to Information Review Board and the Board also disregarded the wording and reasoning of article 26 of Law No. 4982. In other words, the existence of a "decision to exclude" certain types of information is not alone enough to exclude such information from the scope of Law No. 4982 and from the right to information protected by Article 74 of the Constitution. Otherwise, the **existence of a decision to the contrary**, by proxy **can act as a "trojan horse"** and **any information can be excluded** from the scope of the right to information by **dubious** and **arbitrary decisions** taken by public institutions. This was not the intended purpose of article 26 and in any case, it is **not Convention compliant** and certainly falls short of the Court's "in accordance with law" requirement.

26. İFÖD further examined 50 sample decisions published on the website of the Access to Information Review Board. Only one of these decisions involves the application of article 26 of Law No. 4982. The **decision no. 2020/219 (**05.02.2020, **Annex-II)** concerns the applicant's right to information request in relation to the 2019 Ministry of Justice Mediation Exam. The applicant requested to access the questions and the correct answers in full as well as the wrongly answered questions by himself. His request was responded by the Ankara Hacı Bayram Veli University, which was contracted to prepare the 2019 exam questions. The university refused the applicant's request relying on a provision of an agreement with the Ministry of Justice that was restraining the university from sharing the questions with individuals and institutions. The Board referred to the agreement between the university and the Ministry of Justice and refused the applicant's request on the ground that the requested information is excluded subject to article 26 of Law No. 4982. Needless to say, exam papers are not among the types of documents and information listed under article 26. İFÖD therefore argues that, right to information requests concerning exam papers cannot be rejected, regardless of the fact that an agreement between a university and the Ministry of Justice was reached previously.

27. Considering all the above, contrary to the Government's arguments, the case of *Cangı v. Turkey* **is not an isolated incident** and **no progress was achieved** with regard to the full enjoyment of right to receive information as protected under Article 10 of the Convention. İFÖD submits that article 26 of Law No. 4982 **is not foreseeable**, **applied arbitrarily** and the Access to Information Review Board, while continues to keep almost all its decisions secret, **provides wide discretion** to the administrative institutions in the application of the relevant provision. İFÖD maintains that this practice certainly falls short of the Convention standards as referred to by the European Court in *Cangı v. Turkey*.

Conclusions and Recommendations

28. İFÖD considers that structural problems observed by the European Court remain and have not been properly addressed by the Turkish authorities. Even the sample decisions submitted by the Government to the Committee confirm that article 26 of Law No. 4982 is applied by the Access to Information Review Board **in contradiction** with the European Court's case-law.

29. There has been **no progress achieved** with regard to the application of article 26 of Law No. 4982 and citizens along with the public watchdogs **cannot enjoy the right to information** as it is protected under Article 10 of the Convention.

30. İFÖD **recommends** the Committee **to ask** the Government **to provide** detailed data about the implementation of article 26 Law No. 4982 as well as **to submit** all the decisions of the Access to Information Review Board in relation to article 26 for further assessment.

31. İFÖD also **recommends** the Committee **to ask** the Government **to provide** examples from recent administrative and judicial practices regarding the application of article 26 Law No. 4982.

32. İFÖD further **recommends** the Committee **to continue to supervise** the implementation of the judgement of the European Court of Human Rights in the case of *Cangı v. Turkey.*

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İfade Özgürlüğü Derneği (İFÖD) has been set up formally in August 2017 to protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys the freedom of opinion and expression and the right to access and disseminate information and knowledge.

T.C.
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BİLGİ EDİNME DEĞERLENDİRME KURULU

Sayı : B.02.0.BHİ.0.02-622.03-246

31-03-2011

Konu: Bilgi edinme başvurunuz hk.

Sayın Dr.Yaman AKDENİZ
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İlgi: a) 16/02/2011 tarihli dilekçeniz.
b)11/03/2011 tarihli cevabımız.
c) 21/03/2011 tarihli e-posta başvurunuz.

İlgi (a)'da kayıtlı bilgi edinme başvurunuz istemiş olduğunuz şekilde elektronik ortamda Başbakanlık Bilgi Edinme Birimi aracılığıyla ilgi (b) metin ile cevaplanmıştır. İlgi (c) başvurunuz ile bu defa söz konusu cevabı yazılı olarak talep ettiğiniz anlaşılmaktadır. Söz konusu cevabımız aşağıda yer almaktadır:

1) Bilgi Edinme Değerlendirme Kurulu 10 Şubat 2011 tarihinde 165. toplantısını yapmıştır. 16 Mayıs 2007 tarihinden 16 Şubat 2011 tarihine kadar 90 toplantı yapılmıştır. Hali hazırda mevcut 133 Karar defteri bulunmaktadır.

2) 24/05/2004-23/02/2011 tarihleri arasında Kurulumuza 8290 itiraz başvurusu yapılmıştır.

3) İtiraz başvurularının 7910 adedi işleme alınmıştır.

4-7) 23/02/2011 tarihi itibariyle görüşülmemiş 124 başvuru mevcuttur.

5)Yukarıda belirtilen tarihler arasında Kurulumuza yapılan itirazlardan 2802 adedi "KABUL" edilerek, kurum ve kuruluşlarca verilen cevaplar yerinde görülmemiştir. İtirazların 3284 adedi hakkında kurum ve kuruluşların cevapları yerinde görüldüğünden "RED" kararı verilmiştir.

6) İtirazlardan 1390 adedi ise "KISMEN KABUL" edilerek kurum ve kuruluşların başvuru sahibine verdikleri olumsuz cevapların bir kısmı yerinde görülmemiş diğer kısmı ise yerinde görülmüştür. 282 adedi hakkında "KARAR ALINMASINA YER OLMADIĞI'na hükmedilmiştir. İtirazların 28 adedi hakkında ise İNCELEMEYE ALINMASI ara kararı verilmiştir.

8) Ayıklanma işlemi tamamlanmış yayınlanmayan Kurul Karar Defteri bulunmamaktadır. Kurulumuzun yeni web sitesi çalışmaları sürmektedir. Buna göre Kurulumuz örnek kararlarını yeni web sitesi üzerinden yayınlayacaktır. Bu sebeple bundan sonra Karar defteri tanzim edilmeyecektir.

Başbakanlık Merkez Bina B-04 Bakanlıklar 06610 ANKARA
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9-10) nolu taleplerinizle ilgili Kurulumuz kayıtlarında hâlihazırda mevcut bir çalışma bulunmamaktadır. Her ne kadar anılan talepleriniz ile ilgili olarak bu safhada 4982 sayılı Kanunun 7 nci maddesinin *"Kurum ve kuruluşlar, ayrı veya özel bir çalışma, araştırma, inceleme ya da analiz neticesinde oluşturulabilecek türden bir bilgi veya belge için yapılacak başvurulara olumsuz cevap verebilirler."* hükmü uyarınca olumsuz cevap veriliyor olsa da bu konuda Kurulumuzca sürdürülen çalışmalar tamamlandığında konuya ilişkin veriler de tarafınıza bildirilebilecektir.

Bilgi edinilmesini rica ederim.

Ruhi ÖZBİLGİÇ
Başkan

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KARAR TARİHİ: 05/02/2020

KARAR SAYISI : 2020/219

İTİRAZ EDEN **:** …….....
…….

BAŞVURUNUN YAPILDIĞI
KURUM VEYA KURULUŞ **:** Hacı Bayram Veli Üniversitesi Rektörlüğü

KURUM VEYA KURULUŞUN
CEVAP TARİHİ **:** 31/12/2019 (Tebliğ tarihi belirtilmemiş)

KURULA BAŞVURU TARİHİ **:** 04/01/2020(Kurula İntikal: 08/01/2020 Kayıt No:15)

RAPORTÖR **:** BÜNYAMİN BEDİR

1- İTİRAZ VE KONUSU

Başvuru sahibi 16/12/2019 tarihli dilekçesiyle CİMER aracılığıyla Adalet Bakanlığı'na başvurarak '2019 Adalet Bakanlığı Arabuluculuk Sınavı' ile ilgili olarak;

1. Sınavın tüm soru ve cevaplarının açıklanmasını,
2. Sınavda 87 puan aldığından bahisle yanlış yaptığı kabul edilen 13 sorunun ve cevaplarının tarafına bildirilmesini,

talep etmiştir.

2- KURUM VEYA KURULUŞUN CEVABI

Söz konusu başvuru Adalet Bakanlığı tarafından YÖK' e iletilmiş ve Ankara Hacı Bayram Veli Üniversitesi tarafından cevaplanmıştır. Rektörlükçe verilen cevapta, başvuruda yer alan talebin 'Üniversite' ve 'Adalet Bakanlığı' arasında yapılan 02/08/2019 tarihli protokolün 13 üncü maddesinde yer alan '' … Sorular sınav yapıldıktan sonra hiçbir kişi veya kuruma verilmeyecektir.'' hükmü kapsamında olduğundan bahisle başvuru reddedilmiştir.

3- KURULA BAŞVURU

Başvuru sahibi 04/01/2020 tarihli dilekçe ile itirazen Kurulumuza başvurmuştur.

4- USUL YÖNÜNDEN İNCELEME

Bilgi edinme başvurusunun usule uygun olduğu görülmüştür.

KARAR

……..'in itirazının **KISMEN KABULÜ ve KISMEN REDDİ** ile;

4982 sayılı Bilgi Edinme Hakkı Kanununun "Kurum içi görüş, bilgi notu ve tavsiyeler" başlıklı 26 ncı maddesinde "Kurum ve kuruluşların faaliyetlerini yürütmek üzere, elde ettikleri görüş, bilgi notu, teklif ve tavsiye niteliğindeki bilgi veya belgeler, kurum ve kuruluş tarafından aksi kararlaştırılmadıkça bilgi edinme hakkı kapsamındadır..." hükmü ile bilgi edinme hakkının sınırları belirtilmiştir. Bu doğrultuda Arabuluculuk sınavı ile ilgili olarak

Adalet Bakanlığı ile Hacı Bayram Veli Üniversitesi arasında yapılan protokol gereğince soruların açıklanmayacağı, kararlaştırılmış olduğundan ilgilinin soruların açıklanması talebinin reddine,

Ancak, söz konusu bu sınavlarda, 4982 sayılı Kanunun 10 uncu maddesinde belirtilen özel erişim usullerinin geçerli olabileceği, kamusal sınavlara ait soru kitapçığı ve cevap anahtarına ilişkin taleplerin gözetmen eşliğinde, yerinde inceleme yaptırılmak suretiyle karşılanabileceği, yine bu tarz talepler karşılanırken ilgili kurumlarca özel erişim usulüne uygun olarak erişim ücreti talep edilebileceği değerlendirilmiştir. Bu doğrultuda, Arabuluculuk sınavının da kamusal nitelikte olduğu, adayın kendisine ait soru kitapçığının ve cevap anahtarının, başvuru sahibi açısından özel erişim usulü çerçevesinde ve gözetmen eşliğinde,yerinde inceleme yaptırılmak suretiyle karşılanması gerektiğinin, aynı zamanda 4982 sayılı Kanun ve ilgili mevzuat uyarınca erişime açılacak belgeler için ücretlendirmenin geçerli olabileceğinin Hacı Bayram Veli Üniversitesi Rektörlüğüne ve ilgilinin talebin bu kısmının kabul edildiğinin başvuru sahibine bildirilmesine,

İşbu karara karşı 60 gün içerisinde idari yargıda iptal davası açılabileceğinin taraflara bildirilmesine, oybirliği ile karar verilmiştir.

Başkan Prof. Dr. Hasan Tahsin FENDOĞLU	**Üye** İbrahim ACARLI	**Üye** Ahmet Hüsrev VURAL
Üye Prof. Dr. Mahmut KOCA	**Üye** Prof. Dr. Hasan Nuri YAŞAR (Katılamadı)	**Üye** Ünsal TOKER
Üye İsmail KURUL	**Üye** Hayrettin KURT (Katılamadı)	**Üye** Hakan ÖZTATAR (Katılamadı)