



HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE

ANTI-DISCRIMINATION AND EQUALITY GUIDE



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EQUALITY GUIDE**

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ANTI-DISCRIMINATION AND EQUALITY GUIDE



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1 | What is the principle of equality and non-discrimination?

The principle of equality, based on the concept of "human dignity," is at the forefront of the principles that govern the entire state, including the legislative, executive, and judicial bodies regulated by Article 10 of our Constitution. However, equality is a universal principle that has also found its place in many international and national texts. Article 10 of our Constitution states, "*All persons are equal before the law, without distinction of language, race, color, sex, political opinion, belief, religion, and sect or on similar grounds (...)*". The principle of equality and the prohibition of discrimination, which are often used synonymously and express the same thing, mean that people in the same or similar situation must be treated equally and that those who are not in the same situation and under the same conditions may be treated differently. The European Court of Human Rights (ECHR) defined discrimination as treating people in the same situation differently without objective and reasonable justification. (*Willis v. the United Kingdom*, para. 48, *Olkpisz v. Germany*, para. 33). The difference in treatment is based on an objective, and ECHR assesses the reasonable ground within the framework of certain criteria. In this case, the ECHR first examines the

existence of said legitimacy in the context of the relationship between the measure's purpose and its effects, taking into account the principles applicable in a democratic society. The ECHR also considers that in the case of unequal treatment behind the exercise of a right, in addition to the legitimate aim, there is also a reasonable relationship between the aim pursued and the means used. The Constitutional Court, on the other hand, defined the concept of equality as "*different treatment of persons in the same situation without an objective and reasonable basis.*" The principle of equality and the prohibition of discrimination are also enshrined in Article 3 of Law No. 6701 on the Human Rights and Equality Institution of Türkiye.



It states;

"(1) All are equal in the exercise of legally recognized rights and freedoms.

(2) It is prohibited under this Law to discriminate against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age.

(3) Where the principle of non-discrimination is violated, relevant competent and responsible public institutions and agencies and public professional organizations with public institution status shall take necessary actions with a view to putting an end to the violation, remedying its consequences, preventing its repetition and ensuring the launch of administrative and judicial proceedings into it.

(4) Natural persons and legal persons created under private law who bear responsibility in respect of non-discrimination shall take necessary measures for detection of discrimination, elimination thereof and ensuring equality in respect of matters falling under their mandate."

The principle of equality recognizes that all people are born free and equal and that all individuals have the same rights and deserve the same level of respect. Everyone living in society has the right to be treated equally. This right also states that laws, policies, and practices must not be discriminatory and that public authorities are obligated not to act in a discriminatory or arbitrary manner when drafting laws and implementing their policies.

The prohibition of discrimination is an essential component of the principle of equality. It ensures that people are not discriminated against based on factors such as sex, race, color, language, religion, belief, sect, philosophical and political opinion, ethnical origin, wealth, birth, marital status, health status, disability, and age.

The principle of equality and non-discrimination is a fundamental element of international law. In this way, equal treatment of persons under equal conditions is guaranteed in law and practice. However, it is also important to emphasize that not every distinction or difference in conduct constitutes discrimination. As is generally recognized in international law, different treatment with an objective and reasonable justification does not constitute discrimination if the end sought and the means employed are proportionate.

However, the principle of equality may, in certain circumstances, require States to take positive action to reduce or eliminate conditions that cause or contribute to discrimination. The goal is to provide equal opportunities and chances to people in unequal situations, thereby reducing the conditions that hinder them.

2 | What is the scope of non-discrimination?

The scope of the prohibition of non-discrimination is defined in Article 5 of the HREIT Law.

According to this article, public institutions and organizations providing education and training, justice, law enforcement, health, transport, communications, social security, social services, social assistance, sports, accommodation, culture, tourism and similar services, professional associations having the character of public institutions, real persons and legal persons under private law shall be prohibited from discriminating against persons using these services with regard to the activities they perform, or who apply to use these services or who wish to receive information about these services.

Persons and institutions responsible for planning, providing, and supervising these services must consider the needs of the various disability groups and ensure that reasonable accommodations are made.

On the other hand, public institutions and agencies, professional bodies with public institutions status, real persons, legal persons under private law, and their agents who provide movable and

immovable wealth to the public are obliged not to discriminate against those who wish to acquire or rent such wealth, as well as those who want to obtain information about such wealth, when renting it, determining the terms of the rental contract, renewing or terminating the rental agreement, selling it and transferring it.

On the other hand, the different treatment of associations, foundations, trade unions, political parties, and professional organizations in terms of membership, election to their bodies, availing of membership opportunities, termination of membership, and participation in and availing of activities of these organizations also falls within this scope, except for the exceptions established in the relevant laws or statutes.



3

What are the grounds of discrimination in the HREIT law?

After stating in the first paragraph of Article 3 of Law No. 6701 that all people are equal concerning the rights and freedoms recognized by law, the second paragraph lists the grounds for discrimination as follows: *"It is prohibited under this Law to discriminate against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age."*

- **Discrimination based on sex:** Although there are different opinions about the content of discrimination based on sex, the common view is that discrimination based on sex is the distinction between men and women. The discriminatory situation may arise from a one-time act, measure, rule, or policy. In some cases, the discriminatory treatment may be considered discriminatory even if it is not intentional.

The discriminatory treatment, actions, and procedures faced by women in matters such as maternity leave, breastfeeding leave, and termination of employment contract due to maternity based on their sex characteristics also constitute discrimination based on sex.

The 23rd paragraph of the European Union Directive 2006/54/ EC states that negative treatment of women concerning pregnancy or childbirth constitutes direct sex discrimination.

In the case of Ünal Tekeli v. Türkiye, the ECHR ruled that a woman must take her husband's surname after marriage under national law. However, a man is not required to take his husband's surname after marriage, which constitutes discrimination based on sex.



In HREIT Board Decision No. 2020/176, a female applicant applied through a company's website and reported that the HR department hired her based on interviews with various people. However, the hiring process was concluded negatively after informing the relevant people that she was pregnant. The Board then ruled that the applicant had been discriminated against based on her sex because of her pregnancy.

Although seemingly different treatments are applied in our law, situations that do not constitute a prohibition of discrimination are also accepted. Accordingly, cases making it imperative to employ a certain sex may be employed and different proportionate treatment to eliminate inequalities fall within this scope.

- **Discrimination based on race, color, and ethnic origin:** Racial discrimination is discrimination based on race, color, descent, or national or ethnic origin in all political, economic, social, cultural, and civic life.

Although ethnicity, in addition to racial discrimination, is separately regulated in the law, discriminatory treatment based on ethnicity is used in the literature, along with discrimination based on race. Concepts such as a common culture and history, traditions, a commonly spoken language, and the same tribal understanding constitute ethnicity.

For example, being denied health care services at a private hospital without reasonable justification because one is Kurdish may constitute discrimination based on ethnicity.

Discrimination based on skin color, on the other hand, is discrimination suffered by individuals because of the color of their skin. Discrimination based on skin color, listed as a separate ground from discrimination in Law No. 6701, may also be assessed with discrimination based on race and ethnicity in some cases.

For example, discrimination based on skin color may consist of not renting a house to a person because of his or her black skin color or denying him or her access to jobs such as restaurants, hairdressers, or tailors because of his or her skin color.

In Orsus and Others v. Croatia, the ECHR considered the placement of Gypsy children in a class consisting only of these students to be racial discrimination because they did not have a sufficient command of the Croatian language and found this to be a violation.

When a shop in Denizli hung an inscription "IRANIAN, SYRIAN, AFGHAN CUSTOMERS CAN NOT

ENTER THIS SHOP; THEY CAN NOT SHOP, IF THEY ENTER, THEY WILL BE BEATEN IN THIS PLACE," "IF SYRIAN, AFGHAN, IRANIAN PEOPLE ENTER THIS SHOP, THEY WILL BE BEATEN, IT IS NOT OUR RESPONSIBILITY" on its window, the HREIT launched an ex-officio investigation because the statements prevent refugees and immigrants from entering a shop open to the public and receiving a public service and that they would be subjected to violence if they tried to enter it. The investigation found that the prohibition of discrimination based on race and ethnic origin had been violated.

In our law, situations that do not constitute a prohibition of discrimination are also accepted despite seemingly different treatment. This includes situations in which only a particular sex may be employed, necessary, appropriate, and proportionate differential treatment to eliminate inequalities, and appropriate and proportionate differential treatment in employment and self-employment where there are compelling occupational requirements. For example, the non-admission of non-blacks in voting for a film about the life of the former Brazilian football player Pele cannot be considered a violation of the prohibition of discrimination. The difference in treatment resulting from the conditions of entry and residence of non-citizens and their legal status is also among the situations that do not constitute discrimination.

- **Discrimination based on language:** This is the basis of discrimination against individuals based on the language they

speak, write and use.

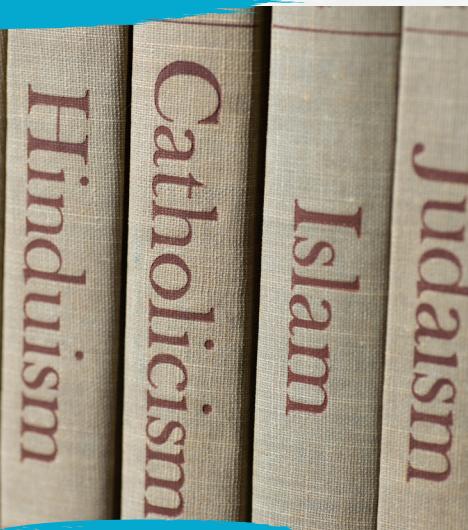
For example, if it is stipulated that singing in an international music competition is only allowed in certain languages without an objective and reasonable reason for doing so; this can be considered a violation of the prohibition of discrimination.

Some documents (e.g., ILO Convention No. 111) prohibit discrimination based on language as a sub-component of discrimination based on race. Article 6 (3) of the ECHR states that every person in criminal proceedings has the right to have the charges against him or her drawn up in a language that he or she understands and to have an interpreter if he or she does not understand or speak the language used in court. Again, under the prohibition of discrimination, Article 14 ECHR prohibits discrimination based on language differences. On the other hand, the treaty bodies have held in their case law that the ECHR does not guarantee freedom of language and, in particular, the right of individuals to use the language of their choice in their relations with public bodies and to



receive answers in that language.

- **Discrimination based on religion, belief, and sect:** : It is discrimination when a person is treated differently because of his or her religion, belief, or sect. Adherence to a particular belief may be considered a basis for discrimination, while lack of a belief may be a basis for discrimination. A sect is a concept where religion and belief are intertwined, and it is a way of conveying a different interpretation of religion.



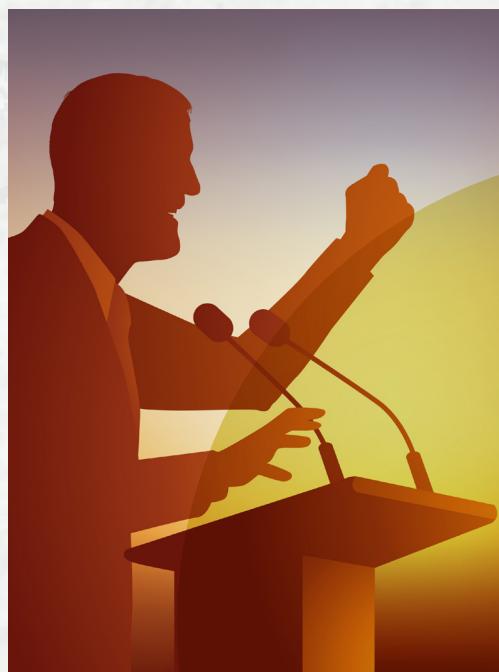
The HREIT ruled in its Decision No. 2020/26 that the prohibition of discrimination based on religion and belief was violated because the freedom of religion and conscience was violated when the plaintiff went on holiday with his family and the family was not allowed to enter the pool wearing a hijab swimsuit when they wanted to use the pool reserved for residents by the officials.

In our law, although there are different treatments, situations that do not constitute a prohibition of discrimination are also accepted. Accordingly, treatments such as employing only members of that religion to provide religious services or education and training in a religious institution are among the situations that do not constitute discrimination, depending on the conditions of the

specific case.

- **Discrimination based on philosophical and political beliefs:** This is the discriminatory treatment of people concerning their rights and freedoms because of their philosophical and political beliefs. Discrimination based on philosophical and political beliefs is found in all areas of society, especially where people gather, such as in the workplace, schools, and universities. Discrimination based on philosophical and political beliefs can manifest itself in the employment process, promotion, personnel rights, working conditions, and pay. In education, discrimination based on philosophical and political views can manifest in enrollment, grading, dismissal, and assignment of students

The HREIT ruled in its Decision No. 2020/193 that the prohibition of discrimination based on political



opinion was violated in a file alleging that Municipality X did not provide transportation services to the neighborhood where they lived because they used their political preferences in favor of another party in the elections.

- **Discrimination based on wealth:** Wealth, defined in the sense of the word as assets, possessions, or wealth, is when people are discriminated against based on their economic level.

For example, if only children from high-income families are admitted to a school, this may constitute discrimination based on wealth against low-income children who meet all other requirements for enrollment.

Our law has also accepted situations that do not constitute a prohibition on discrimination, despite the apparent difference in treatment. Accordingly, treatments such as necessary, purposeful, and proportionate



differential treatment aimed at eliminating inequalities may be among the situations that do not constitute discrimination, depending on the circumstances of the specific case.

- **Discrimination based on birth:**

Discrimination based on birth generally means that a person is subjected to discriminatory treatment because of a situation such as illegitimate birth or adoption or for reasons arising from the person's social status in the context of facts such as neighborhood, region, or place of birth.

For example, if a person born out of wedlock inherits less of his or her parents' inheritance than his or her siblings born out of wedlock, the prohibition against discrimination based on birth may be violated.



In *Mazurek v. France*, the ECHR considered the practice of entitling an illegitimate applicant to no more than one-fourth of his mother's inheritance under national law to be unequal treatment based solely on the fact that he was born out of wedlock. The Court held that the unequal treatment would be justified only if there were "extremely weighty reasons" and that, although the traditional objective of protecting the family was a legitimate one, the unequal treatment on that ground alone would result in the victimization of the child, who did not have the power to determine the circumstances of his birth.

- **Discrimination based on marital status:** This is the basis for discriminating against a person based on whether or not he or she is married, whether he or she was married under a particular legal regime, or whether he or she is divorced or widowed.

In the Board decision numbered 2018/69 by HREIT, the applicant claimed that when he applied to a real estate agent to rent a house, he was not rented because of his marital status and, therefore, he was subjected to discrimination. Based on the investigation, the Board ruled that the treatment violated the prohibition against discrimination based on marital status.



- **Discrimination based on health status:** This is when people are discriminated against regarding their rights because of their health condition, e.g., in education, transport, health facilities, buildings, information/communication, employment, personal rights, transport, and access to goods and services. Health status includes both mental and physical illnesses.

For example, unjustified dismissal by the restaurant where the person works because of his or her HIV positivity may constitute discrimination based on health status.

In Kiyutin v. Russia, the ECHR considered the refusal of an Uzbek to apply for a residence permit because he was HIV-positive to violate the prohibition of discrimination in connection with Article 8 of the Convention.



- **Discrimination based on disability:** According to Law No. 6701, a disability is an impairment caused by attitudes and environmental conditions that limit full and effective participation in society under the same conditions as other persons due to varying degrees of loss of physical, and mental, emotional and sensory abilities. Discrimination based on disability is the discrimination against persons who have lost their physical, mental, spiritual, sensory, and social skills from birth or for any reason while continuing their social life and meeting their daily needs, according to Law No. 5378 on Disabled Persons.

One of the types of discrimination, "failure to make reasonable accommodation," is the necessary and reasonable arrangement to enable disabled persons to enjoy their fundamental rights and freedoms on an equal basis with other persons; measures taken to prevent discrimination do not impose an undue burden on the person who must make an accommodation.

For example, building a handicap-accessible ramp and arranging boarding and alighting times for persons with disabilities are reasonable accommodations. Failure to make reasonable accommodations may, under certain circumstances, constitute a violation of the prohibition against discrimination.

In Cam v. Türkiye, the ECHR held that if a visually impaired student passes the conservatory's "baglama" (an instrument with three double strings) examinations and then receives training in the medical report required for education, the conservatory refuses to accept the report, claiming that there are no instructors or infrastructure to provide private training. The court fails to make reasonable accommodation to avail the right to education; this is considered a violation of the prohibition on discrimination.

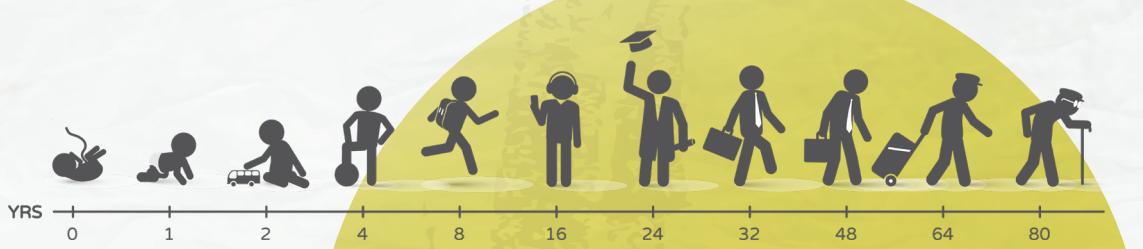
In the case file, where the visually impaired plaintiff claims that although the Ministry of Culture and Tourism is responsible for transferring all

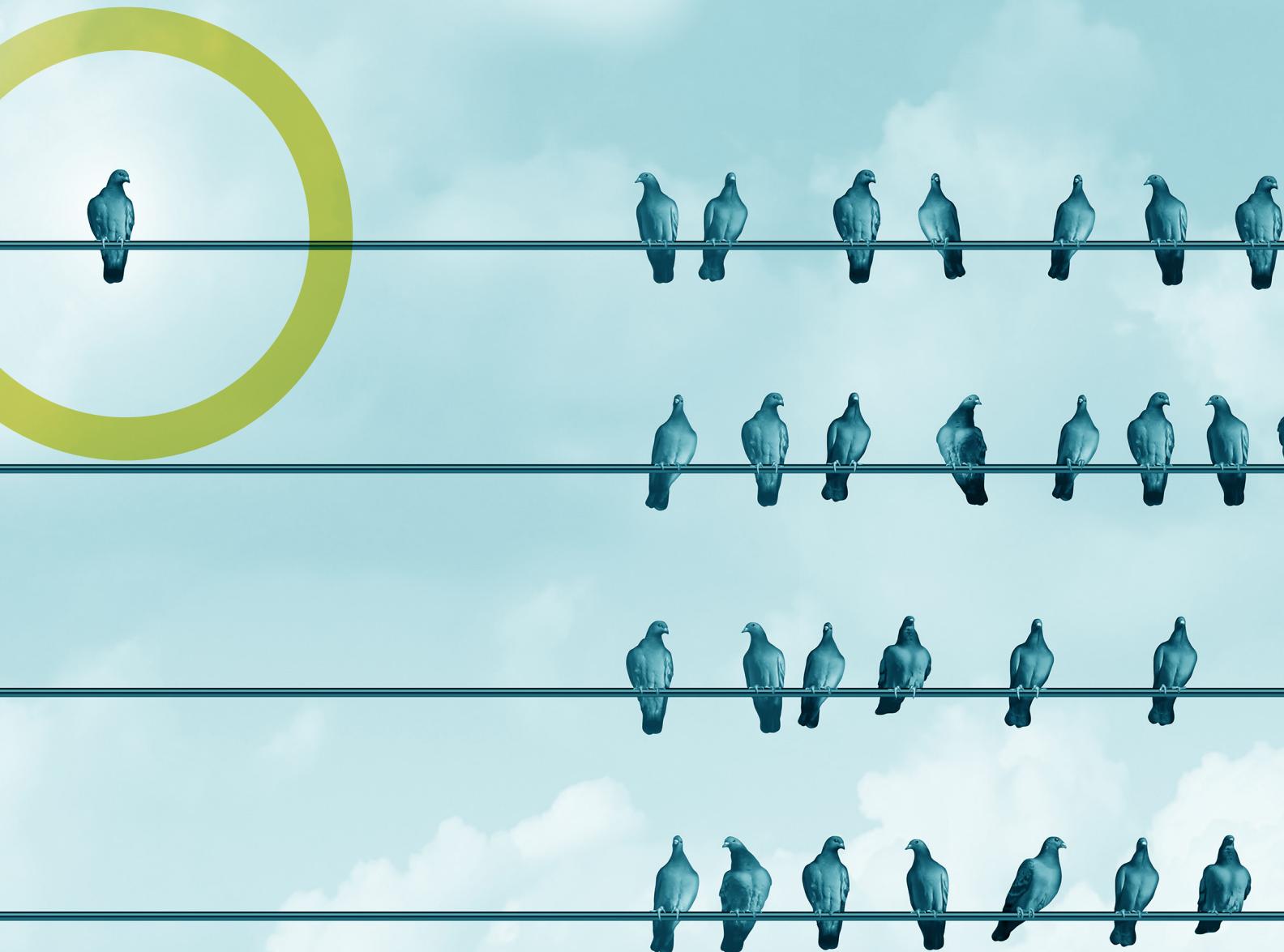
printed works to electronic media and making them accessible to visually impaired people, the HREIT Board failed to fulfill this responsibility in its Decision No. 2021/377. Therefore, he was subjected to discriminatory treatment based on disability; it was ruled that the prohibition of discrimination based on disability was violated by failing to ensure accessibility when claiming the right to participate in cultural life.

- **Discrimination based on age:** This is discrimination against people based on their age.

For example, suppose a college's job advertisement for librarians includes a condition that only people under the age of 25 can apply for the job without any objective and reasonable justification. In that case, this may constitute age discrimination against people over 25.

Despite seemingly different treatment, situations that do not constitute a prohibition of discrimination have also been accepted in our law. Accordingly, in the areas of employment and self-employment, a further treatment that is reasonable and proportionate when there are compelling occupational requirements, as well as the establishment and application of age limits based on the needs of the service in the recruitment and employment process, are among the situations that do not constitute discrimination, depending on the conditions of the specific case.





4

What are the types of discrimination?

The types of discrimination within the scope of Law No. 6701 are as follows:

- ▶ Segregation.
- ▶ Instruction to discriminate and implementing such instructions.
- ▶ Multiple discrimination.
- ▶ Direct discrimination.
- ▶ Indirect discrimination.
- ▶ Mobbing.
- ▶ Failure to make reasonable accommodation.
- ▶ Harassment.
- ▶ Discrimination based on an assumed ground.
- ▶ Unfavourable treatment of persons and their representatives who initiate or participate in administrative or judicial proceedings to comply with the principle of equal treatment or to prevent discrimination.
- a. **Segregation:** Segregation refers to the situation in which people are kept apart from others and subjected to separate behaviors without justifiable or reasonable justification. Isolation can occur through an act or inaction.

For our institution to consider whether or not such an event constitutes discrimination, the segregation must be based on one or more of the grounds of discrimination listed in HREIT Law No. 6701

- b. **Instruction to discriminate and implementing such instructions:** Instruction to discriminate refers to the instruction given by a person to those he has authorized to act on his behalf or for his account. Similarly, such instruction may be provided by a public official. The issuance and implementation of such an instruction to discriminate are considered one of the types of discrimination under HREIT Law No. 6701.

For example, if the wealth owner instructs the real estate agent to rent or not to rent the wealth to certain persons based on certain criteria involving discrimination (e.g., that the wealth may not be rented to singles or men), and if the real estate agent also implements this decision, it is possible to give and enforce a discriminatory instruction under HREIT Law No. 6701.

c. **Multiple discrimination:** If the discriminatory practice relates to more than one of the grounds of discrimination listed in HREIT Law No. 6701, there is multiple discrimination.

For example, multiple discrimination occurs when a person is not hired because of race and creed or when a single man is not hired because of his marital status and sex.

d. **Direct discrimination:** Any discriminatory treatment that prevents or makes it more difficult for a natural or legal person to enjoy the same rights and freedoms as other persons in the same or similar situation.

Examples of direct discrimination include not renting a house to a single or widowed person solely based on marital status, stating that only applications from women will be considered in a job posting that does not include special circumstances, or deciding that entry into the swimming pool, which is open to all residents of the facility, is not permitted with a veiled bathing suit.

For a valid distinction to be made as to whether or not there is direct discrimination, the situation in which the person alleging discrimination is to be compared must be the same or

similar. At this point, the element of comparison is very important.

However, the discriminatory treatment in question must be based on at least one of the grounds of discrimination listed in HREIT Law No. 6701. When examining direct discrimination, attention should be paid to whether there is a justifiable ground. If the treatment, transaction, or situation is based on an objective, adequate and reasonable basis, there is no violation of the prohibition of discrimination.

e. **Indirect discrimination:** Indirect discrimination is when a natural or legal person is put in an unfavorable position by all kinds of seemingly non-discriminatory acts, transactions, and practices related to the grounds of discrimination listed in HREIT Law No. 6701, which cannot be objectively justified when it comes to the enjoyment of legally recognized rights and freedoms.

Indirect discrimination occurs when a neutral regulation, criterion, or practice places people, e.g., of a particular race or ethnicity, at a distinct disadvantage compared to others.

In indirect discrimination, the actions are seemingly non-discriminatory. However, because of people's different characteristics, the need to treat them differently may arise. Thus, when a situation that applies equally to everyone is applied to people who need further treatment and are disadvantaged, this is called indirect discrimination. In such a case, the

person or organization using the practice should demonstrate that it has good and objective reasons based on criteria. It does not matter whether the purpose of the application in question is to disadvantage the person or not.

In the decision of the HREIT dated 25.08.2020, number 182, it is stated that a large area is closed to pedestrian and vehicular traffic with the conclusion of the X Governor's Office so that orthopedically handicapped people cannot walk with disabilities to make their way without problems due to the slopes and numerous stairs of the open roads, without creating an alternative. It has been alleged that this practice indirectly discriminates against people with disabilities. The Human Rights and Equality Institution of Türkiye decided in the application in question that there was a violation of the prohibition of discrimination, as the disabled plaintiff had been indirectly discriminated against based on his disability." Although the said decision of the Governor's Office is an application that is valid for everyone without any discrimination, it makes it difficult for people with mobility limitations such as the disabled, the elderly and pregnant women to achieve the desired goal," the reasoning of the decision stated, and an administrative fine of TL 5,000 was imposed on the relevant Governor's Office.

- f. **Mobbing:** This refers to actions taken intentionally to alienate, exclude, and fatigue a person from his or her work. Mobbing is also referred to in the

literature as workplace bullying. The occurrence of workplace bullying, defined in Law No. 6701 as a type of discrimination, must be based on the grounds of discrimination specified in the same law. In this regard, the term workplace bullying generally encompasses a broader scope than the concept of workplace bullying defined in Law No. 6701. For an incident to be considered workplace intimidation, expressed as a type of discrimination under Law No. 6701, some elements must be present. These elements can be listed as follows:

- ▶ The incident must occur in the workplace.
- ▶ The behaviors must be performed intentionally.
- ▶ The behaviors must be intended to alienate, exclude, or fatigue the person from the workplace.
- ▶ There must be more than one act.
- ▶ It must be based on one of the grounds of discrimination outlined in the act.

To answer the question of which behaviors should be considered workplace bullying, German psychologist Heinz Leymann has classified bullying behaviors into five groups:

- This study includes behaviors that affect the victim's self-expression and communication style in the first group. Behaviors carried out within this framework include bullying practitioners limit the victim's ability to show themselves, and their words constantly interrupted, and those with

whom the victim interacts restrict the victim's ability to show themselves. The victim is yelled at or called names, their work and personal life are constantly criticized, they are harassed on the phone, they receive threats, and their relationship with the victim is denied through gestures and innuendo.

- The second group of behaviors includes attacks on social relationships. In this context, people around the victim do not talk to the victim, or the victim is prevented/prohibited from talking to others. The victim is isolated from others or treated as if he or she is not there.
- Behaviors classified in the third group include attacks on the victim's reputation. In this context, unfounded rumors circulate about the victim; the victim is bad-mouthed behind his or her back, and the victim is ridiculed or mocked for apologizing. The victim is treated as if he or she is mentally ill and is pressured to undergo a psychological evaluation, the victim's religious and political views, nationality, or private life are ridiculed, and the victim's gait, voice, and gestures are imitated, or derogatory terms are used to make him or her laugh. The victim is forced to do work that negatively affects his or her self-esteem, and his or her efforts are judged in a demeaning way, his or her choices are constantly questioned, or sexual innuendos are made about the victim.
- The fourth group of behaviors manifests as attacks on the victim's quality of life and professional status. In this context, the victim is not assigned special tasks, is given

meaningless work, the work assigned to him is taken back, and the victim cannot even look for a new job. The victim is given tasks that require less talent than he has or that exceed his qualifications, and the victim's job is constantly changed. Damage is inflicted on the victim, putting a financial burden on the victim, and the victim's living or working environment is damaged.

- The fifth and final group of attacks affects the person's health. In this context, the victim is physically forced to do hard labor, threatened with physical violence, intimidated with light force, or the victim is physically injured or directly sexually harassed.

Situations such as damaging personal belongings, exclusion, and isolation, preventing communication with colleagues, spreading gossip and false information about the victim, inciting colleagues against the victim, serious accusations against the victim's performance, provocations, a humiliation in word and deed, refusal to serve, repeated disciplinary inquiries, constant criticism, preventing the victim from taking advantage of opportunities in the workplace, overworking and/or requiring work to be completed at inappropriate times, references to the victim's mental health may be cited as examples of bullying.

However, not every stress experienced is defined as mobbing. One-time events or behaviors to which it is exposed, a violent but sudden conflict, Non-continuous negative attitudes, behaviors, disputes, and conflicts due

to stress and natural workload, even if repeated several times, attitudes to improve performance under the legal authority of management, compliance with the requirements of the law, protection of the rights and freedoms of others, attitudes and behaviors that occur outside the workplace, and similar conflicts and situations cannot always be called workplace intimidation.

In the HREIT's decision dated 14.09.2021, number 230, a female applicant working under a contract at Municipality X alleged that she was bullied based on gender. According to the applicant's allegations, the bullying began when she applied for pregnancy and maternity leave and continued until the employment contract was not renewed and she was terminated. In its review, the Human Rights and Equality Institution of Türkiye found that the applicant was justified and ruled that the applicant had been harassed based on her gender.

- g. Failure to make reasonable accommodation:** This refers to the proper, necessary, and appropriate modifications and actions required in a particular situation to ensure that persons with disabilities can fully enjoy or exercise their rights and freedoms on an equal basis with others.

For people with disabilities, this means that the employer, other people, or organization takes appropriate action to eliminate the disadvantages caused by a rule or practice. The assessment of these measures also considers the

conditions and financial possibilities imposed by the situation.

For an unreasonable regulation to constitute discrimination, the persons who need the code must inform the party responsible for the regulation. However, the regulation must not impose an excessive burden on the obligated party and must not significantly complicate the activities of third parties. (İdil İşil GÜL and Ulaş KARAN, Training Guide, p. 12)



- h. Harassment:** Any intentional or unintentional conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, humiliating, or offensive environment for that person.

Harassment may occur as a one-time act of insulting or humiliating words or as a series of behaviors over an extended period. For harassment to occur, it is sufficient that the conduct has a degrading or humiliating effect. It does not change the outcome if the person is not affected by the conduct.



- i. **Discrimination based on an assumed ground:** It refers to the situation in which a natural or legal person is subjected to discriminatory treatment because he or she is presumed to have one of the grounds of discrimination listed in Law No. 6701; however, he or she does not have it. In other words, it is a situation in which a person is discriminated against because of his or her race, religion, sect, or political affiliation, even though he or she does not have these characteristics.

For example, the unjustified dismissal of a person on the assumption that he or she is a Christian, when in fact he or she is a Muslim, may constitute discriminatory treatment based on the assumed basis.

- j. **Victimization:** The negative treatment of persons who initiate or participate in administrative or judicial proceedings to comply with the principle of equal treatment or to prevent discrimination, as well as their representatives, are also subject to discrimination within the meaning of Law No. 6701.

For example, if a colleague's testimony is used against the employer in a case brought because a person is subject to workplace bullying because he or she is Alevi, the colleague is subject to unfavourable treatment by the employer on that ground.

5

What are the circumstances where a claim of discrimination cannot be made?

The HREIT Law does not consider some different treatments as discrimination. Accordingly, the cases that cannot be claimed as discrimination are listed below:

- a) *'Different treatment which is fit for purpose and proportional and necessitated by imperative professional requirements in employment and self-employment.'*
- For example, if a company operating in the construction industry prefers hiring personnel for industrial glass cutting, hiring only persons with a certificate of competency in that occupation cannot be considered discriminatory.
- b) *'Cases making it imperative to employ a certain sex'*
- The fact that women cannot be employed underground or underwater, such as in sewer and tunnel construction, cannot be considered discriminatory treatment.
- c) *'Determining and applying age limits during admission into work and employment due to the necessities of the service, different treatment based*

on age provided that it is necessary and proportional'

- For example, prohibiting males under 18 from working in mines cannot be considered discriminatory treatment.
- c) *'Special measures and protective measures pertaining to children and persons who have to be kept at a certain place.'*
- For example, supportive measures for a child who needs protection to participate in vocational or artistic training or not sell tobacco products to children cannot be considered discriminatory treatment.
- d) *'Employment at a religious establishment of persons who are members of that religion for the purpose of religious service or delivering training and education on that religion.'*
- For example, it cannot be considered discriminatory treatment if the appointment as an imam in a mosque is conditional on a person being a Muslim.
- e) *'Requirement of certain conditions and qualifications related to persons wishing to join associations, foundations, trade unions, political parties and professional*

organizations based on purposes, principles and values mentioned in their relevant legislation and statutes.'

- For example, the rejection of the application of a dentist in a private hospital for membership in an association founded by human rights and equality experts cannot be considered discriminatory treatment.
- f) '*Different treatment which is intended for eliminating inequalities and which is necessary, fit for purpose and proportional.*'
- For example, a quota request for persons with disabilities in employment is not considered discriminatory.
- g) '*Different treatment towards non-citizens arising from conditions pertaining to their entry into and residence in the country and from their legal status..*'
- For example, the introduction of certain criteria for the naturalization of non-Turks or the inability of foreigners to become civil servants cannot be considered discriminatory treatment.

6

What are the application mechanisms for claims violating the prohibition of discrimination?

As far as discrimination is concerned, national law provides for various application mechanisms. These mechanisms are divided into extrajudicial (administrative) and judicial remedies.

Extrajudicial (administrative) remedy

Human Rights and Equality Institution of Türkiye: One of the three main mandates of the HREIT is the prevention of discrimination. In this context, any natural or legal person who claims to have been harmed by the violation of the prohibition of discrimination may apply to the HREIT. The request may be submitted in person, by mail, e-mail, fax, or via the institution's website <https://ebasvuru.tihk.gov.tr/Giris.aspx>. The application may be submitted online via the address or the e-government system. There is no fee for applying. Before submitting a request to the Institution, the parties concerned shall request the other party to correct the items they consider to violate Law No.6701. If this request is rejected or there is no response within 30 days, an application may be filed with the Institution. The institution accepts requests without imposing this condition if irreparable or impossible harm is possible. (The Guide to Individual Applications to

the Human Rights and Equality Institution of Türkiye, which contains detailed application information, can be found at <https://www.tihk.gov.tr/uploads/fileeditor/2021/08/1629465532.pdf>).

In addition to the HREIT, various institutions and organizations such as the Parliamentary Human Rights Investigation Commission, the Personal Data Protection Authority, the Board of Review of the Access to Information, and the provincial and district human rights commissions accept applications in the field of human rights in national law.

Judicial remedy

The judicial route is the route taken by the person alleging a violation of the prohibition of discrimination to the courts or the Office of the Attorney General. If the addressee accused of discriminatory treatment is an administrative authority, the administrative courts have jurisdiction, and in the case of a natural or legal person under private law, the civil courts have jurisdiction. In addition, criminal courts have jurisdiction over both addressees.

Individuals may bring a civil action for discriminatory treatment or request a criminal investigation if the treatment in question also constitutes a criminal offense. For example, an employee who has been discriminated against may seek compensation in the labor court, or a criminal investigation may be initiated at the same time if the treatment is a crime.

Article 122 of the Turkish Penal Code, entitled "Hate and Discrimination," also regulates discrimination as a criminal offense and provides for a prison sentence of one to three years. The crime in question is not reportable and is investigated ex officio by the public prosecutor's office. The statute of limitations is eight years.

Constitutional Court: Persons claiming a violation of the prohibition of discrimination may file an individual application with the Constitutional Court within 30 days after exhausting domestic legal remedies (courts of the first instance, court of appeal, Supreme Court/Council of State). Individual petitions may be filed at the Petitions Office of the Constitutional Court, at the courts and Prosecutor General's Offices, and at a foreign representative office by the petitioner, his legal representative, or his lawyer. Detailed information on the application can be found at https://www.anayasa.gov.tr/files/bireyselbasvuru/basvuru_kilavuzu.pdf

European Court of Human Rights: It is possible to apply to the ECHR after the domestic legal channels have been exhausted and the individual complaint to the Constitutional Court has been unsuccessful. The application must be filed after exhausting domestic remedies and within four months from the date

of the final decision of the last judicial authority. (Following the final decision taken after exhaustion of domestic remedies by the 15th Protocol annexed to the Convention, the time limit for filing an individual application with the Court was reduced from 6 months to 4 months.

The new 4-month period will enter into force on February 1, 2022, and the final decision in domestic law will be final. It will apply to applications filed on or after February 1, 2022). If there is a previous application on the same subject before the ECHR or an application with the same content submitted to other international bodies such as the United Nations Human Rights Committee, the applications cannot be accepted. It is possible to apply in person without a lawyer, but it is mandatory to seek legal assistance after the application is accepted. It is possible to use legal aid if it is necessary for properly processing the case and the applicant does not have the means to cover the costs. Article 47 of the ECHR Statute regulates the conditions the application must meet. The application form to be submitted to the Court is available at <https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms/tur&c>



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