

BOARD DECISION

Application Number : 2020/547  
Meeting Date/Number : 4.1.2022/167  
Decision Number : 2022/12  
Applicant : G. C. E. ( Foreigner ID No:.....)  
Applicant's Attorney : --  
Addressee Institution/Person : C. R. E. Real Estate Office (B. Ş.)

**I. SUBJECT OF THE APPLICATION**

1. The application is related to the allegation of discrimination on the grounds of color in service procurement.

**II. EXAMINATION PROCESS**

**a) Application and Opinion in Writing Stage**

2. In summary, the applicant stated that on 18.02.2021, he made an appointment to rent a flat with his wife and daughter and went to the complex named K., his wife entered the Real Estate Office first, and his wife, who was alone at that time, was told *"We have a suitable flat, we can show it to you"* and when the applicant himself entered five minutes later, he was told *"Sorry, but we do not accept black people to our complex"*, the applicant alleged a violation of the prohibition of discrimination on the grounds of color, stating that when the applicant asked his wife whether he had understood the conversation correctly, his wife answered as: *"Actually, they say that they can rent the house to me but they can't give us a house because you are black" and that he was repeatedly told: "Black people can't even enter our complex through the gate, the management has such a directive, sorry"*.

3. Within the scope of the application examination, opinion in writing were requested from the addressees of the allegation of violation regarding the applicant's allegations. Real persons M. Ş. (30.09.2021) and Ç. A. Ö. (05.08.2021), employees of the addressee C. R. E. Real Estate Office, submitted their opinions in writing to our Institution.

4. In her response letter, M. Ş., an employee of the addressee C. R. E. Real Estate Office, claims that she was present at the Real Estate Office owned by her spouse B. Ş. on 18.02.2021 when the incidents in application took place; however, the applicant did not have any verbal or actual communication with the applicant or his wife as the applicant was having conversations with the other office employee Ç. A. Ö., and she was not aware of the dialogues that took place as she was working on her computer at that time. In her response letter, the other office employee Ç. A. Ö. claims that she has no relation to the allegations in the application, that the name M. Ş. is mentioned in the applicant's petition, and that by looking at the Social Security Institution (SSI) records on the date of the incident, it will be understood that she did not work at the aforementioned Real Estate Office.

**b) On-Site Examinations**

5. Pursuant to the duty of our Institution to combat discrimination and ensure equality specified in Law No. 6701, with the assignment of the Presidency Authority dated 20.09.2021 and numbered 4150 for the mentioned application file, the addresses of the real estate consultant B. Ş. and the Complex Management in ..... district of Istanbul province was visited on 27.09.2021 in order to meet with the addressees and to examine the issues that need to be clarified within the scope of the application examinations on-site.

6. During the on-site examination, the addressee B. Ş.: *"We do not have a contract with*

*the complex management for renting and sales, we only request the necessary documents from foreign citizen tenants in line with the request of the complex management. Ç.A.Ö and M.Ş. were present in the office on the day of the event. I was sitting outside the office at that time. The mentioned allegations and dialogues did not take place directly in my presence. My employee Ç.A.Ö. had a dialogue with the applicant and the incident took place in just 5 minutes. First, the lady came in, and then her husband came with her. Suddenly there was a stir inside the office. When I questioned my employee Ç.A.Ö. about what the problem was, she said: - The individuals suddenly left the shop after I demanded the legally required documents. My spouse M.Ş. did not even have the opportunity to say hello to the applicant and his wife".*

7.The statement of A.Y., Site Manager in the K. Temporary Complex Management Board, taken during the on-site examination is as follows: *"I also heard about the issue from the media and I have no information about the subject. As the temporary site management, we do not have any rental and sales transactions. In the offices located in the bazaar square within the complex, everyone operates a real estate office independently. We do not have any legal or labour contractual relation with real estate offices. We do not have the authority to give instructions. There are eighty percent, foreign tenants and owners, in our complex, and all foreigners who provide some documents requested by the Ministry of Interior can live in our complex".*

8.Again, pursuant to the provision of paragraph 3 of Article 20 of Law No. 6701; *"When deemed necessary in connection with the matter under inquiry and examination, the Board and Institution staff members authorized to conduct inquiries and examinations may hear witnesses or persons concerned."*, the statements of the witnesses heard during the on-site examination are summarized as follows:

*Witness 1: I work as a property consultant in the ... district within the complex. Although I have heard the allegations in question, I have no direct connection with the events. But I can give brief information about our operation. There are a total of 4800 flats in our complex and each flat has a different owner. Property consultants act in line with the preferences of the apartment owners. There are a total of 6-7 property consultancies in the bazaar of the complex. We do not have any contract with the complex management in terms of sale and lease, but we work in coordination. The real estate offices in the bazaar of the complex can rent and sell houses outside the complex. (M. D. - An official of another real estate office within the complex)*

*Witness 2: I have been living in this complex as a black person since 2018. I have not been discriminated against by the complex management for my color. I reside in the complex with my spouse without any complaints. (A. N. - Complex Resident)*

*Witness 3: I work at the C.R.E. Real Estate Office as an employee registered at SSI. My start date of employment is very shortly after the incident. However, in the last 6 months after the incident, we rented houses to many foreigners and Turkish citizens. When renting to foreigners, we only ask for the documents requested by the Ministry of Interior. Moreover, the complex management requests these documents from us and I would like to state that the complex management has never had any discrimination instructions. (N. Ö. - SSI registered employee at the addressee Real Estate Office)*

*Witness 4: Since January 2018, I have been working as an accounting officer at K. Complex Management. As far as I know about the incident, the addressee Real Estate Office stated that they would not rent the applicant without looking at the residence and other legal documents. As the complex management, we do not have any discriminatory behavior or instructions. (E. Ö. - Accounting Officer of the Complex Management)*

### **c)Press News**

9.It is understood that the news regarding the allegations subject to the application was also covered in the press and an interview was conducted on a private channel with the employee of the addressee Real Estate Office. In the interview, it was seen that the employee

of the Real Estate Office stated that: “The applicant was informed that apartments could not be rented to black people according to the decision taken by the complex management and that the Real Estate Office would not want to lose the customer from whom Office could receive a commission; however, certain conditions were sought to live in the complex and one of these conditions was not to be a black person”.

### **III. RELEVANT LEGISLATION**

10. Article 10 of the Constitution titled "Equality before the law" is as follows: *"Everyone is equal before the law without distinction as to language, race, color, sex, political opinion, philosophical belief, religion, sect, or any such grounds. (...) Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings."*

11. According to paragraphs (b) and (d) of Article 2 titled "Definitions" of Law No. 6701 dated 20.04.2016: *"b) Instruction to Discriminate: An instruction given by a person to other persons authorized to act on her/his behalf or account or by a public officer to other persons to discriminate, d) Direct Discrimination: Any kind of different treatment that prevents or makes difficult, on grounds of discrimination cited in this Law, the exercise of legally recognized rights and freedoms by a natural person or legal person in an equal manner as compared to comparable persons"*.

12. According to Article 3 of Law No. 6701 entitled "Principle of Equality and Non-discrimination": *"(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... (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."*

13. In the first paragraph of Article 4 of the aforementioned Law titled "Types of Discrimination", the types of discrimination are as follows: *"a) Segregation b) Instruction to discriminate and implementing such instructions c) Multiple discrimination ç) Direct discrimination d) Indirect discrimination e) Mobbing f) Failure to make reasonable accommodations g) Harassment ğ) Discrimination based on assumed ground"*.

14. According to the first paragraph of Article 5 of Law No. 6701 titled; *"Public institutions and agencies, professional bodies with public institution status, natural persons and legal persons established under private law providing services of education and training, judiciary, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism and similar services shall not discriminate, in respect of their activities, against persons who use or have applied to use or wishing to be informed of such services. This provision also covers access to buildings and spaces where public services are provided."* and in the third paragraph of the aforementioned Article it is stated; *"When offering movable and immovable property to public; public institutions and agencies, professional bodies with public institution status, natural persons and legal persons established under private law and those authorize by them shall never discriminate against those who wish to acquire or rent such property and wish to receive information thereon at any stage during the lease of such property, formulation of the conditions of the contract of lease, renewal of the contract of lease or termination thereof, sale or assignment."*

15. In subparagraph (g) of first paragraph of Article 9 of Law No. 6701, it is regulated that the Institution has duty *"Inquiring into, examining, taking a final decision on and*

*monitoring the violations of non-discrimination principle – ex officio or upon an application”.*

16. According to third paragraph of Article 20 of Law No. 6701: *“When deemed necessary in connection with the matter under inquiry and examination, the Board and Institution staff members authorized to conduct inquiries and examinations may hear witnesses or persons concerned.”*

17. According to Article 25 of the aforementioned Law: *“(1) In case of violation of non-discrimination principle, an administrative fine ranging from one thousand Turkish lira to fifteen thousand Turkish lira depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination, shall be imposed on the relevant public institutions and agencies, professional organizations with public institution status, natural persons and legal persons established under private law responsible for the violation.”*

#### **IV. THE BOARD’S ASSESSMENT AND JUSTIFICATION**

18. According to first paragraph of Article 17 of the Law dated 20.04.2016 and numbered 6701 titled "Applications": *“Each and every natural person and legal person who claim to have suffered from violations of non-discrimination can apply to the Institution.”* In this specific case, the applicant alleges that he was discriminated against on the grounds of color and that he was denied rental services.

19. At the admissibility stage of the examination of applications, the first issue to be addressed is the determination of the addressees in the file. In this specific application, the applicant alleged that he was subjected to discriminatory treatment and he was denied service at the Real Estate Office where he went to look for rental flats because he was a "person of color". In terms of the application, pursuant to paragraph 3 of Article 5 of the Law No. 6701; *“When offering movable and immovable property to public; public institutions and agencies, professional bodies with public institution status, natural persons and legal persons established under private law and those authorize by them shall never discriminate against those who wish to acquire or rent such property and wish to receive information thereon at any stage during the lease of such property, formulation of the conditions of the contract of lease, renewal of the contract of lease or termination thereof, sale or assignment.”*; it is stated that the condition of being an owner is not specifically sought in the addressees of the violation allegations, and it is underlined that those who are authorized to conclude a lease agreement cannot discriminate against persons seeking information.

20. Again, another issue to be evaluated in the application file is whether the Real Estate Office or the employees of the Office are the addressees of the violation allegation. When the available information and documents are examined, it is seen that Office employees M. Ş. and Ç.A.Ö. have contradictory statements regarding the identity of the employee who conducted the alleged conversations, and both of them claim that the other employee conducted the conversations. According to subparagraph (i) of Article 4 titled "Definitions" of the Regulation on Real Estate Trade: *“Responsible real estate consultant; refers to real person merchants and tradesmen and craftsmen who are engaged in real estate trade, trade companies and other legal person merchants and authorized representatives who carry out real estate trade activities in branches”*. Also, according to the first and second paragraphs of Article 8 of the Law on Misdemeanors No. 5326; *“(1) An administrative sanction may also be imposed on the legal entity for the misdemeanor committed within the scope of this duty by the person who acts as an organ or representative or, although not an organ or representative, undertakes duties within the scope of the activities of the legal entity. (2) Administrative sanctions may also be imposed on the real person represented due to the misdemeanor committed by the person acting in the capacity of a representative in connection with this capacity. Administrative sanctions may also be imposed on the person who owns the business due to the misdemeanor committed by a person who works in a business owned by a real person within the framework of this*

activity."

In addition, it is understood that a statement was made on behalf of the addressee Real Estate Office in the news reflected in the press, therefore the Real Estate Office was involved in the issue by making a corporate statement regarding the allegations subject to the application. For the reasons explained above, our Institution has decided that the "Real Estate Office" rather than the office employees as the addressee of the file is the appropriate party and the C.R.E. Real Estate Office, which is the business of a real person merchant (B. Ş.), is the addressee of this specific application.

21. On the other hand, if it is necessary to make an assessment regarding the participation of the complex management in the incident subject to the application; during the on-site examination carried out for the application file, another black individual residing in the complex was heard as a witness and the person's statement as follows; *"I have been living in this complex as a black person since 2018. I have not been discriminated against by the complex management for my color. I reside in the complex with my spouse without any complaints"* was recorded in the report. As can be understood from the aforementioned statements, it is seen that the complex management does not have an intention not to accept black individuals to the site. In other words, the existence of the precedent person factor, which must be taken into consideration in discrimination law, shows that the allegations against the complex management are groundless and shows that the complex management is not involved in the allegations of discriminatory treatment. Moreover, during the on-site examination carried out by our Institution, the decision books of the complex management were examined and no decision regarding the refusal to admit black individuals to the complex was found. Therefore, there is a conviction that the complex management was not involved in the incident, and it is seen that any behavior and action contrary to the prohibition of discrimination within the scope of the application was not carried out by the complex management. Based on all these explanations, it is concluded that the Real Estate Office refused to provide rental services to the applicant without the instruction of the complex management and was the direct and sole addressee of the allegations of discriminatory treatment.

22. The prohibition of discrimination is at the core of international human rights law and is specifically regulated in many international human rights treaties. According to Article 14 of the European Convention on Human Rights (ECHR); *"The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as gender, race, color, language, religion, political or other opinion, national or social origin, membership of a national minority, wealth, birth or other status"*. The basis of the principle of equality and the prohibition of discrimination is tried to be explained on the basis of different concepts and rules such as the rule of honesty, the principle of equity, the rule of morality, the constitutional principle of equality. It is a fundamental duty of the State to prohibit all forms of discriminatory treatment contrary to equality between persons. The State itself shall not engage in discriminatory treatment, nor shall it condone discriminatory treatment between individuals. According to the Constitutional Court, the principle of non-discrimination includes the submission of opportunities or refusal of opportunities based on personal preferences, such as religion, political opinion, and sexual identity, which are elements of an individual's personality or based on personal characteristics such as gender, race, disability, and age, which cannot be favored in any way.

23. The application under examination relates to the allegation of the applicant, who made an appointment to rent a house with his wife and daughter on 18.02.2021 and went to the apartment complex named K., that this treatment was contrary to the prohibition of discrimination and that he was humiliated due to the use of the expression "Sorry, but we do not accept black people on our complex" when he entered the Real Estate Office.

24. The UN International Convention on the Elimination of All Forms of Racial

Discrimination, to which Türkiye is a party, was adopted in 1965 to eliminate racial discrimination. Article 1 of the Convention defines the term racial discrimination as “*Any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*” and prohibits it. Article 2 of the Convention states that States Parties condemn racial discrimination and undertake to “*pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races*”. Article 5 of the Convention states that individuals have the right to enjoy all public places and services without racial discrimination. This is expressed in the Convention as follows: “*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights*”. European Commission against Racism and Intolerance (ECRI), General Recommendation No. 7, racism is defined as “*The belief that a ground such as race, **color**, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.*”

25. The right of individuals to equal access to goods and services is one of the areas most frequently violated by real persons or private legal entities due to the submission of such services by private persons. Such violations may include (but are not limited to) refusal of access to services because of a person's race, color, national or ethnic origin or ancestry. (*HREIT, 2019/29 Decision, § 37*) In this specific application, although there are statements of the officials and employees of the addressee Real Estate Office stating that they were not aware of the conversations that took place on the date of the incident, the statements specific to the application reflected in the press in a different direction are noteworthy. In the video in the press, it is seen that the applicant was informed by the representative of the addressee Real Estate Office that flats could not be rented to black people according to the decision taken by the complex management and that the Real Estate Office would not want to lose the customer from whom it could receive a commission; however, certain conditions were sought to live in the complex and one of these conditions was not to be a black person. At the substantial examination stage of the case, it is clear that the applicant was refused the rental service, taking into account the above points; however, considering the explanations in paragraph 21 of the decision, the discriminatory treatment was carried out directly by the Real Estate Office without the instruction of the complex management.

26. Another issue to be addressed in the application is the statements regarding the residence permit documents allegedly requested from the applicant by the Real Estate Office. In terms of the existence of a justified and reasonable ground for discriminatory treatment, the European Court of Human Rights (ECHR) decisions define discrimination as different treatment of persons in the same position without objective and reasonable grounds (*ECHR, Willis, §48, Okpysz v. Germany, §33*). Furthermore, according to the ECHR, within the framework of Article 14 of the Convention, a different treatment constitutes discrimination if it is not objectively and reasonably justified, in other words, if it does not pursue a legitimate purpose or if there is no reasonable relationship of proportionality between the means employed and the end sought to be achieved (*ECHR Abdulaziz, Cabales and Balkandali v. United Kingdom, §72*). As regards this specific case, although it may be considered objective and reasonable not to grant a lease to a person who does not have official documents regarding residence, the fact that the applicant's spouse is a Turkish citizen and was present with the applicant on the day of the allegations must also be taken into account. In the ordinary course

of life, even if it is assumed for a moment that the Real Estate Office only asked the applicant for official documents relating to his residence in the alleged meeting, it is not considered that this would be the sole reason for the dispute between the parties. Therefore, it is considered that the allegation that the Real Estate Office discriminated against the applicant by refusing to provide rental services because the applicant was black is more in line with the facts and it is concluded that the discriminatory treatment of the applicant did not pursue a legitimate purpose.

27. On the other hand, since direct discrimination requires an individual to be subjected to different treatment, it is important for this specific case first to establish evidence of unfavorable treatment. Unfavorable treatment relates to the determination of discrimination where there is unfavorable treatment compared to a similarly situated person. In this case, considering the established ECHR decisions, when determining whether there has been discrimination on a case basis, the situation of the person claiming discrimination, the situation of the precedent person and the fact whether the precedent person and the person claiming discrimination are treated differently, and if there is different treatment, it should be determined whether it is based on motives such as race, political opinion, philosophical belief, ethnic identity, gender. (D.H. and Others, §175) Proving a violation of the prohibition of discrimination is very difficult as discrimination does not manifest itself in a clear and easily recognizable manner. In this respect, the ECHR has adopted a standard of proof "beyond reasonable doubt". According to the Court, the proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (Nachova and Others, § 147). Furthermore, regarding the burden of proof, Article 21 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye contains the following provision: "In case the person who applied to the Institution alleging the violation of prohibition of discrimination presented concrete indications and facts, the opposite side shall have to present compelling evidence suggesting that they did not violate the prohibition of discrimination and the principle of equal treatment". Although there is a definite opinion that the Real Estate Office has committed discriminatory treatment in the press about this specific application, within the framework of the above-mentioned case law and legislative provisions, it is also observed that the addressee Real Estate Office did not provide information and documents showing that they did not violate the prohibition of discrimination despite the strong indications provided by the applicant.

28. However, in the context of combating discrimination, ECRI's General Recommendation No. 1 to State Parties as; *"Ensure that the national legal order at a high level, for example in the Constitution or Basic Law, enshrines the commitment of the State to the equal treatment of all persons and to the fight against racism, xenophobia, antisemitism and intolerance... Initiate research on discriminatory practices, barriers and exclusionary mechanisms, especially in the field of housing, both in the public and private sector"* should also be taken into account. In addition, paragraph 1 of Article 5 of Law No. 6701 titled "Scope of non-discrimination" regulates the areas in which different treatment may be encountered. The mentioned paragraph states *"Public institutions and agencies, professional bodies with public institution status, natural persons and legal persons established under private law providing services of education and training, judiciary, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism and similar services shall not discriminate, in respect of their activities, against persons who use or have applied to use or wishing to be informed of such services. This provision also covers access to buildings and spaces where public services are provided."*

29. In a pluralistic and multicultural democratic state of law, it is of utmost importance for human rights that a person is not discriminated against on the grounds of race, color, and/or ethnic origin. Historically, the most basic human rights of individuals have been violated

because of their race, color, and ethnic origin. Today, it is observed that the prohibition of discrimination on the grounds of race, color and ethnic origin is included in almost all international and national legislation within the scope of human rights law and that racial discrimination is given special importance in view of its dangerous consequences.

30. When all the above-mentioned issues are considered together; in the application made to our Institution, since it is understood that the applicant could not benefit from a service open to the public due to his skin color and was deprived of the service within the scope of Law No. 6701 without objective justification, it was concluded that the addressee Real Estate Office acted in violation of the prohibition of discrimination by preventing the applicant from benefiting from the legally recognized rights and freedoms in an equal manner due to his "color" compared to those in a comparable situation.

#### **V.DECISION**

On 04.01.2022, it was UNANIMOUSLY decided as follows:

1. In the application there was A VIOLATION OF THE PROHIBITION OF DISCRIMINATION,

2. AN ADMINISTRATIVE FINE of 5,000 TRY shall be imposed on the C. R. E. Real Estate Office (B. Ş.),

3. Notification of the decision to the parties and ANNOUNCEMENT to the PUBLIC,

4. Against the decision, an application can be made to the Ankara Administrative Court within 60 days from the date of notification.

e-signed  
Att. Alişan TİRYAKİ  
II. Chairperson

e-signed  
Prof. Dr. Muharrem KILIÇ  
Chairperson (On Sick Leave)

e-signed  
Dr. Burhan ERKUŞ  
Board Member

e-signed  
Dilek ERTÜRK  
Board Member

e-signed  
Att. Harun MERTOĞLU  
Board Member

e-signed  
İsmail AYAZ  
Board Member  
(Appointed)

e-signed  
Mehmet Emin GENÇ  
Board Member

e-signed  
Muhammet Ecevit CARTİ  
Board Member

e-signed  
Saffet BALIN  
Board Member

e-signed  
Ünal SADE  
Board Member

e-signed  
Att. Zennure BER  
Board Member