

**BOARD DECISION**

Application Number : 2021/996  
Assembly Date/Number : 17.5.2022/175  
Decision Number : 2022/311  
Applicant : K.A  
Applicant's Attorney : --  
Address :  
Addressee : K.D.

**I. SUBJECT OF THE APPLICATION**

1. The subject of this application is the real estate agent's refusal to rent a house due to the applicant's marital status.

**II. EXAMINATION PROCESS**

2. The following was stated by the applicant in his petition:

a. He saw an advertisement titled "spacious 2+1 apartment with a garden, suitable for a family" in İzmir province Bornova district ... Neighborhood on the website ... where there are house advertisements for rent, he thought that the advertisement numbered ... was suitable for him and wanted to rent the house,

b. That he communicated in writing with K. D, the person authorized to rent real estate on behalf of ... via the aforementioned website,

c. The person he contacted told him that the apartment was not suitable for a single person to rent, that they preferred a family, that this situation was related to the homeowner, and that as a result of the negotiations, it was declared that the apartment was not wanted to be rented to him because he was single,

ç. He could not rent the house due to the treatment he encountered, that he was subjected to discrimination and that he demanded that the necessary action be taken against the addressee.

3. Pursuant to the second paragraph of Article 18 of Law No. 6701, an opinion in writing was requested from K.D., the addressee of the alleged violation, regarding the applicant's allegations. Pursuant to the legislation, the party addressed to the alleged violation did not submit their opinion in writing within the 15-day legal period specified in the Law on the Institution; although our opinion in writing request was repeated, no return was made by the addressee.

4. The petition dated 21.12.2021 and numbered 5181 containing the reconciliation request was sent to our Institution by the applicant. In the reconciliation request petition submitted by the applicant, apart from the allegations in his application, the following issues were expressed:

a. As a result of his application to HREIT, he was called by Mr. ..., who was Ms. ...'s employer, and invited to their real estate office after the call,

b. They stated that they would show him a suitable rental apartment in order to eliminate his victimization,

c. The apartment shown to him was an old warehouse under renovation, and the apartment in the advertisement was not equivalent to the one he had requested,

ç. In this case, in order to eliminate his victimization, he stated that he would withdraw his complaint if there is an apartment equivalent to the apartment whose features are clearly stated in the advertisement and if they rent this apartment to him,

d. However, after the last meeting, he did not receive any return from the addressees, and in this case, his victimization still continues,

e. He thought that Mr. ... and Ms. ..., with whom he had a meeting, were well-intentioned and that he requested 1,000 TRY (One Thousand Turkish Liras) as a reconciliation amount to eliminate his victimization, and he requested the payment to be made through our Institution.

5. With the letter dated 27.12.2021 and institution number 6225, the petition containing the reconciliation request of the applicant was forwarded to the addressee K. D.. On 7.03.2022, the addressee responded by sending an e-mail to the corporate e-mail address and stated the following points regarding the applicant's opinion in writing containing the reconciliation request:

a. They contacted K.A. and invited the applicant to their real estate office after they received the letter regarding the complaint application made by the applicant to the Human Rights and Equality Institution of Türkiye,

b. The applicant was shown an apartment in the Atatürk Neighborhood, which was thought to be suitable for the applicant's request, and was also offered alternative apartments suitable for rent, the applicant asked for time to think about it, said that he would get back to them after thinking about it, and when they called the applicant later, he did not want the apartment shown to him,

c. In this process, they had a telephone conversation with the applicant, in this conversation, the applicant said that he had given up his complaint application, whereupon they stated that he should apply to the Institution with a petition declaring that he had given up his complaint application, and the applicant responded positively to this request,

ç. However, at this point, they stated that the applicant had delayed them and the Institution during this period and that the applicant was not in good faith as he had applied the same practice to seven other companies.

### III. RELEVANT LEGISLATION

6. Article 10 of the Constitution titled "Equality before the law" states 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. (...) (Additional para: 7/5/2010-5982/1 article.) Measures to be taken for children, the elderly, the disabled, widows and orphans of war and duty martyrs, disabled and veterans shall not be considered contrary to the principle of equality. Government bodies and administrative authorities are obliged to act in accordance with the principle of equality before the law in all their actions."*

7. Article 48 of the Constitution, entitled "Freedom of work and contract", states that *"Everyone has the freedom to work and contract in the field of his choice (...)"*.

8. Subparagraph (d) of Article 2 titled "Definitions" of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye states as follows: *"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,"*

9. 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.*

*(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.”*

10. In the first paragraph of Article 4 of the Law No. 6701 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 an assumed ground.”

11. In the first paragraph of Article 5 of Law No. 6701 titled "Scope of the prohibition of discrimination", it is stated that;

*“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.”*

12. Subparagraph (g) of first paragraph of Article 9 of Law No. 6701 states that the Institution is in charge of *“Inquiring into, examining, taking a final decision on and monitoring the violations of non-discrimination principle – ex officio or upon an application”*.

13. Article 21 of Law No. 6701 titled "Burden of proof" states as follows: *“In applications filed at the Institution exclusively on the basis of an alleged violation of non-discrimination, if the applicant exhibits the presence of strong signs and presumptive facts relating to the veracity of his/her allegation, then the other party shall be required to prove the non-violation of the non-discrimination and principle of equal treatment.”*

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

14. First paragraph of Article 17 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye titled "Applications" states that *“Each and every natural person and legal person who claim to have suffered from violations of non-discrimination can apply to the Institution.”* It has been concluded that the application made by K.A., which is not clearly groundless and there is no other reason to decide on its inadmissibility, can be considered as an application that can be examined by our Institution.

15. 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 sex, race, color, language, religion, political or other opinion, national or social origin, membership of a national minority, wealth, birth or other status”*.

16. Prohibition of discrimination, equality before the law and equal protection under the law without discrimination are fundamental and general principles of human rights protection. Therefore, first paragraph of Article 2 of the International Covenant on Civil and Political Rights expresses the obligation of each State Party to respect and ensure to all persons within

its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (*United Nations Human Rights Committee; General Comment 18; Prohibition of Discrimination; CCPR General Comment No. 18: Non-discrimination, 10 November 1989, §1*).

17. In the judgments of the European Court of Human Rights (ECHR), discrimination is defined as treating persons in the same situation differently without objective and reasonable grounds (*ECHR, Willis v. United Kingdom Case, Application No: 36042/97, 11.09.2002, §48 and ECHR, Okpiz v. Germany Case, Application No: 59140/00, 15.02.2006 §33*). The fact that different treatment is based on objective and reasonable grounds is evaluated by the ECHR within the framework of certain criteria. In this case, the legitimacy must first be assessed in the context of the relationship between the objective of the measure in question and its effects, taking into account the principles applicable in a democratic society. It is not sufficient that the difference in treatment behind the exercise of a right set out in the Convention is solely motivated by a legitimate aim. Article 14 is likewise violated where there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (*ECHR, Belgian Linguistic Case, A. No: 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 23/07/1968, §10*). In its recent jurisprudence, the Court defines discrimination as “a difference in treatment of persons in analogous, or relevantly similar situations” and “based on an identifiable characteristic, or ‘status’ ” (*ECHR, Zarb Adami v. Malta Case, A.No: 17209/02, 20.06.2006, §71*).

18. In its Tuğba Arslan judgment, the Constitutional Court (CC) made the following assessments in terms of the principle of equality and the prohibition of discrimination; “*Even if Article 10 of the Constitution is not regulated in the form of “prohibition of discrimination”, the principle of equality has a normative value to be relied upon in every case in the constitutional context, and therefore the prohibition of discrimination must also be effectively implemented (See CC, C.1996/15, R.1996/34, R.D. 23/9/1996) In other words, the principle of equality includes the prohibition of discrimination as a concrete norm” (CC, Tuğba Arslan, A. No: 2014/256, 25/6/2014, §108)*.

19. Law No. 6701 defines direct discrimination as “*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*”.

20. Proving a violation of the prohibition of discrimination is very difficult as discrimination does not manifest itself in a clear and easily identifiable manner. In this respect, the ECHR has adopted a standard of proof “beyond reasonable doubt”. According to the Court, proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. (*ECHR, Nachova and Others v. Bulgaria Case (Great Chamber), A.No: 43577/98, 06/07/2005, §147*).

21. According to the Constitutional Court, in order for a claim of discrimination to be taken seriously, the applicant must demonstrate with reasonable evidence that there is a difference between the treatment of others in a similar situation and the treatment of himself/herself and that this difference is based on a discriminatory reason such as race, color, sex, religion, language, etc. without a legitimate purpose (*CC, Devrim Evin Judgment, A. No: 2013/2069, 20.02.2014, §34*).

22. Regarding the burden of proof, Article 21 of Law No. 6701 states that “In applications filed at the Institution exclusively on the basis of an alleged violation of non-discrimination, if the applicant exhibits the presence of strong signs and presumptive facts relating to the veracity of his/her allegation, then the other party shall be required to prove the non-violation of the non-discrimination and principle of equal treatment.” In this framework,

in order for the burden of proof to shift in applications to the Institution, the applicant must exhibit the presence of strong signs and presumptive facts relating to the veracity of his allegation (*HREIT Board Decision dated 2019/64 19/11/2019, §32*).

23. The Constitutional Court states that in cases where the existence of different treatment can be understood at first glance, the applicant is not expected to make any effort of proof, and in this context, the applicant cannot be expected to bear an additional burden of proof for different treatment that arises independently of the motive/intent of the applicant, even if it arises from legislation or practice. However, it emphasizes that in cases where differential treatment is caused by the motive/intent of the practitioner - such as the ill-treatment of a person based on discriminatory motives - the burden of proof will be on the applicant, since in such cases, it is the intention of the practitioner that gives the relevant transaction or act the character of differential treatment (*CC, Burcu Reis Judgment, A. No: 2016/5824, 28/12/2021, §57*).

24. The Constitutional Court stated that in order for the claim of discrimination to be taken seriously, it is not enough for the applicants to state that there is a difference between the treatment of others in the same situation and the treatment of themselves, they must demonstrate with reasonable evidence that this difference is based on discrimination based on race, color, sex, religion, language, etc. without a legitimate basis (*CC, Z.A. [GK], A. No: 2013/2928, 18/10/2017, §64*). However, the Constitutional Court stated that proving discrimination is not easy, therefore it is possible for the applicants to prove that they have been treated differently with any evidence in accordance with the law, and in cases where it is proved that the different treatment does not exist or is based on justified reasons, the burden of proof will shift to the party who has committed the different treatment (*CC, Ayla (Şenses) Kara Judgment, A. No: 2013/7063, 5/11/2015, §46*).

25. When the allegation of discrimination on the basis of marital status, which is the subject of the application, is examined, first of all, it is seen that the applicant submitted a screenshot of the conversation he had with the addressee real estate official on 29.09.2021 as an annex to his application petition. In these screenshots, it is understood that the real estate agent states that single tenants are not accepted for renting houses, citing discrimination instructions from homeowners. The applicant also tried to find out, in response to the answer that a family was preferred, that his financial situation was sufficient to cover the rent payment, what else was the problem and on what grounds the refusal to give him the house was based. The applicant also asked the addressee whether she was aware of the discriminatory treatment, to which the addressee replied that it was "related to the homeowners". The interview in question can be regarded as the beginning of evidence as to the truth of the applicant's allegations.

26. In the present case, it was assessed that the addressee was aware of the information and documents forming the basis of the applicant's allegations of discrimination on grounds of marital status and had sufficient information about their content. It is also understood that the addressee did not make an assessment in their opinion in writing that the applicant had not been subjected to discriminatory treatment on the basis of marital status in response to the allegations made in his petition. Therefore, as it does not seem possible to conclude that the applicant's allegations have been refuted, the applicant's allegations remain valid.

27. In order to evaluate whether the prohibition of discrimination has been violated, it is necessary to look at the relationship between the purpose and the result of the transaction, action or inaction alleged to cause discrimination. According to the ECHR, a difference in treatment constitutes discrimination if it is not "objectively and reasonably justified" or pursues a "legitimate aim" (*ECHR, Abdulaziz, Cabales and Baalkandali v. United Kingdom Case, Application No: 15/1983/71/107-109, 24/04/1985, §72*). In the present case, the applicant was treated in a discriminatory manner solely on the grounds that he was single, without any other justification. Although the addressee real estate leasing official K.D. declared that the

homeowner was behind the instruction not to give the house to a single person, giving discrimination instructions and implementing these instructions, which are defined as "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" within the scope of Law No. 6701, are among the types of discrimination included in Article 4 of the aforementioned Law. In this framework, only the reasoning for the implementation of the instruction given is put forward, does not change the determination that the discrimination instruction was implemented.

28. Article 48 of the Constitution regulates freedom of contract. The freedom of contract, which is also seen as a fundamental principle in the Code of Obligations, has aspects such as whether or not to conclude a contract, choosing the person to conclude a contract, determining and changing the content of the contract, and terminating the contract. Although the provisions of the aforementioned articles protect the freedom of contract, these rights do not provide unlimited protection to individuals. In particular, the principle of equality enshrined in the preamble and Article 10 of the Constitution acts as a brake on the exercise of these rights. Therefore, the rights protected under Article 48 of the Constitution are not only unrestricted, but are also related to the principle of equality.

29. Pursuant to Article 26 of the Turkish Code of Obligations No. 6098 entitled "Freedom of contract"; *"The parties may freely determine the content of a contract within the limits prescribed by law."* Pursuant to Article 27 of the aforementioned Law, *"Contracts that are contrary to the mandatory provisions of the law, morality, public order, personal rights or whose subject matter is impossible are absolutely null and void."* In the present case, although the addressee states that she implemented the instruction given by the homeowner, it is also prohibited to implement the discrimination instruction within the scope of Law No. 6701. Therefore, it cannot be said that she exercised their authority over the real estate that she was authorized to rent within the limits of the legal order, reasoning the discrimination instruction she received from the homeowner in her declaration, it was concluded that there had been a violation of the prohibition of discrimination since K.D. did not provide any evidence to refute the applicant's allegations that he had been treated differently.

#### **V. DECISION**

On 17.05.2022, it was UNANIMOUSLY decided as follows:

1. In the application there was A VIOLATION OF THE PROHIBITION OF DISCRIMINATION on the ground of marital status,
2. AN ADMINISTRATIVE FINE of 1.963 TRY shall be imposed on the Addressee,
3. The administrative fine shall be COMMUTED TO A WARNING in accordance with the fourth paragraph of Article 25 of Law No. 6701,
4. Notification of the decision to the parties and ANNOUNCEMENT to the PUBLIC,
5. Against the decision, an application can be made to the Ankara Administrative Court within 60 days from the date of notification.

e-signed  
Prof. Dr. Muharrem KILIÇ  
Chairperson

e-signed  
Att. Alişan TİRYAKİ  
II. Chairperson

e-signed  
Dr. Burhan ERKUŞ  
Board Member (On  
Sick Leave)

e-signed  
Dilek ERTÜRK  
Board Member

e-signed  
Att. Harun MERTOĞLU  
Board Member

e-signed  
İsmail AYZ  
Board Member

e-signed  
Mehmet Emin GENÇ  
Board Member

e-signed  
Muhammet Ecevit CARTI  
Board Member

e-signed  
Saffet BALIN  
Board Member

e-signed  
Ünal SADE  
Board Member

e-signed  
Att. Zennure BER  
Board Member