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NEWS REPORT

Country:	Turkey
Title:	The Turkish Parliament adopted an anti-discrimination law and established a national institution on human rights, anti-discrimination and torture prevention
Date:	25 May 2016
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Update of news report nr:	TR-34 ("Turkish government announced plans to establish an equality body and to penalize hate crimes")
<u>Context</u>	
Issue at stake:	The adoption of an anti-discrimination law and the establishment of a national equality body
Ground of discrimination:	Race/ethnic origin, religion/belief, age, disability, multiple discrimination
Source:	Legislation
Field:	Employment, social protection, social advantages, access to goods and services, education, housing
Applicable law:	Law on the Human Rights and Equality Institution of Turkey (no. 6701)

Content

Law development:

On April 6th, 2016, the Turkish Parliament adopted the "Law on the Human Rights and Equality Institution of Turkey," published in the Official Gazette on April 20th. As had been announced by the Deputy Prime Minister and government spokesman on 11 January 2016, the Turkish cabinet adopted the decision to establish the institution in response to the EU's condition for visa liberalisation as part of its refugee deal with Turkey. As the government spokesman has put it, this was a "package" law introducing a number of changes at once. The law replaced the Human Rights Institution of Turkey, which had been established in 2012, with the Human Rights and Equality Institution of Turkey; adopted a revised version of an anti-discrimination law which had been pending at the Ministry of Interior since 2009; and vested on the new equality body to also function as the National Prevention Mechanism to fulfil Turkey's obligation under the Optional Protocol to the UN Convention against Torture. Thereby, instead of adopting an independent law on anti-discrimination and equality body, as promised since 2009, the government merged the existing human rights institution with the foreseen equality and anti-discrimination body, with an added mandate of torture prevention.

The revised law has substantially restricted the definition and grounds of discrimination as well as the fields of application of anti-discrimination rules. As in the 2009 draft anti-discrimination law, the new law does not include sexual orientation. On the other hand, "sexual identity" and "social status", which were included in the 2009 draft law, have been taken out of the list of enumerated grounds, while "wealth" and "birth" have been added in. Most importantly, unlike the 2009 draft law, the list of prohibited grounds has

not been left open-ended. Article 3 (2) of the new law lists the following exclusive grounds: sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age.

Unlike the 2009 draft, the new law mentions multiple discrimination and mobbing at workplace among the prohibited types of discrimination. Other types of discrimination listed in Article 4 are segregation; instruction to discriminate and compliance with such instruction; direct discrimination; indirect discrimination; failure to provide reasonable accommodation; harassment; and discrimination by assumption. Victimization and discrimination by association are not included. Hate speech, which was a type of discrimination prohibited under the 2009 draft law, has been taken out.

Article 2(1)(d) of the new law defines direct discrimination as "any differential treatment, based on one of the grounds enumerated in this law, which prevents or obstructs any natural or legal entity from the enjoyment of legally recognized rights and freedoms on equal footing with others in comparable situations." Article 2(1)(e) defines indirect discrimination as: "[a] real or legal person being put in a disadvantageous situation in exercising his/her legally recognized rights and liberties on the grounds prohibited under this law in such a way that cannot be objectively justified as a result of any action, procedure or practice which does not appear discriminatory." The following additional sentence which existed under the corresponding article of the 2009 draft law has been removed: "In order for an action, procedure or practice to be objectively justified, it must have a legitimate aim and be proportionate." Article 2(1)(j) defines harassment as "any intimidating, degrading, humiliating or embarrassing conduct, including psychological and sexual, which seeks to violate human dignity or results in such outcome, related to any of the grounds referred to in this Law."

While the 2009 draft law defined race, ethnic origin, sex and sexual identity (but not age and disability), the only ground defined in the new law is disability. The definition of a person with disability under the new law is identical to that in the Law on Persons with Disabilities (no. 5378): "an individual who is influenced by attitudes and environmental factors which hinder his/her full and effective participation in social life on an equal basis with others due to loss of physical, mental, psychological or sensory capabilities at various levels." The new law defines reasonable accommodation as "necessary and appropriate changes and precautions, to the extent that financial resources permit, needed in a certain situation in order to ensure that persons with disabilities exercise or benefit from their rights and freedoms fully and on equal footing with others." Compared to the Law on Persons with Disabilities, which requires reasonable accommodation unless it imposes "a disproportionate and excessive burden", the new law imposes less stringent obligations on employers.

The new equality body will consist of 11 members, eight of whom will be appointed by the Cabinet and three by the President. The president and the vice president of the body will be appointed by the Cabinet.

The announcement of the new law has been strongly criticized by human rights groups in Turkey for its failure to comply with the UN Paris Principles which require civil society participation in the preparatory works for the establishment of national equality bodies and such bodies to be structurally, functionally and financially independent. In this case, the law has been drafted "behind closed doors" with an instrumental perspective "in exchange of the visa exemption" without the knowledge and participation of civil society.¹ Upon the finalization of the draft without any consideration of their criticisms,

¹ „Government Statement regarding the Establishment of the Human Rights and Equality Institution of Turkey: The Issue of the Institutionalization of Human Rights is Perceived Fully from an Instrumental Perspective“, joint statement of the Human Rights Foundation of Turkey, Human Rights Association, Association of Human Rights and Solidarity with the Oppressed, Helsinki Citizens Assembly, Human Rights

human rights organizations released a second press release. Reminding that the now defunct Human Rights Institution of Turkey had already been criticized by the European Commission, the Council of Europe and the United Nations for its lack of independence from the executive, the election procedure of its members and the limitations on civil society involvement, the press release saw the Human Rights and Equality Institution as a further setback. Human rights groups criticized the government for not taking into account the internal reform efforts of the Human Rights Institution, in consultation and with the involvement of civil society, to enhance the independence of this institution. The entrusting of the new equality body with the National Prevention Mechanism under the Torture Convention has also been criticized as a measure seeking to create an ineffective counter-torture mechanism from the start.²

Key points of analysis:

As admitted by the Turkish government spokesman, the primary motivation behind the hasty adoption of a much awaited law since 2009 is to fulfil an EU condition for visa liberalization as part of the deal between Brussels and Ankara for the containment of the Syrian refugee flow to Europe. As is too often the case, the government treated a much expected key reform as a foreign policy instrument rather than a human rights issue.

Internet link source:

Law on the Human Rights and Equality Institution of Turkey, no. 6701, 6 April 2016, Official Gazette, no. 29690, 20 April 2016:

<http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/04/20160420.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/04/20160420.htm>.

Agenda Association, Human Rights Studies Association, Amnesty International Turkey Branch, 18 January 2016.

² İnsan Hakları Ortak Platformu, 'Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu Tasarısı Hakkındaki Görüşlerimiz', 18 February 2016.