



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Turkey
Title:	Law no. 6701 on Human Rights and Equality Institution of Turkey
Date:	15 July 2016
Expert:	Nurhan Süral
<u>Context</u>	
Issue at stake:	Establishment of an equality board
Ground of discrimination:	Sex
Source:	Legislation
Field:	Gender mainstreaming
Applicable law:	Law on Human Rights and Equality Institution of Turkey (<i>Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu</i>), Law no. 6701, Official Gazette 20 April 2016, No. 29690; Law on Human Rights Institution of Turkey (<i>Türkiye İnsan Hakları Kurumu Kanunu</i>), Law no. 6332, Official Gazette 30 June 2012, No. 28339

Content

Law/policy development: The Law on Human Rights and Equality Institution became effective with its publication in the Official Gazette of 20 April 2016. With this law, which comprises 30 articles, protection against discrimination is strengthened in Turkey.

Turkey had its Human Rights Institution established by Law no. 6332 in June 2012. The Human Rights Institution has now been restructured and replaced by the Human Rights and Equality Institution. The Human Rights and Equality Institution, a public legal entity with administrative and financial autonomy, is attached to the Prime Ministry (Article 8). The Human Rights and Equality Board is the decision-making body of the Institution (Article 10/1). The Board shall consist of eleven members, including a President and a Vice President. Three members shall be appointed by the President of the Republic and eight members by the Cabinet (Article 10/2).

The Human Rights and Equality Institution is tasked with three functions (Article 1):

1. Protection and enhancement of human rights;
2. To ensure the right to equal treatment and to prevent discrimination in using rights and freedoms; and
3. To serve as national prevention mechanism in the framework of OPCAT. (Human Rights Institution established by Law no. 6332 in June 2012 was entrusted this task with the Governmental Decree of 9 December 2013. Official Gazette 28 January 2014, No. 28896).

The grounds specified in the Law no. 6701 (Article 3/2) are sex, racial or ethnic origin, religion or belief, sect, disability, age, philosophical and political belief, colour, language, wealth, birth, marital status and health conditions. This is an exhaustive list that cannot be extended by the judiciary but only through legislation. This does not mean that courts have no role. Sex is protected but not sexual orientation, gender reassignment or transsexuality. These groups are only marginally outside the delineated boundaries and the courts can easily re-characterize sex in order to bring these groups within the scope of protection like the leading decisions of the Court of Justice applying prohibition of sex discrimination arising from the gender reassignment of a person or transsexuality.

The Law defines direct discrimination, indirect discrimination, harassment, mobbing, multiple discrimination, segregation, instruction to discriminate and implementation of such an instruction, reasonable accommodation in line with the EU acquis, mainly the Recast Directive 2006/54/EC (Article 2).

In case of violation of the prohibition of discrimination, public bodies with responsibility and mandate on the issue and public professional bodies have to take measures necessary to end the violation, to avoid its consequences, to prevent its reoccurrence, and measures for pursuance of claims in judicial and administrative proceedings (Article 3/3). Articles 5 and 6 aim at transposition of Directives 2004/113/EC and 2010/41/EU.

The primary means of enforcing anti-discrimination laws in the employment field has been by means of individual claims to labour courts. Now, a new approach to enforcement is envisaged by Law no. 6701. The Human Rights and Equality Institution will investigate discrimination upon complaint and ex-officio and to fine people and public/private legal entities in cases of discrimination. It will also offer guidance to victims about administrative and legal procedures (Articles 9/g-ğ, 11/b). The Institution has a wider authority than its predecessor, the Human Rights Institution.

Natural persons and legal entities can file complaints of discrimination. Applications can be made directly to the Human Rights and Equality Institution or through governors in towns and sub-governors in sub-towns. Applications are free of charge (Article 17/1). Applicants have to apply firstly to the perpetrator for correction. If the application is rejected or not responded within a period of 30 days, then they can apply to the Institution. The Institution can accept a claim of discrimination without requiring this first step only if there is the possibility of emergence of damages that are impossible or very difficult to be compensated (Article 17/2). To initiate an ex-officio investigation the approval of the victim or the victim's representative has to be sought in cases where the victim can personally be determined (known) (Article 17/5). In individual applications, identities of children, of people under guardianship or protection, and of victims with such a request will be kept in secrecy (Article 17/6). Any adverse treatment of applicants, applicants' representatives, or those involved in administrative and judicial procedures (victimisation) constitutes discrimination (Art. 4/2).

The Institution will settle complaints within 3 months following receipt of application or following decision to initiate an ex-officio investigation. This period can be extended for a maximum of 3 months by the President of the Institution (Article 18/1). The party claimed to have discriminated will be asked to submit in written form his/her testimony. Upon request, the parties can be called to make oral explanations separately before the Board (Article 18/2). On its own initiative or upon request, the President of the Institution may bring victim and perpetrator to a settlement (to reach a compromise) first, and if this fails, the Board will arrive at a decision based on the testimony of the parties and the accounts of witnesses. Settlement can include avoidance of the practice claimed to be discriminatory, solutions leading to termination of such a practice, and/or payment of a certain amount of compensation (Article 18/3).

In individual complaints, the burden of proof shifts to the respondent when there is a prima facie case of discrimination (Article 21). In order to provide for effective, proportionate and dissuasive penalties in cases of the breaches of the discrimination prohibition, administrative fines can be imposed by the Board. In determining a fine, the gravity of the violation, the perpetrator's economic status, and multiple discrimination, if any, shall be considered as an aggravating factor. The discriminatory acts will be punishable with fines between TL 1 000 (EUR 310) and TL 15 000 (EUR 4 650) (Article 25/1). The Board can also convert the administrative fine to a warning. Recourse to the competent court challenging the administrative fine is possible (Article 25/6).

Besides the complaints-led model, there are positive duties to promote equality with the focus on systemic discrimination. Establishment of an equality body will now provide for compromise or synthesis which lacks in the adversarial process before the courts. Herein, anti-discrimination law is enforced by duty holders, mainly public bodies, private employers, service providers, trade unions and employers' associations, political parties, public professional organisations and NGOs (Article 3/3-4; 5).

The Human Rights and Equality Board shall, upon request, inform judicial bodies, public bodies and relevant persons of its views and considerations on issues within its mandate (Article 11/1d).

Key points of analysis:

Turkey needed an organisation promoting equality, assisting victims of discrimination, and monitoring and reporting on discrimination issues. There are no specific guidelines by the EU on how these bodies should operate. The Human Rights and Equality Institution of Turkey will operate not only in the fields of race and ethnic origin and gender but in all grounds specified in the Law. The Institution is hoped to be an effective body in promoting equality and curbing discrimination.

Internet link source: www.resmigazete.gov.tr (Official site of the official gazette), accessed 19 May 2016. (15 July 2016?)